

**THE STATE OF SOUTH CAROLINA  
In The Supreme Court**

APPEAL FROM SPARTANBURG COUNTY  
Court of Common Pleas

The Honorable J. Derham Cole, Circuit Court Judge

Case No. 2012-CP-42-0893

The State, Respondent,

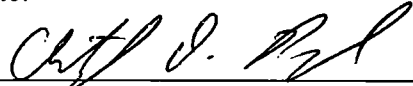
v.

Travis T. Tracy, Appellant.

**NOTICE OF INTENT TO APPEAL**

Travis T. Tracy appeals the denial of his application for Post-Conviction Relief in this case. The Order of Dismissal was imposed by the Honorable J. Derham Cole on February 20, 2014. Appellant received notice of the same on that date.

February 28, 2014

  
CHRISTOPHER D. BROUGH  
175 Magnolia St., Suite 202  
SPARTANBURG, SC 29306  
(864) 585-3088  
ATTORNEY FOR APPELLANT

Other Counsel of Record:  
Suzanne H. White  
Assistant Attorney General  
P.O. Box 11549  
Columbia, SC 29211-11549  
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**S.C. SUPREME COURT**

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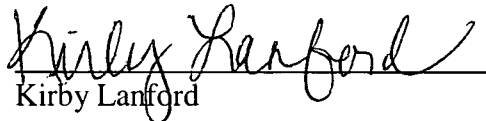
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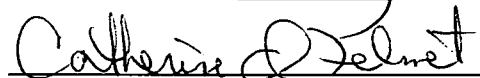
PROOF OF SERVICE

The undersigned hereby certifies that he is a person of such age and discretion as to be competent to serve papers and that a copy of the **Notice of Intent to Appeal**, was served upon the following person(s) on the State, by depositing copies of the same in the United States Mail, with sufficient postage affixed thereto, on February 28, 2014, addressed as follows:

The Honorable Alan Wilson  
SC Attorney General  
Rembert Dennis Building  
1000 Assembly Street, Room 519  
Columbia, S.C. 29201

  
Kirby Lanford

SWORN BEFORE ME THIS  
28 DAY OF February, 2014.

  
NOTARY PUBLIC FOR SOUTH CAROLINA  
MY COMMISSION EXPIRES: Aug 3, 2019

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF SPARTANBURG )  
 )  
**Travis Tyrone Tracy, #347877,** )  
 )  
Applicant, )  
 )  
v. )  
 )  
State of South Carolina, )  
 )  
Respondent. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
SEVENTH JUDICIAL CIRCUIT

2012-CP-42-0893

**ORDER OF DISMISSAL**

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SPARTANBURG COUNTY  
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M. HOPE

This matter comes before the Court by way of an Application for Post-Conviction Relief filed February 24, 2012, and amended March 12, 2012. The Respondent made its Return on or about November 30, 2012. An evidentiary hearing into the matter was convened on October 3, 2013, at the Spartanburg County Courthouse. The Applicant was present at the hearing and was represented by Christopher D. Brough, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. Robert B. Hall, Esquire, also testified. This Court also had before it a copy of the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the Return, the plea transcript, and Applicant's Exhibits.

**PROCEDURAL HISTORY**

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. The Applicant was indicted during the February 2011 term by the Spartanburg County Grand Jury for armed robbery and possession of a weapon during the commission of a violent crime (2011-GS-42-

1128, count 1 and count 2). The Applicant was represented by Robert B. Hall, Esquire. On September 19, 2011, the Applicant pled guilty as indicted to count 1, armed robbery. The charge of possession of a weapon during the commission of a violent crime, count 2, was dismissed. Applicant was sentenced by The Honorable Roger L. Couch to a sentence of twenty-five years, provided upon the service of twenty years; the balance is suspended to two years of probation. However, the sentence was amended on September 22, 2011, to reflect a sentence of twenty years.

A timely Notice of Appeal was filed on Applicant's behalf; however, the appeal was dismissed by the South Carolina Court of Appeals on December 19, 2011, for Applicant's failure to show that any issue was preserved for appeal.

#### ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel;
2. Prosecutorial misconduct; and
3. Trial court error.

At the hearing, the Applicant, over the State's objection, orally amended his application to include the allegation of involuntary guilty plea.

#### 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 their 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).

### Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRPC). Where ineffective assistance of counsel is alleged 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, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland).

Applicant testified that he was represented by Robert Hall ("Counsel") on charges of

armed robbery and trafficking. Applicant testified that the armed robbery charge followed the robbery of a Family Video store on October 18, 2010. Applicant testified that he met with Counsel twice over nine months, with the first time being a bond hearing and the second time at the plea. Applicant testified that he did receive some of the discovery materials. Applicant's girlfriend, Tiara, was one of those co-defendants and the Applicant had visited her at her apartment behind the Family Video. However, Applicant testified that there were several inconsistencies in the co-defendant's statements regarding who knew about the robbery and who was involved and Counsel could have attacked the co-defendants at trial about those inconsistencies. Additionally, Applicant testified that the guns were recovered from the apartment of Ashley Meadows, who was the sister of co-defendant Marion Garnett. Applicant testified that the video and photos show that the person robbing the store was wearing a mask. The Applicant testified that he was with another female, Kenyatta, at the time of the robbery and believes that Tiara implicated him in the robbery because she was made that he was with Kenyatta. There was also a second robbery in which Applicant was implicated in and the items stolen during that robbery were discovered in the apartment of Tiara and Mercedes, co-defendant Marian's girlfriend. Applicant introduced the following exhibits in support of his claims; #1, investigative report; #2, supplemental investigative report; #3, waiver of rights form; #4, the second waiver form and Applicant's statement; #5-#9, still photos from the video of the crime; #10 and #11, statements of Marion Garnett; #12 and #13, statements of Adrian Grayson; #14, supplemental report regarding the search warrant; and #15, supplemental report regarding narcotics found.

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Counsel testified that the Applicant faced three armed robbery charges, two trafficking in crack cocaine charges, possession with intent to distribute, and a distribution within the

proximity of a park or school charge. Counsel testified that the Applicant claimed he was only guilty of accessory after the fact related to the armed robberies and was not guilty of any drug charges. Counsel testified that he tried to get in touch with the alibi witness, but was unable to contact her. Counsel was unable to locate any witnesses based on the phone numbers given to him by the Applicant. Counsel agreed that the victims were unable to identify Applicant as the robber because a mask was worn. However, the State indicated that Tiara would identify Applicant by the clothing he was wearing at the time of the robbery. Counsel testified that he did discuss the inconsistent statements with the Applicant, but each statement consistently said that Applicant was involved in the robberies.

This Court finds the testimony of Counsel to be more credible than the testimony of the Applicant. The Applicant's allegation that Counsel did not meet enough with Applicant or conduct an adequate investigation is without merit. Following testimony and review of the transcript, it is clear that Counsel had reviewed the facts and evidence, as well as the options that Applicant faced. The "brevity of time spent in consultation, without more, does not establish that counsel was ineffective." Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980). To establish counsel was inadequately prepared, an Applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel been more fully prepared. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998); Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial). The Applicant failed to point to any specific matters Counsel failed to discover, or any defenses that could have been pursued had Counsel been more fully prepared. Counsel testified that he attempted to interview witnesses provided by the Applicant, but the contact information

was not correct. Counsel reviewed discovery materials with the Applicant and discussed possible issues with the identification or statements. Furthermore, the Applicant failed to show any prejudice that may have resulted from Counsel's alleged inadequate preparation or consultation. Accordingly, this allegation is dismissed.

### **Involuntary Guilty Plea**

In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4<sup>th</sup> Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4<sup>th</sup> Cir. 1976).

Applicant testified that he was innocent of the crime, but pled guilty on the advice of Counsel based upon the fact that Counsel informed him that the co-defendants were planning on testifying against Applicant if he went to trial. Applicant also acknowledged that some additional charges were dismissed as part of the plea and he was aware that the minimum sentence he could receive was ten years. Applicant testified that he wanted to proceed to trial, but pled when

Counsel came to him with the plea offer and the fact that Tiara and Marian would testify against him. However, Applicant testified that he lied to the court when he said he was guilty and agreed with the facts of the case. Applicant testified that he lied on the advice of Counsel.

Counsel testified that he met with the Applicant around August 24 and then September 13. In September, Counsel testified that he showed the Applicant the video evidence and presented an offer to plead to one armed robbery, violent and most serious, with no recommendation. Counsel testified that he saw the Applicant a few days later and the Applicant indicated that he wanted to plead guilty before the other co-defendants. Counsel testified that he did not tell the Applicant what to say at the plea, other than to be respectful.

In Hill v. Lockhart, 474 U.S. 52 (1985), the United States Supreme Court held that the two-part standard adopted in Strickland v. Washington, supra, for evaluating claims of ineffective assistance of counsel applies, as well, to guilty plea challenges based on ineffective assistance of counsel. To meet the Court's "prejudice" requirement, a criminal defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pled guilty and would have insisted on going to trial. Hill at 59. The Applicant has failed to establish that he would have proceeded to trial, but for, these alleged deficiencies of Counsel. Applicant's own testimony indicated that he chose to plead guilty when faced with the prospect of his co-defendants testifying against him. Therefore, this claim is denied and dismissed.

### **Trial Court Error and Prosecutorial Misconduct**

Although raised in his application, the Applicant failed to pursue these claims at his hearing. Therefore, this Court finds that the Applicant voluntarily abandoned these claims.

### *Summary*

This Court finds in regards to the allegations of ineffective assistance of counsel and

involuntary guilty plea, the Applicant's testimony is not credible. This Court further finds Counsel adequately conferred with the Applicant, conducted a proper investigation, was thoroughly competent in his representation, and that Counsel's conduct does not fall below the objective standard of reasonableness.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in his representation of the Applicant.

This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. This Court concludes the Applicant has not met his burden of proving Counsel failed to render reasonably effective assistance. See Frazier supra. Therefore, this allegation is denied.

**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 cautions Applicant that he must file and serve a notice of appeal within thirty (30) 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 PCR. Rule 71.1(g), SCRCR, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your


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

**IT IS THEREFORE ORDERED:**

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

**AND IT IS SO ORDERED** this 20 day of February, 2013.

  
\_\_\_\_\_  
J. Derham Cole  
Presiding Judge

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M. HARRIS



# The Brough Law Firm



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February 27, 2014

**RECEIVED**

The Honorable Daniel E. Shearouse  
Clerk, South Carolina Supreme Court  
Post Office Box 11330  
Columbia, SC 29211

MAR 03 2014

**S.C. SUPREME COURT**

RE: THE STATE VS. TRAVIS TYRONE TRACY

Dear Mr. Shearouse:

Enclosed for filing is a notice of appeal in the above case. Also enclosed are the following:

- (1) Original Proof of Service upon opposing counsel.
- (2) Order of Dismissal.

If I can be of any further assistance please feel free to call me.

Sincerely,

Christopher D. Brough

Enclosure

cc: South Carolina Office of the Attorney General

The Brough Law Firm  
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