THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM YORK COUNTY
Court of Common Pleas

The Honorable Edgar W. Dickson, Circuit Court Judge

Case No. 2012-CP-46-1312

Raymond Bradley McCarter,

Appellant,

v.

State of South Carolina, Respondent.

NOTICE OF APPEAL

Raymond Bradley McCarter appeals the orders of the Edgar W. Dickson dated June, 17, 2013 and March 4, 2014 (copies of which are attached as Exhibit A). Appellant received written notice of entry of these Orders on July 12, 2013 and March 10, 2014, respectively.

This the 13th day of March, 2014.

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S.C. SUPREME COURT

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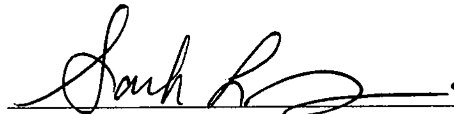
PROOF OF SERVICE

I certify that I have served the Notice of Appeal on The State of South Carolina by depositing a copy of it in the United States Mail, postage prepaid, on March 13, 2014, addressed to the Office of the Attorney General, J. Rutledge Johnson, Post Office Box 11549, Columbia, South Carolina 29211.

March 13, 2014



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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF YORK) SIXTEENTH JUDICIAL CIRCUIT

Raymond Bradley McCarter, # 314487,)
Applicant,) 2012-CP-46-1312
v.)
State of South Carolina,) **ORDER OF DISMISSAL**
Respondent.)

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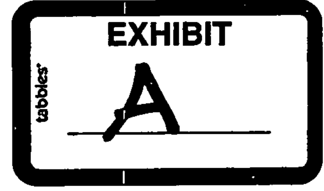
DAVID HAMILTON
C.C.C.P. & GS
YORK COUNTY, SC

This matter comes before the Court by way of an Application for Post-Conviction Relief filed April 9, 2012. The Respondent made its Return on July 26, 2012. An evidentiary hearing into the matter was convened on October 9, 2012, at the Moss Justice Center in York, SC. Sarah L. DiFranco, 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, as well as his father Raymond McCarter. David Cook, Esquire also testified. This Court had before it a copy of the records of the York County Clerk of Court, records from the South Carolina Department of Corrections, and the guilty plea transcript. The trial transcript, which preceded the guilty plea, was subsequently provided to the Court after the evidentiary hearing. PCR counsel also provided the Court with a letter which specifically referenced passages in the transcript for the Court's consideration.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. Applicant was indicted at the



March 2010 term of the York County Grand Jury for Assault and Battery with Intent to Kill (ABWIK) (2010-GS-46-1078). He was represented by David Cook, Esquire. On August 25, 2011, Applicant pled guilty as indicted. The Honorable John C. Hayes, III sentenced Applicant to confinement for a period of ten (10) years. Applicant did not appeal his conviction and sentence.

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

1. "Ineffective Counsel"
   a. "Counsel failed to use important evidence in trial"
   b. "Conflict of Interest'
   c. "Medical records states mild injuries (not life threating(sic) injuries)
2. "Sentence was unduly harsh"
   a. "(Judge was biased)"

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

SUMMARY OF TESTIMONY

The Applicant testified he when he met with Counsel, the two did not discuss the discovery on the charges, that Counsel did not mention any statements the victim gave, and did not discuss DNA as it relates to the crime scene. The Applicant stated Counsel did not discuss self-defense as a defense until the second day of trial and was not informed of the victim's or other witnesses' statements until the second day of trial. He asserted he found inconsistencies with the statements as opposed to the victim's in–court testimony. The Applicant testified he heard the audio statement before trial, but does not think he heard the entire statement. The Applicant also stated he wanted his co-defendant to testify at the trial. He further testified he wanted to testify at the trial, which he would have had to do to establish a self-defense claim.

Additionally, the Applicant testified Counsel did not discuss the elements of ABWIK with him. He also stated, although Counsel asked for and received a suppression hearing, he did not think Counsel 'gave it his best shot' as it was unsuccessful. The Applicant also asserted Counsel did not cross-examine Jamie Gilfillan, but did cross-examine the victim, although not about a prior inconsistent statement.

The Applicant's further testified at the end of the second day of trial, there was no discussion about pleading guilty because Counsel supposedly told the Applicant there was a good chance of acquittal. Upon entering the third day of trial, the Applicant stated he thought he needed to plead guilty because he wanted to do the right thing. He testified that before trial the plea offer from the State was for eight years, but he did not have enough time to think about his options. The Applicant also testified he felt pressured into pleading guilty because he did not feel like he had another choice.

Concerning the guilty plea, the Applicant stated the solicitor explained all of his prior convictions and that he was convicted of all previous charges through guilty pleas. He admitted he lied during his guilty plea because while he took responsibility for Assault and Battery, he did not take responsibility for ABWIK. He also admitted he could hear the plea judge clearly. He lastly testified he had gotten into a fight with another inmate while in the county detention center awaiting trial in this case.

On cross-examination, the Applicant admitted the plea court explained the crime for which he was charged and the penalty it carried. He also agreed that he understood ABWIK and wanted to plead guilty. The Applicant acknowledged he gave up his Constitutional rights associated with a trial at the guilty plea. He admitted he pled freely and voluntarily. The Applicant also testified he

was satisfied with his Counsel. He lastly admitted he hit the victim with a hammer and accepted responsibility for his actions.

The Applicant's father (Raymond McCarter) testified he hired Counsel to represent his son and talked to Counsel about this case. During the trial, Mr. McCarter testified he was held outside of the courtroom pursuant to a motion for sequestration. He also stated he was informed that his son was going to plead guilty, and Counsel mentioned a 'dog code' which meant it was his son's decision to plead guilty. This 'dog code' was a secret code between the Applicant and his father which was used to show the Applicant was not coerced into pleading guilty.

Counsel testified he has been practicing law for seven years and eighty percent of his practice is criminal defense. He stated he was formally an assistant public defender and tried many cases. Counsel testified he was retained and visited the Applicant numerous times to discuss this case. He stated he watched the in-car video where the Applicant gave a confession which was troubling to his defense. Counsel said he had the video transcribed for the Applicant due to the Applicant's hearing impairment.

Upon meeting with the Applicant, Counsel testified the Applicant first claimed he never hit the victim with a hammer. Then, after seeing the pictures of the victim, the Applicant claimed he hit the victim in self-defense. Counsel testified he consulted with the Applicant and recommended that he plead guilty. However, Counsel stated he did not promise any results at trial and did not force the Applicant to plead guilty. Counsel also testified he did not tell the Applicant he would only receive probation in this case but did try to convince the solicitor to offer five years instead of eight years. Counsel stated he turned over all of the victim's and witnesses' statements to the Applicant.

Concerning the trial and plea, Counsel testified had the trial continued, the Applicant would have had to testify to establish self-defense, especially because there were multiple witnesses that testified he was at the scene with a hammer in his hand. Counsel also stated guilty plea discussions were part of the equation from the onset, but it was the Applicant's decision to reject the State's eight-year offer and pursue a trial. Counsel testified the Applicant's father thought Counsel coerced the Applicant into pleading guilty, but the Applicant wrote down the 'dog code' to prove to his father that it was the Applicant's decision to plead guilty.

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

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), SCRCP). 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 (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 (1985).

This Court finds Counsel was competent and diligent in his representation of the Applicant in this case. Counsel sufficiently advised the Applicant of the charges against him, the potential penalties if convicted at trial, and the evidence the State would produce at trial. Counsel satisfactory investigated this case based on the information supplied by the Applicant and the evidence available. Counsel also engaged in plea negotiations which were beneficial to the Applicant. This Court also finds the Applicant was well informed by Counsel in this case. This Court is convinced that all of Counsel's strategies at trial and his advice that the Applicant eventually accept a plea offer from the State were reasonable professional decisions based upon Counsel's experience and the facts of the case. As such, the Applicant cannot show any resulting prejudice.

This Court further finds the Applicant's testimony concerning Counsel's ineffective

assistance not credible while finding Counsel's testimony credible. The Applicant admitted a few times that he lied at the guilty plea. As such, the Applicant has no credibility with this Court. 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

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, 89 S.Ct. 1709 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621 (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. U.S., 519 F.2d 317 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the 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. Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993).

The Applicant alleged his guilty plea was not voluntarily entered because Counsel coerced

him to plead guilty. At the PCR hearing, the Applicant testified he felt he had no other option but to plead guilty. However, the guilty plea transcript and the Applicant's answers during cross-examination at the PCR hearing directly refute his claims.

At the guilty plea, the Applicant stated he understood the charge against him and the penalty the charge carried. (Plea Tr. p. 4 lines 10-15). He then stated he wanted to plead guilty to the charge. (Plea Tr. p. 5 line 19). The Applicant testified he was not promised anything or threatened in any way to influence him to enter a guilty plea. (Plea Tr. p. 5 line 24). He also stated he was satisfied with Counsel. (Plea Tr. p. 4 line 9). The Applicant testified he was not under the influence of drugs or alcohol and that he had no mental or emotional condition that would interfere with his judgment. (Plea Tr. p. 6 ln 2). He stated he was pleading freely and voluntarily. (Plea Tr. p. 6 line 5). The Applicant testified he understood his Constitutional rights, had no questions about them, and wanted to plead guilty understanding these rights. (Plea Tr. p. 6 line 6-p. 7 line 8). After a brief discussion with the plea court, the Applicant agreed with the facts as presented during the trial phase of the case. (Plea Tr. p. 10 lines 6-9). Lastly, the Applicant stated, "I take full responsibility for my actions, You Honor… I'm pleading guilty to assault and battery with intent to kill, and I apologize to the Court." (Plea Tr. p. 12 line 19-p. 13 line 1).

On cross-examination at the PCR hearing, the Applicant freely admitted he testified to all of the above at his guilty plea.

This Court further finds the Applicant's testimony regarding the pressure Counsel alleged placed upon him to plead guilty is not credible while also finding Counsel's testimony is credible Counsel testified he never promised the Applicant he would receive probation or anything less than what the State offered. Counsel also testified it was the Applicant's decision to plead guilty.

Additionally, the Applicant admitted he lied during the guilty plea under oath. As such, this Court finds him not credible. Further, Counsel and the Applicant's father both testified that the 'dog code' confirmed that it was the Applicant's decision to plead guilty in this case.

Therefore, this Court finds the Applicant pled guilty freely, voluntarily and without any coercion, threats or promises. Therefore, this allegation is denied.

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.

This Court notifies the 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!

Edgar W. Dickson
Presiding Circuit Court Judge
Sixteenth Judicial Circuit

June 17, 2013
Orangeburg, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF YORK) SIXTEENTH JUDICIAL CIRCUIT

Raymond Bradley McCarter, # 314487,) 2012-CP-46-1312

Applicant,)

v.) **AMENDED ORDER OF DISMISSAL**

State of South Carolina,)

Respondent.)

This matter comes before the Court by way of an Application for Post-Conviction Relief filed April 9, 2012. The Respondent made its Return on July 26, 2012. An evidentiary hearing into the matter was convened on October 9, 2012, at the Moss Justice Center in York, SC. Sarah L. DiFranco, Esquire represented the Applicant. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented the Respondent. The undersigned signed an Order of Dismissal on June 17, 2013 which was then filed by the Clerk on June 28, 2013. Thereafter, on July 16, 2013, Applicant, by and through undersigned counsel, timely filed Applicant's Motion To Alter or Amend Judgment pursuant to Rule 59(e).

At the hearing, the Applicant testified on his own behalf, as well as his father Raymond McCarter, Senior. David Cook, Esquire, Applicant's trial counsel, ("Counsel") also testified. This Court had before it a copy of the records of the York County Clerk of Court, records from the South Carolina Department of Corrections, and the guilty plea transcript. The trial transcript, which preceded the guilty plea, was subsequently provided to the Court after the evidentiary hearing. PCR

counsel also provided the Court with a letter which specifically referenced passages in the transcript for the Court's consideration.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. Applicant was indicted at the March 2010 term of the York County Grand Jury for Assault and Battery with Intent to Kill (ABWIK) (2010-GS-46-1078). He was represented by David Cook, Esquire. On August 25, 2011, Applicant pled guilty as indicted. The Honorable John C. Hayes, III sentenced Applicant to confinement for a period of ten (10) years. Applicant did not appeal his conviction and sentence.

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The Applicant further testified that on the morning of the third day of trial Counsel presented him with a computer generated document which detailed what Counsel wanted him to say on the stand. The document states "YOU HAVE TO SAY THESE THINGS ON THE STAND TO WIN[.]" (emphasis in original). The Applicant testified that he wanted to testify at his trial.

However, he could not agree to testify to certain items included in the document presented by Counsel, including that he threw a stepping stone at the victim. The Applicant claimed because he was not willing to testify exactly as Counsel instructed him to, Counsel would not put the Applicant on the stand and advised the Applicant to plead guilty.

The Applicant and his father both testified that the Applicant suffers from significant hearing loss and must wear hearing aids in both ears. The Applicant stated he must read lips in order to understand most of what people say and he further testified that he had trouble hearing much of what was said during his trial.

Moreover, the Applicant testified Counsel was ineffective because he failed to review all of the potentially exculpatory evidence, including having blood on the weapon (a hammer) tested or subpoenaing the Applicant's phone records.

Concerning the guilty plea, the Applicant stated the solicitor explained all of his prior convictions and that he was convicted of all previous charges through guilty pleas. He admitted he lied during his guilty plea because while he took responsibility for Assault and Battery, he did not take responsibility for ABWIK. He also admitted he could hear the plea judge clearly. He lastly testified he had gotten into a fight with another inmate while in the county detention center awaiting trial in this case.

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

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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 (1985).

This Court finds Counsel was competent and diligent in his representation of the Applicant in this case. Counsel sufficiently advised the Applicant of the charges against him, the potential penalties if convicted at trial, and the evidence the State would produce at trial. Counsel satisfactorily investigated this case based on the information supplied by the Applicant and the evidence available. Counsel also engaged in plea negotiations which were beneficial to the Applicant. This Court also finds the Applicant was well informed by Counsel in this case. This Court is convinced that all of Counsel's strategies at trial and his advice that the Applicant eventually accept a plea offer from the State were reasonable professional decisions based upon Counsel's

experience and the facts of the case. As such, the Applicant cannot show any resulting prejudice.

While the Applicant testified Counsel failed to review potentially exculpatory evidence including the having the blood on the hammer tested or subpoenaing the Applicant's phone records, the Applicant failed to produce any evidence sufficient to show that the Applicant would have continued with his trial and not plead guilty had Counsel researched these issues. Specifically, the Applicant produced no phone records or blood tests at the PCR hearing and thus, failed to carry his burden of proof.

This Court further finds the Applicant's testimony concerning Counsel's ineffective assistance not credible while finding Counsel's testimony credible. The Applicant admitted a few times that he lied at the guilty plea. As such, the Applicant has no credibility with this Court. 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

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, 89 S.Ct. 1709 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621 (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. U.S., 519 F.2d 317 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

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The Applicant alleged his guilty plea was not voluntarily entered because Counsel coerced him to plead guilty. At the PCR hearing, the Applicant testified he felt he had no other option but to plead guilty. He also testified that Counsel gave him a document detailing the things he must testify to if he took the stand at trial. The Applicant claimed because he would not agree to testify exactly as Counsel instructed, including that he threw a stepping stone at the victim, Counsel refused to put Applicant on the stand and advised him to plead guilty. However, the guilty plea transcript and the Applicant's answers during cross-examination at the PCR hearing directly refute his claims.

At the guilty plea, the Applicant stated he understood the charge against him and the penalty the charge carried. (Plea Tr. p. 4 lines 10-15). He then stated he wanted to plead guilty to the charge. (Plea Tr. p. 5 line 19). The Applicant testified he was not promised anything or threatened in any way to influence him to enter a guilty plea. (Plea Tr. p. 5 line 24). He also stated he was satisfied with Counsel. (Plea Tr. p. 4 line 9). The Applicant testified he was not under the influence of drugs or alcohol and that he had no mental or emotional condition that would interfere with his judgment.

(Plea Tr. p. 6 ln 2). He stated he was pleading freely and voluntarily. (Plea Tr. p. 6 line 5). The Applicant testified he understood his Constitutional rights, had no questions about them, and wanted to plead guilty understanding these rights. (Plea Tr. p. 6 line 6-p. 7 line 8). After a brief discussion with the plea court, the Applicant agreed with the facts as presented during the trial phase of the case. (Plea Tr. p. 10 lines 6-9). Lastly, the Applicant stated, "I take full responsibility for my actions, You Honor... I'm pleading guilty to assault and battery with intent to kill, and I apologize to the Court." (Plea Tr. p. 12 line 19-p. 13 line 1).

On cross-examination at the PCR hearing, the Applicant freely admitted he testified to all of the above at his guilty plea.

This Court further finds the Applicant's testimony regarding the pressure Counsel alleged placed upon him to plead guilty is not credible while also finding Counsel's testimony is credible Counsel testified he never promised the Applicant he would receive probation or anything less than what the State offered. Counsel also testified it was the Applicant's decision to plead guilty. Additionally, the Applicant admitted he lied during the guilty plea under oath. As such, this Court finds him not credible. Further, Counsel and the Applicant's father both testified that the 'dog code' confirmed that it was the Applicant's decision to plead guilty in this case.

Therefore, this Court finds the Applicant pled guilty freely, voluntarily and without any coercion, threats or promises. Therefore, this allegation is denied.

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.

This Court notifies the 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!

Edgar W. Dickson
Presiding Circuit Court Judge
Sixteenth Judicial Circuit

March 4, 2014
Orangeburg, South Carolina

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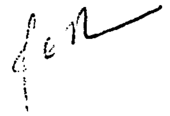
March 13, 2014



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

Re: Raymond Bradley McCarter v. State of South Carolina
Case No.: 12-CP-46-1312 (York Co.)

Dear Mr. Shearouse:

Enclosed for filing please find an original and two (2) copies of a *Notice of Appeal* and the Orders from which the appeal is being taken: the Order of Dismissal dated June 17, 2013 and the Amended Order of Dismissal dated March 4, 2014, as well as a *Proof of Service* of the Notice of Appeal in the above-referenced case. Once these documents are filed, please return the file-stamped copies to my attention using the enclosed envelope. Since Mr. McCarter is presently incarcerated and I was appointed to represent him, it is my understanding that he is indigent. Therefore, we respectfully request that you waive any filing fee. If this presents a problem, please let us know immediately.

It is my understanding that my appointment will end due to this appeal, and I am notifying the South Carolina Office of Appellate Defense of the appeal.

Thank you for your assistance in this matter. Please feel free to contact me with any questions or concerns..

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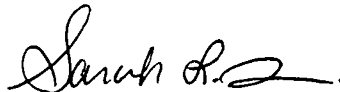
S.C. SUPREME COURT

Sincerely,

POYNER SPRUILL LLP



Sarah L. DiFranco

SLD/avd
Enclosures

cc: Raymond Bradley McCarter
J. Rutledge Johnson
Robert M. Dudek, SC Comm. on Indigent Defense, Appellate Division

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The Honorable Daniel E. Shearouse
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