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JUL 11 2014

**S.C. SUPREME COURT**

**THE STATE OF SOUTH CAROLINA  
In The Supreme Court**

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**APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas  
HONORABLE D. GARRISON HILL**

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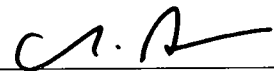
**Case No.: 2013CP2301351**

BILLY JOE HANNAH, )  
)  
                  PETITIONER, )  
)  
                  vs. )  
)  
STATE OF SOUTH CAROLINA )  
)  
                  RESPONDENT. )  
\_\_\_\_\_ )

**NOTICE OF APPEAL**

The Petitioner, Billy Joe Hannah, hereby appeals the Honorable D. Garrison Hill's June 5, 2014, order denying post-conviction relief to the Petitioner. A copy of the order on appeal is attached to this notice.

Respectfully submitted,



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Brian P. Johnson, Esq.  
522 North Church Street  
Greenville, SC 29601  
Attorney for Petitioner  
SC Bar: 73996

Date: July 7, 2014  
Other counsel of record: Karen Ratigan  
P.O. Box 11549/Columbia, SC 29211

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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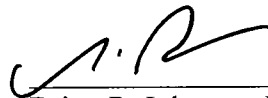
Case No.: 2013CP2301351

BILLY JOE HANNAH, )  
)  
PETITIONER, )  
)  
vs. )  
)  
STATE OF SOUTH CAROLINA )  
)  
RESPONDENT. )  
)

**PROOF OF SERVICE**

I, Brian P. Johnson, Esq., certify that I have today served the within notice of appeal upon the Respondent by depositing a copy in the United States Mail, postage prepaid, addressed to the attorney of record, Karen Ratigan, at P.O. Box 11549 Columbia, SC 29211.

Respectfully submitted,



\_\_\_\_\_  
Brian P. Johnson, Esq.  
522 North Church Street  
Greenville, SC 29601  
Attorney for Petitioner  
SC BAR: 73996

Greenville, SC  
July 7, 2014

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

JUDGMENT IN A CIVIL CASE  
CASE NO: 2013CP2301351

FILED - CLERK OF COURT  
GREENVILLE CO. S.C.  
PAUL B. WICKENSIMER  
2013 JUN 5 AM 10:12

Billy Joe Hannah vs. South Carolina 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 45(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 Greenville, South Carolina, this .

Court Reporter:

\_\_\_\_\_  
PRESIDING JUDGE - D Garrison Hill

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

\_\_\_\_\_  
Brian P. Johnson Applicant Attorney

\_\_\_\_\_  
Karen Christine Ratigan PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

\_\_\_\_\_  
ATTORNEY(S) FOR THE DEFENDANT(S)

\_\_\_\_\_  
Paul B. Wickensimer Greenville County Clerk Of Court  
- Clerk of Court

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GREENVILLE )  
 )  
 Billy Joe Hannah, )  
 S.C.D.C. No. 348206, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 C.A. No. 2013-CP-23-1351

**ORDER OF DISMISSAL**

FILED-CLERK OF COURT  
 GREENVILLE CO. S.C.  
 PAUL B. WICKENSIMMER  
 2014 JUN 5 AM 10 12

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed March 7, 2013. The Respondent made its return on July 12, 2013. An evidentiary hearing into the matter was convened on April 23, 2014 at the Greenville County Courthouse. The Applicant was present at the hearing and represented by Brian P. Johnson, 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 plea counsel, James H. Price, III, Esquire. The Court had before it the transcript of the guilty plea hearing, the Greenville County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, and the return.

**PROCEDURAL HISTORY**

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted at the September 2011 term of the Greenville County Grand Jury for felony driving under the influence (DUI) resulting in death (2011-GS-23-5729) and leaving the scene of an accident

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resulting in death (2011-GS-23-5730). He was represented by James H. Price, III, Esquire.

On June 26, 2012, the Applicant pled guilty. The Honorable Edward W. Miller sentenced the Applicant to concurrent terms of twenty-five years suspended on twelve years and three years probation for felony DUI resulting in death and twenty-five years suspended during probation for leaving the scene of an accident resulting in death. The Applicant did not file an appeal.

### **ALLEGATIONS**

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

1. Breach of plea agreement.
2. Involuntary guilty plea.
3. Ineffective assistance of counsel.

At the start of the PCR hearing, counsel for the Applicant stated they were proceeding solely upon the issue of an involuntary guilty plea.

### **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 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 as required by S.C. Code Ann. § 17-27-80 (2003).

#### **Involuntary Guilty Plea**

The Applicant alleges his guilty plea was involuntary. 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).

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To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969). In Boykin, the United States Supreme Court held that before a court can accept a guilty plea, a criminal defendant must be advised of the constitutional rights he is waiving. Id. at 243, 89 S. Ct. at 1712. Specifically, the accused must be aware of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers. Id. Moreover, a criminal defendant entering a guilty plea "must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citation omitted). A criminal defendant's knowing and voluntary waiver of statutory or constitutional rights in a guilty plea "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) (citation omitted). 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)).

The Applicant stated he entered a guilty plea with his first attorney but that plea was vacated. The Applicant stated he retained plea counsel and that they discussed some of the State's evidence. The Applicant stated he told plea counsel his version of events. The Applicant stated he was not allowed to tell the plea judge his version of events and that plea counsel coerced him as to what to say in court. The Applicant stated plea counsel told him that he had to agree with what the State said at the plea hearing. The Applicant stated plea counsel told him to

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lie "in a sense." The Applicant stated he signed the sentencing sheets at the jail before he pled guilty and the sheets noted the charges were non-violent. The Applicant stated he would not have necessarily pled guilty if he had known the charges were violent. The Applicant stated he was eventually brought back to court for the charges to be changed to violent.

Plea counsel confirmed he was the Applicant's second attorney and stated the paperwork to vacate the Applicant's first guilty plea was in process when he was retained. Plea counsel testified he reviewed the plea colloquy several times with the Applicant and explained what the plea judge would expect to hear. Plea counsel testified he did not tell the Applicant what to say in court. Plea counsel testified the plea judge initially would not take the plea because he interpreted the Applicant's actions as wavering. Plea counsel testified he spoke with the Applicant and explained the plea judge did not feel he was accepting responsibility. Plea counsel testified he told the Applicant that he should tell the truth but that if he did not want to go forward, there would be a trial in August. Plea counsel testified he and the Applicant discussed the elements and the penalties for the charges but not whether they were violent or non-violent. Plea counsel testified the Applicant never mentioned that he wanted to plead guilty to non-violent charges. Plea counsel testified the Applicant signed the sentencing sheets "a good while" before the plea hearing. Plea counsel testified the Applicant was brought back to court at some point after the plea hearing in order to change the sentencing sheets from non-violent to violent and that he explained this problem to the Applicant. Plea counsel testified the judge said the Applicant could withdraw his plea and start over again but that the Applicant chose not to vacate this plea.

This Court finds the Applicant has failed to meet his burden of proving plea counsel coerced his guilty plea or somehow coached him as to how to answer the judge's questions. This

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Court notes there was a thorough guilty plea colloquy in this case. The Applicant was advised of the sentencing ranges for the offenses. (Plea transcript, p.3). The Applicant admitted to the plea judge that he was guilty. (Plea transcript, p.5). The Applicant also told the plea judge that he understood the trial rights he was waiving in pleading guilty, was satisfied with counsel, and had not been coerced in any way. (Plea transcript, pp.4-5). The Applicant admitted he left the scene of the accident and expressed remorse. (Plea transcript, p.14; pp.27-28). Plea counsel testified he did not instruct the Applicant about how to answer the plea judge's questions. This Court finds plea counsel's testimony is credible. This Court finds there is no evidence in the guilty plea transcript to support the Applicant's assertion that he was coerced into entering a guilty plea; therefore the transcript has refuted this allegation. See Stalk v. State, 375 S.C. 289, 300, 652 S.E.2d 402, 407 (Ct. App. 2007); see also Rayford v. State, 314 S.C. 46, 48-49, 443 S.E.2d 805, 806 (1994) (where transcript of guilty plea proceeding refuted applicant's claim that he did not understand the terms of a plea bargain, grant of PCR was inappropriate notwithstanding applicant's claim lawyer misadvised him). This Court finds the Applicant entered a knowing and voluntary guilty plea. See Boykin v. Alabama, 395 U.S. at 243-44, 89 S. Ct. at 1712.

This Court finds the Applicant failed to meet his burden of proving his guilty plea was involuntary because he was not allowed to present his version of the facts at the plea hearing. After the State recited its version of the facts, the Applicant disputed some of it and told the plea judge his version of what happened that day. (Plea transcript, pp.6-13). The plea judge determined he could not accept the Applicant's guilty plea. (Plea transcript, p.13). Later that day, the Applicant appeared back in court and stated "I agree with what the solicitor's sayin' that I am guilty for leavin' the scene" and said he had disputed this earlier because he was "scared and confused and a little bit idled right now." (Plea transcript, pp.13-14). The Applicant agreed

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with the State's contention that "he had multiple opportunities to have access to a phone and did not avail himself of it." (Plea transcript, p.14). This Court finds the plea judge was aware of both the Applicant's version of the facts and that he had admitted his guilt. This Court finds the Applicant has failed to meet his burden of proof. See Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (holding that in a post-conviction relief proceeding, the applicant bears the burden of proving the allegations in their application).

This Court finds the Applicant failed to meet his burden of proving his guilty plea was involuntary because non-violent was improperly marked on the sentencing sheets when he signed them. Plea counsel testified the Applicant never said he wanted to plead guilty only to non-violent charges. Plea counsel further testified the judge gave the Applicant the option to withdraw his guilty plea because of this error, but the Applicant chose not to do so. This Court finds plea counsel's testimony is credible. This Court finds that, while there may have been an error on the sentencing sheets at the time of the plea hearing, the Applicant cannot prove he suffered any resulting prejudice because: (1) this error was subsequently corrected and (2) the Applicant opted not to withdraw his guilty plea when given the option to do so. See id.

Accordingly, this Court finds the Applicant has failed to meet his burden of proving his guilty plea was not knowing, intelligent, and voluntary. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

#### **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.

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**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. Furthermore, the Applicant's guilty plea was entered knowingly and voluntarily within the mandates of Boykin. 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<sup>rd</sup> day of May, 2014.

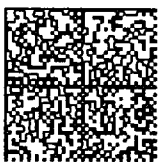


\_\_\_\_\_  
D. Garrison Hill  
Presiding Judge  
Thirteenth Judicial Circuit

Greenville, South Carolina.

Law Office of Brian P. Johnson, LLC  
522 North Church Street  
Greenville, SC 29601

Supreme Court of South Carolina  
P.O. Box 11330  
Columbia, SC 29211



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