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# MURPHY LAW OFFICES, LLC

POST OFFICE BOX 2008

MT. PLEASANT, SOUTH CAROLINA 29465

TELEPHONE: 843-278-9025 FACSIMILE: 843-278-8988

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August 7, 2014

The Honorable Daniel E. Shearouse  
Clerk of South Carolina Supreme Court  
Supreme Court Building  
1231 Gervais Street  
Columbia, South Carolina 29201

**RECEIVED**

AUG 11 2014

S.C. SUPREME COURT

Re: *Damon Lockwood v. State of South Carolina*  
Case No.: 2013-CP-10-4532

Dear Mr. Shearouse:

Enclosed for filing, please find an original and two copies of Mr. Lockwood's Notice of Appeal the denial of her application for Post Conviction Relief and Proof of Service. If you find everything in order, please file the original and return the clocked in copies in the enclosed self addressed envelope.

Please note I was appointed and copy the Office of Appellate Defense who will handle the appeal. Please call if you have any questions.

With kindest regards, I am

Sincerely,



Christopher L. Murphy

CLM:ah

Enclosures

c Ashleigh Wilson, Esq  
Damon Lockwood  
Robert M. Dudek, Esq.  
PO Box 11433  
Columbia, SC 29211-1433

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AUG 11 2014

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Roger Young, Circuit Court Judge

Case Nos.: 2013-CP-10-4532

Damon Lockwood..... Appellant

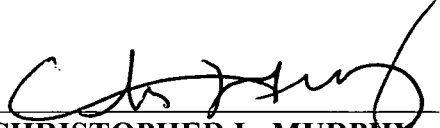
v.

State of South Carolina..... Respondent

NOTICE OF APPEAL

Damon Lockwood appeals the attached order of the Honorable Deadra Jefferson dated August 1, 2014. Appellant received written entry of this order on August 7, 2014.

August 7, 2014

  
**CHRISTOPHER L. MURPHY**  
MURPHY LAW OFFICES, LLC  
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Mt. Pleasant, South Carolina 29465  
Phone: (843) 278-9025  
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Other Counsel of Record

**Ashleigh R. Wilson**  
Assistant Attorney General  
South Carolina Office of the Attorney General  
1000 Assembly Street  
Columbia, SC 29201  
(803) 734-3737  
[ARWilson@SCAG.gov](mailto:ARWilson@SCAG.gov)

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AUG 11 2014

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Roger Young, Circuit Court Judge

Case Nos.: 2013-CP-10-4532

Damon Lockwood..... Appellant  
v.  
State of South Carolina..... Respondent

PROOF OF SERVICE

I CERTIFY that I have served PROOF OF SERVICE on counsel of record for Respondent by delivering a copy via U.S. Mail First-Class postage prepaid on the 7th day of August, 2014, addressed as follows:

Ashleigh R. Wilson  
Assistant Attorney General  
PO Box 11549  
Columbia, South Carolina 29211  
(803) 734-3737  
ARWilson@SCAG.gov

Attorney for Respondent

  
APRIL JENNINGS

**RECEIVED**

AUG 11 2014

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )  
 )  
Damon Lockwood, #336605, )  
 )  
Applicant, )  
 )  
v. )  
 )  
State of South Carolina, )  
 )  
Respondent. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
**RECEIVED**  
2013-CP-10-4552

AUG 11 2014

**S.C. SUPREME COURT**

**AMENDED ORDER OF DISMISSAL<sup>1</sup>**

FILED  
2014 AUG -4 AM 11:15  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_

Presiding Judge: Hon. Deadra L. Jefferson  
Applicant's Attorney: Christopher L. Murphy, Esquire  
Respondent's Attorney: Ashleigh R. Wilson, Esquire  
Plea Counsel: Mark A. Redmond, Esquire  
Date of Hearing: May 19, 2014  
Court Reporter: Joyce C. Rueger

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed August 2, 2013. The Respondent made its Return on February 19, 2014. An evidentiary hearing into the matter was convened on May 19, 2014 at the Charleston County Courthouse. The Applicant was present at the hearing and represented by Christopher L. Murphy, 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. The Applicant's plea counsel, Mark A. Redmond, 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

<sup>1</sup> This Amended Order of Dismissal replaces the original Order of Dismissal, signed July 8, 2014 and filed July 11, 2014, to correct scrivener's and citation errors. This Amended Order is done with the consent of Counsel for the State and Applicant.

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Respondent's Return thereto.

### 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 October 2007 term of the Charleston County Grand Jury for Distribution of Heroin-Third Offense<sup>2</sup> (2007-GS-10-11708). Mark A. Redmond, Esquire, represented the Applicant. The Applicant pled guilty as indicted. On September 1, 2009, the Honorable Roger M. Young, Sr. sentenced the Applicant to confinement for fifteen (15) years. The Applicant did not appeal his conviction or sentence.

### ALLEGATIONS

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

1. Ineffective assistance of counsel.
  - a. Denied his right to appeal.
2. Lack of subject matter jurisdiction.
3. Miscarriage of justice.
4. Involuntary guilty plea.

At the commencement of the Applicant's evidentiary hearing, the State moved to dismiss all allegations other than ineffective assistance of counsel for failure to file a prerequisite appeal. The State argued all remaining allegations should be summarily dismissed for the Applicant's failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act.

Subsequently, the State moved to dismiss all allegations other than ineffective assistance of counsel for failure to file an appeal as untimely because the Applicant's application was filed outside of the one-year (1) statute of limitations. See S.C CODE ANN. § 17-27-45(A) (2003) (providing a one year (1) filing limitation for post-conviction relief applications to be filed within

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<sup>2</sup> Distribution of Heroin is a serious felony punishable by a term of imprisonment for not less than fifteen (15) years, not more than thirty (30) years or a fine not more than fifty thousand dollars (\$50,000.00) or both. See S.C. CODE ANN. § 44-53-370(b)(1) (2005).

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one year of conviction or final disposition); Peloquin v. State, 321 S.C. 468, 470, 469 S.E.2d 606, 607 (1996) (one year (1) statute of limitations applies to all applications filed after July 1, 1996). This Court finds that the Applicant's plea was entered on September 1, 2009 and PCR application filed August 2, 2013, nearly three (3) years after the expiration of the statute of limitations. Accordingly, this Court grants the State's motion to dismiss and dismisses all allegations other than the issue of counsel's ineffective assistance for failing to file a direct appeal for the Applicant. This Court finds the Applicant presented no persuasive argument to explain the failure to file his application within the statute of limitations. At the hearing, the only issue under consideration by this Court was whether counsel was ineffective for failure to file a direct appeal for the Applicant after his guilty plea.<sup>3</sup>

### **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 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).

### **Summary of the Testimony**

The Applicant testified Mark Redmond, Esquire represented him at his guilty plea. The Applicant testified he understood his right to appeal. He testified he did not speak with Counsel about his right to appeal and Counsel did not follow up after his guilty plea. The Applicant

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<sup>3</sup>This Court also finds the Applicant's claim that the circuit court lacked subject matter jurisdiction over his charge because his indictment was not filed with the Clerk of Court is without merit. The Applicant's indictment was true billed by the Charleston County Grand Jury on October 8, 2007 and date stamped as filed by the Charleston County Clerk of Court on October 15, 2007. This Court finds this allegation is dismissed and denied with prejudice.

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testified he never asked Counsel to appeal his sentence. Lastly, the Applicant testified he wanted to appeal his guilty plea. However, on cross-examination, the Applicant admitted that he did not tell his attorney that he wanted to appeal.

Plea counsel, Mark Redmond, was present and testified he has been practicing law since September 2000. He testified he has experience handling lower level criminal cases and his practice is half criminal and half domestic relations. Counsel testified he was appointed to represent the Applicant in April 2008 but is not practicing full time at this time. He testified plea negotiations with the State started about one and one-half (1.5) years prior to the Applicant's guilty plea. He testified the State offered to drop two Proximity charges,<sup>4</sup> a second Distribution charge,<sup>5</sup> and a probation issue if the Applicant pled guilty. Counsel testified he met with the Applicant in person at least five (5) or six (6) times and had additional telephone conferences with the Applicant, although he kept no exact record of the number of meetings. Counsel testified he and the Applicant had been to court several times before for guilty pleas and he did not think the Applicant would accept the plea offer. He further testified that he was surprised the Applicant took the pleas and he thought the matter was going to a trial. He testified he communicated the plea offer to the Applicant, informed him of the consequences of his plea, and informed him of his constitutional rights. Counsel testified his conversation with the Applicant prior to his plea mirrored the Court's advisements during the Applicant's plea. He testified he

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<sup>4</sup> Distribution of a controlled substance within proximity of a school is an offense under the South Carolina Code:

It is a separate criminal offense for a person to distribute, sell, purchase, manufacture, or to unlawfully possess with intent to distribute, a controlled substance while in, on, or within a one-half mile radius of the grounds of a public or private elementary, middle, or secondary school; a public playground or park; a public vocational or trade school or technical educational center; or a public or private college or university. A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be fined not more than ten thousand dollars, or imprisoned not more than ten years, or both.

S.C. CODE ANN. § 44-53-445 (2006).

<sup>5</sup> Distribution of Heroin is a serious felony punishable by a term of imprisonment for not less than fifteen (15) years, not more than thirty (30) years or a fine not more than fifty thousand dollars (\$50,000.00) or both. See S.C. CODE ANN. § 44-53-370(b)(1) (2005).

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discussed with the Applicant the mandatory minimum sentence of fifteen (15) years and the fact that if he went to trial and was convicted he would gain two (2) strikes as opposed to one (1). He further testified that he never told Applicant that if there was "no plea" the case would be turned over to the federal authorities.

Counsel testified he did not discuss with the Applicant his right to appeal after the guilty plea. He testified he told the Applicant he did not have anything to appeal. He testified the Applicant absolutely knew he had the right to appeal during the guilty plea proceeding and understood he had the right to appeal. Counsel testified the Applicant never indicated he wanted to appeal and he had no reason to think the Applicant wanted to appeal his guilty plea. Further, Counsel testified that he did not think it was in the Applicant's best interest to appeal and that after the Applicant's plea, he had no further contact with the Applicant.

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

The Applicant alleges that he received ineffective assistance of counsel for counsel's failure to file an appeal. In a post-conviction relief action, the applicant has the burden of proving the allegations in the application by a preponderance of the evidence. Rule 71.1(e), SCRCF; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 622, 300 S.E.2d 482, 483 (1983)). Where the Applicant 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, 686, 104 S. Ct. 2052, 2064 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 686, 104 S. Ct. at 2064).

The proper measure of performance is whether the attorney provided representation

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within the range of competence required in criminal cases. See Strickland at 690, 104 S. Ct. at 2066. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. See id. The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (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. See id. at 117-18, 386 S.E.2d at 625. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Id. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 668, 104 S. Ct. at 2052). 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. at 117-18, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 694, 104 S. Ct. at 2068). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland, 466 U.S. at 694, 104 S. Ct. at 2068).

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, 52, 106 S. Ct. 366, 366 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citing Lockhart, 474 U.S. at 52, 106 S. Ct. at 366; Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000); Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000); Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994)). To be knowing and voluntary, a

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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); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991) (citing State v. Hazel, 275 S.C. 392, 394, 271 S.E.2d 602, 602 (1980)). 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. Rolen v. State, 384 S.C. 409, 413, 683 S.E.2d 471, 474 (2009) (citing Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 650 (2000). See 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 be attacked through only a claim of ineffective assistance of counsel. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2002) (citing Al-Shabazz v. State, 338 S.C. 354, 363–64, 527 S.E.2d 742, 747 (1999)).

This Court finds plea counsel has experience in the handling of criminal matters. This Court finds Counsel conferred with the Applicant prior to his guilty plea and adequately advised him of his constitutional rights, range of penalty, and the consequences of his guilty plea. This Court also finds the Applicant's guilty plea was entered knowingly, freely, and voluntarily. The record reflects the Applicant was fully advised by the Court of the consequences of pleading guilty.

This Court finds most persuasive the plea colloquy transcript, which reflects that the Applicant desired to plead guilty to the charged offense and entered his plea freely, voluntarily, intelligently, and knowingly. (Tr. 8: 25–9:1). The Applicant told the court that he was not under the influence of alcohol or drugs (Tr. 5:23–25) and that he does not suffer from any mental or physical illnesses or emotional conditions that would prevent him from understanding the plea proceedings. (Tr. 6:1–4). Further, the record reflects the Applicant's complete allocution to the

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range of penalty and guilt; the Applicant told the Court he wished to plead guilty to Distribution of Heroin-Third Offense and told the Court he understood that the penalty range was fifteen (15) to thirty (30) years. (Tr. 2:5-12; 4:12-13). The Applicant was advised that his guilty plea violated his probation, which he indicated to the court he understood. (Tr. 2:14-22). The Applicant also acknowledged multiple times that his plea to this particular offense constituted a strike offense, that he was ineligible for parole and must serve eighty-five percent (85%) of his sentence. (Tr. 4:15-5:9; 5:10-16, 9:18-10:3). The Applicant was advised of and waived his right to a jury trial and accompanying constitutional rights, such as the right to confront witnesses and present witnesses in his defense. (Tr. 3:18-22, 4:1-10, 6:18-7:4). The Applicant also told the court that he had the opportunity to discuss the evidence the State had against him and his ability to go to trial. (Tr. 6:12-20). The Applicant further told the court that he was satisfied with his attorney's services, had no complaints about his attorney's services, and had adequate time to talk with his attorney. (Tr. 6:6-11). Finally, the Applicant told the court that he was not promised anything nor promised any hope of reward, nor had anyone threatened or pressured him into pleading guilty, and that he had engaged in no other secret negotiations. (Tr. 5:17-22). The Applicant told the court that ultimately, it was his decision alone to plead guilty. (Tr. 7:5-7). Additionally, the Applicant's attorney also represented to the court that the Applicant understood that he was waving his right to a jury trial (Tr. 8:12-15), that he understood what he was doing by pleading guilty (Tr. 8:16-18), and that he had explained to the Applicant strike offenses and no parole offenses (Tr. 8:19-24).

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

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that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 5, 239 S.E.2d 750, 752 (1977); Strickland, 466 U.S. at 687–88, 104 S. Ct. 2052, 2064–65; Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 687–88, 104 S. Ct. at 2064–65, Turner v. Bass, 753 F.2d 342, 348 (4th Cir. 1985), *rev'd on other grounds*, Turner v. Murray, 106 S. Ct. 1683 (1986); Marzullo v. Maryland, 561 F.2d 540, 543 (4th Cir. 1977)). This Court further finds Counsel adequately conferred with the Applicant, 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 trial counsel was not ineffective for failing to advise the Applicant of his right to appeal. 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 (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. “In a plea proceeding, . . . there is no requirement that plea counsel inform a defendant of the right to a direct appeal absent extraordinary circumstances.” Turner v. State, 384 S.C. 451, 456, 682 S.E.2d 792, 794–95 (2009) (citing Weathers v. State, 319 S.C. 59, 61, 459 S.E.2d 838, 839 (1995)).

This Court finds credible Mr. Redmond's testimony that the Applicant was made aware

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of his right to appeal his guilty plea prior to his plea and that he absolutely knew he had the right to appeal. This Court finds the Applicant has failed to carry his burden of proving he expressed his desire to appeal to plea counsel. This Court finds most compelling the Applicant's own testimony that he understood his right to appeal and that he never indicated to Counsel that he wished to appeal his guilty plea. This Court finds there is no proof that any appeal taken from the Applicant's guilty plea would have been meritorious. This Court also finds there is no proof that a rational defendant would want to appeal, especially since the Applicant received the mandatory minimum sentence. Counsel provided credible testimony that the Applicant had no meritorious issues to raise on appeal; therefore, this Court finds the Applicant's appeal likely would have been dismissed pursuant to an Anders brief. Anders v. California, 386 U.S. 738, 741-42, 87 S. Ct. 1396, 1398-99 (1967). This Court finds the Applicant was not prejudiced by Counsel's performance because Counsel had no constitutionally imposed duty to consult with the Applicant about an appeal after his guilty plea. See Roe, 528 U.S. at 479-80, 120 S. Ct. at 1036. This Court finds this allegation is without merit and the Applicant has failed to carry his burden of proving Counsel was ineffective in this regard.

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. See Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). The Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in his representation of the Applicant. The Applicant failed to show that Counsel's performance was deficient. Therefore, this Court need not address whether the Applicant was prejudiced by Counsel's representation. See id. The Applicant's complaints concerning Counsel's performance are without merit and are

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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 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 1<sup>st</sup> day of August, 2014

  
\_\_\_\_\_  
The Hon. Deadra L. Jefferson  
Presiding Judge, 9th Judicial Circuit

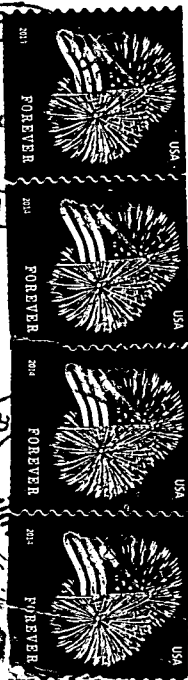
Charleston, South Carolina  
At Chambers

ATTEST: A TRUE COPY  
JULIE J. ARMSTRONG (SEAL)  
CLERK, C.P., G.S. & F.C.  
BY   
DEPUTY CLERK

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DJG

Christopher L. Murphy  
PO Box 2008  
Mount Pleasant, SC 29465

The Honorable Daniel E. Shearouse  
Clerk of South Carolina Supreme Court  
Supreme Court Building  
Columbia, South Carolina 29201



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