

R. MILLS ARIAIL, JR.  
ATTORNEY AT LAW

PCR

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April 15, 2014

**Via US Mail**

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

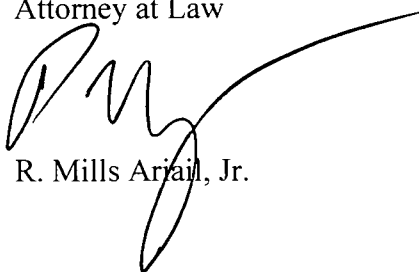
***Re: Notice of Intent to Appeal from Brandon Croft v. The State of South Carolina  
C.A. No.: 2012-CP-23-6445***

Dear Mr. Shearouse:

I was Court Appointed in the above referenced matter, and I expect that appellate defense will handle the appeal and petition for certiorari. On behalf of my client, enclosed for filing please find the Notice of Appeal and proof of service. I've enclosed a copy of the Honorable G. Edward Welmaker's Order of Dismissal to be challenged on appeal.

Thank you for your assistance in this matter and if you have any questions, please feel free to contact me.

Sincerely,  
LAW OFFICE OF R. MILLS ARIAIL, JR.  
Attorney at Law



R. Mills Ariail, Jr.

RMAjr/dcd  
Enclosures (as stated)

**RECEIVED**

APR 21 2014

**S.C. SUPREME COURT**

cc: Greenville County Clerk's Office  
Greenville County Courthouse  
305 East North Street  
Greenville, SC 29601

Karen C. Ratigan  
Assistant Attorney General  
P.O. Box 11549  
Columbia, SC 29211-11549

Brandon Cornelius Croft #350090  
Lee Correctional Institute  
990 Wisaky Highway  
Bishopville, SC 29010

SC Commission of Indigent Defense  
Division of Appellate Defense  
1122 Lady Street  
Columbia, SC 29201-3218

**RECEIVED**

APR 21 2014

**S.C. SUPREME COURT**

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

G. Edward Welmaker, Circuit Court Judge

Case No. 2012-CP-23-6445

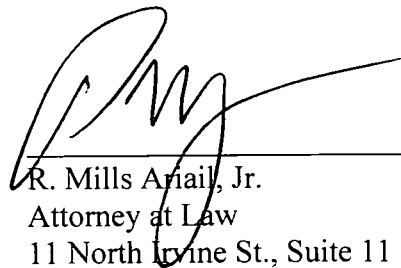
Brandon Croft ,..... Appellant,  
SCDC # 350090

v.

State of South Carolina ..... Respondent.

**NOTICE OF APPEAL**

Appellant appeals the Honorable G. Edward Welmaker's Order of Dismissal dismissing Appellant's application for post-conviction relief. On March 31, 2014, the Honorable G. Edward Welmaker signed an order dismissing Appellant's application for post-conviction relief with prejudice. Appellant, through counsel, received written notice of entry of this order on April 14, 2014. A copy of the Honorable G. Edward Welmaker's Order of Dismissal is attached.



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Telephone (864) 232-9390  
Facsimile (864) 232-9392  
Attorney for Appellant

Greenville, South Carolina  
April 15, 2014

Other Counsel of Record and Interested Parties:

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803-734-3970  
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Division of Appellate Defense  
1122 Lady Street  
Columbia, SC 29201-3218

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

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G. Edward Welmaker, Circuit Court Judge

Case No.2012-CP-23-6445

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Brandon Croft,..... Appellant,  
SCDC # 350090

v.

State of South Carolina ..... Respondent.

**CERTIFICATE OF SERVICE**

I, Denise Tanner LaBeck, paralegal to R. Mills Ariail, Jr., do hereby certify that on this April 15, 2014, I served upon the below named Respondents copies of the **NOTICE OF APPEAL** by depositing copies of the same via U.S. Mail, postage prepaid, Registered Mail in an envelope addressed as set forth herein below:

**Karen C. Ratigan, Esq.**  
**Assistant Attorney General**  
**PO Box 11549**  
**Columbia, SC 29211**  
**Attorney for the State of South Carolina**

**Greenville County Clerk's Office**  
**Greenville County Courthouse**  
**305 East North Street**  
**Greenville, SC 29601**

**SC Commission of Indigent Defense**  
**Division of Appellate Defense**  
**1122 Lady Street**  
**Columbia, SC 29201-3218**



Denise Tanner LaBeck  
Paralegal to R. Mills Ariail, Jr.  
LAW OFFICE OF R. MILLS ARIAIL, JR.

April 15, 2014  
Greenville, SC

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 2012CP2306445

FILED-CLERK OF COURT  
GREENVILLE CO. S.C.  
PAUL B. WICKENSIMER  
2014 APR -9 P 3:08

Brandon C Croft vs. South Carolina State Of

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;  Statement of Judgment by the Court;

Dated at Greenville, South Carolina, this .

Court Reporter:

PRESIDING JUDGE - G Edward Welmaker

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

R. Mills Ariail Jr, 11 North Irvine St., Ste., 11  
Greenville, SC 29601

Karen Christine Ratigan PO Box 11549 Columbia,  
SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court  
- Clerk of Court

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GREENVILLE )  
 )  
 Brandon Cornelius Croft, )  
 S.C.D.C. No. 350090, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 C.A. No. 2012-CP-23-6445

**ORDER OF DISMISSAL**

2014 APR -9 P 3:03

FILED-CLERK OF COURT  
 GREENVILLE CO. S.C.  
 PAUL B. WICKENSIMMER

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed October 9, 2012. The Respondent made its return on May 2, 2013. An evidentiary hearing into the matter was convened on February 18, 2014 at the Greenville County Courthouse. The Applicant was present at the hearing and represented by R. Mills Ariail, Jr., Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's plea counsel, Scott D. Robinson, Esquire. The Court had before it the transcript of the guilty plea hearing, the Greenville County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, and the return.

**PROCEDURAL HISTORY**

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted at the November 2009 term of the Greenville County Grand Jury for three counts of armed robbery (2009-GS-23-3464, count 1, -4231, count 1, -4233, count 1), four counts of possession

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of a weapon during the commission of a violent crime (2009-GS-23-3464, count 2, -3471, count 1, -4231, count 2, -4233, count 2), three counts of assault and battery of a high and aggravated nature (ABHAN) (2009-GS-23-3465, -4232, -4234), and attempted armed robbery (2009-GS-23-3471, count 2). He was represented by Scott D. Robinson, Esquire.

On March 13, 2012, the Applicant pled guilty. The Honorable C. Victor Pyle, Jr. sentenced the Applicant to concurrent terms of twenty-five years for each count of armed robbery, five years for each count of possession of a weapon during the commission of a violent crime, ten years for each count of ABHAN, and twenty years for attempted armed robbery. The Applicant did not appeal.

### **ALLEGATIONS**

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

1. Ineffective assistance of counsel.

### **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).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel’s ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). When there has been a guilty plea, the applicant must prove that counsel’s representation was below the standard of reasonableness and that, but for counsel’s unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

The Applicant stated plea counsel was his second attorney on these charges. The Applicant stated he met with plea counsel 3-4 times at the detention center and that they discussed the State’s evidence and his version of events. The Applicant stated plea counsel explained the concept of “the hand of one is the hand of all.” The Applicant acknowledged that he admitted at the plea hearing that he was present at the scene. The Applicant stated plea counsel told him that his co-defendant would testify against him and that a DVD showed he was guilty. The Applicant stated both of these things were untrue. The Applicant stated there was a 10-15 year plea offer available while he was represented by his first attorney. The Applicant stated he was under the impression that he would receive this offer if he pled guilty. The Applicant admitted, however, that plea counsel told him on the day of the plea hearing that there was no plea offer.

Plea counsel testified he was appointed on May 16, 2011. Plea counsel testified he filed discovery motions, received those materials, reviewed them with the Applicant, and provided

him a copy. Plea counsel testified he had 3-4 meetings with the Applicant and that his investigators would have had additional meetings with him. Plea counsel testified the Applicant told him his version of events and that he explained the theory of "hand of one is hand of all" to the Applicant. Plea counsel testified the prior plea offer had expired on December 27, 2009 (prior to his appointment on the case) and that the Applicant knew this. Plea counsel testified there were no further plea offers and the case was on the trial docket. Plea counsel testified two different investigators worked on the case and he was prepared for trial. Plea counsel testified he would have told the Applicant that some of his co-defendants were on the State's witness list. Plea counsel testified at least two co-defendants (Jamar G. and Darius M.) had given very damaging statements against the Applicant. Plea counsel testified there were still photographs from the DVD and that he would have shown them to the Applicant. Plea counsel testified he told the Applicant he would be pleading guilty without a sentence recommendation and explained the elements and sentence ranges of the offenses.

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds the Applicant's testimony is not credible, while also finding plea counsel's testimony is credible. This Court further finds plea counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his representation.

The Applicant admitted to the plea judge that the facts recited by the solicitor were true. (Plea transcript, p.10). The Applicant also told the plea judge that he understood the trial rights he was waiving in pleading guilty, was satisfied with counsel, and had not been coerced in any way. (Plea transcript, pp.4-6).

This Court finds the Applicant failed to meet his burden of proving plea counsel did not

properly prepare his case. The Applicant and plea counsel both testified they met 3-4 times and discussed the evidence and the Applicant's version of events. Additionally, plea counsel testified he provided a copy of discovery materials to the Applicant and had two investigators working on the case. This Court finds plea counsel's testimony is credible. This Court finds there is no merit to the Applicant's contention that plea counsel misled him when he said co-defendants would testify against him. Plea counsel produced statements from his co-defendants in which they implicate the Applicant. Further, plea counsel produced a witness list indicating several co-defendants were to be called as State witnesses. Regardless, as these co-defendants did not testify at the PCR hearing, this Court cannot speculate as to what their trial testimony would have been. See Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (the South Carolina Supreme Court "has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial.") (emphasis in original). Similarly, this Court cannot speculate as to whether the DVD (or still photographs therefrom) were either harmful or helpful in the Applicant's case because they were not introduced at the PCR hearing. Cf. Palacio v. State, 333 S.C. 506, 513, 511 S.E.2d 62, 66 (1999) (holding that, since the contents of challenged documents were not presented at the PCR hearing, the Applicant could not demonstrate how the failure of counsel to obtain these documents prejudiced the defense).

This Court finds the Applicant failed to meet his burden of proving plea counsel misadvised him about the sentence he would receive if he pled guilty. It is clear the State's plea offer had expired well before plea counsel was appointed in this case. While the Applicant stated he was under the impression that this offer was still available, this Court finds this

testimony is not credible. The Applicant admitted plea counsel advised him that he was pleading guilty without a recommendation and plea counsel confirmed this. This Court finds the Applicant was fully aware that he was pleading guilty without a sentence recommendation and has failed to prove that plea counsel was deficient.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that plea counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that plea 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 plea counsel’s performance.

This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

**All Other Allegations**

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

**CONCLUSION**

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner and the Applicant was not prejudiced by counsel’s representation. Therefore, this PCR application must be denied and dismissed with prejudice.

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This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

**IT IS THEREFORE ORDERED:**

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

**AND IT IS SO ORDERED** this 31 day of March, 2014.



G. Edward Welmaker  
Presiding Judge  
Thirteenth Judicial Circuit

Greenville, South Carolina.

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