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CAROL A. MILLER

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February 18, 2014

RECEIVED

Clerk of Court
Supreme Court of S.C.
PO Box 11330
Columbia, South Carolina 29211

FEB 21 2014

S.C. SUPREME COURT

RE: Ramon Atienzo-Perez v State of South Carolina; 2011-CP-07-4997

Dear Clerk of Supreme Court:

Under cover of this letter, please find enclosed for filing in your court a Notice of Appeal and Proof of Service in the above-referenced matter. Kindly file the original and return the copy marked filed to me in the self addressed stamped envelope enclosed for this purpose. Thank you and please contact me with any questions or concerns.

Sincerely,



Carol A. Miller

cc: Clerk of Court, Beaufort County Courthouse, w/encl.
Ashleigh R. Wilson, SC Assistant Attorney General, w/encl.
Office of Indigent Defense
Ramon Atienzo- Perez

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas, Non Jury

Deadra L. Jefferson, Circuit Court Judge

Case Number: 2011-CP-07-4997

Ramon Atienzo-Perez, #344636.....Appellant

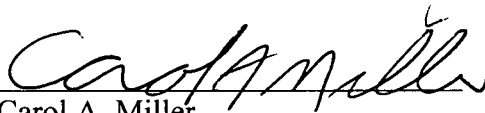
v.

The State,.....Respondent

NOTICE OF APPEAL

The appellant, Ramon Atienzo-Perez #344636 appeals the judgment and Order of Dismissal of the Circuit Court, the Honorable Deadra L. Jefferson presiding, denying his Application for Post Conviction Relief and dismissing this action. This Order was signed on February 5th, 2014, filed on February 10th, 2014 and received by counsel for the appellant on February 13th, 2014.

February 18th, 2014



Carol A. Miller.
Attorney for Appellant
P.O. Box 1306
Beaufort, South Carolina 29901
(843) 838-9025

Opposing Attorney of Record:

Ashleigh R. Wilson, Office of the Attorney General
PO Box 11549
Columbia, SC 29211-11549

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas, Non Jury

FEB 21 2014

Deadra L. Jefferson, Circuit Court Judge

S.C. SUPREME COURT

Case Number: 2011-CP-07-4997

Ramon Atienzo-Perez, #344636Appellant

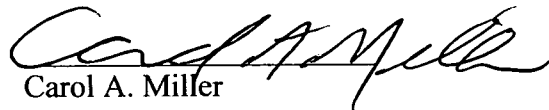
v.

The State,.....Respondent

PROOF OF SERVICE

I certify that I have served the Notice of Appeal by depositing a copy of it in the United States Mail, postage prepaid, on February 18, 2014 addressed to Ashleigh R. Wilson, Asst. AG, Office of the Attorney General of S.C., P.O. Box 11549, Columbia, S.C. 29211-11549.

February 18, 2014



Carol A. Miller
Attorney for Appellant
P.O. Box 1306
Beaufort, South Carolina 29901
(843) 838-9025

Opposing Attorney of Record:

Ashleigh R. Wilson, Office of the Attorney General of S.C.
PO Box 11549
Columbia, SC 29211-11549

FORM 4

STATE OF SOUTH CAROLINA
 COUNTY OF BEAUFORT
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2011CP0704997

Ramon Atienzo Perez

South Carolina State Of

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: Plaintiff Defendant
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the **10th day February, 2014**, and a copy mailed first class or placed in the appropriate attorney's box on the **13th day of February, 2014**, to attorneys of record or to parties (when appearing pro se) as follows:

Ramon Atienzo Perez # 344636 Lieber Corr Inst Cooper A7
post office box 205 Ridgeville, SC 29472
Carol Ann Miller PO Box 1306 Beaufort, SC 29901

Ashleigh Rayanna Wilson PO Box 11549 Columbia, SC
29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Lynn Geren - Staff

Court Reporter

Jerri Ann Roseneau - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

14 FEB 10 PM 2:43
JERRY ANN ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)
)
Ramon Atienzo-Perez, #344636,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
2011-CP-07-4997

ORDER OF DISMISSAL

Presiding Judge: Hon. Deadra L. Jefferson
Applicant's Attorney: Carol A. Miller, Esquire
Respondent's Attorney: Ashleigh R. Wilson, Esquire
Plea Counsel: Michael L. Dirnbauer, Esquire
Date of Hearing: August 26, 2013
Court Reporter: Susan "Mia" Perron

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed November 28, 2011. The Respondent made its Return on August 6, 2012. An evidentiary hearing into the matter was convened on August 26, 2013 at the Jasper County Courthouse. The Applicant was present at the hearing and represented by Carol A. Miller, Esquire. Ashleigh R. Wilson, Esquire, of the South Carolina Attorney General's Office represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Applicant's plea counsel, Michael Dirnbauer, Esquire, and former assistant solicitor Gregory Collins, Esquire, also testified at the hearing. This Court had before it the records of the Beaufort County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the PCR application, and Respondent's Return thereto. At the time of the hearing, the court reporter could not locate the guilty plea transcript. At the close of the hearing, on August 26, 2013, this Court

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took the matter under advisement in order to give the court reporter time to locate the guilty plea transcript. On October 14, 2013, the guilty plea transcript was located and the Court was provided a copy of the transcript, which it reviewed prior to its ruling and the issuance of this Order. The Court provided a copy of the transcript to counsel. Subsequently, on November 7, 2013 the Court issued a form Order denying the application and directing the Assistant Attorney General to provide the Court with a proposed Order within fifteen (15) days. The Order and a copy of the transcript were sent to the Beaufort County Clerk of Court for filing in the Applicant's record.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Beaufort County. The Applicant was indicted at the November 2009 term of the Beaufort County Grand Jury for Trafficking Cocaine Greater than 400 Grams (2009-GS-07-2346).¹ Michael Dirnbauer, Esquire, represented the Applicant. The Applicant pled guilty to the lesser included offense of Trafficking Cocaine 28-100 Grams-First Offense.² Pursuant to a negotiated plea agreement, the Honorable Craig D. Brown sentenced the Applicant to confinement for twenty (20) years. The Applicant did not appeal his conviction or sentence.

ALLEGATIONS

The Applicant alleges he is being held in custody unlawfully for the following reasons:

¹ The offense of Trafficking Cocaine Greater than 400 Grams is a violent, serious felony punishable by "a term of imprisonment of not less than twenty-five [(25)] years nor more than thirty [(30)] years with a mandatory minimum term of imprisonment of twenty-five [(25)] years, no part of which may be suspended nor probation granted, and a fine of two hundred thousand dollars [(\$200,000.00)]." S.C. CODE ANN. § 44-53-370(e)(2)(e) (2012).

² The offense of Trafficking Cocaine 28-100 Grams- First Offense is a violent, serious felony punishable by "a term of imprisonment of not less than seven [(7)] years nor more than twenty-five [(25)] years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars [(\$50,000.00)]." S.C. CODE ANN. § 44-53-370(e)(2)(b)(1) (2012).

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1. Ineffective assistance of counsel.
2. There exists evidence of material facts, not previously presented and heard that requires vacation of the conviction.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing and to closely pass upon his or her credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. CODE ANN. § 17-27-80 (2003).

At the evidentiary hearing, the Applicant testified he was initially charge with Trafficking Cocaine Greater than 400 Grams. He testified Counsel did not do anything and did not look into his case from the beginning. He testified he met with his attorney several times, although he could not remember exactly how many times they met. He testified that he and his attorney never reviewed the discovery, police reports, witness statements or any other papers and never discussed any strategy or defenses, nor did his attorney look into witnesses. The Applicant testified that at all times he met with his attorney they spoke with the assistance of a translator. He further testified that he felt he could ask questions of his attorney. The Applicant further testified he had difficulty understanding his attorney. He testified his attorney never gave him any options, did not ask him any questions, did not discuss anything with him, and rushed him to plead guilty. He further testified that he did not give his attorney any witness leads to investigate. The Applicant clarified that he and his attorney never discussed trial because his attorney never gave him any options and hurried and "pushed" him to sign. The Applicant testified he and his attorney discussed the twenty (20) year plea offer and he ultimately pled guilty because his

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attorney told him not to go to trial.

The Applicant testified he understood what a jury trial was and that he could go to trial and that by pleading guilty, he would give up his right to a trial, but was told by his attorney not to go to trial. He testified he was told to sign a confession and the sentencing sheet and he understood he would be getting a twenty (20) year sentence. The Applicant claimed that he "somewhat" did not understand the plea sheet because it was in English. The Applicant testified he was not under the influence of any substance or suffering from any mental deficits at his guilty plea, but has no recollection of what the judge explained, what his attorney said at the plea, and does not remember the exact words used. The Applicant testified that his attorney told him how to answer the judge's questions during his guilty plea and that on one occasion he did not understand his attorney and he did not understand and did not know what the judge said, but did not speak up and tell anyone.

The Applicant testified he was told that there was a confession in his case, but he never spoke with his attorney about the confession's contents or veracity. The Applicant testified further his attorney should have "looked at" the confession and that he gave a statement to police, but did not recall what he told police. He testified he could not recall what he told the police but that the police had him sign several blank papers stating he could have an attorney. He testified that he signed four (4) to five (5) papers written in English and that he was not provided a Spanish copy, but that he never told his attorney that police had him sign blank papers. The Applicant also testified that he told his attorney that he wanted to go to trial when he signed the sentencing sheet, but that he knew he was agreeing to twenty (20) years imprisonment at that time. He further testified that he knew the negotiations and plea were pursued on his behalf. He also testified that he did not want to go trial and just wanted to do his time. Lastly, the Applicant

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testified the newly discovered evidence in his case violated his constitutional rights.

Plea counsel testified he has been practicing law since 2001. He testified he was a civil attorney on the criminal appointment list at the time. He testified that at the time of this appointment he had twenty (20) to thirty (30) clients. He testified that he is now employed in the aerospace industry and currently on the inactive list. He testified he hired an interpreter and had no trouble communicating with the Applicant. He testified he was appointed to represent the Applicant approximately one (1) year prior to his guilty plea. He testified he met with the Applicant at least four (4) or five (5) times, asked all questions regarding attacking the veracity of the Applicant's confession, and spent a great deal of time trying to develop an effective defense for the Applicant. He testified that he went over the Applicant's constitutional rights, range of penalty, elements of the offense and potential defenses. He testified he filed Brady and Rule 5 motions on the Applicant's behalf and discussed all discovery, including information on the informant and all other evidence, with the Applicant at the jail.

Counsel testified he spoke with the Applicant about the lack of a defense because he saw no way to suppress the Applicant's confession, although he had reviewed the confession many times and spent a "great deal" of time going over the confession with the Applicant. He testified he asked the Applicant about his education and the Applicant indicated he could both read and write. He testified he asked the Applicant about the circumstances surrounding the confession and the Applicant indicated he was not impaired when he gave the statement. He testified the Applicant never indicated the confession was false and confirmed the content of the confession as his version of the facts. Counsel also testified the Applicant never told him he signed a blank confession form. He testified the Miranda warning and waiver signed by the Applicant was in Spanish and the Applicant was questioned by police in Spanish. Additionally, Counsel testified

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he asked all the questions he could in order to suppress the confession and advised his client that if he was unable to suppress his confession, the likelihood of the Applicant's success at trial was slim to none. Counsel also divulged that he always thought the Applicant should take a plea deal because the Applicant was at risk due to his confession and undocumented status. He further testified that he advised the Applicant that there was no legal basis for the suppression of his confession. He further testified that the Applicant never denied the validity of his confession during their evaluation of the case. He further testified that there was no evidence in his investigation of the case that the Applicant ever signed a "blank" sheet of paper at his confession for the police investigators. He testified ultimately it was the Applicant's decision when faced with the alternatives to plead guilty. He further testified that he had no concerns about the Applicant's competency to stand trial. He also testified that the Applicant was not suffering from any mental disabilities or under the influence of any intoxicants at the time of the plea. Counsel denies ever "telling" the Applicant what to say at the plea in response to the Judge's questions.

Counsel testified he entered into plea negotiations with the State and the Applicant was originally offered a negotiated plea to twenty (20) years imprisonment. He testified he communicated the offer to the Applicant and the Applicant rejected the offer and said he wanted to go to trial. Counsel testified the State then offered a negotiated plea to Trafficking Cocaine 28-100 Grams with a seventeen (17) year sentence. He testified he communicated the plea offer to the Applicant, who rejected the offer.

Counsel testified he advised the Applicant that he had three (3) options going forward—plead guilty, go to trial, or relieve him as counsel. Counsel testified the Applicant's motion to relieve counsel was denied. Counsel testified that the Applicant's motion did not upset him or compromise his diligence in representing the Applicant. Counsel testified the Applicant was

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dissatisfied with him mainly because of the plea offers he was receiving from the State. He also testified the Applicant believed the State always made three (3) plea offers. He testified he told the Applicant there was a great risk of conviction at trial. He testified at one point in the Applicant's case there were no pending plea offers and the Applicant's case was headed to trial.

Counsel testified he went back to the State a third time and the State was interested in a plea offer in exchange for the Applicant's testimony against his co-defendant. Counsel testified he communicated the offer to the Applicant and the Applicant refused to testify against his co-defendant. Counsel testified he was then able to obtain the negotiated twenty (20) year plea offer from the State a second time. He testified he communicated the offer to the Applicant, spoke with him about his right to a jury trial, his potential sentence, the nature of the charges he was facing, his constitutional rights, and immigration status. The plea court also advised the Applicant regarding his immigration status and collateral consequences as a result of the plea. Counsel testified the Applicant requested the original seventeen (17) year offer be "put back on the table" and he told the Applicant he would not be able to plead to the original seventeen (17) year offer as it was no longer available. He testified the Applicant was cognizant of everything they discussed and never said he did not understand. Counsel further testified that the Applicant was not under the influence during his plea and that he did not tell the Applicant to answer the Court's questions in a certain way. Counsel also testified that the Applicant's plea was in line with his co-defendant's plea offers and that the Applicant's version of the facts was in line with his confession. During his testimony, Counsel maintained that he reviewed the Applicant's confession in "excruciating" detail every time he met with the Applicant, as well as the law on suppression because it was critical to the case. Counsel further testified that he never subjected the Applicant to any form of coercion. However, he testified he did encourage the Applicant to

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take the offer as it was his best possible option under the circumstances. He testified that he always wished he could have gotten a better plea deal for the Applicant but the solicitor was not willing to offer anything more.

Former Assistant Solicitor Gregory Collins was also present and testified he has been practicing law for eight (8) years and spent ninety-eight (98%) to ninety-nine (99%) percent of his career in criminal law. He testified he was the assistant solicitor assigned to prosecute the Applicant's case. He testified a kilogram of cocaine was found underneath a trailer. He testified the case was initiated by a confidential informant tip. He testified police learned the Applicant drove from North Carolina with the cocaine in a car engine block. He testified originally four (4) co-defendants were arrested in association with the drugs, but one case was *nolle prossed*. He testified that in his evaluation of the case the minimum penalty was too steep considering there was a lack of gang activity and involved misguided defendants. As a result, he testified, he convinced his bosses that it was in the interest of judicial economy to make a lower offer, thus the inception of the seventeen (17) year offer. He testified the Applicant rejected the original seventeen (17) year offer resulting in instructions to him that there were to be no further offers made. Collins testified he was in constant communication with the Applicant's attorney, felt the plea offers would be accepted, noted the plea offers in the file, the Applicant ultimately pled guilty in a group with his three (3) co-defendants, and that the plea colloquy was "very detailed." Collins testified that, had there been anything unusual about the Applicant's guilty plea proceeding, he would have brought it to the judge's attention. He further testified that there were interpreters present for each defendant and the plea was time consuming so as to ensure each defendant understood the colloquy.

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Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, “the burden of proof is on the applicant to prove his allegation by a preponderance of the evidence.” Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 622, 300 S.E.2d 482, 483 (1983)). Where the Applicant alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 686, 104 S. Ct. at 2064).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. See Strickland at 690, 104 S. Ct. at 2066. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. See id. The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

Courts use a two-pronged test to evaluate allegations of ineffective assistance of counsel. First, the applicant must prove that counsel’s performance was deficient. See id. at 117–18, 386 S.E.2d at 625. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Id. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 668, 104 S. Ct. at 2052). Second, counsel’s deficient performance must have prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Id. at 117–18, 386 S.E.2d at 625

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(citing Strickland, 466 U.S. at 694, 104 S. Ct. at 2068). “A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland, 466 U.S. at 694, 104 S. Ct. at 2068).

This Court finds Counsel provided credible testimony, while the Applicant’s testimony was not credible. Counsel provided credible testimony that he conferred with the Applicant on numerous occasions. During conferences with the Applicant, Counsel testified he discussed the pending charges, range of penalty, the elements of the charges and what the State was required to prove, the Applicant’s constitutional rights, the Applicant’s version of the facts, and possible defenses or lack thereof.

Regarding the Applicant’s claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds that the Applicant’s attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 5, 239 S.E.2d 750, 752 (1977); Strickland, 466 U.S. at 687–88, 104 S. Ct. 2052, 2064–65; Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 687–88, 104 S. Ct. at 2064–65, Turner v. Bass, 753 F.2d 342, 348 (4th Cir. 1985), *rev’d on other grounds*, Turner v. Murray, 106 S. Ct. 1683 (1986); Marzullo v. Maryland, 561 F.2d 540, 543 (4th Cir. 1977)). This Court further finds Counsel adequately conferred with the Applicant, conducted a proper investigation, and provided thorough representation. This Court finds that Counsel’s representation did not fall below an objective standard of reasonableness.

This Court finds most persuasive the Applicant’s statements during his guilty plea that he understood his lawyer, was completely satisfied with Counsel’s representation, that he felt Counsel did all he could, and that he had no complaints about Counsel’s representation. (Tr.

20:8–25; 21:1–25). This Court finds that Counsel’s representation did not fall below an objective standard of reasonableness. This Court further finds Counsel utilized the services of an interpreter and was able to communicate effectively with the Applicant. Counsel’s ability to communicate effectively with the Applicant is reflected in the Applicant’s statement to the Court during his guilty plea that he understood his talks with his attorney. (Tr. 20:25–21:1). This Court also finds credible Counsel’s testimony that he was never told by the Applicant that he signed a blank form while being questioned by police. This Court finds nothing in the record indicates the Applicant signed any blank forms or advised his attorney of such.

When there has been a guilty plea, the applicant must prove that counsel’s representation was below the standard of reasonableness and that, but for counsel’s unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 52, 106 S. Ct. 366, 366 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citing Lockhart, 474 U.S. at 52, 106 S. Ct. at 366; Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000); Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000); Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994)). To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243–44, 89 S. Ct. 1709, 1712 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991) (citing State v. Hazel, 275 S.C. 392, 394, 271 S.E.2d 602, 602 (1980)). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Rolen v. State, 384 S.C. 409, 413, 683 S.E.2d 471, 474 (2009) (citing Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 650 (2000)). See Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)). When a defendant pleads guilty on the advice of counsel, the plea

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may be attacked through only a claim of ineffective assistance of counsel. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2002) (citing Al-Shabazz v. State, 338 S.C. 354, 363–64, 527 S.E.2d 742, 747 (1999)).

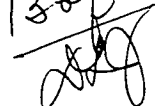
A defendant knowingly, freely, voluntarily, and intelligently pleads guilty when the defendant has a full understanding of the consequences of his plea and the charges against him. Boykin, 395 U.S. at 243–44, 89 S. Ct. at 1712. Defendant’s knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and “may be accomplished by colloquy between court and defendant, between court and defendant’s counsel, or both.” Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (quoting State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). “A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate’s right to contest the validity of such a plea is usually, but not invariably, foreclosed.” Dalton v. State, 376 S.C. 130, 137–38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 73–74, 97 S. Ct. 1621, 1629–30 (1977)). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. United States, 519 F.2d 347, 350 & n.1 (4th Cir.1975), *overruled on other grounds*, United States v. Whitley, 759 F.2d 327, 331 (1985).

This Court finds that the Applicant’s guilty plea was entered freely and voluntarily. The record reflects the Applicant was advised of the charge and range of penalty he was facing (Tr. 12:3–6; 12:12–17; 14:10–23; 15: 8–14, 17–19; 16: 7–20), as well as the Applicant’s potential enhancement exposure (Tr. 15:1–5). The court advised The Applicant he was pleading guilty to a violent offense, which would impact his parole eligibility. (Tr. 15:1–14). The Applicant was advised of his constitutional rights (Tr. 18:10–25) including the right to a jury trial (Tr. 18:12–

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16), his right to remain silent (Tr. 18:18–21), and his right to confront his accusers (Tr. 18:16–18). The Applicant also told the court that he was aware he was giving up these rights by pleading guilty. (Tr. 18: 10–25; 19:1–8). The Applicant was advised that his guilty plea could impact his immigration status and result in deportation. (Tr. 16: 23–25; 17:7–11, 14–19, 22–25; 18:1). The Applicant stated he was not promised anything, coerced or threatened by anyone to plead guilty (Tr. 22:3–6; 9–12; 15–18) and that he was accurate and truthful in his answers (Tr. 24:12–15). The Applicant stated his guilty plea was given freely and voluntarily (Tr. 23:12–15; 20–22; 27:10–12) and that he had no matters to make the court aware of (Tr. 19:11–25; 20: 1–5). The Applicant also told the court he had not been treated for alcohol abuse, drug abuse, or mental illness (Tr. 11:9–11), was not under the influence of drugs or alcohol within the past twenty-four (24) hours (Tr. 11: 14–17), and did not suffer from any physical, emotional or nervous problems that would keep him from understanding the proceedings. (Tr. 11:20–24). The court discussed the Applicant’s negotiated plea (Tr. 12:21–24; 13:3–13; 14:10–17; 28:24–25; 29:1–5), which the Applicant asked the court to accept (Tr. 14:20–23). The Applicant was advised of his right to appeal. (Tr. 22:21–23:3). The Applicant told the court that he had enough time to decide to plead guilty and was not rushed (Tr. 23:6–9) and that he understood the proceedings through the assistance of his interpreters (Tr. 23:25–24:3). The record reflects that the Applicant’s charge was reduced based on the Applicant’s cooperation. (Tr. 30:14–20). Lastly, the Applicant agreed with the facts as presented by the State during the guilty plea (Tr. 27:6–9); apologized to the State for his actions (Tr. 28:19–23); and told the Court he had no questions regarding the nature of his plea (Tr. 24: 6–9).

This Court finds and the record reflects the Applicant had a full understanding of the consequences of his plea and the charges against him. This Court does not find credible the

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Applicant's assertion that he was told by Counsel how to respond to the Court's questions. This Court finds there was ample support in the record for the plea judge to find that the Applicant's plea was freely, voluntarily, knowingly, and intelligently made.

This Court finds the Applicant has failed to carry his burden of proving Counsel's performance was deficient in any manner or that his guilty plea was not entered freely or voluntarily. This Court also finds the Applicant has failed to carry his burden of proving but for Counsel's performance he would not have pled guilty. Specifically, this Court finds the Applicant provided no testimony expressing his interest in proceeding to trial.

Newly Discovered Evidence

The Applicant also alleges evidence exists not previously presented and heard that requires vacation of his conviction and sentence. The Uniform Post-Conviction Relief Act states that a person may institute a post-conviction relief action "if there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice." S.C. CODE ANN. § 17-27-20(4) (1962).

If the applicant contends that there is evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence, the application must be filed under this chapter within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence. S.C. CODE ANN. §17-27-45(c) (1995).

In order for an Applicant to obtain a new trial on the basis of newly discovered evidence, the party requesting the new trial "must show that the evidence: (1) Is such as would probably change the result if a new trial was had; (2) Has been discovered since the trial; (3) Could not by the exercise of due diligence have been discovered before the trial; (4) Is material to the issue of guilt or innocence; and, (5) Is not merely cumulative or impeaching. Hayden v. State, 278 S.C.

610, 611–12, 299 S.E.2d 854, 855 (1983) (citing State v. Caskey, 273 S.C. 325, 329, 256 S.E.2d 737, 739 (1979)). This Court finds the Applicant’s allegation of newly discovered evidence is wholly without merit. At the evidentiary hearing, the Applicant provided no new evidence. The Applicant’s claim that his constitutional rights were violated does not constitute newly discovered evidence and the Applicant’s claims do not meet the requirements outlined in Hayden v. State. See id.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test, specifically that counsel failed to render reasonably effective assistance under prevailing professional norms. See Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). The Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in his representation of the Applicant. The Applicant failed to show that Counsel’s performance was deficient. Therefore, this Court need not address whether the Applicant was prejudiced by Counsel’s representation. See id. The Applicant’s complaints concerning Counsel’s performance are without merit and are denied and dismissed.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations. Therefore, all other allegations are hereby denied and dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations occurring before or during his guilty

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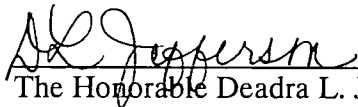
plea and sentencing proceedings. Counsel was not deficient in any manner, nor was the Applicant prejudiced by counsel's representation. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of written notice of entry of this Order to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely served and filed.

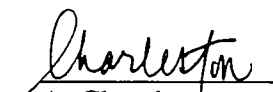
IT IS THEREFORE ORDERED:

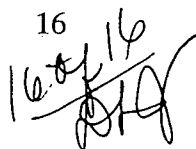
1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 5th day of Feb., 2014



The Honorable Deadra L. Jefferson
Presiding Judge, 9th Judicial Circuit


_____, South Carolina
At Chambers

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Clerk of Court
The Supreme Court of S.C.
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