

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

APPEAL FROM DORCHESTER COUNTY  
Court of Common Pleas  
Honorable Diane S. Goodstein, Circuit Court Judge

Case No: 2012-CP-18-2306

Joshua Monroe.....Appellant  
S.C.D.C. 344735

v.

The State.....Respondent

**RECEIVED**

FEB 26 2014

**S.C. SUPREME COURT**

NOTICE OF APPEAL

Joshua Monroe, appeals his Denial for Post Conviction Relief in this case. The order of Dismissal was imposed and signed by the Honorable Diane S. Goodstein, February 2, 2014, which I, Charles T. Brooks, III, received on February 23, 2014.

  
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Attorney for Appellant

Other Counsel on Record:  
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PROOF OF SERVICE

I, the undersigned, do hereby certify that on this 24<sup>th</sup> day of February, 2014, I served the foregoing **Notice of Appeal, Order of Dismissal**, as well as **Proof of Service** in this matter by depositing a true copy of it in the United States Mail, postage prepaid, on February 24, 2014, addressed to the following as indicated below:

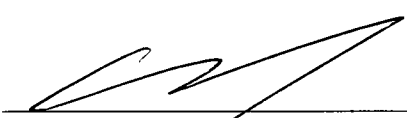
South Carolina Supreme Court  
Post Office Box 11330  
Columbia, South Carolina 29211

South Carolina Office of Appellate Defense  
1330 Lady Street, Suite 401  
PO Box 11589  
Columbia, SC 29211-1589

Office of Attorney's General  
Attn: Megan E. Harrigan, Esquire  
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Joshua A. Monroe, 344735  
McCormick Correctional Institution  
386 Redemption Way  
McCormick, South Carolina, 29899

Dated: February 24, 2014

  
Charles T. Brooks, III  
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STATE OF SOUTH CAROLINA )  
COUNTY OF DORCHESTER )  
Joshua Monroe, #344735, )  
Applicant, )  
v. )  
State of South Carolina, )  
Respondent. )

IN THE COURT OF COMMON PLEAS  
FOR THE FIRST JUDICIAL CIRCUIT

Case No. 2012-CP-18-2306

**ORDER OF DISMISSAL**

*Charles T. Brooks, III*  
CLERK OF COURT  
DORCHESTER COUNTY  
2014 FEB 11 PM 2:53  
CERTIFIED COPY

**PROCEDURAL HISTORY**

This matter comes before the Court by way of an application for post-conviction relief filed October 10, 2012. Respondent made its Return on March 13, 2013, requesting an evidentiary hearing be held. Thereafter, Applicant amended his application on October 15, 2013. An evidentiary hearing was convened on November 1, 2013 at the Dorchester County Courthouse. Applicant was present at the hearing and was represented by Charles T. Brooks, III, Esquire. Respondent was represented by Assistant Attorney General Megan E. Harrigan of the South Carolina Attorney General's Office.

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Dorchester County Clerk of Court<sup>1</sup>. Applicant was indicted during the September 2008 term of the Dorchester County Grand Jury two counts of Armed Robbery (2008-GS-18-1090, -1100), three counts of Kidnapping (2008-GS-18-1092, -1099, - 1104), and Assault and Battery of a High and

<sup>1</sup> Applicant is currently serving a concurrent sentence for the following charges from Charleston County: three counts of Kidnapping (2008-GS-10-8123, -8145, 8111), for which he received a sentence of twenty-five years imprisonment on each count; two counts of Armed Robbery (2008-GS-10-8149, -8120), for which he received a sentence of twenty five years imprisonment for each count; Attempted Armed Robbery (2008-GS-10-8109), for which he received a sentence of twenty years imprisonment; and Criminal Sexual Conduct in the First Degree (2008-GS-10-8143), for which he received a sentence of twenty-five years imprisonment, with all sentences to be served concurrently.

Aggravated Nature (2008-GS-18-1102). Applicant was represented by Michelle Suggs, Esquire. On November 14, 2011, Applicant appeared before the Honorable R. Ferrell Cothran, Jr., where he pled guilty as indicted.<sup>2</sup> Judge Cothran sentenced Applicant at an aggregate twenty-five year sentence to be served concurrently to his current SCDC sentence. No direct appeal was taken.

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for the following allegations of ineffective assistance of counsel and involuntary guilty plea based on counsel's failure to investigate or properly inform him of the matters surrounding his case. In his amended application, Applicant alleged similar grounds for relief.

### **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 at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

In a post-conviction relief action, an applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an 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 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813.

The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel

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<sup>2</sup> Applicant pled guilty pursuant to North Carolina v. Alford, 400 U.S. 25 (1970), for all counts but one count of kidnapping.

rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813. The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). 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." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

"A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of a plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial." Holden v. State, 393 S.C. 565, 572, 713 S.E.2d 611, 615 (2011), citing Rolen v. State, 384 S.C. 409, 413, 683 S.E.2d 471, 474 (2009).

After careful review based on the standard discussed above, this Court finds that Applicant has failed to carry his burden in this action. Specifically, this Court finds that Counsel's testimony is very credible while Applicant's testimony is not credible. In support of his allegations, Applicant testified that Counsel was ineffective because she "should have put

more effort into his case.” He elaborated that Counsel should have contacted his mother, who could have provided an alibi for him, and that Counsel should have investigated whether video surveillance from the armed robberies existed. Applicant did not present any witnesses or evidence at the evidentiary hearing and was not able to articulate what benefit, if any, could have been realized from additional investigation. He acknowledged that Counsel met with him twice before his guilty plea, reviewed all discovery materials with him, discussed possible defenses with him, and answered his questions. He testified that she reviewed the maximum and minimum sentences with him and presented him with the State’s plea offer for an aggregate sentence of twenty-five years to be served concurrently to his current SCDC sentence of the same length. He testified that it was his decision to plead guilty and he pled guilty because he wanted to take advantage of the State’s favorable plea offer that would not require him to serve any additional time beyond his current SCDC sentence.

Counsel testified that she meet with Applicant twice before his guilty plea, with each meeting lasting several hours. She testified that she reviewed Applicant’s discovery with him thoroughly during these meetings, including two statements Applicant gave law enforcement implicating himself in the crimes. She elaborated that the Dorchester County and Charleston County charges all stemmed from a string of Armed Robbery in the North Charleston area, spanning both counties, in which Applicant and his co-defendants all participated. She testified that at the time she was appointed, Applicant was incarcerated within SCDC serving a twenty-five year sentence from a guilty plea Applicant had already entered to the Charleston County charges. She testified that the State made Applicant a plea offer for an aggregate sentence of twenty-five years to be served concurrently to his current SCDC sentence. She testified that the plea offer was also for the dismissal of ten related charges. She testified that she fully advised

Applicant of his rights, including his right to trial. She testified that following their discussions, Applicant elected to take advantage of the states extremely favorable plea offer rather than risk a potential life sentence if convicted at trial, which was extremely likely.

This Court finds that Applicant has failed carry his burden of establishing that Counsel was ineffective for failure to investigate. Applicant failed to present any evidence or testimony to this Court as to what possible benefit could have been derived from additional investigation. "Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result." Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998). The record from Applicant's guilty plea and the testimony presented at the evidentiary hearing all reveal that Counsel's performance was reasonable and prudent based on the circumstances of Applicant's case. Therefore, this allegation must be denied and dismissed with prejudice

### CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

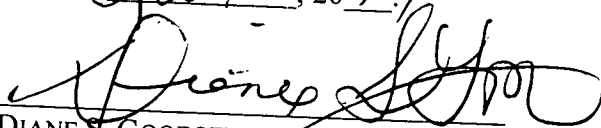
This Court notes that that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCR, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's

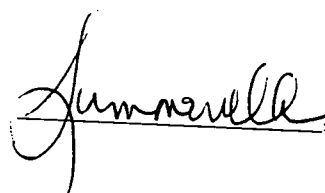
behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED:**

1. That this application for post-conviction relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to and remain in the custody of the State

AND IT IS SO ORDERED this 2 day of Feb, 2014

  
DIANE S. GOODSTEIN  
Presiding Judge  
First Judicial Circuit

, South Carolina

# The Brooks Law Office, LLC

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**RECEIVED**

February 24, 2014

FEB 26 2014

South Carolina Supreme Court  
PO Box 11330  
Columbia, SC 29211

**S.C. SUPREME COURT**

RE: Joshua A. Monroe, 344735 vs. State of South Carolina  
2012-CP-18-2306


Dear Sir or Madam:

Enclosed herewith you will find the **Notice of Appeal, Order of Dismissal**, along with a **Proof of Service** in reference to the above named Applicant.

If you have any questions or concerns, please contact my office at the number stated above.

With kind regards, I am

Sincerely,

  
Charles T. Brooks, III  
CTB/srw

Enclosed as stated

Cc: Megan E. Harrigan, Office of Attorney's General  
South Carolina Office of Appellate Defense  
Joshua A. Monroe, 344735

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