



# Wilson & Luginbill, LLC

J. Christopher Wilson  
Daniel W. Luginbill  
Lauren Bailey  
Janek Kazmierski

Reply to:  
Post Office Box 1150  
Bamberg, SC 29003

May 5, 2014

**RECEIVED**

MAY 07 2014

**S.C. SUPREME COURT**

Honorable Daniel Shearhouse  
Clerk of Court  
South Carolina Supreme Court  
P.O. Box 11330  
Columbia, SC 29211

Re: State of South Carolina v. Michael Daniels  
Case No. 2012-CP-05-067

Dear Mr. Shearhouse:

Enclosed please find for filing a Notice of Intent to Appeal in the above matter along with Proof of Service and a copy of the Order being appealed. Please file the original and return a certified copy to me. No filing fee is required because this is an appeal from a Court-appointed post-conviction relief case with an indigent Applicant. Please return a clocked copy to me in the enclosed envelope.

Thank you for your attention to this matter. Please contact me if you have any questions.

Sincerely,

J. Christopher Wilson

JCW:gs  
Enclosure

cc: Daniel Gourley  
Assistant Attorney General  
P.O. Box 11549  
Columbia, SC 29211

Michael Daniels

IN THE STATE OF SOUTH CAROLINA  
In The Supreme Court of South Carolina

---

APPEAL FROM BAMBERG COUNTY  
Court of Common Pleas

Edgar Dickson, Circuit Court Judge

---

Case No.: 2012-CP-05-067

---

State of South Carolina ..... Defendant/Respondent

v.

---

Michael Daniels, ..... Defendant/Appellant

---

---

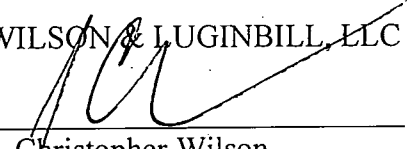
NOTICE OF INTENT TO APPEAL

---

Michael Daniels hereby appeals the Order of Dismissal entered in the above matter on April 7, 2014 in the above matter. A copy of the Order of Dismissal is attached hereto.

May 5, 2014

WILSON & LUGINBILL, LLC



---

J. Christopher Wilson  
P.O. Box 1150  
Bamberg, SC 29003  
(803) 245-7799  
Attorney for Appellant (appointment)

Other Counsel of Record:

---

Daniel Gourley  
Assistant Attorney General  
P.O. Box 11549  
Columbia, SC 29211

**RECEIVED**

MAY 07 2014

**S.C. SUPREME COURT**



STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF BAMBERG )  
 )  
 MICHAEL DANIELS, #319408 )  
 \_\_\_\_\_ )  
 Plaintiff, )  
 vs. )  
 )  
 STATE OF SOUTH CAROLINA )  
 \_\_\_\_\_ )  
 Defendant. )

IN THE COURT OF COMMON PLEAS  
 SECOND JUDICIAL CIRCUIT  
 CASE NO.: 2012-CP-05-067  
 MOTION AND ORDER INFORMATION  
 FORM AND COVERSHEET C

FILED  
 APR 14 AM 9:35  
 JAMES H. HARRIS  
 CLERK OF COURT  
 BAMBERG, SC

Plaintiff's Attorney: J. Christopher Wilson, Bar No. _____ Address: PO Box 1150 Bamberg, SC 29003 Phone: _____ Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: Daniel Gourley, Bar No. _____ Address: PO Box 11549 Columbia, SC 29211 Phone: _____ Fax _____ E-mail: _____ Other: _____
--	--

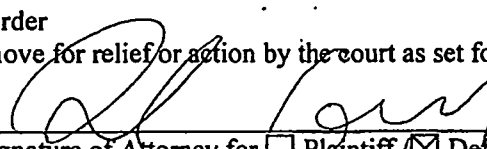
MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)  
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)  
 PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

**SECTION I: Hearing Information**

Nature of Motion: \_\_\_\_\_  
 Estimated Time Needed: \_\_\_\_\_ Court Reporter Needed:  YES /  NO

**SECTION II: Motion/Order Type**

Written motion attached  
 Form Motion/Order  
 I hereby move for relief or action by the court as set forth in the attached proposed order.

  
 Signature of Attorney for  Plaintiff /  Defendant

March 7, 2014  
 Date submitted

**SECTION III: Motion Fee**

PAID - AMOUNT: \$ \_\_\_\_\_  
 EXEMPT: (check reason)

- Rule to Show Cause in Child or Spousal Support
- Domestic Abuse or Abuse and Neglect
- Indigent Status  State Agency v. Indigent Party
- Sexually Violent Predator Act  Post-Conviction Relief
- Motion for Stay in Bankruptcy
- Motion for Publication  Motion for Execution (Rule 69, SCRPC)
- Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: \_\_\_\_\_  
 Other: \_\_\_\_\_

**JUDGE'S SECTION**

Motion Fee to be paid upon filing of the attached order.  
 Other: \_\_\_\_\_

JUDGE CODE \_\_\_\_\_  
 Date: \_\_\_\_\_

**CLERK'S VERIFICATION**

Collected by: \_\_\_\_\_ Date Filed: \_\_\_\_\_  
 MOTION FEE COLLECTED: \$ \_\_\_\_\_  
 CONTESTED - AMOUNT DUE: \$ \_\_\_\_\_

FILED  
BAMBERG COUNTY  
2014 APR 17 9:35  
CLERK OF COURT  
BAMBERG, SC

STATE OF SOUTH CAROLINA )  
COUNTY OF BAMBERG )  
Michael Daniels, #319408, )  
Applicant, )  
v. )  
State of South Carolina, )  
Respondent. )

IN THE COURT OF COMMON PLEAS  
FOR THE SECOND JUDICIAL CIRCUIT

Case No. 2012-CP-05-067

**ORDER OF DISMISSAL**

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on April 9, 2012. Respondent made its return on June 28, 2012. An evidentiary hearing into the matter was convened on January 23, 2014, at the Aiken County Courthouse. Applicant was present at the hearing and was represented by Christopher Wilson, Esquire. Respondent was represented by Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office.

**PROCEDURAL HISTORY**

The records before this Court indicate the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Bamberg County Clerk of Court. The Applicant was indicted during the March 2011 term of the Bamberg County Grand Jury Murder and two counts of Attempted Murder (2011-GS-05-00017-000018-000019). Applicant was represented by Laura A. McCann, Esquire. On April 25, 2011, the Applicant pled guilty as indicted to all charges. The Applicant was sentenced by the Honorable Doyet A. Early, III, to life imprisonment for Murder, thirty years for the first count of Attempted Murder to run consecutive, and thirty years for the second count of Attempted Murder to run consecutive for a

total of life plus sixty years. The Applicant did not appeal his guilty plea or sentence.

### ALLEGATIONS

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

1. Ineffective assistance of trial counsel.
  - a. "My attorney deprived me of my right to a fair trial by apprising me that if I neglected to plea guilty I'd receive the death penalty but that if I plead I'd receive a lighter sentence and that she'd file a motion for reconsideration."

### SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. The State presented testimony from plea counsel, Laura McCann, Esquire (Counsel). This Court also had before it a copy of guilty plea hearing, the Bamberg County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, and the return.

During the evidentiary hearing, Applicant testified he was originally charged with one count of Murder and two counts of Attempted Murder. Applicant stated Counsel, Laura McCann, represented him. Applicant stated he met with Counsel twice. Applicant stated he reviewed the discovery material with Counsel. Applicant could not recall discussing any possible defense. Applicant stated he did not give Counsel any leads or witnesses to investigate. Applicant recalled waiving his constitutional rights. Applicant stated he told the plea judge that he was satisfied with Counsel's services and had enough time to talk with her prior to his guilty plea. Applicant stated he told the plea judge that no one was pressuring, threatening or forcing him to plead guilty and he was doing so freely and voluntarily. Applicant further admitted that he was guilty of Murder and two counts of Attempted Murder. Applicant stated he ultimately pled guilty to avoid a harsher punishment, i.e., the death penalty. Applicant stated if he did not

plead guilty he could potentially face the death penalty. Applicant stated that he was under the impression that Counsel was going to file a motion for reconsideration. Applicant stated he did not know if Counsel filed a motion for reconsideration or the result of the motion.

Following Applicant's testimony, Counsel was called to testify by the State. Counsel stated he had been practicing law since 1989. Counsel stated she was appointed to represent Applicant. Counsel stated she met with Applicant multiple times prior to his guilty plea. Counsel stated she reviewed the discovery material and Applicant's version of the facts. Counsel stated Applicant had no possible defenses. Counsel stated Applicant confessed to the crimes, was caught on video, and identified by the surviving Victims. Counsel characterized the evidence against Applicant as "overwhelming." Counsel stated she reviewed the elements of both Murder and Attempted Murder with Applicant. Counsel stated Applicant gave her no leads or witnesses to investigate. Counsel stated she reviewed Applicant's constitutional rights. Counsel stated she was informed that the Solicitor would notice Applicant for death if he did not plead guilty. Counsel further stated it was Applicant's decision to plead guilty. Counsel stated she filed a timely motion for reconsideration, despite the fact that Applicant did not request her to file the motion. Counsel stated the motion to reconsider the sentence was ultimately denied.

#### **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. Specifically, this Court finds that Counsel's testimony is very credible while Applicant's testimony is less credible. 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).

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 (1985).

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 (1985). 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. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985). Below are this Court's findings in regards to each of Applicant's allegations of ineffective assistance of counsel.

#### INEFFECTIVE ASSISTANCE OF COUNSEL

*Counsel was ineffective for failing to file a motion for reconsideration following his plea hearing.*

This Court finds Applicant's allegation that he was denied effective assistance of counsel for failing to file a motion for reconsideration following his plea hearing is without merit. Applicant stated that his plea was contingent on his attorney's representation that she would file a motion to reconsider his sentence and that he would not have pled absent this promise. At the evidentiary hearing, plea counsel testified that she filed a motion to reconsider sentence, which was denied. The Court finds that Applicant has failed to meet his burden under Strickland. Therefore, the application is denied.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that plea counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that plea counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by plea counsel's performance.

The Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. This Court also concludes the Applicant has failed to meet his burden of proving his guilty plea was not knowing and voluntary. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

#### **ALL OTHER ALLEGATIONS**

Except as discussed above, this Court finds that the Applicant affirmatively waived the remaining allegations set forth in his application at the hearing. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas

Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

*[Signature block on following page]*

A handwritten signature in black ink, appearing to be the initials 'SBO' followed by a horizontal line.

## CONCLUSION

Based on all the foregoing, this Court finds and concludes that the 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 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), SCRCR, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

### IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 7<sup>th</sup> day of April, 2014.

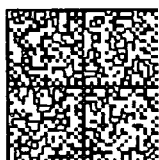


EDGAR W. DICKSON.  
Presiding Judge  
Second Judicial Circuit

Drangalney, South Carolina

Wilson & Luginbill, LLC  
P.O. Box 1150  
Bamberg, SC 29003

Honorable Daniel Shearhouse  
Clerk of Court  
South Carolina Supreme Court  
P.O. Box 11330  
Columbia, SC 29211



UNITED STATES POSTAGE  
PITNEY BOWES  
\$ 000.690  
02 1P  
0003881938 MAY 06 2014  
MAILED FROM ZIP CODE 29003

2581 1 81 9807 2093

