

R. MILLS ARIAIL, JR.  
ATTORNEY AT LAW

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June 11, 2014

**Via US Mail**

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

***Re: Notice of Intent to Appeal from Robert Lee Dean v. State of South Carolina  
C.A. No.: 2013-CP-39-0649***

Dear Mr. Shearouse:

I was Court Appointed in the above referenced matter, and I expect that appellate defense will handle the appeal and petition for certiorari. On behalf of my client, enclosed for filing please find the Notice of Appeal and proof of service. I've enclosed a copy of the Honorable D. Garrison Hill's Order of Dismissal to be challenged on appeal. By copy of this letter, I am also serving counsel for the State of South Carolina, the South Carolina Commission of Indigent Defense - Appellate Defense Division and the Pickens County Clerk's Office.

Thank you for your assistance in this matter and if you have any questions, please feel free to contact me.

Sincerely,  
LAW OFFICE OF R. MILLS ARIAIL, JR.  
Attorney at Law

  
R. Mills Ariail, Jr.

RMAjr/dl  
Enclosures (as stated)

**RECEIVED**

JUN 17 2014

S.C. SUPREME COURT

cc: Pickens County Clerk's Office  
Pickens County Courthouse  
214 E. Main Street  
Pickens, SC 29671

Karen C. Ratigan  
Assistant Attorney General  
P.O. Box 11549  
Columbia, SC 29211-11549

Robert Dean SCDC# 337033  
McCormick Correctional Institution  
386 Redemption Way  
McCormick, SC 29899

SC Commission of Indigent Defense  
Division of Appellate Defense  
PO Box 11433  
Columbia, SC 29211-1433

**RECEIVED**

JUN 17 2014

**S.C. SUPREME COURT**

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM PICKENS COUNTY  
Court of Common Pleas

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D. Garrison Hill, Circuit Court Judge

Case No. 2012-CP-39-1273

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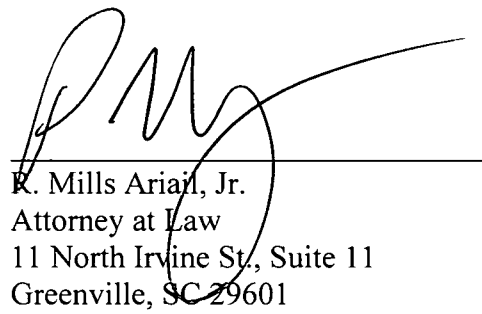
Robert Dean ,..... Appellant,  
SCDC # 337033

v.

State of South Carolina ..... Respondent.

**NOTICE OF APPEAL**

Appellant appeals the Honorable D. Garrison Hill's Order of Dismissal dismissing Appellant's application for post-conviction relief. On May 23, 2014, the Honorable D. Garrison Hill signed an order dismissing Appellant's application for post-conviction relief with prejudice. Appellant, through counsel, received written notice of entry of this order on June 4, 2014. A copy of the Honorable D. Garrison Hill's Order of Dismissal is attached.



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Telephone (864) 232-9390  
Facsimile (864) 232-9392  
Attorney for Rodney Young

Greenville, South Carolina  
June 11, 2014

Other Counsel of Record and Interested Parties:

Karen C. Ratigan, Esq.  
Assistant Attorney General  
PO Box 11549  
Columbia, SC 29211  
803-734-3970  
Attorney for the State of South Carolina

Pickens County Clerk's Office  
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214 E. Main Street  
Pickens, SC 29671

SC Commission of Indigent Defense  
Division of Appellate Defense  
1122 Lady Street  
Columbia, SC 29201-3218

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM PICKENS COUNTY  
Court of Common Pleas

---

D. Garrison Hill, Circuit Court Judge

Case No.2012-CP-39-1273

---

Robert Dean ,..... Appellant,  
SCDC # 337033

v.

State of South Carolina ..... Respondent.

**CERTIFICATE OF SERVICE**

I, Denise Tanner LaBeck, paralegal to R. Mills Ariail, Jr., do hereby certify that on this June 11, 2014, I served upon the below named Respondents copies of the **NOTICE OF APPEAL** by depositing copies of the same via U.S. Mail, postage prepaid, Registered Mail in an envelope addressed as set forth herein below:

**Karen C. Ratigan, Esq.**  
**Assistant Attorney General**  
**PO Box 11549**  
**Columbia, SC 29211**  
**Attorney for the State of South Carolina**

**Pickens County Clerk's Office**  
**Pickens County Courthouse**  
**214 E. Main Street**  
**Pickens, SC 29671**

**SC Commission of Indigent Defense**  
**Division of Appellate Defense**  
**PO Box 11433**  
**Columbia, SC 29211-1433**

*Denise Tanner LaBeck*  
Denise Tanner LaBeck  
Paralegal to R. Mills Ariail, Jr.  
LAW OFFICE OF R. MILLS ARIAIL, JR.

June 11, 2014  
Greenville, SC

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

IN THE COURT OF COMMON PLEAS

CLERK OF COURT  
PICKENS COUNTY  
SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE

CASE NO: 2012CP3901273

2014 MAY 30 P 3:44

Robert Lee Dean vs. South Carolina The State of

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: \_\_\_\_\_

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;  Statement of Judgment by the Court:

Dated at Pickens, South Carolina, this .

Court Reporter: \_\_\_\_\_

PRESIDING JUDGE - \_\_\_\_\_

This judgment was entered on the , and a copy mailed first class this May 30, 2014 , to attorneys of record or to parties (when appearing pro se) as follows:

R. Mills Ariail Jr. 11 North Irvine St., Ste., 11 Greenville, SC 29601

Karen Christine Ratigan PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

*Harold P Welborn, Jr.* - Deputy  
Harold P Welborn, Jr. - Clerk of Court

STATE OF SOUTH CAROLINA )

COUNTY OF PICKENS )

Robert Lee Dean, )  
S.C.D.C. No. 337033, )

Applicant, )

v. )

State of South Carolina, )

Respondent. )

IN THE COURT OF COMMON PLEAS  
C.A. No. 2012-CP-39-1273

**ORDER OF DISMISSAL**

CLERK OF COURT  
PICKENS COUNTY  
SOUTH CAROLINA  
MAY 30 P 3:44

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed August 31, 2012. The Respondent made its return on March 28, 2013. An evidentiary hearing into the matter was convened on April 21, 2014 at the Pickens County Courthouse. The Applicant was present at the hearing and represented by R. Mills, Ariail, Jr., Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's trial counsel, John W. DeJong, Esquire. The Court had before it the trial transcript, the Pickens County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, the return, and the appellate records.

**PROCEDURAL HISTORY**

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Pickens County Clerk of Court. The Applicant was indicted at the February 2007 term of the Pickens County Grand Jury for second-degree criminal sexual conduct (CSC) with a minor (2007-GS-39-0346) and lewd act upon a child (2007-GS-39-0347).

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He was represented by John W. DeJong, Esquire.

After the State called the case to trial, the Applicant was found guilty. On September 23, 2009, the Honorable G. Edward Welmaker sentenced the Applicant to concurrent terms of twenty years for second-degree CSC with a minor and fifteen years for lewd act upon a child.

A notice of appeal was filed at the South Carolina Court of Appeals. Wanda H. Carter, Esquire of the South Carolina Commission on Indigent Defense, Division of Appellate Defense perfected the appeal in the form of an Anders<sup>1</sup> brief. The Court of Appeals dismissed the appeal. State v. Dean, Op. No. 2012-UP-097 (S.C. Ct. App. filed February 22, 2012).

### ALLEGATIONS

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

1. Prosecutorial misconduct:
  - a. Illegal enhancement of charges.
  - b. Threats and attempted coercions to induce a guilty plea.
  - c. Brady violation with State witnesses.
  - d. Improper interrogation proceedings.
  - e. Improper trial tactics:
    - i. Bolstering witnesses.
    - ii. Closing arguments.
2. Ineffective assistance of trial counsel:
  - a. Failure to request Brady materials.
  - b. Failure to properly investigate.
  - c. Failure to raise proper objections and preserve relevant issues for appellate review during trial and closing arguments.
  - d. Failure to move for mistrial.
3. Ineffective assistance of appellate counsel:
  - a. Failure to present appropriate issues for appellate review.
  - b. Failure to ensure Applicant's right to present pro se Anders brief.
4. Due process violations:
  - a. Abuse of discretion with preliminary hearing judge.
  - b. Abuse of discretion with trial judge.
  - c. Failure of South Carolina Court of Appeals in granting forty-five

<sup>1</sup> Anders v. California, 386 U.S. 738, 87 S. Ct. 1396 (1967).

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days to submit a pro se Anders brief.

In a pro se document captioned "Amendment to Application for Post-Conviction Relief" dated February 14, 2013, the Applicant made the following allegations:<sup>2</sup>

1. Trial judge erred in denying motion for directed verdict.
2. Ineffective assistance of counsel:
  - a. Counsel failed to "properly and timely raise the Corpus Delict issue during trial base on lack of corroborating evidence."

At the hearing, the Applicant proceeded solely upon the allegations of ineffective assistance of trial counsel.

### **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 their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law required by S.C. Code Ann. § 17-27-80 (2003).

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

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective

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<sup>2</sup> While the Applicant filed a pro se "Amendment to Application for Post-Conviction Relief" dated April 10, 2014, this Court will not consider this document because it was filed after the Applicant was represented by counsel. See Rule 11(a), SCRCP; Jones v. State, 348 S.C. 13, 14, 558 S.E.2d 517, 517 (2002) (holding there is no constitutional right to hybrid representation either at trial or on appeal).

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performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052).

The Applicant stated he had four to six meetings with trial counsel. The Applicant stated they reviewed the State's evidence and his version of events. The Applicant stated trial counsel also met with his daughters. The Applicant stated he and trial counsel discussed that the case was a "he said/she said" scenario. The Applicant stated he wanted trial counsel to investigate: (1) a neighbor who he said had been "inappropriate" and (2) a May 2006 police report in which he told the victim and her brother to report such inappropriate behavior to the police. The Applicant stated he turned down plea offers because he wanted to go to trial and prove his innocence. The Applicant stated trial counsel should have found a way to impeach the victim. The Applicant stated he wanted trial counsel to call character witnesses on his behalf but that counsel said this was not an attack on his character.

Trial counsel testified he filed discovery motions, received those materials, and reviewed them with the Applicant. Trial counsel testified he discussed the Applicant's version of events several times and reviewed the elements and punishments for the charges. Trial counsel confirmed he and the Applicant discussed this was a "he said/she said" situation. Trial counsel confirmed he met with the Applicant's daughters and stated they testified at trial. Trial counsel testified he had no independent recollection of discussing either the neighbor or the May 2006

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police report and that there was nothing in his file that the Applicant gave him the names of the police officers. Trial counsel testified there was nothing else he could have investigated, as this was a "swearing contest." Trial counsel testified there were two plea offers in this case – a written offer on August 14, 2007 for fifteen years suspended on twelve years and five years probation and an oral offer on December 5, 2007 for an aggregate fifteen year sentence or a "straight up" plea. Trial counsel testified they discussed the advantages and disadvantages of a guilty plea versus a trial but that the Applicant always wanted a trial. Trial counsel testified the defense strategy was to argue the abuse never occurred and to stress the victim's delayed reporting. Regarding character witnesses, trial counsel testified he generally tells his clients that character would not be an issue in a case such as this.

This Court finds the Applicant failed to meet his burden of proving trial counsel did not properly discuss the case with him. The Applicant stated he did not realize the facts at trial would go beyond an allegation of improper touching. This Court finds the Applicant's testimony is not credible. The Applicant admitted he saw the arrest warrants (one of which mentioned penetration) and that he and trial counsel had discussed the issue of penetration. Further, trial counsel testified they discussed the State's evidence and would have also discussed the arrest warrants. Trial counsel also testified they reviewed the elements of both charges. This Court finds trial counsel's testimony is credible and that the Applicant was well aware of the nature of the State's evidence and charges against him.

This Court finds the Applicant failed to meet his burden of proving trial counsel did not properly investigate his case. While the Applicant stated he wanted trial counsel to investigate his neighbor and a May 2006 police report, trial counsel testified he did not recall such a conversation and that there were no notes in his file about these matters. This Court finds trial

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counsel's testimony is credible. Further, as the Applicant did not present either witnesses or the police report at issue, this Court cannot speculate as to whether further investigation would have changed the outcome of the Applicant's case. See Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (the South Carolina Supreme 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.") (emphasis in original); see also Palacio v. State, 333 S.C. 506, 513, 511 S.E.2d 62, 66 (1999) (holding that, since the contents of challenged documents were not presented at the PCR hearing, the Applicant could not demonstrate how the failure of counsel to obtain these documents prejudiced the defense). Similarly, as the Applicant failed to present testimony from purported character witnesses, he failed to meet his burden of proving this would have benefitted his case. See Bannister, 333 S.C. at 303, 509 S.E.2d at 807. And while the Applicant stated trial counsel did not do enough to impeach the victim, he failed to articulate what counsel should have done. See Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (holding applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial).

Accordingly, this Court finds the Applicant failed to prove the first prong of the Strickland test – that trial counsel failed to render reasonably effective assistance under prevailing professional norms. This Court also finds the Applicant failed to prove the second prong of Strickland – that he was prejudiced by trial counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

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**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 testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

**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 trial and sentencing proceedings. Counsel was not deficient and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application 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 this Order if he wants 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 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 23~~rd~~ day of May, 2014.

  
\_\_\_\_\_  
D. Garrison Hill  
Presiding Judge  
Thirteenth Judicial Circuit

Greenville, South Carolina.

████████████████████  
R. MILLS ARIAL, JR.

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