

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM YORK COUNTY  
Court of Common Pleas

John C. Hayes, III, Circuit Court Judge

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Civil Action Number: 2013-CP-46-0916

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Princeton Thrower #300701,

Petitioner,

v.

STATE OF SOUTH  
CAROLINA,

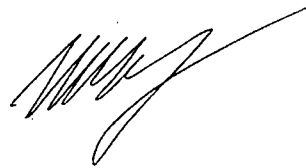
Respondent.

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NOTICE OF APPEAL

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Princeton Thrower appeals the order of the Honorable John C. Hayes, III dated April 15, 2014 denying his application for Post-Conviction Relief.



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W. Michael Hemlepp, Jr.  
3027 S. Paraham Road  
York, South Carolina 29745  
803-718-0956  
[legal@p-3-solutions.com](mailto:legal@p-3-solutions.com)  
Attorney for Appellant

May 5, 2014  
York, South Carolina

Other Counsel of Record:  
Rutledge Johnson  
OFFICE OF THE ATTORNEY GENERAL  
1000 Assembly Street, Suite 518  
Columbia, South Carolina 29201

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PROOF OF SERVICE

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I certify that I have served the Notice of Appeal in the above captioned case on the following individuals by depositing a copy of it in the United States Mail, postage prepaid, on ~~April~~ 1, 2014, addressed to:

*May*

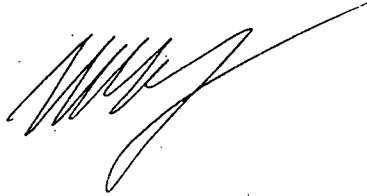
David Hamilton, Clerk of Court  
York County Court of Common Pleas  
Post Office Box 649  
York, South Carolina 29745

Rutledge Johnson, Esq.  
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1000 Assembly Street, Suite 518

Columbia, South Carolina 29201

Princeton Thrower #300701  
BCRI Murray 121  
4460 Broad River Road  
Columbia, South Carolina 29210

May 5, 2014

A handwritten signature in black ink, appearing to read 'W. Michael Hemlepp, Jr.', written in a cursive style.

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Attorney for Appellant

FORM 4

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

JUDGMENT IN A CIVIL CASE  
 CASE NUMBER 2013CP4600916

Princeton A Thrower

South Carolina State Of

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for:  Plaintiff  Defendant  
 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.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  
 Rule 43(k), SCRPC (Settled);  Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):  Rule 40(j) SCRPC;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other: \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE-BOX):  
 Affirmed;  Reversed;  Remanded;  Other:

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

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

This order  ends  does not end the case.  
 Additional Information for the Clerk: ORDER

INFORMATION FOR THE JUDGMENT 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 (List amount(s) below)

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.**

s/ John C. Hayes, III.  
 Circuit Court Judge

2049  
 Judge Code

4/15/2014  
 Date

**For Clerk of Court Office Use Only**

This judgment was entered on April 15, 2014, and a copy mailed first class or placed in the appropriate attorney's box on April 15, 2014, to attorneys of record or to parties (when appearing pro se) as follows:

William Michael Hemlepp Jr. 3027 S. Paraham Road York,  
SC 29745

James Rutledge Johnson PO Box 11549 Columbia, SC  
29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

Court Reporter

David Hamilton - Clerk of Court

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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STATE OF SOUTH CAROLINA )  
COUNTY OF YORK )

IN THE COURT OF COMMON PLEAS  
SIXTEENTH JUDICIAL CIRCUIT

Princeton A. Thrower, #300701 )

C.A. No.: 2013-CP-46-0916

Applicant, )

v. )

State of South Carolina, )

Respondent. )

ORDER

DAVID HAMILTON  
S.C.C.P. & G.S.  
YORK COUNTY, SC

2014 APR 15 PM 2:51

FILED-RECEIVED

This is a post-conviction relief application filed March 20, 2013. The case was heard April 14, 2014. Applicant was represented by W. Michael Hemlepp, Esq., the State by J. Rutledge Johnson, Esq.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court's orders of commitment. The applicant was indicted by the January 2012 term of the York County Grand Jury for Trafficking in Cocaine Base (2012-GS-46-0258). The Applicant was represented by Hemphill Pride, Esquire. On September 10, 2012, the Applicant pled guilty to Trafficking Cocaine Base, 3<sup>rd</sup> offense. The Honorable Edward W. Miller sentenced the Applicant to confinement for twenty-seven (27) years.

A notice of appeal was filed on the Applicant's behalf. The South Carolina Court of Appeals dismissed the appeal for failure to provide a sufficient showing for appeal on May 6, 2013. The Remittitur was issued on June 4, 2013.

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

1. "Ineffective Assistance of Counsel"
2. "Violation Due Process"

*J. C. Miller*

At his hearing Applicant's counsel stated the only issue for the Court's consideration was ineffective assistance of counsel in that Applicant's trial counsel failed to have an independent mental evaluation conducted on the Applicant. Applicant did not proceed on his Due Process claim. At the end of Applicant's case the State moved for summary judgment and/or a directed verdict, both of which were taken under advisement by the Undersigned. These motions are hereby denied as the Court feels compelled to make a ruling on the merits in this case.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 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).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 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. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, she would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985).

Applicant's charge and conviction relating to this matter arises out of an automobile accident Applicant was involved in. At the PCR hearing held on April 14, 2014, Applicant's mother, Applicant's mother's boyfriend, Applicant, and Applicant's trial counsel, Hemphill Pride, Esq., testified.

The Applicant's mother testified that the Applicant could not remember anything relating to the night of the car accident. She testified that she was informed the Applicant had drugs with him and was facing criminal charges several days after the automobile accident. She subsequently hired Hemphill Pride, Esq. to represent the Applicant. Applicant's mother also testified that she spoke to the Applicant by telephone approximately every other day since he has been incarcerated and that Applicant does not recall anything from the night of the automobile accident.

Applicant's mother's boyfriend, Mr. Rodney Dean Neely, testified that he had a father-son type of relationship with the Applicant. He testified that the Applicant appeared to be very confused during his plea and "didn't know what was going on." On cross examination Mr. Neely testified that he did not interact with the Applicant on the day of the plea but rather observed the Applicant from sitting in the courtroom audience.

At the hearing Applicant testified that he remembers coming to court for his plea and also remembers being represented by Hemphill Pride, but he could not remember anything else about the car accident, the drugs that were found, or the plea. Applicant also testified that he does not

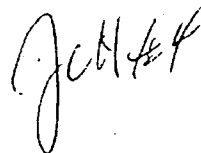
*Je H. H. 3*

remember the trial judge asking him any questions nor does he recall any of the conversations he had with his attorney in regards to the charge he was facing.

Hemphill Pride, Esq., counsel for the Applicant during his plea, testified that he was retained by the Applicant's mother while the Applicant was being held in the York County Detention Center. He testified that he went and met with Applicant at least three times to discuss the case and options with the Applicant. Counsel testified that the solicitor's office was "irate" over the Applicant failing out of the York County Drug Court Program. The undersigned notes that trial counsel testified that he was informed by jail staff members that they believed the Applicant was "faking it." The Court acknowledges this testimony but does not rely on such hearsay in reaching its opinion in this case. Trial Counsel testified that he moved for a mental health evaluation to be conducted on the Applicant to ensure the Applicant was competent to stand trial or enter into a plea deal. The evaluation, conducted by the South Carolina Department of Mental Health, found that:

Because competency is presumed absent evidence to the contrary, we have no reason to believe that the deficits Mr. Thrower is currently presenting are genuine or that they would impair his ability to work with his attorney if he chooses. Therefore, it is our opinion that although he does not respond to competency questions correctly, he should be presumed competent. (Page 7 of Forensic Evaluation Report.)

Trial counsel relied on the results of the mental health evaluation finding that the Applicant was presumed to be competent. The Undersigned has reviewed the "Competency to Stand Trial Evaluation " conducted on June 29, 2012, by the South Carolina Department of Mental Health, and finds that Trial Counsel had a right to rely on the results of this evaluation in carrying out his representation of the Applicant. The report did not indicate in any way that the Applicant was incompetent. Rather, Dr. Richard L. Frierson concluded in his Axis I Diagnoses that the Applicant had "Malingering of Cognitive Deficits" as well as "Polysubstance Dependence



(Cocaine, Alcohol, Cannabis) in a Controlled Environment." (Page 1 of Forensic Evaluation Report). This report states:

It was noted that Mr. Thrower used the term to be honest repeatedly during the evaluation. For example, he would state, "to be honest I have no idea – I don't know nothing." He could not state his mother's address although he was able to do so for the doctor in the Columbia Regional Care Center. He gave an erroneous number for his mother. His use of the phrase *too be honest* repeatedly is potential evidence for malingering also. (Page 6 of Forensic Evaluation Report).

The Forensic Evaluation Report went on to state:

Therefore, we are assigning a diagnosis of Malingering of Cognitive Deficits including factual and rational knowledge of how legal system functions and how criminal cases are handled in court. It is likely that his secondary gain is to avoid prosecution for his serious charge of trafficking cocaine base.

Competency is presumed unless there is evidence to the contrary. "In every criminal case, it is presumed the defendant is sane." *State v. Milian-Hernandez*, 287 S.C. 183, 336 S.E.2d 476 (1985). The defendant bears the burden of proving his lack of competence to stand trial by a preponderance of the evidence. *State v. Weik*, 356 S.C. 76, 587 S.E.2d 683 (S.C. 2002).

In this instance, the South Carolina Department of Mental Health report did not contain any information that would rebut the presumption of Applicant's competency. Rather, in the report Dr. Frierson even stated "once again, he was confronted about his responses and the fact that we would have to inform the court that he was malingering (faking). However, this did not lead to a change in his response style." (Page 6 of Forensic Evaluation Report). Trial counsel's failure to seek an additional independent evaluation of the Applicant's mental health does not render his assistance of counsel ineffective.

In *Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998), the South Carolina Supreme Court held that:

This 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. *Pauling v. State*, 331 S.C. 606, 503 S.E.2d 468 (1998) (applicant established prejudice where nurse's notes presented at PCR hearing corroborated lack of penetration in sexual assault case); *Glover v. State*, 318 S.C. 496, 458 S.E.2d 538 (1995) (where witnesses applicant claimed could have provided an alibi defense did not testify at the PCR hearing, he could not establish any prejudice from counsel's failure to contact these witnesses); *Underwood v. State*, 309 S.C. 560, 425 S.E.2d 20 (1992) (where applicant did not offer witnesses at PCR hearing but merely alleged they would have provided him with alibi defense and testified victims had recanted their trial testimony, he failed to establish prejudice); see also *Jackson v. State*, 329 S.C. 345, 495 S.E.2d 768 (1998) (applicant failed to establish prejudice from counsel's failure to investigate criminal backgrounds of victims and witnesses where he failed to substantiate at PCR hearing that victims and witnesses had criminal records). "The applicant's mere speculation what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice." *Glover v. State*, supra, 318 S.C. at 498-99, 458 S.E.2d at 540.

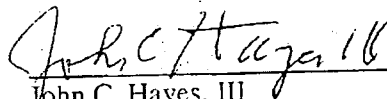
The logic the South Carolina Supreme Court used in *Bannister* is analogous to the case at hand.

The Court finds that in order to establish ineffective assistance of counsel by the trial counsel's failure to seek an independent mental evaluation, the Applicant must produce an independent mental evaluation that indicates he was incompetent at the time of entering his plea.

Wherefore, Applicant's application for Post-Conviction Relief is denied and dismissed with prejudice. This Court hereby advises Applicant that he must file and serve a Petition for Writ of Certiorari within thirty (30) days of the service of this Order to secure appellate review. See Rule 203 and 243, South Carolina Appellate Court Rules (SCACR). The Applicant's attention is directed to Rule 243, SCACR, for the procedures following the filing and service of the Petition.

IT IS SO ORDERED.

York, SC  
August 15<sup>th</sup>, 2014

  
\_\_\_\_\_  
John C. Hayes, III  
Presiding Judge #6