

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APR 14 2014

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

S.C. Supreme Court

The Honorable L. Casey Manning, Circuit Court Judge

Case No. 2010-CP-40-7042

Baron L. Lewis, #152591,

Appellant

v.

State of South Carolina,

Respondent.

JEANETTE W. MORRIS  
C.C.P. & S.S.

2014 APR 14 AM 11:55

FILED

NOTICE OF APPEAL

The Appellant, Baron L. Lewis, appeals the Order of Dismissal filed September 17, 2013, and the Order filed April 9, 2014 denying Appellant's motion to alter or amend the judgment, and any other rulings preserved for appeal. Copies of the referenced Orders/Judgments are attached hereto.

April 14, 2014



Rowland P. Alston III  
The Sullivan Firm, LLC  
907 Calhoun Street  
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(803) 252-3663  
Attorney for Indigent Appellant

Other Counsel of Record:  
Megan E. Harrigan, Esq.  
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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 April 14, 2014, addressed to the attorney of record, Megan E. Harrigan, Esq., Post Office Box 11549, Columbia, South Carolina, 29211-1549.

April 14, 2014



Rowland P. Alston III  
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907 Calhoun Street  
Columbia, SC 29201  
(803) 252-3663  
Attorney for Indigent Appellant

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

JUDGM: T IN A CIVIL CASE

CASE NUMBER: 2010CP4007042

Baron L #152591 Lewis

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: \_\_\_\_\_

Attorney for :  Plaintiff  Defendant or  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:

**ORDER INFORMATION**

This order  ends  does not end the case.

Additional Information for the Clerk : \_\_\_\_\_

**INFORMATION FOR THE PUBLIC INDEX**

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

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

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

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

Circuit Court Judge \_\_\_\_\_ Judge Code \_\_\_\_\_ Date \_\_\_\_\_

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this 17 September 2013 to attorneys of record or to parties (when appearing pro se) as follows:

Baron L #152591 Lewis

Rowland P. Alston III

Robert Daniel Corney

Baron L #152591 Lewis

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter \_\_\_\_\_

Clerk of Court \_\_\_\_\_

*Jeanette W. McBride*

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )  
) )  
Baron Lewis, #152591, )  
) )  
Applicant, )  
) )  
v. )  
) )  
State of South Carolina, )  
) )  
Respondent. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH JUDICIAL CIRCUIT

2010-CP-40-07042

ORDER OF DISMISSAL

RICHLAND COUNTY  
FILED  
2013 SEP 17 PM 12:10  
JEANETTE W. McBRIDE  
C.C.P. & G.S.

**PROCEDURAL HISTORY**

This matter comes before the Court by way of an Application for Post-Conviction Relief filed April 30, 2010. An evidentiary hearing into the matter was convened on Wednesday, May 23, 2012, at the Richland County Courthouse. The Applicant was present at the hearing with counsel, Rowland Alston, III, Esquire. The Respondent was represented by Robert D. Corney of the South Carolina Attorney General's Office.

At the hearing, Applicant testified on his own behalf. Also testifying was Applicant's former plea counsel, Tivis Sutherland, Esquire. This Court had before it a copy of the transcript of the proceedings against Applicant, the records of the Richland County Clerk of Court, and Applicant's records from the South Carolina Department of Corrections.

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. Applicant was true bill indicted at the February 2008 term of the Richland County Grand Jury for Conspiracy to Commit Armed Robbery, Attempted Armed Robbery, Murder and two (2) counts of Assault and Battery with Intent to Kill (2008-GS-40-0396 through -0399). Tivis Sutherlands, Esquire, represented Applicant on the charges. On March 15, 2010,



Applicant appeared before The Honorable G. Thomas Cooper, Jr., where he pled guilty to the charges as indicted as part of a plea offer from the state setting forth a negotiated sentencing range between twelve (12) and fifteen (15) years imprisonment. Applicant was sentenced to five (5) years imprisonment for the Conspiracy, and fourteen (14) years imprisonment each for the two (2) ABWIK charges and the Attempted Armed Robbery, all to run concurrently. The Murder charge was *nolle prossed* by the state in return for the plea.

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

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective A/c of Counsel
- (b) Breach of Plea agreement
- (c) Involuntary Guilty Plea

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) My Counsel failed to object to the breach of the plea Bargain.
- (b) Prosecution backed out of plea agreement after I gave them determinatal cooperation.
- (c) Due to the ineffectiveness of counsel I felt I had no other option.  
I am on FD Plea 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 arguments presented by both parties at the evidentiary hearing. 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, the 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). 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, 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).

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.

*Failure to Secure More Advantageous Plea Deal*

Applicant's sole allegation raised through the action is counsel was ineffective for failing to secure a more advantageous plea offer from the state on his behalf. Specifically, Applicant testified at the PCR hearing he did **not** want to have his pleas vacated to be sent back for a new trial, but rather is requesting a better sentence as he believes he was "over sentenced" by the original plea judge. Applicant stated he was "only the driver" for the other individuals involved and maintained he was "never on the scene" of the robbery, but said he was the only person charged in the crime. He said he cooperated with the police based on counsel's advice to do so in the hopes of receiving an eight (8) year plea offer, but once he cooperated and "ratted everyone else out", the police never mentioned that plea deal again. Applicant noted that the state had three (3) inculpatory statements against him and, therefore, he does not want to go back to General Sessions court on the indictments for re-trial.

On cross-examination, Applicant stated an indicted murder charge against him had been dismissed and agreed he knew prior to his plea that by entering such, he would receive at least twelve (12) years imprisonment under the negotiated terms of the plea, but went forward with the plea anyway because counsel told Applicant it "was a good deal".

Counsel testified similarly saying there was very little with Applicant's PCR testimony that he could disagree with. Counsel recalled that initially Applicant wanted a plea offer for about eight (8) years imprisonment, but the state offered only a plea for twenty-five (25) years. He went on to say the Sheriff's Department was able to obtain a recording of Applicant detailing the facts and his involvement in the case, which would have been damaging at trial. Counsel said he believed he had good grounds to have one (1) of the three (3) statements Applicant made to police, but not the other two. Counsel said Applicant was nervous about cooperating with police

in the beginning, but ended up cooperating and identifying his co-defendants in an attempt to obtain a more advantageous plea offer. Counsel noted that by the time Applicant decided to cooperate, the information he gave police was old and not helpful enough to elicit any plea offers from the state in Applicant's eight year range.

On cross-examination, counsel testified he requested an eight (8) year plea offer from the state, but was never concretely promised such a deal without Applicant's prior cooperation. He noted he was able to convince Judge Cooper that the murder charge was erroneous and got it thrown out. Counsel finished by saying he was confident Applicant knew he would receive at least twelve (12) years after entering his plea based on the negotiated range set forth.

This Court finds Applicant's allegation to be without merit. First, counsel's performance was not objectively unreasonable in failing to "secure a more advantageous plea offer". As a preliminary matter, this Court finds Applicant's testimony to **not** be entirely credible, while conversely finding counsel's testimony to **be** credible. First, it is important to note that there is no constitutional right to plea bargain. See Reed v. Becka, 333 S.C. 676, 511 S.E.2d 396 (1999). Counsel, after being able to only secure a plea offer for twenty-five (25) years initially, advised Applicant to cooperate with the state's investigation to encourage the extension of better plea offers. Applicant, after hesitating for a while, did ultimately cooperate by providing the names of the other individuals involved in the robbery to law enforcement and by helping to try to set up a wiretapped conversation with them; however, according to counsel's credible testimony, by that time the information disclosed was not helpful and was insufficient to persuade the state to extend the eight (8) year plea offer Applicant sought. Counsel was able to have the murder charge dismissed prior to the plea hearing, but was unable to secure the eight (8) year offer Petitioner sought. Applicant has failed to establish that there was any valid, written plea offer

which he relied upon in disclosing the information to police and, according to counsel's credible testimony, no such formal offer existed. Therefore, Applicant has not proven he is entitled to an eight year plea offer, or that counsel was ineffective for "failing to secure" such a plea offer.

Further, this court finds Applicant entered the plea knowingly and voluntarily without any misconception about the range in which he was going to be sentenced. Applicant knew at the time he pled guilty that the offer from the State was for a negotiated twelve (12) to fifteen (15) year sentencing range, and not for any alleged eight (8) year plea offer as he had originally hoped to obtain by cooperating. Therefore, he was fully apprised of the direct consequences of his plea prior to electing to accept the offer and did so intelligently after being fully advised of such by competent counsel. See Mabry v. Johnson, 467 U.S 504 (1984) (where a defendant pleads guilty voluntarily and intelligently with full awareness of the consequences, the inability to enforce the prosecutor's offer is without constitutional significance). Accordingly, this Court finds this application for PCR to be without merit and, therefore, denies and dismisses the action 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.

Except as discussed above, this Court finds that the Applicant failed to raise all additional allegations raised 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

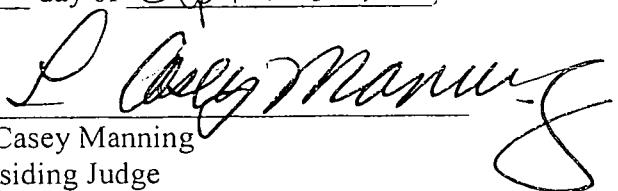
be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issues 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 notes Applicant 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), SCRPC, 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 this 12<sup>th</sup> day of September, 2012.

  
\_\_\_\_\_  
L. Casey Manning  
Presiding Judge  
Fifth Judicial Circuit

Columbia, South Carolina.

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2010CP4007042

Baron L #152591 Lewis

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: \_\_\_\_\_

Attorney for :  Plaintiff  Defendant or  Self-Represented Litigant.

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- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other \_\_\_\_\_

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

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

**ORDER INFORMATION**

This order  ends  does not end the case.

Additional Information for the Clerk : \_\_\_\_\_

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Circuit Court Judge \_\_\_\_\_ Judge Code \_\_\_\_\_ Date \_\_\_\_\_

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this 9 April 2014 to attorneys of record or to parties (when appearing pro se) as follows:

Baron L #152591 Lewis

Rowland P. Alston III

Megan E. Harrigan

Baron L #152591 Lewis

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter \_\_\_\_\_

Clerk of Court \_\_\_\_\_





## II.

Applicant filed an application for post-conviction relief on April 30, 2010. An evidentiary hearing into the matter was convened May 23, 2012, at the Richland County Courthouse. Applicant was present at the hearing and was represented by counsel, Rowland Alston, III, Esquire. The Respondent was represented by Assistant Attorney General Robert D. Corney of the South Carolina Attorney General's Office. By written Order signed September 12, 2013 and filed September 17, 2013, this Court denied and dismissed Applicant's post-conviction relief action with prejudice. A copy of this Order was served on Applicant by the Richland County Clerk of Court.

On September 26, 2013, Applicant filed a "Motion to Alter or Amend the Judgment." Respondent made a Return to this motion, asking that it be denied and dismissed.

## III.

This Court's Order of Dismissal contains the required findings of facts and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1976) and Rule 52(a) SCRCP. See also McCray v. State, 305 S.C. 329, 408 S.E.2d 241 (1991). Having carefully reviewed the entire record in this matter, this Court finds that there is no basis for altering or amending its prior ruling.<sup>1</sup> Therefore, this Court hereby denies the Applicant's Motion in its entirety, and affirms the previous Order of Dismissal.

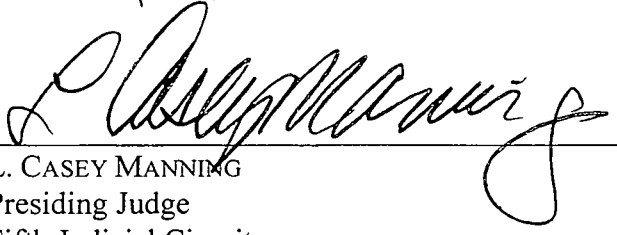
This Court notes that if the Petitioner desires to secure appellate review of this Order and the Order of Dismissal, a notice of appeal must be filed and served within thirty days of the service of this Order. Petitioner is directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the

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<sup>1</sup> The Court, in its discretion, has considered this matter based upon the motions submitted by the parties and the post-conviction

appropriate procedures to follow after notice of appeal has been timely filed.

AND, IT IS SO ORDERED this 1 day of April, 2014

  
\_\_\_\_\_  
L. CASEY MANNING  
Presiding Judge  
Fifth Judicial Circuit

Columbia, South Carolina

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relief file, since oral argument will not aid the Court in reaching its decision. See Rule 59(f), SCRCP.