

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM LAURENS COUNTY
Court of Common Pleas

Donald B. Hocker, Presiding Circuit Judge – Laurens County

C/A No. 2013-CP-30-00721

BRIAN KEITH STEPHENS, #131066,

Appellant,

v.

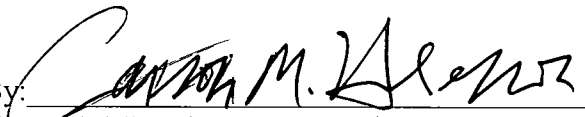
STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Brian Keith Stephens appeals the Order of Dismissal issued by the Honorable Donald B. Hocker on Friday, February 28, 2014. The Appellant's trial counsel received the Order of Dismissal on Monday, March 3, 2014.

THE HENDERSON LAW FIRM, P.C.
Trial Attorney for the Appellant

By: 
Carson M. Henderson
109-B Oak Avenue
Greenwood, S.C. 29646
Phone: (864) 229-8000
Fax: (864) 229-8001

RECEIVED

MAR 10 2014

S.C. SUPREME COURT

1 - 2
Greenwood, South Carolina

March 4, 2014

Other Counsel of Record:

James Rutledge Johnson, Esquire
S.C. Attorney General's Office
P.O. Box 11549
Columbia, S.C. 29211

S.C. Commission on Indigent Defense
Appellate Division
Attention: Sharon Graham
1330 Lady Street, Suite 401
Columbia, S.C. 29201

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM LAURENS COUNTY
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Donald B. Hocker, Presiding Circuit Judge – Laurens County

C/A No. 2013-CP-30-00721

BRIAN KEITH STEPHENS, #131066,

Appellant,

v.

STATE OF SOUTH CAROLINA,

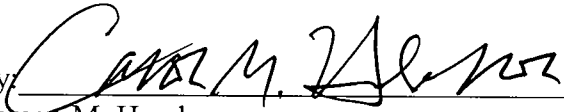
Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the Respondent, State of South Carolina, by depositing a copy of it in the United States Mail, postage prepaid, on March 4, 2014, addressed to its attorney of record, James Rutledge Johnson, Esquire, S.C. Attorney General's Office, P.O. Box 11549, Columbia, S.C. 29211, with a copy also being mailed to S.C. Commission on Indigent Defense, Appellate Division, Attention: Sharon Graham, 1330 Lady Street, Suite 401, Columbia, S.C. 29201.

Handwritten mark: a star with a vertical line through it.

THE HENDERSON LAW FIRM, P.C.
Trial Attorney for the Appellant

By: 
Carlson M. Henderson
109-B Oak Avenue
Greenwood, S.C. 29646
Phone: (864) 229-8000
Fax: (864) 229-8001

Greenwood, South Carolina

March 4, 2014

#2

STATE OF SOUTH CAROLINA
COUNTY OF LAURENS

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

MAR 28 AM 11:43

Brian Keith Stephens, #131066,

2013-CP-30-00721

Applicant,

ORDER OF DISMISSAL

v.

State of South Carolina,

Respondent.

This matter comes before the Court by way of an Application for Post-Conviction Relief filed September 16, 2013. Respondent made its Return and Motion to Dismiss all claims except for an Austin¹ review on October 25, 2013. An evidentiary hearing into the matter was convened on February 18, 2014, at the Laurens County Courthouse. Carson Henderson, Esquire, represented Applicant. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

At the hearing, Applicant testified on his own behalf. Gary Williams, Esquire, also testified. This Court also had before it a copy of the records of the Laurens County Clerk of Court, records from the South Carolina Department of Corrections, the complete file of PCR Counsel (Williams) and Applicant's prior PCR Order of Dismissal.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Laurens County. He was indicted by the Laurens County Grand Jury for Felony DUI, Death Results (2009-GS-30-1585), Hit and Run with Death

(2009-GS-30-1586), Possession of Stolen Vehicle (2009-GS-30-1587), Felony DUI with Great Bodily Injury (2010-GS-30-0460), Hit and Run with Great Bodily Injury (2010-GS-30-0461), and Hit and Run with Minor Personal Injury (2010-GS-30-0493). He was represented by Bill Mayer, Esquire. On January 26, 2011, Applicant appeared before the Honorable Eugene C. Griffith, Jr., and pled guilty as indicted to all of the aforementioned charges with a negotiated cap of twenty-five (25) years. He received the following sentences, all concurrent: twenty-five (25) years and a \$10,100.00 fine for felony DUI with death; twenty-five (25) years a \$10,000.00 fine for hit and run with death; five (5) years for possession of a stolen vehicle; fifteen (15) years and a \$10,100.00 fine for felony DUI, great bodily injury; ten (10) years for hit and run with Applicant did not appeal his convictions or sentences.

2011-CP-30-0407

Applicant filed his first application for Post-Conviction Relief (PCR) on April 27, 2011. In his first PCR application, Applicant alleged that he was being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel
2. Conflict of interest
3. Involuntary plea
4. Inadequate defense

The Respondent made its Return on August 22, 2011. An evidentiary hearing into the matter was convened on March 14, 2012, at the Greenwood County Courthouse before the Honorable Frank R. Addy, Jr. Gary Williams, Esquire, represented Applicant. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented Respondent. On April 16, 2012, the Honorable Frank R. Addy, Jr. denied and dismissed the application with prejudice.

1 Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991)

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In his current application for post-conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective assistance of trial counsel."
 - a. "Issue is pursued in pursuant to Austin v. State, 409 S.E.2d 395."

At the beginning of the PCR hearing on February 18, 2014, Counsel for Applicant agreed that the only issue before this Court was a review pursuant to Austin. Counsel for Applicant also introduced into evidence PCR Counsel's (Williams) complete file as well as the Laurens County Clerk of Court's file without objection.

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 (2003).

Ineffective Assistance of Counsel

Applicant alleges he received ineffective assistance of PCR counsel for failing to file an appeal from the denial of his first PCR on Applicant's behalf. 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,

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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, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Under an Austin v. State review, a PCR court must conduct an "evidentiary hearing to determine whether [Applicant] requested and was denied an opportunity to seek appellate review. If the court finds this to be true the court shall review whether [Applicant] was prejudiced by the failure to obtain review of a meritorious issue. In deciding this question, we shall use an analysis akin to that of Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984)." Austin at 455, 409 S.E.2d at 396.

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.

At the hearing, Applicant testified that after the conclusion of the first PCR hearing at the Greenwood County Courthouse he asked PCR Counsel (Williams) to file an appeal if the first PCR case was not decided in his favor while at counsel table. PCR Counsel testified he did not recall

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whether or not Applicant asked him to file an appeal. It was undisputed that PCR Counsel did not file an appeal. However, Counsel testified he received a Form 4 from the Honorable Frank R. Addy Jr., explaining to PCR Counsel that Applicant's first PCR was denied. Counsel sent the Form 4 along with a typed letter to Applicant on April 9, 2012. Counsel also testified that when he received a copy of the signed and clocked Order of Dismissal, he sent Applicant a copy of the Order along with another typed letter dated April 29, 2012. Applicant admitted that he, in fact, received this letter and a copy of the Order of Dismissal. While PCR Counsel admitted that he did not advise Applicant concerning his appellate rights in the second letter, the following was included in the Order of Dismissal:

This Court notifies 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), SCRCP, 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 attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

See Order of Dismissal 2011-CP-30-0407.

Additionally, Counsel testified it was not until March of 2013 that he received notification from the South Carolina Supreme Court regarding Applicant's desire to pursue an appeal from the denial of his first PCR case. Later, the South Carolina Supreme Court dismissed Applicant's appeal for failure to timely file the appeal. Counsel testified he sent a letter to Applicant on May 25, 2013 instructing Applicant to file another PCR application and stating, in his opinion, Applicant should be granted an Austin appeal. However, this Court finds differently.

While arguably the first prong of Strickland- that counsel failed to render reasonably effective assistance under prevailing professional norms- may have been satisfied in light of Rule 71.1(g)

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SCRCF, Applicant has failed to prove the second prong of Strickland- that he was prejudiced by PCR Counsel's performance.

Applicant failed to show resulting prejudice in this case because this Court finds the findings and holdings in the Honorable Frank R. Addy, Jr.'s Order of Dismissal in the Applicant's first PCR case are correct.

Even if this Court did not agree with the Honorable Frank R. Addy Jr.'s ruling, Applicant still has failed to show resulting prejudice. "In a PCR proceeding, the burden of proof is on the applicant to prove the allegations in his application. On appeal, the PCR court's ruling should be upheld if it is supported by any evidence of probative value in the record." Simuel v. State, 390 S.C. 267 (2010). Additionally, appellate courts "[give] great deference to a PCR judge's findings where matters of credibility are involved." Id.

There is ample evidence in the record to support Honorable Frank R. Addy, Jr.'s Order of Dismissal. Additionally, the Honorable Frank R. Addy, Jr. found trial counsel's testimony to be credible while finding Applicant testimony not credible. This Court finds PCR Counsel's testimony credible. This Court finds Applicant is not entitled to a review pursuant to Austin. Applicant admitted he received a copy of the Order of Dismissal from his first PCR application, which clearly stated that Applicant had thirty (30) days in which to file an appeal, yet decided not to inquire about the status of an appeal until almost one year after the time to file has passed. Based on Applicant's own inaction in this case, this Court denies his allegations against PCR Counsel.

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

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D. J. W.

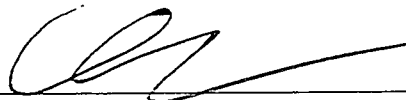
application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court notifies 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), SCRCP, 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 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!



 Donald B. Hocker
 Presiding Circuit Court Judge
 Eighth Judicial Circuit

A TRUE COPY OF ORIGINAL
 Lynn W. Lancaster
 Clerk
 Landon County CACP & GS

2-28, 2014

 _____ South Carolina

#7

FORM 4

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

JUDGMENT IN A CIVIL CASE

Brown Keith Stephens,
131066,

CASE NO. 2016 -CP- 30 - 407
State of South Carolina,

PLAINTIFF(S)

DEFENDANT(S)

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.
- 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 _____

IT IS ORDERED AND ADJUDGED: See attached order; Statement of Judgment by the Court:

Order of Dismissal

Dated at _____, South Carolina, this _____ day of _____, 20_____.

PRESIDING JUDGE

This judgment was entered on the 26th day of April, 2012, and a copy mailed first class this 26th day of April, 2012 to attorneys of record or to parties (when appearing pro se) as follows:

Gary L. Thelkema, Esq.

J. Reelledge Johnson, Esq.
S. C. Charleston City. General

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Lynn M. Lancaster
CLERK OF COURT (EN)

STATE OF SOUTH CAROLINA)
COUNTY OF LAURENS)

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

Brian Keith Stephens, #131066,)
Applicant,)

2011-CP-30-0407

v.)

ORDER OF DISMISSAL

State of South Carolina,)
Respondent.)

A TRUE COPY OF ORIGINAL

Lynn W. Lancaster
Lynn W. Lancaster
Laurens County CCCP & GS

This matter comes before the Court by way of an Application for Post-Conviction Relief filed April 27, 2011. The Respondent made its Return on August 22, 2011. An evidentiary hearing into the matter was convened on March 14, 2012, at the Greenwood County Courthouse.¹ Gary Williams, Esquire, represented the Applicant. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. Bill Mayer, Esquire, also testified. This Court also had before it a copy of the records of the Laurens County Clerk of Court, records from the South Carolina Department of Corrections, and the guilty plea transcript.

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 Laurens County. He was indicted by the Laurens County Grand Jury for Felony DUI, Death Results (2009-Gs-30-1585), Hit and Run with

¹ I note that the Court agreed to delay ruling until Monday, March 19, 2012, to allow the Applicant to consider whether he desired to withdraw his PCR, per the Applicant's request. The Court informed the Applicant that the Court would delay ruling, and only if the Court received word from the Applicant's PCR counsel that the Applicant wanted to withdraw, would the Court forego ruling. No communication was received indicating a desire to withdraw

MA

AM

Death (2009-GS-30-1586), Possession of Stolen Vehicle (2009-GS-30-1587), Felony DUI with Great Bodily Injury (2010-GS-30-0460), Hit and Run with Great Bodily Injury (2010-GS-30-0461), and Hit and Run with Minor Personal Injury (2010-GS-30-0493). He was represented by Bill Mayer, Esquire. On January 26, 2011, he appeared before the Honorable Eugene C. Griffith, Jr., and pled guilty as indicted to all of the aforementioned charges with a negotiated cap of twenty-five (25) years. He received the following sentences, all concurrent: twenty-five (25) years and a \$10,100.00 fine for felony DUI with death; twenty-five (25) years a \$10,000.00 fine for hit and run with death; five (5) years for possession of a stolen vehicle; fifteen (15) years and a \$10,100.00 fine for felony DUI, great bodily injury; ten (10) years for hit and run with great bodily injury; and one (1) year, or time served, for hit and run with minor personal injury. He did not appeal his convictions or sentences.

In his application for post-conviction relief, the Applicant alleges he is being held unlawfully for the following reasons:

1. Ineffective assistance of counsel
2. Conflict of interest
3. Involuntary plea
4. Inadequate defense

At the PCR hearing, the Applicant proceeded on the ineffective assistance of counsel claim.

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

PCR, hence this ruling.

pursuant to 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. 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, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

Conflict of Interest/ Plea Offer

The Applicant claims Counsel became a witness when he informed Counsel of a purported fifteen-year sentence offer. He also claims Counsel was ineffective for not presenting this 'offer' to the plea court.

Counsel testified he was never extended a fifteen-year offer. In fact, Counsel testified when he asked for such an offer, the solicitor blatantly rejected any such offer. Counsel also stated the solicitor would not even agree to a twenty-year plea bargain. Counsel further testified the only plea offer the solicitor was willing to negotiate was a twenty-five year cap.

This Court finds the Applicant's testimony regarding Counsel's conflict of interest and fifteen-year plea offer is not credible while also finding Counsel's testimony is credible. There is no factual or legal basis that Counsel became a witness when the Applicant informed him of a purported fifteen-year plea offer. Similarly, Counsel was not ineffective for failing to inform the plea court of a fifteen-year deal when no such offer existed. This Court finds the Applicant has failed to meet his burden of proving counsel's performance was deficient or that he was prejudiced thereby. Accordingly, this allegation is denied.

Involuntary Guilty Plea

The Applicant claims his guilty plea was involuntary because Counsel advised him that he would get a lesser sentence than what he received. The Applicant also claims he was coerced by Counsel to plead guilty.

Counsel testified he neither forced nor threatened the Applicant to plead guilty. To the



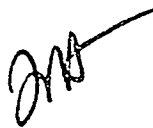
contrary, Counsel stated it was the Applicant's decision to plead guilty. Counsel testified he informed the Applicant of the charges and penalties in this case and while he did prepare the Applicant for his guilty plea, Counsel did not tell the Applicant how to answer the plea court's questions.

This Court finds the Applicant's testimony regarding the involuntariness of his plea is not credible while also finding counsel's testimony is credible. A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea are conclusive unless the defendant presents reasons why they should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976). This Court has reviewed the plea transcript and concludes that the Applicant's plea was not involuntary simply because he hoped to get a lesser sentence. "Wishful thinking regarding sentencing does not equal a misapprehension concerning the possible range of sentences, especially where one acknowledges on the record that one knows the range of sentences and that no promises have been made." Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 371 (1997). There is ample evidence in the plea transcript, as well as at the PCR hearing, to find the Applicant's guilty plea was knowingly, voluntarily, and intelligently made. This Court finds the Applicant has failed to meet his burden of proving counsel's performance was deficient or that he was prejudiced thereby. Accordingly, this allegation is denied.

Insufficient time to discuss case

As to the allegation that the Applicant had insufficient time to discuss the case with Counsel, I find no merit to this contention.

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. Therefore, these allegations are 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.

Except as discussed above, this Court finds that the Applicant failed to raise the remaining allegations set forth in his application at the hearing and has, thereby, waived them. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issue at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

This Court notifies Applicant that he must file and serve a notice of appeal within thirty (30)

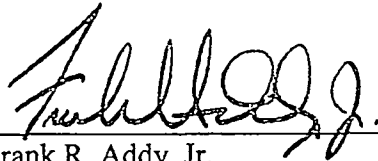


days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, 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 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!



Frank R. Addy, Jr.
Presiding Circuit Court Judge
Eighth Judicial Circuit

April 16, 2012
Greenwood, South Carolina

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

JUDGMENT IN A CIVIL CASE

BRIAN K. STEPHENS

LYNN W. LANCASTER

CASE NO. 2011-CP-30-407

State of South Carolina

PLAINTIFF(S)

2012 APR -2 P 2:54

DEFENDANT(S)

Submitted by: LAURENS COUNTY CLERK OF COURT

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.
- 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: This matter came before the court for a hearing on March 14, 2012. After a complete review of the record, consideration of the testimony presented at the hearing, and a review of the applicable law, the Court finds that Applicant's petition for post-conviction relief should be denied. [I note that the court agreed to delay ruling until Monday, March 19th to allow Applicant to consider whether he desired to withdraw his PCR, per Applicant's request. The court informed Applicant that the court would delay ruling, and only if the court received word from Applicant's counsel that Applicant wanted to withdraw would the court forego ruling. No communication was received indicating a desire to abandon PCR, hence this ruling.] As to Applicant's assertion that Mr. Mayer became a witness when Applicant informed Mr. Mayer of a purported 15 year sentence, said contention has no basis in law or reason. Similarly, Mr. Mayer was not ineffective for failing to inform the judge of a 15 year deal when there was no such deal. The court has reviewed the transcript and concludes that Applicant's plea was not involuntary simply because Applicant may have hoped for a lesser sentence. As to allegations of coercion and insufficient time to discuss case with trial counsel, I find no merit to this contention. I find all other allegations were abandoned by Applicant. Accordingly, the court finds Applicant's petition for PCR should be denied. Rutledge Johnson is to prepare a more formal order.

Order Information

This order ends does not end the case.

Additional Information for the Clerk :

Complete if judgment requires payment of a sum of money or affects title to real or personal property

JUDGMENT AGAINST PLAINTIFF		JUDGMENT AGAINST DEFENDANT	
Judgment Amount	\$ _____	Judgment Amount	\$ _____
Taxable Costs	\$ _____	Taxable Costs	\$ _____
Attorney's Fees	\$ _____	Attorney's Fees	\$ _____
Interest	\$ _____	Interest	\$ _____
Other	\$ _____	Other	\$ _____
Total Amount to be Enrolled:	\$ _____	Total Amount to be Enrolled:	\$ _____

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 interests or 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.

[Signature]
Circuit Court Judge **FREE COPY OF ORIGINAL** *2159* *3/30/12*
Judge Code Date

Lynn W. Lancaster
Lynn W. Lancaster

Laurens County CCJP & GS
FOR Clerk of Court Office Use Only

This judgment was entered on the *2nd* day of *April*, 20*12* and a copy mailed first class this *2nd* day of *April*, 20*12* to attorneys of record or to parties (when appearing pro se) as follows:
✓ Gary Williams, Esq. ✓ Rutledge Johnson, Esq.

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)
Lynn W. Lancaster
CLERK OF COURT *[Signature]*

PCR

LAW OFFICE

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March 4, 2014

RECEIVED

MAR 10 2014

S.C. SUPREME COURT

Honorable Daniel E. Shearouse
Clerk of Court
S.C. Supreme Court
1231 Gervais Street
P.O. Box 11330
Columbia, S.C. 29211

Re: Brian Keith Stephen, #131066 v. State of South Carolina
Laurens C/A No. 2013-CP-30-00721

Dear Clerk Shearouse:

Please file the enclosed Notice of Appeal and Proof of Service and return clocked copies of both documents to me and the S.C. Commission on Indigent Defense, Appellate Division in the enclosed envelopes provided for your convenience.

My email address is carson@carsonhendersonlawfirm.com.

Thank you for your assistance and cooperation in this matter.

Cordially yours,

THE HENDERSON LAW FIRM, P.C.


Carson M. Henderson

CMH/lhc
enclosures as indicated

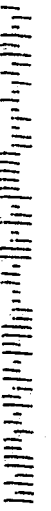
cc: James Rutledge Johnson, Esquire
S.C. Attorney General's Office
P.O. Box 11549
Columbia, S.C. 29211

#1

S.C. Commission on Indigent Defense
Appellate Division
Attention: Sharon Graham
1330 Lady Street, Suite 401
Columbia, S.C. 29201

Brian Keith Stephens (#131066)
MLT 2043
Broad River Correctional Institution
4460 Broad River Road
Columbia, S.C. 29210

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Greenville F&DC 296
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