

PCR

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April 29, 2014

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

**RECEIVED**

MAY 01 2014

**S.C. SUPREME COURT**

RE: Notice of Appeal of Sterling Brown  
Berkeley County PCR Case No.: 2012-CP-08-0157  
Hearing Date: November 20, 2013  
Charleston County Courthouse

Dear Mr. Shearouse:

Enclosed for filing is the Notice of Appeal in the above case. Also enclosed are the following:

- 1) Proof of service of the notice of appeal on the respondent Assistant Attorney General Ashleigh R. Wilson.
- 2) A copy of the final order which is to be challenged on appeal

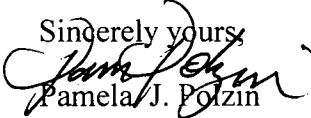
This appeal from the denial of the post conviction relief application is being filed with the Supreme Court because the applicant has advised me he wishes to appeal.

No filing fee is being sent because I was appointed to represent the applicant as an indigent defense case.

I was appointed by the Court to handle the PCR application. However, I am requesting that South Carolina Appellate Defense be appointed to handle all further proceedings in this matter.

Please advise if you require anything further.

With kind regards, I am

Sincerely yours,  
  
Pamela J. Polzin

PJP/pp  
enclosures  
cc: Ashleigh R. Wilson, Asst. Attorney General  
Berkeley County Clerk of Court  
Sterling Brown, # 346227

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM BERKELEY COUNTY

Court of Common Pleas  
Post Conviction Relief

Honorable Stephanie P. McDonald, Circuit Court Judge

Case No. 2012-CP-08-0157

STERLING BROWN, # 346227,

APPELLANT

v.

STATE OF SOUTH CAROLINA,

RESPONDENT

NOTICE OF APPEAL

Sterling Brown hereby appeals the final decision and order of the Honorable Stephanie P. McDonald dated March 14, 2014 and filed March 26, 2014 in the Berkeley County Clerk of Court's Office in his Post Conviction Relief case. Appellant, through his attorney, received and was served by first class ordinary mail with a copy of the formal final order on April 9, 2014 from Ashleigh R. Wilson, Assistant Attorney General.

April 29, 2014

**RECEIVED**

MAY 01 2014

**S.C. SUPREME COURT**



Pamela J. Polzin

SC Bar No. 4126

P.O. Box 62255

Charleston, SC 29419-2255

(843) 744-0043

Attorney for Appellant

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM BERKELEY COUNTY

Court of Common Pleas  
Post Conviction Relief

Honorable Stephanie P. McDonald, Circuit Court Judge

Case No. 2012-CP-08-0157

STERLING BROWN, # 346227,

APPELLANT

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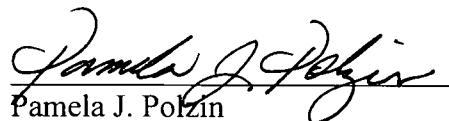
STATE OF SOUTH CAROLINA,

RESPONDENT

PROOF OF SERVICE

I Certify that I have served the Notice of Appeal on Ashleigh R. Wilson, Assistant Attorney General, by depositing a copy of it in the United States Mail, postage prepaid and addressed to Ashleigh R. Wilson, Assistant Attorney General, South Carolina Attorney General's Office, Post office Box 11549, Columbia, South Carolina 29211-1549, on this 29th day of April, 2014.

April 29, 2014



Pamela J. Polzin  
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(843) 744-0043  
Attorney for Appellant

AW  
Filed 4-9-2014  
PJP

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF BERKELEY )  
 )  
Sterling Brown, #346227, )  
 )  
Applicant, )  
 )  
v. )  
 )  
State of South Carolina, )  
 )  
Respondent. )

IN THE COURT OF COMMON PLEAS  
2012-CP-08-0157

ORDER OF DISMISSAL

FILED  
2014 MAR 26 10:35  
HARRY PERKINSON  
CLERK OF COURT  
BERKELEY COUNTY, SC

Presiding Judge: The Honorable Stephanie P. McDonald  
Applicant's Attorney: Pamela Polzin, Esquire  
Respondent's Attorney: Ashleigh R. Wilson, Esquire  
Plea Counsel: J. Mitchell Lanier, Esquire  
Date of Hearing: November 20, 2013  
Court Reporter: Sharon Vizer

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed January 23, 2012. The Respondent made its Return on March 15, 2012. An evidentiary hearing into the matter was convened on November 20, 2013, at the Charleston County Courthouse. The Applicant was present at the hearing and represented by Pamela Polzin, Esquire. Ashleigh R. Wilson, Esquire, of the South Carolina Attorney General's Office represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also present to testify was Adrian Dejeu, Esquire- the assistant solicitor assigned to the Applicant's case.<sup>1</sup> This Court had before it the guilty plea transcript, the records of the Berkeley County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the PCR application, and Respondent's Return thereto.

<sup>1</sup> The Applicant's defense attorney J. Mitchell Lanier passed away before the scheduling of the evidentiary hearing.

P. Polzin  
A. Wilson

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## PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Berkeley County. The Applicant was indicted at the August 2009 term of the Berkeley County Grand Jury for armed robbery (2009-GS-08-0157). J. Mitchell Lanier, Esquire, represented the Applicant. The Applicant pled guilty as indicted. The Honorable R. Markely Dennis sentenced the Applicant to confinement for ten (10) years- the minimum sentence.<sup>2</sup> The Applicant did not appeal his conviction or sentence.

## ALLEGATIONS

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

1. Ineffective assistance of counsel.
  - a. Trial counsel failed to advise of the stipulations behind signing a guilty plea.
2. Involuntary guilty plea.

At the evidentiary hearing, the Applicant alleged the following grounds for relief:

1. Ineffective assistance of counsel.
2. Involuntary guilty plea.
3. Unconstitutional sentencing scheme.

This Court finds the Applicant waived all claims for relief except those raised at his evidentiary hearing by failing to present any testimony or argument in support of any other claims.

## 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 his or her credibility. This Court has weighed the testimony accordingly. Set forth below are the

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<sup>2</sup> In exchange for the Applicant plea of guilty, the State also *nolle prossed* a charge for carrying a weapon on school property (2010-GS-08-0512).

relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

The Applicant testified at the evidentiary hearing that his sentencing was unconstitutional. He testified he looked up the different statutes related to his charge and the statutes were in conflict. The Applicant testified he discussed this issue with his attorney. The Applicant testified he did not appeal his case and his attorney did not appeal his plea. He testified his attorney never mentioned an appeal because his sentencing was deferred. He testified he never requested his attorney file an appeal.

The Applicant testified he met with his attorney three or four times before his guilty plea. He testified he did not recall reviewing discovery with his attorney. He testified he did not give his attorney any leads or potential witnesses to investigate. The Applicant testified his attorney never put up a defense on his behalf. The Applicant testified his defense should have been there was no evidence against him. He testified he asked counsel to request a youthful offender sentence or probation and his attorney told him he did not qualify for a youthful offender sentence. The Applicant testified counsel was not familiar with his case and would ask who people were. He also testified counsel failed to investigate his case. The Applicant testified he never saw his Rule 5 materials.

The Applicant testified further <sup>that</sup> his guilty plea was involuntary. He testified he was coerced to plead guilty because it was his first time in court. He testified counsel told him he could plead guilty or go to trial and get thirty (30) years. He testified further <sup>that</sup> trial counsel did not explain the charge until before his guilty plea. He testified trial counsel did explain that armed robbery carried ten to thirty years. The Applicant testified he told the Court during his plea he had not been threatened to plead guilty. The Applicant testified he recalled agreeing with the

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facts presented by the State at his guilty plea. He testified he also recalled waiving his constitutional rights and telling the judge that he was satisfied with his attorney's representation. Lastly, the Applicant testified some of the answers he gave during his guilty plea were untruthful. He testified the answers he gave at the evidentiary hearing were truthful.

The State called to testify Adrian Dejeu, Esquire, the assistant solicitor assigned to the Applicant's case. Mr. Dejeu testified he has been practicing law since 2008, and has spent most of his career doing criminal work. He testified the Applicant was charged with the armed robbery of a KFC restaurant in Moncks Corner. He testified the State's evidence would show that there were four persons involved. Two actually went inside, Marcus Rannie, a co-defendant, and Sterling Brown, the Applicant. Mr. Rannie was carrying a shotgun and asked the manager to give up money. Applicant Brown went in after Mr. Rannie. Two others were outside the restaurant. Applicant Brown gave a confession implicating himself and the three codefendants in the robbery. Mr. Dejeu testified that he turned over all discovery materials requested by the Applicant's attorney.

Mr. Dejeu testified he spoke with the Applicant's attorney several times about allowing the Applicant to plead guilty to strong armed robbery but he refused to allow the Applicant to plead to the lesser included offense. He testified the State was also not interested in offering the Applicant probation or a youthful offender sentence. He testified further the dismissal of the armed robbery charge was never a consideration.

#### **Ineffective Assistance of Counsel**

The Applicant alleges that he received ineffective assistance of counsel. As an initial matter, this Court finds the Applicant's testimony at the evidentiary hearing was not credible. In a post-conviction relief action, the applicant has the burden of proving the allegations in the

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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. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test to evaluate 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." Id. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. 668). 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." Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). 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 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

To be knowing and voluntary, a plea must be entered with a full understanding of the

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charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243-44 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)). When a defendant pleads guilty on the advice of counsel, the plea may only be attacked through a claim of ineffective assistance of counsel. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2002) (citations omitted).

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 that Applicant's attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, 466 U.S. at 668; Butler, 286 S.C. 441, 334 S.E.2d 813. This Court further finds counsel adequately conferred with the Applicant, and provided thorough representation. This Court finds persuasive the Applicant's statement at his guilty plea that he was satisfied with counsel's representation and had no complaints. (Tran. 4:3-8). This Court finds that counsel's representation did not fall below an objective standard of reasonableness.

This Court finds that trial counsel was not ineffective for failing to investigate the Applicant's case. "[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." Walker v. State, 397 S.C. 226, 235, 723 S.E.2d 610, 615 (Ct. App. 2012). Failure to conduct an independent investigation

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does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result. Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." Wiggins v. Smith, 539 U.S. 510, 521-22 (2003). This Court finds the Applicant has failed to show what further investigation by counsel would have discovered. This Court declines to accept this allegation when it is supported by mere speculation as to result. This Court also finds persuasive counsel's statement during the Applicant's guilty plea proceeding that after sharing the results of his investigation with the Applicant, the Applicant indicated he wanted to plead guilty. (Tran. 4:30-5:1). This Court finds that this allegation is without merit and the Applicant has failed to carry his burden of proving counsel was ineffective in his investigation of the Applicant's case.

This Court finds that trial counsel was not ineffective for failing to request a sentence under the Youthful Offender Act (YOA). This Court finds the Applicant was not eligible for a YOA sentence and counsel's performance was not deficient in this regard. It appears from the record that the Applicant was 16-years-old when the offense was committed. S.C. Code §24-19-10(d)(ii) defines "Youthful Offender" as a defendant "under seventeen years of age and has been bound over for proper criminal proceedings to the court of general sessions pursuant to Section 63-19-1210 for allegedly committing an offense that is not a violent crime, as defined in Section 16-1-60, and that is a misdemeanor, a Class D, Class E, or Class F felony, as defined in Section 16-1-20, or a felony which provides for a maximum term of imprisonment of fifteen years or less."

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The record reflects the Applicant was indicted for armed robbery. This Court finds armed robbery is classified as a violent crime (S.C. Code §16-1-60), a felony, and has a potential sentence of ten to thirty years (S.C. Code §16-11-330(a)). Based on the nature of this offense, the Applicant was ineligible for sentencing under the Youthful Offender Act. Counsel's knowledge of the Applicant's ineligibility is evidenced in the record when counsel tells the plea court "I wish that they had the old youthful offender sentence of three years." (Tran. 10:19-20). This Court finds that this allegation is without merit and the Applicant has failed to carry his burden of proving counsel was ineffective for failing to request a sentence under the Youthful Offender Act.

#### Involuntary Guilty Plea

This Court finds that the Applicant's guilty plea was entered freely and voluntarily. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). Defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977)). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should

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be allowed to depart from the truth of his statements. Crawford v. United States, 519 F.2d 347 (4th Cir.1975).

This Court finds that this allegation is without merit and the Applicant has failed to carry his burden of proving that his guilty plea was involuntarily made. This Court finds the Applicant's guilty plea was entered freely and voluntarily. This Court finds further and the record reflects the Applicant was thoroughly advised of the waiver of his constitutional rights during his guilty plea. He was advised of his right to a jury trial (Tran. 6:1-4), his right to remain silent (Tran. 7:1-5), and his right to confront his accusers (Tran.6:15-25). The record reflects the Applicant at his plea proceeding told the Court that he wished to plead guilty (Tran. 3:21-25). The record also reflects that the Applicant told the Court that he had not been promised anything or threatened by anyone to get him to plead guilty. (Tran. 7:6-9). The Applicant also told the Court he did not suffer from any mental illnesses and was not under the influence of drugs or alcohol. (Tran. 7:10-17). This Court finds that the Applicant had a full understanding of the consequences of his plea and the charges against him. This Court finds that the plea judge correctly found that the Applicant's plea was freely, voluntarily, and intelligently made.

#### Unconstitutional Sentence

The Applicant alleges his sentence for armed robbery is unconstitutional. This Court finds this allegation is wholly without merit and the Applicant has provided no basis for the unconstitutionality of the statute outlining the sentence for armed robbery. S.C. Code Sec. 16-11-330(a) states a person convicted of armed robbery "must be imprisoned for a mandatory minimum term of not less than ten years or more than thirty years, no part of which may be suspended or probation granted. A person convicted under this subsection is not eligible for parole until the person has served at least seven years of the sentence."

This Court finds the Applicant was sentenced to imprisonment for ten years- the minimum sentence allowed under the statute. This Court finds the Applicant's sentence was constitutional and within the range of sentences allowed under the statute. This Court finds further the Applicant was properly advised of his parole eligibility for the charges he was facing.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test, specifically, 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 while representing the Applicant. The Applicant failed to show that counsel's performance was deficient. Therefore, this Court need not address prejudice. Applicant's complaints concerning counsel's performance are without merit and are denied and dismissed.

#### 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 argument or testimony regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations. Therefore, they are hereby denied and dismissed.

#### 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, nor was the Applicant prejudiced by counsel's representation. Therefore, this application for PCR must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty

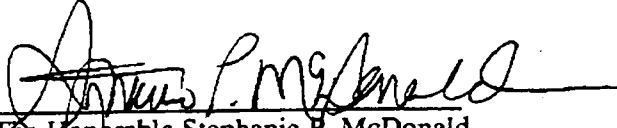
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(30) days from the receipt of written notice of entry of this Order to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely served and 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.

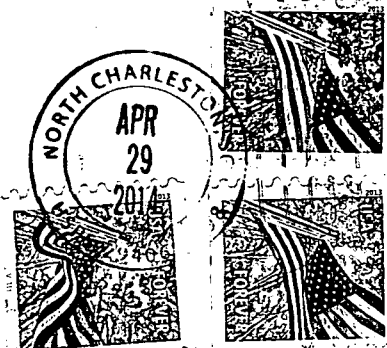
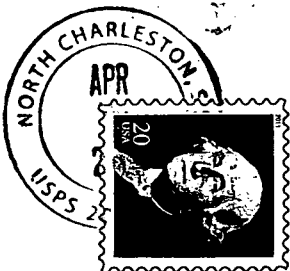
AND IT IS SO ORDERED this 14<sup>th</sup> day of March, 2014.

  
The Honorable Stephanie P. McDonald  
Presiding Judge  
9th Judicial Circuit

Charleston, South Carolina.

PAMELA J. POLZIN  
ATTORNEY AT LAW  
P.O. BOX 62255  
CHARLESTON, SC 29419-2255

RETURN SERVICE REQUESTED



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