

IN THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
APPEAL FROM RICHLAND COUNTY
COURT OF COMMON PLEAS
ALISON RENEE LEE, CIRCUIT COURT JUDGE
2013-CP-40-1332

RECEIVED
APR 22 2014
S.C. Supreme Court

Jeremy Batts,.....Petitioner.

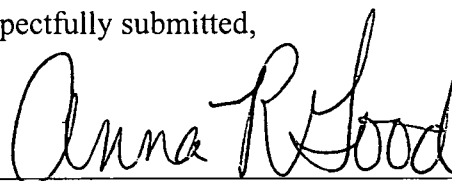
vs

The State of South Carolina,.....Respondent.

NOTICE OF APPEAL

Jeremy Batts appeals the Honorable Alison Renee Lee's April 7, 2014, order denying post-conviction relief to the Petitioner. Undersigned counsel received notice of entry of the order on April 10, 2014. A copy of the order on appeal is attached to this notice.

Respectfully submitted,



Anna R. Good
Law Office of Anna Good, LLC
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Columbia, South Carolina 29201
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Attorney for the Petitioner.

April 21, 2014.

OTHER COUNSEL OF RECORD:
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South Carolina Attorney General's Office
Post Office Box 11549
Columbia, SC 29211-1549

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IN THE SUPREME COURT
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vs

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PROOF OF SERVICE

I, Anna Good, certify that I have today served the within notice of appeal upon the Respondent by depositing a copy of it in the United States Mail, postage prepaid, addressed to the attorney of record, Megan Harrigan, P.O. Box 11549, Columbia, South Carolina 29211-1549. I further certify that all parties required by Rule to be served have been served this 21st day of April 2014.

Respectfully submitted,



Anna R. Good, Esquire
Law Office of Anna Good, LLC
1720 Main Street, Suite 303
Columbia, South Carolina 29201

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2013CP4001332

Jeremy #301883 Batts

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 _____

RICHLAND COUNTY
FILED
2014 APR -7 AM 10:28
JEANETTE W. McBRIDE
CLERK OF COURT

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 7 April 2014 to attorneys of record or to parties (when appearing pro se) as follows:

Jeremy #301883 Batts

Anna Rawl Good

Megan E. Harrigan

Jeremy #301883 Batts

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)
)
 Jeremy Batts, #301883,)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FIFTH JUDICIAL CIRCUIT

Case No. 2013-CP-40-1332

ORDER OF DISMISSAL

RICHLAND COUNTY
 FILED
 2014 APR -7 AM 10:26
 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 March 5, 2013. Respondent made its Return on May 28, 2013, requesting an evidentiary hearing be held. Thereafter, on January 3, 2014, Applicant, through counsel, filed an amended application. An evidentiary hearing into the matter was convened March 19, 2013, at the Richland County Courthouse. Applicant was present at the hearing and was represented by counsel, Anna R. Good, Esquire. Respondent was represented by Assistant Attorney General Megan E. Harrigan of the South Carolina Attorney General's Office.

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 indicted during the February 2009 term of the Richland County Grand Jury for Assault and Battery with Intent to Kill (2009-GS-40-13217) and Criminal Domestic Violence – Second Offense (2009-GS-40-5844). Applicant was also indicted during the November 2009 term of the Richland County Grand Jury for Use of a Firearm during the Commission of a Violent Crime (2009-GS-40-10337), Displaying a Firearm into a Vehicle while Occupied (2009-GS-40-10338), and Assault with Intent to Kill (2009-GS-40-10446). Nicole L. Singletary, Esquire, and Jennifer C. Davis, Esquire, represented Applicant. On April 26, 2010, Applicant appeared before the Honorable L. Casey Manning, where he pled guilty as indicted; the three additional related Assault with Intent to kill charges were dismissed pursuant to the plea. Sentencing was deferred, and on April 29, 2010, Judge Manning sentenced Applicant to an aggregate term of twenty years imprisonment.

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A notice of appeal was filed and an Anders brief was submitted on Applicant's behalf. The South Carolina Court of Appeals dismissed the appeal, and the Remittitur was sent on March 16, 2012.

In his *pro se* application for post-conviction relief, Applicant alleged that he was being held in custody unlawfully based on allegations of ineffective assistance of counsel and due process violations. Applicant amended his application for post-conviction relief. Applicant alleged the following claims of ineffective assistance of counsel:

1. "Trial counsel failed to correctly inform applicant regarding the plea and potential sentencing for charges;"
2. "Trial counsel failed to inform the Applicant of his rights during a plea, only mentioning the plea is a mitigation plea and like a trial;" and
3. "Trial counsel failed to ask for a continuance and adequately explain directly presented indictment served on the defendant the morning of trial."
4. Violation of Applicant's "due process of law (right to fair trial) - investigator at sentencing made prejudicial remarks that were unfair."

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. Respondent presented testimony from plea counsel, Nicole L. Singletary (hereinafter "Counsel"). This Court also had before it Applicant's guilty plea and sentencing transcripts, the records from the Richland County Clerk of Court regarding the subject convictions, Applicant's appellate records, and Applicant's records from the South Carolina Department of Corrections.

Applicant testified first on his own behalf. He testified that the Criminal Domestic Violence charge stemmed from an altercation with his child's mother and that the remaining charges stemmed from a later incident with his girlfriend at the time where he shot into the car that they both were occupying along with her three small children. He was arrested in December of 2008 shortly after the second incident. Counsel was appointed to represent him shortly thereafter and that she represented him for the entire time, but that Counsel also had Jennifer Davis of the Public Defender's Office assist with the case. Counsel met with him several times. They met for the first time in March of 2009, and at this initial meeting, she reviewed the basics with him, including the charges he was facing and sentencing ranges. He testified that he reviewed discovery with her on the third meeting and that the discovery included: several



varying statements he gave law enforcement, including a final statement where he admitted to shooting into the car; Gunshot Residue Analysis that showed GSR in the passenger seat where he was sitting; a statement from the victim describing "flashes" from a gun coming from where Applicant was sitting in the car; and a statement from one of the victim's minor children describing how Applicant had threatened to kill the victim shortly before the incident. He testified that he did shoot into the car two times and acknowledged that there were three small children in the backseat of the car. He testified that Counsel gave him an entire copy of the discovery.

He was aware that Counsel used an investigator to assist in his defense, but that he never met with the investigator. He testified that he wanted a particular witness, a "Ms. Cunningham," to be located to testify on his behalf and that he told Counsel about her. He did not know her full name or have any contact information for this witness, but she should not have been hard to track down because she lived near the incident location. He testified that Counsel did not locate this witness. He testified that he has not since been able to locate this witness and that she was not present to testify at the evidentiary hearing.

Applicant testified that he was only served a warrant for Assault and Battery with Intent to Kill for the second set of charges and that he did not learn of the additional indictments until the morning of his guilty plea. Applicant testified that he discussed trial versus a plea with Counsel and that he originally wanted to proceed to trial. Because of these extra indictments that he had never discussed with Counsel, he felt like he had no option other than to plead guilty. He testified that Counsel "seemed distracted" and not interested in his case on the day of his plea. He was given time to discuss his case with his family on the day of his plea and his family urged him to accept the State's plea offer to dismiss the three additional Assault with Intent to Kill charges. Specifically, Applicant testified that his mother had recently had a heart attack and he pled guilty because he was afraid he would receive a harsher sentence at trial and not be able to spend time with his mother and the rest of his family. He testified that this was his primary consideration in deciding to plead guilty.

Applicant testified that Counsel did not fully prepare him for his guilty plea. Counsel informed him that a plea was like a "mitigation trial" where he would present witnesses on his behalf to try to get as small of a sentence as possible. He testified that he thought Counsel would subpoena witnesses for his plea and was surprised when certain witnesses, such as Ms.

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Cunningham, were not present. He did acknowledge that Counsel had several family members and other people there to give statements on his behalf. Counsel informed him that the State would be dismissing the three additional Assault with Intent to Kill charges, which would reduce his sentence exposure by thirty years, but that there was no negotiation or recommendation as to a particular sentence. He testified that Counsel explained to him that he could receive consecutive sentences, but that he thought he could only receive up to twenty years imprisonment. He did acknowledge that he told the plea court while under oath that he understood he could receive a sentence of up to forty-one years, that he was guilty, and that he was satisfied with Counsel's representation.

Following Applicant's testimony, Respondent called Counsel to testify. Counsel testified that she has been practicing law for eight years and she was employed at the Richland County Public Defender's Office from 2005 until April 2010, shortly before Applicant's plea. She was appointed to represent Applicant on December 23, 2008, while employed at the Public Defender's Office and as part of her exit agreement she would keep Applicant's case because she had spent such a great deal of time working on the case. She asked fellow Public Defender Jennifer C. Davis to assist her on this case, which is common practice for the Richland County Public Defender's Office. She had worked on numerous cases with Davis before and they worked well together.

Counsel testified that she met with Applicant an immeasurable amount of times, including near daily meetings as Applicant's trial date neared. She testified that Applicant initially expressed an interest in proceeding to trial and that she was fully prepared for trial. Counsel testified she had received written notice of the trial date from the State two months prior to Applicant's trial date and that Applicant elected to plead guilty on the date of his trial. She testified that she had thirteen written pre-trial motions prepared and was ready for hearings on each. She compiled a document of more than thirty pages in preparation for trial, which included potential direct and cross examination questions for all likely witnesses, including Applicant, as well as the various statements from the victim and Applicant, the evidence likely to be introduced against Applicant, and the challenges to be made on Applicant's behalf in response to such evidence. She testified that this packet made in anticipation for trial included charts, potential opening statements, necessary pre-trial motions to be made, and anything else essential for trial. She testified that she gave Applicant a copy of this document and reviewed it with him

countless times. Counsel testified that she also did mock direct and cross examinations with Applicant to prepare him for his testimony at trial. She testified that Applicant had "erratic behavior" and would often get inexplicably upset with her without any explanation. Because of this, she wanted him to be as prepared a possible in the event he testified so that he did not display such negative behavior in front of the jury and make a negative impression. She testified that she had Applicant evaluated due to these mood swings, even though she did not have any reason to doubt his competency, and that Applicant was determined to be both competent and criminally responsible.

She testified that the evidence the State had against Applicant was very strong, including the victim's statement that she saw Applicant shooting at her; GSR in numerous locations inside the car indicating that Applicant shot several times from the passenger seat; a statement from the victim's minor child that Applicant had threatened to kill the victim shortly before the incident; and Crime Scene Investigation reports showing that after firing his weapon from within the car Applicant had exited the car and shot from the outside in an attempt to stage a "drive-by shooting" scenario. She testified that she informed Applicant that the State's evidence was strong and that he would likely be convicted if he proceeded to trial. She testified that she reviewed all discovery with him numerous times and gave him a copy of his discovery to keep.

Counsel retained two independent Crime Scene Investigators and a Gunshot Residue expert to assist with Applicant's defense. She testified that these experts would not have been able to provide favorable testimony on Applicant's behalf at trial, which she informed Applicant. However, they were helpful in assisting her draft her cross-examination of the State's expert witnesses likely to be called at trial. Counsel testified that she also used a private investigator to assist in investigation.

Counsel testified that Applicant insisted that he did not fire any weapons throughout trial preparation until three days before the anticipated trial date, when he changed his version of events completely and admitted he had fired a gun numerous times inside the car. She testified that this impacted her trial preparation drastically, including how she would be able to examine Applicant if he took the stand in his defense. She testified that on the same date, she also learned that the State had directly presented additional indictments, including the four Assault with Intent to Kill indictments, Displaying a Weapon into a Vehicle while Occupied, and Use of a Firearm during the Commission of a Violent Crime. She testified that she was aware that directly

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presented indictments might be served on Applicant shortly before trial but that none of these new charges changed her trial strategy as they all stemmed from the same incident and had no impact on her anticipated defense. She testified that Applicant pled guilty on Monday, and that the Friday before is when she learned of these additional charges. She testified that she explained all the elements of these additional charges and the potential sentences to Applicant numerous times. Applicant understood the impact these new indictments had on his potential sentence and to ensure that he understood that he could receive consecutive sentences, she drew out all potential sentences for him.

She considered moving for a continuance in light of these new charges, but that on the Monday in which Applicant's trial was slated to begin, he was insistent that he wanted to enter a guilty plea. She testified that Applicant was given time to discuss his charges with his family and that his family wanted him to accept the State's plea offer to dismiss three of the Assault with Intent to Kill charges. She testified that these three charges were for the three minor children that were in the vehicle when Applicant discharged his weapon several times. She testified that she fully explained to Applicant that there was no negotiation or recommendation from the State beyond the dismissal of these three charges and that he could potentially receive a sentence of forty-one years imprisonment if the plea court sentenced him consecutively. She testified that Applicant fully understood this, which he acknowledged to Judge Manning during his guilty plea. She testified that she also reviewed all of Applicant's rights with him, including the right to call witnesses on his behalf and the right to proceed to a jury trial. She testified that she explained to Applicant that she would ask several of Applicant's family members and other close family friends to speak on his behalf at his guilty plea in mitigation. She testified that she explained what mitigation meant to Applicant and that she was going to ask the plea court to sentence him as leniently as possible.

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. This Court finds that Counsel's testimony is credible, while Applicant's testimony lacks credibility. 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).

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Ineffective Assistance of Counsel

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; 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 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813.

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. 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.

“In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Specifically, the voluntariness of a guilty plea is not determined by an examination of a specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea, and also from the record of the PCR hearing.” Holden v. State, 393 S.C. 565, 573, 713 S.E.2d 611, 615 (2011) (internal citations omitted).

After careful review based on the standard discussed above, this Court finds that Applicant has failed to carry his burden in this action. Below are this Court’s findings in regards to each of Applicant’s allegations of ineffective assistance of counsel:

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Allegation that "trial counsel failed to correctly inform Applicant regarding his plea and potential sentencing for charges"

Applicant alleges that Counsel was ineffective for failing to advise him of the potential sentences for the variety of charges to which he pled guilty. However, Counsel's credible testimony sharply refutes this allegation. Counsel testified that she not only verbally explained all potential sentences for the various charges to Applicant numerous times prior to his guilty plea, but also visually explained his potential sentence exposure to him by drawing out all potential sentences. Counsel testified that she explained to Applicant that he could potentially receive consecutive sentences and that based on the charges to which he was pleading guilty, he was facing forty-one years imprisonment. Additionally, Applicant testified that Counsel did review the potential sentences with him prior to his guilty plea, including how the dismissal of the three Assault with Intent to Kill charges reduced his maximum exposure by thirty years. This Court finds that Counsel's performance well exceeded professional norms and that her performance was in no aspect deficient in regards to this allegation.

Furthermore, this Court finds that Applicant has failed to establish any resulting prejudice from Counsel's alleged deficiency. Applicant's testimony and the transcript from Applicant's guilty plea both reveal that Applicant understood he could receive a potential sentence of up to forty-one years as a result of his guilty plea, which is the correct exposure he was facing based on the charges to which he pled guilty. As Applicant has failed to prove both deficiency and prejudice, this Court finds that this allegation must be denied and dismissed with prejudice.

Allegation that "trial counsel failed to inform the Applicant of his rights during a plea, only mentioning the plea is a mitigation plea and like a trial"

Applicant alleges that trial counsel was ineffective for failing to inform him of his rights during a guilty plea. Specifically, Applicant alleges that Counsel informed him that he would be able to present witnesses during his guilty plea in mitigation, much like presenting a defense at trial. However, the uncontroverted testimony from both Applicant and Counsel was that Counsel informed Applicant that she would present witnesses on his behalf in an effort to secure the lowest sentence possible. Counsel testified, and the record from Applicant's guilty plea and sentencing proceedings reveal that Counsel did provide such persons on Applicant's behalf, including his sister, mother, aunt, child's mother, and Dr. Charles Kelly, Applicant's spiritual advisor. Counsel's credible testimony is that she reviewed all rights with Applicant prior to his

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guilty plea, including his right to proceed to trial and call witnesses on his behalf. This Court finds that Counsel's performance was in accordance with professional standards and she was not deficient in regards to this allegation.

Furthermore, this Court finds that Applicant has failed to meet his burden of establishing any resulting prejudice from this alleged deficiency. Applicant presented no evidence or testimony of any evidence he wanted to present at his guilty plea that Counsel prevented him from presenting. Furthermore, Applicant failed to articulate any particular right or other information that Counsel failed to review with him, or how it would have had any impact on his decision to plead guilty. Therefore, this allegation must be denied and dismissed with prejudice.

Allegation that "trial counsel failed to ask for a continuance and adequately explain directly presented indictments served on the Defendant the morning of trial"

Applicant alleges that Counsel was ineffective for failing to move for a continuance to allow her to adequately and fully explain the additional directly presented indictments that he was served with on the day of his plea. Counsel's credible testimony reveals that this allegation is without merit and must be denied and dismissed. Counsel testified that she was informed that the State had directly presented several additional indictments regarding the incident shortly before his guilty plea and that on the Friday before his plea; she discussed these additional charges with Applicant. She testified that she explained the potential sentences for these new charges with Applicant. Counsel testified that these additional indictments did not alter her anticipated defense as the new indictments stemmed from the same incident. Counsel testified that she considered moving for a continuance based on these new indictments, but that such a motion was not necessary as Applicant was adamant that he wanted to plead guilty that day. This Court finds that Counsel's performance was not deficient in regards to this allegation.

Furthermore, this Court finds that Applicant has failed to meet his burden of establishing any resulting prejudice from this alleged deficiency. Applicant testified that he understood how these additional indictments affected his sentence exposure and that he pled guilty because of health concerns within his family and his fear that he would receive a harsher sentence if convicted at trial. Therefore, this allegation must be denied and dismissed with prejudice.

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Violation of Applicant's "due process of law (right to fair trial) - investigator at sentencing made prejudicial remarks that were unfair."

Applicant presented no evidence on this allegation at the hearing. The transcript of the sentencing reveals the statements by the investigator discussed that the victim feared the Applicant and her statements to him that she saw the muzzle flash. He also stated that the Applicant showed no signs of remorse. Counsel objected to other statements made by the investigator that stopped him from speculating about the events. This Court finds that the Applicant has not his burden of proof related to this ground set forth in his application. He did not raise any of these issues during the hearing and therefore has failed to establish a basis to grant relief on this ground.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that 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.

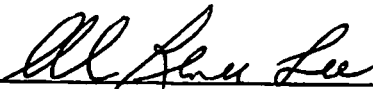
This Court notes that Applicant must file and serve a Notice of Appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

ORDER

IT IS THEREFORE ORDERED:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. The Applicant is remanded to the custody of the State.

AND IT IS SO ORDERED.



ALISON RENEE LEE
Presiding Judge
Fifth Judicial Circuit

Columbia, South Carolina.
April 4, 2014

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