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STATE OF SOUTH CAROLINA )  
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COUNTY OF CHARLESTON )  
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 )  
William C. Doar III, #348781, )  
 )  
 )  
Applicant, )  
 )  
v. )  
 )  
State of South Carolina, )  
 )  
Respondent. )

IN THE COURT OF COMMON PLEAS  
2012-CP-10-7605

**ORDER OF DISMISSAL**

FILED  
JUL 2 8 2014  
CLERK OF COURT  
JUL 2 8 2014  
JUL 2 8 2014

Presiding Judge: The Honorable Kristi L. Harrington  
Applicant's Attorney: Joseph Cole Good, III, Esquire  
Respondent's Attorney: Ashleigh R. Wilson, Esquire  
Plea Counsel: Rodney D. Davis, Esquire  
Date of Hearing: January 15, 2014  
Court Reporter: Sharon L. Vizer

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed November 19, 2012. The Respondent made its Return on April 16, 2013. An evidentiary hearing into the matter was convened on January 15, 2014 at the Charleston County Courthouse. The Applicant was present at the hearing and represented by Joseph Cole Good, III, 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. Applicant's plea counsel, Rodney D. Davis, Esquire, also testified at the hearing. This Court had before it the guilty plea transcript, the records of the Charleston County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the PCR application, and Respondent's Return thereto.

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**SC Court of Appeals**

### 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 Charleston County. The Applicant was indicted at the March 2011 term of the Charleston County Grand Jury for two counts of criminal sexual conduct with a minor- second degree (2011-GS-10-1605, -1611). Rodney D. Davis, Esquire, represented the Applicant. On November 28, 2011, the Applicant pled guilty as indicted. Pursuant to a negotiated plea agreement, the Honorable Roger M. Young, Sr. sentenced the Applicant to confinement for fifteen years provided upon the service of seven years the balance is suspended to probation for three years which will terminate upon the completion of the Department of Probation, Parole, and Pardon's sex offender treatment program. The sentences were to run concurrently. The Applicant did not appeal the plea or sentence.

### ALLEGATIONS

The Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
  - a. Failure to file an appeal.
2. "State withheld information. Rule 5. Refused info M-health or defendant or victims."
3. Involuntary guilty plea.
  - a. "Did not make me understand consequences of guilty plea."

At the hearing, the Applicant waived all grounds for relief except the following:

1. Ineffective assistance of counsel.
  - a. Counsel failed to file an appeal.
  - b. Counsel failed to obtain the Applicant and the victim's mental health records.
  - c. Counsel failed to have the Applicant mentally evaluated.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the

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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).

- The Applicant was present and testified he pled guilty to two counts of criminal sexual conduct with a minor. He testified he met with his attorney five times prior to pleading guilty. He testified he reviewed the victims' forensic interviews and statements with counsel. He testified he discussed possible defenses and witnesses with counsel.

He testified counsel was ineffective for failing to have him mentally evaluated and for failing to obtain mental health records that he requested. He testified the records would have shown his mental health history along with the mental health history of the victims. He testified he suffers from anxiety, bi-polar disorder, obsessive-compulsive disorder, post-traumatic stress disorder, and panic attacks. He also testified his recent weight loss has affected his chemical balance. He testified the mental health records were also missing from his Rule 5 materials.

The Applicant testified he discussed the State's plea offer with his attorney. He testified it was his decision to plead guilty and he recalled telling the plea court he was indeed guilty. He testified he also recalled waiving his right to a jury trial. The Applicant testified he wrote his attorney frequently. The Applicant testified he discussed his right to appeal with counsel. He testified they did not discuss how to appeal and they did not discuss whether or not he wanted to appeal. The Applicant testified further in the letters he wrote to his attorney after his guilty plea he did not express his desire to appeal.

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Rodney Davis represented the Applicant at his guilty plea. He testified he has practiced criminal law for the last eighteen years. He testified he was appointed to represent the Applicant around October 11, 2010. He testified he met with the Applicant enough to fully discuss the case. He testified he filed Brady and Rule 5 motions on the Applicant's behalf. He testified he did not expect to receive any mental health records in the discovery materials. Counsel testified he discussed the discovery materials with the Applicant along with the Applicant's version of facts and possible defenses. Counsel testified the State's evidence against the Applicant included the victim's statements, the Applicant's own statements, and post-arrest letters written by the Applicant.

Counsel testified he had several conversations with the Applicant about his mental health background. Counsel testified he spoke with the Applicant about the possibility of having him evaluated by Dr. Burke to determine if he was a sexual predator and by Dr. Knight to determine if he suffered from any mental illnesses. He testified they did not pursue a mental health evaluation based on lack of need. He also testified he did not have the Applicant's mental health records, but he was aware of his mental health background. Counsel testified the Applicant was able to assist in his own defense.

Counsel testified further he discussed with the assistant solicitor assigned to the case whether or not having the Applicant evaluated would have any bearing on the State's position or offer any mitigation. He testified that based on the State's response the use of the Applicant's mental health would not have had any effect on the State's position. He testified further he had lengthy conversations with the Applicant about the facts and procedures in his case. He testified he discussed with the Applicant at length that the results of any evaluation would have gone to

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mitigation and not been a defense to present at trial.

Counsel testified he communicated the State's plea offer to the Applicant. He testified he informed the Applicant of the consequences of his guilty plea. He testified he discussed with the Applicant his constitutional rights. He testified if the Applicant indicated he did not understand something, they would have discussed it more thoroughly. Counsel testified several other criminal sexual conduct and contributing to the delinquency of a minor charges were *nolle prossed* in exchange for the Applicant's guilty plea. Lastly, counsel testified he discussed with the Applicant his right to appeal. He testified the Applicant never indicated he wanted to appeal his guilty plea.

At the start of the Applicant's evidentiary hearing, counsel for the Applicant requested that Charles T. Brooks, III, Esquire, be substituted in as counsel for the Applicant. Counsel for the Applicant stated he was prepared for the hearing, but wanted to substitute in Mr. Brooks as he was more experienced with post-conviction relief matters. The State did not object to the Applicant's request. This Court denied counsel's request and proceeded with the hearing based on counsel's representation that he was prepared to go forward with the Applicant's evidentiary hearing.

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

The Applicant alleges that he received ineffective assistance of counsel. As an initial matter, this Court finds the testimony of Rodney Davis, Esquire, credible, while finding the testimony of the Applicant less credible. In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground

  
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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).

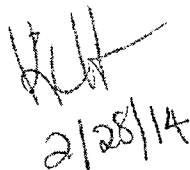
To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243-44 (1969);

  
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Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). 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)). When a defendant pleads guilty on the advice of counsel, the plea may only be attacked through a claim of ineffective assistance of counsel. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2002) (citations omitted).

This Court finds that counsel is a criminal 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, the Applicant's constitutional rights, the Applicant's version of the facts, and possible defenses or lack thereof. The record reflects that the Applicant's plea was entered freely, voluntarily, knowingly, and intelligently. The Applicant acknowledged that he was guilty of these offenses. The Applicant told the plea court that he was satisfied with his attorney and that no one had threatened him or promised him anything to plead guilty. This Court finds that Applicant understood the terms of the negotiated sentence.

Regarding the Applicant's claims 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 adequately conferred with the Applicant,

  
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conducted a proper investigation, and provided thorough representation. This Court finds that counsel's representation did not fall below an objective standard of reasonableness.

This Court finds that counsel was not ineffective for failing to file an appeal of the Applicant's guilty plea. The United States Supreme Court has rejected a "bright-line rule that counsel must always consult with the defendant regarding an appeal." Roe v. Flores-Ortega, 528 U.S. 470, 480, 120 S. Ct. 1029, 1036, 145 L. Ed. 2d 985 (2000). They instead held that "counsel has a constitutionally imposed duty to consult with the defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing." Id., "[A]lthough not determinative, a highly relevant factor in this inquiry will be whether the conviction follows a trial or a guilty plea, both because a guilty plea reduces the scope of potentially appealable issues and because such a plea may indicate that the defendant seeks an end to judicial proceedings." Id.

This Court finds that counsel gave credible testimony that he conferred with the Applicant about his right to appeal. This Court also finds that counsel gave credible testimony that after consulting with the Applicant about his right to appeal, he never indicated he wanted to pursue an appeal. The record also reflects that the Applicant was advised of his right to appeal by the plea judge. (T. 3). This Court finds that there is no evidence that a rational defendant would have wanted to appeal or that the Applicant indicated he wanted to appeal. This Court finds that this allegation is without merit and the Applicant has failed to carry his burden of proving counsel was ineffective for failing to file an appeal of the Applicant's guilty plea.

This Court finds that counsel was not ineffective for failing to have the Applicant

  
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mentally evaluated. A defendant must be mentally competent to stand trial to assist counsel in his defense. Drope v. Missouri, 420 U.S. 62 (1975). In determining if counsel is ineffective for failing to request a competency hearing, an applicant must show that a reasonable probability exists that he would be found incompetent at the time of this trial or plea. Jeter v. State, 308 S.C.230, 417 S.E.2d 594 (1992). Counsel may reasonably rely on his own perceptions in deciding if a client is competent to stand trial. Id.

This Court finds the Applicant has failed to carry his burden of proving that he would have been found incompetent at the time of his guilty plea. This Court finds the Applicant failed to present any evidence showing he suffered from a mental illness that precluded him from assisting counsel in his defense. This Court finds most persuasive counsel's testimony that he was aware of the Applicant's mental health background and that the Applicant was active in his defense. This Court also finds persuasive counsel's testimony that the results of any evaluation would have gone to mitigation and would not have provided any defense against the Applicant's charges. This Court finds counsel was not ineffective for failing to have the Applicant evaluated.

This Court also finds that counsel was not ineffective for failing to obtain the mental health records of the victim or the Applicant. This Court finds credible counsel's testimony that he was not aware of any mental health records for the victim. Counsel also testified while he did not have the Applicant's mental health records, he was aware of the Applicant's mental health background and had discussed it with the Applicant in length. This Court finds the Applicant has failed to show how these records would have beneficial to his case and how counsel's failure to obtain the records resulted in any prejudice. This Court finds that this allegation is without merit and the Applicant has failed to carry his burden of proving counsel was ineffective for failing to

  
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obtain the mental health records of the victims and the Applicant.

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.

#### All Other Allegations

• As to any and all allegations that were raised in the application in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony 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

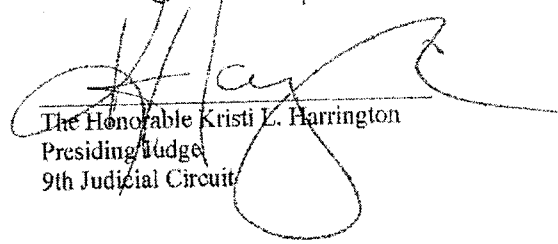
  
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Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely served and filed.

**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 28<sup>th</sup> day of February, 2014

  
The Honorable Kristi L. Harrington  
Presiding Judge  
9th Judicial Circuit

Charles, South Carolina.

2/28/14

# GOOD LAW GROUP LLC

Charleston, South Carolina

July 24, 2014

Sharon L. Vizer  
Court Reporter  
Charleston County Court of Common Pleas  
100 Broad Street  
Charleston, South Carolina 29401

**RE: William C. Doar, III, #348781, Appellant, v. State of South Carolina, Respondent.  
Case No. 2012-CP-10-7605**

Dear Ms. Vizer:

Pursuant to the South Carolina Appellate Court Rules, Rules 203, 207, and 243, I am writing to request a copy of the hearing transcript in the above referenced matter to be used for purposes of an appeal. On January 15, 2014, this case was heard before the Honorable Kristi L. Harrington, Circuit Court Judge, in Charleston County. The Order indicates that you were the court reporter for this case.

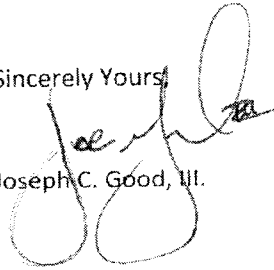
I request that you provide me with a transcript of the proceedings, including the entire record. Also please provide me with your invoice for the same pursuant to SCACR, Rule 607.

If you have questions or concerns, please let me know.

With kind regards,

Sincerely Yours,

Joseph C. Good, III.



Enclosures

cc: Ashleigh R. Wilson, Esq.  
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