

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM COLLETON COUNTY  
Court of Common Pleas  
Post Conviction Relief

James R. Barber, III, Circuit Court Judge

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Case No.: 2012-CP-15-917

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Michael Todd Sanders #290266,..... Appellant,

vs.

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

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NOTICE OF APPEAL

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Michael Todd Sanders #290266, appeals the order of the Honorable James R. Barber, III dated April 2, 2014, and filed on April 10, 2014. Appellant received written notice of entry of this order on April 23, 2014.



TOMMY A. THOMAS  
Attorney for Appellant  
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Other Counsel of Record:

Ashleigh R. Wilson, Esq.  
Assistant Attorney General  
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Attorney for Respondent

Irmo, South Carolina  
April 30, 2014

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MAY 02 2014

**S.C. SUPREME COURT**

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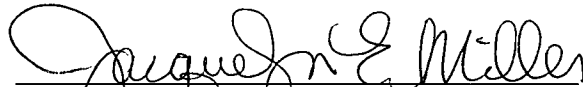
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CERTIFICATE OF SERVICE

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I, Jacquelyn E. Miller, secretary to Tommy A. Thomas, Attorney for the Appellant,  
hereby certify that I placed in the United States Mail, a copy of a Notice of Appeal with postage  
prepaid and the return address clearly shown on said envelope to:

Office of the Attorney General  
Attention: Ashleigh R. Wilson, Esq.  
P.O. Box 11549  
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Jacquelyn E. Miller, Secretary  
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Irmo, South Carolina  
April 30, 2014

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF COLLETON )  
 )  
 Michael Todd Sanders, #290266, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 2012-CP-15-0917

**ORDER OF DISMISSAL**

PATRICIA C. GRAHNT  
 COLLETON COUNTY  
 COMMON PLEAS  
 2014 APR 10 PM 3:07

Presiding Judge:	The Honorable James R. Barber
Applicant's Attorney:	Tommy Thomas, Esquire
Respondent's Attorney:	Ashleigh R. Wilson, Esquire
Plea Counsel:	David Mathews, Esquire
Date of Hearing:	February 19, 2014
Court Reporter:	Ruth L. Mott

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed November 21, 2011. The Respondent made its Return on July 11, 2013. An evidentiary hearing into the matter was convened on February 19, 2014 at the Beaufort County Courthouse. The Applicant was present at the hearing and represented by Tommy Thomas, 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. The Applicant's plea counsel, David Mathews, Esquire, also testified at the hearing. This Court had before it the Applicant's guilty plea transcript, the records of the Colleton County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the Applicant's PCR application, and the Respondent's Return thereto.

## 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 Colleton County. The Applicant was indicted at the August 2011 term of the Colleton County Grand Jury for burglary-first degree (2011-GS-15-0567). David S. Mathews, Esquire, represented the Applicant. The Applicant pled guilty as indicted. Pursuant to a negotiated plea agreement, the Honorable Perry M. Buckner sentenced the Applicant to confinement for twenty years. The Applicant's sentence is to run concurrently to sentences the Applicant received after pleading guilty to charges in Dorchester County.

## ALLEGATIONS

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

1. Ineffective assistance of counsel.
  - a. "No investigation done and I was allowed to plead when there was no Rule 5."
2. "Newly discovered evidence of co-defendant statement not presented at plea."

At the evidentiary hearing, the Applicant proceeded on the allegations raised in his application along with a claim that his guilty plea was not freely and voluntarily entered.

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

### Summary of the Testimony

The Applicant testified he pled guilty in January 2011 to charges in Dorchester County and in February 2012 to charges in Colleton County. He testified for the Colleton County charge he received a twenty year sentence concurrent to his Dorchester County sentences. The Applicant testified he was brought to Colleton County once prior to his guilty plea for his preliminary hearing. He testified he was represented by David Mathews, but did not meet with Mathews until the day of his guilty plea. The Applicant testified plea counsel was present at his preliminary hearing, but counsel did not speak with him at the bond hearing. He testified Mathews never came to see him or sent him any correspondence.

The Applicant testified he never received any discovery and never reviewed the discovery with plea counsel. The Applicant testified he learned of the State's evidence against him at the bond hearing, when he received his warrant, and during his guilty plea when the solicitor stated the facts.

The Applicant testified one of his co-defendants told him that he had written a letter to plea counsel telling him that he (the Applicant) was not guilty. He testified he never saw any statements from his co-defendant, but the solicitor said at his guilty plea that his co-defendants were willing to testify against him. The Applicant testified he spoke with counsel about the hand of one is hand of all, but they did not discuss mere presence. He testified he was not aware he could be found guilty even if he did not enter the victim's home.

The Applicant testified he felt his plea was not freely and voluntarily entered. He testified he was threatened with a life sentence. The Applicant testified further he told the court that no one had threatened or promised him to plead guilty. The Applicant testified he told the plea court he was guilty and that his answers were his own and truthful answers. He testified further he

recalled telling the Court he had no complaints with counsel and that he did not need any additional time to speak with his attorney before entering his guilty plea.

The Applicant testified he never discussed an Alford plea with counsel. He testified he is not guilty and he took the wrong advice from counsel. The Applicant testified he answered the Court's questions during his guilty plea the way counsel told him to answer.

Plea counsel testified he has been practicing mostly criminal law since 1986. He testified he was appointed to represent the Applicant in Court during the Applicant's bond hearing. He testified he spoke briefly with the Applicant during his bond hearing. Counsel testified he was aware of the Applicant's pending charges in Dorchester County and in Georgia. He testified he may have spoken with the attorney representing the Applicant on the Dorchester charges, but at the time of the Applicant's guilty plea in Colleton County the Dorchester County charges had been resolved and he would not have needed to speak with counsel.

Counsel testified he went to the Applicant's preliminary hearing and the State presented the statements from the Applicant's two co-defendants. Counsel testified both co-defendants' statements basically stated the Applicant and the other co-defendant went into the home during the burglary. He testified the Applicant's co-defendants were willing to testify against the Applicant at trial.

Counsel testified the Applicant was present at the preliminary hearing where the State set out their entire case and all the evidence against the Applicant. He testified the nature of the evidence against the Applicant was discussed at the preliminary hearing. He testified he filed Rule 5 and Brady motions and received the discovery materials from the State. He testified he did not receive any additional evidence in discovery that was not brought out at the preliminary hearing. Counsel testified had the Applicant proceeded to trial, he would have reviewed the

State's evidence with the Applicant again.

Counsel testified he did not prepare the case for trial, but would have if the Applicant wanted to go to trial. He testified he did not recall the Applicant ever indicating he wanted to go to trial. He testified he did not recall any discussions with the Applicant about the possibility of facing life without parole. Counsel testified he discussed with the Applicant the testimony of his co-defendants. He testified that they also discussed the fact that whether the Applicant was in the car or in the home during the burglary did not make a difference. He testified he also discussed mere presence and the hand of one is the hand of all with the Applicant.

Counsel testified he negotiated a plea for the Applicant with a twenty year sentence to run concurrent with the sentences he was already serving for the Dorchester County charges. He testified he did not recall discussing an Alford plea with the Applicant and that the Applicant's case was not one of the rare cases where he would have discussed the possibility of an Alford plea. Counsel testified he communicated the offer to the Applicant, informed him of the consequences of his plea, and advised him of his constitutional rights. Counsel testified the Applicant was not a rookie and had an extensive criminal record. He testified the Applicant understood the process and if the Applicant did not understand something he would have clarified for him.

Counsel testified he generally tells his clients the type of questions the Court will ask during a guilty plea and to answer honestly or the court will not accept the guilty plea. Counsel testified he did not tell the Applicant to be untruthful to the Court during his guilty plea. He testified the Applicant told the Court he was guilty and the Applicant told him he was in the car during the burglary. Lastly, counsel testified it was the Applicant's decision to plead guilty and he would not have proceeded with the guilty plea if it was not the Applicant's decision to plead

guilty.

At the conclusion of the evidentiary hearing, counsel for the Applicant argued there was some question raised at the hearing that the guilty plea entered by the Applicant in Colleton County was predicated on a prior guilty plea that was entered in Dorchester County. He argued because the Dorchester County post-conviction relief matter is still pending, the Court's ruling in the Colleton County matter should be taken under advisement until after the Dorchester County matter is resolved. This Court finds there is no basis for holding this matter under advisement until resolution of the Dorchester County post-conviction relief matter is concluded and counsel's request is denied.

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

The Applicant alleges that he received ineffective assistance of counsel. As an initial matter, this Court finds credible the testimony of David Mathews, Esquire. This Court does not find credible the testimony of the Applicant. 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. 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).

This Court finds that counsel is a trial practitioner who has extensive experience in the trial of serious offenses. Counsel conferred with the Applicant on numerous occasions. During conferences with the Applicant, counsel discussed the pending charges, the elements of the charges and what the State was required to prove, Applicant's constitutional rights, Applicant's version of the facts, and possible defenses or lack thereof.

Regarding the Applicant's claim 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 conferred with the Applicant and provided thorough representation. 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 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)). This Court finds counsel's investigation of the Applicant's case was sufficient. This Court also finds the Applicant has failed to provide any evidence of what would have been discovered had counsel done additional investigation prior to the Applicant's plea. This Court finds the Applicant has failed to carry his burden of proving counsel was deficient and that prejudice resulted.

#### **Newly Discovered Evidence**

The Applicant alleges the presence of newly discovered evidence. The Applicant claims the newly discovered evidence is an alleged statement from his co-defendant that was not presented to the court by counsel at his guilty plea. The Uniform Post-Conviction Relief Act states that a person may institute a post-conviction relief action if "there exists evidence or material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice." S.C. Code Ann. § 17-27-20(4). If the applicant contends there is evidence of material fact not previously presented, the post-conviction relief application must

be filed within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence. S.C. Code Ann. §17-27-45(c). In order for an Applicant to obtain a new trial on the basis of newly discovered evidence, the party requesting the new trial must show that the evidence (1) Is such as would probably change the result if a new trial was had; (2) Has been discovered since the trial; (3) Could not by the exercise of due diligence have been discovered before the trial; (4) Is material to the issue of guilt or innocence; and, (5) Is not merely cumulative or impeaching. Hayden v. State, 278 S.C. 610, 611-12, 299 S.E.2d 854, 855 (1983).

This Court finds this allegation is wholly without merit and the Applicant has presented no evidence or testimony to support this claim of newly discovered evidence. Specifically, the Applicant presented no testimony from his co-defendant as to the substance of this alleged statement. This Court finds the Applicant has failed to carry his burden of proving any of the five elements needed to obtain a new trial based on newly discovered evidence.

#### **Involuntary Guilty Plea**

The Applicant alleges his guilty plea was not entered freely and voluntarily. Specifically, the Applicant alleges he did not get to spend enough time with counsel prior to the plea, he was threatened with a life sentence, and he was told how to respond to the Court's questions by his attorney. This Court finds these allegations are wholly without merit. This Court finds and the record reflects 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 (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 (1977)). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. United States, 519 F.2d 347 (4th Cir.1975).

This Court finds the Applicant was fully advised of all the consequences of pleading guilty prior to and during his guilty plea. The record reflects the Applicant was advised of the substance of the negotiated plea agreement with the State. (T. 3:1-16). The Applicant told the Court he had not been treated for any substance abuse issues and was not under the influence. (T. 5:7-13). The Applicant also told the Court that plea counsel advised him of the charge he was facing, advised him of the maximum penalty for the charge, advised him of the consequences of his plea, and advised him of what constitutional rights he was waiving by pleading guilty. (T. 6:3-11). The Applicant was advised by the Court of his right to a jury trial, his right to confront the State's witnesses, and his right to remain silent. (T. 8:16-9:6). The Applicant was advised by the Court that he could receive of potential sentence from fifteen years to life in prison. (T. 7:1-5). He was advised by the Court of the violent and most serious classification of burglary- first degree and advised that if convicted in the future he could face the possibility of a life sentence. (T. 7:6-22). The Applicant told the Court that he wished to plead guilty. (T. 13-15). The Applicant also told the Court that he had not been promised anything in order to get him to plead

guilty. (T. 9:23-10:2).

This Court does not find credible the Applicant's testimony that counsel told him how to respond to the Court's questions during the guilty plea. This Court finds and the record reflects the Applicant was sworn to tell the truth (T. 4:2-5) and told the Court that his answers had been truthful and were indeed his own answers. (T. 11:9-16).

This Court also does not find credible the Applicant's testimony that he was told he would receive a life sentence if he did not plead guilty. This Court finds credible plea counsel's testimony that he did not recall any discussions with the Applicant about the possibility of a sentence to life without parole. The Applicant also told the Court at his guilty plea that no one had threatened him in any manner to get him to plead guilty. (T. 10:3-5).

This Court finds most persuasive the Applicant telling the Court he was fully satisfied with his attorney's services. (T. 10:6-8, 18-20). The Applicant told the Court that counsel had done everything he felt like he should or could have done. (T. 10:9-11). The Applicant also told the Court he had enough time to talk with counsel and he understood all their talks. (T. 10:12-17). This Court also finds persuasive counsel's statements to the court that he spoke with the Applicant about the facts of the case, the Applicant indicated he wanted to go forward, and the Applicant understood his rights when pleading guilty. (T. 15:13-24). This Court finds and the record reflects the Applicant's guilty plea was freely and voluntarily entered. This Court finds the Applicant has failed to carry his burden of proving he did not have a full understanding of the consequences of his guilty plea.

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. This Court also finds the Applicant's guilty plea was entered freely and voluntarily and the Applicant had a full understanding of the consequences of pleading guilty.

#### **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 evidence or argument 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.

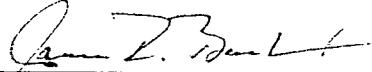
This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of written notice of entry of this Order to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules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

[Signature on the following page.]

**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 2<sup>nd</sup> day of April, 2014.



The Honorable James R. Barber, III  
Presiding Judge  
14th Judicial Circuit

Columbia, South Carolina.

# Tommy A. Thomas

ATTORNEY AND COUNSELOR AT LAW

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April 30, 2014

The South Carolina Supreme Court  
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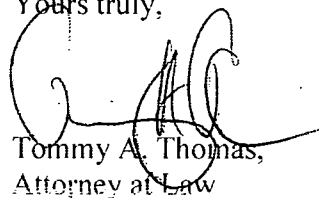
RE: Michael Todd Sanders #290266 v. State of South Carolina  
Case No.: 2012-CP-15-0917

Dear Sir or Madam:

Enclosed please find an original and a copy of the Notice of Appeal regarding the above matter. Kindly return a clocked copy to me in the enclosed envelope.

Thank you and should you have any questions, please feel free to contact me.

Yours truly,

  
Tommy A. Thomas,  
Attorney at Law

TAT/jem

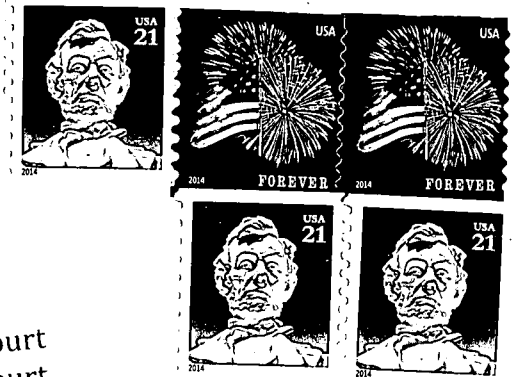
cc: Ashleigh Wilson, Esq.  
Michael Sanders #290266  
Office of Appellate Defense

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MAY 02 2014

S.C. SUPREME COURT

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