

LAW OFFICE OF



**TARA DAWN SHURLING, PA**

Attorney and Counselor at Law

3614 Landmark Drive

Suite A

Columbia, South Carolina 29204

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**RECEIVED** (803) 738-8622  
(fax) (803) 738-1600

AUG 18 2014

August 13, 2014

**S.C. SUPREME COURT**

The Honorable Daniel E. Shearouse  
South Carolina Supreme Court Clerk  
Post Office Box 11330  
Columbia, South Carolina 29211-1330

Re: Diane Elizabeth Brown, 344449 v. State of South Carolina; 2012-CP-43-100.

Dear Mr. Shearouse:

Enclosed please find for filing a Notice of Appeal on behalf of the above-captioned Post-Conviction Relief client. I would appreciate your returning a clocked copy to me in the stamped self-addressed envelope provided. I will be representing Mrs. Brown in this appeal. I have already ordered the transcript of the PCR hearing held in this matter. I will notify the Court when that transcript is delivered to me. I have courtesy copied the Appellate Division of the South Carolina Commission on Indigent Defense on this correspondence so they will make note that I am handling this appeal, and won't need to send me an inquiry concerning this appeal. With my thanks for your assistance in this matter, as always, I remain,

Sincerely yours,

A large, stylized handwritten signature in black ink that reads "Tara D. Shurling".

Tara Dawn Shurling  
Attorney and Counselor at Law

TDS/sg

Enclosures

cc: Daniel Gourley, Assistant Attorney General  
Lorienne French, South Carolina Office of Appellate Defense

LAW OFFICE OF



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AUG 18 2014

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**S.C. SUPREME COURT**

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E-Mail: [tdslaw@shurlinglaw.com](mailto:tdslaw@shurlinglaw.com)

August 13, 2014

Daniel Gourley, Assistant Attorney General  
Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211-

Re: Dianne Elizabeth Brown, #344449 v. State of South Carolina; 2012-CP-43-100

Dear Mr. Gourley:

Enclosed please find for your records a copy of the Notice of Appeal that was filed in the above-captioned matter. I will be handling this appeal; therefore, please direct any further questions to that office after this date. Thank you again for your assistance with our filing oversight in this case. I remain,

Sincerely yours,

A large, stylized handwritten signature in black ink that reads "Tara Dawn Shurling". The signature is written in a cursive style with a large initial "T".

Tara Dawn Shurling  
Attorney and Counselor at Law

TDS/sg

Enclosure

cc: The Honorable Daniel E. Shearouse, Clerk, Supreme Court of South Carolina ✓  
Diane E. Brown, #344449  
Robert Brown

STATE OF SOUTH CAROLINA  
In The Supreme Court

RECEIVED

AUG 18 2014

APPEAL FROM SUMTER COUNTY  
Court of Common Pleas  
R. Ferrell Cothran, Jr., Presiding Judge

S.C. SUPREME COURT

2012-CP-43-100

DIANE ELIZABETH BROWN, 344449

Applicant,

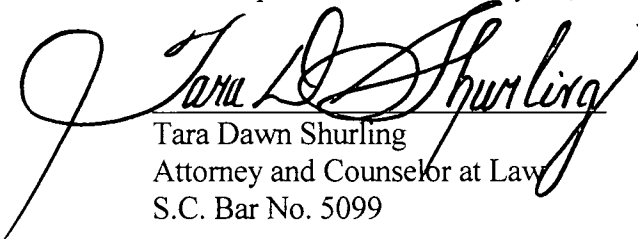
v.

THE STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

**NOW COMES** the Applicant in the above-captioned Post-Conviction Relief matter, acting by and through her undersigned counsel, giving notice of her appeal from the Order of Dismissal denying his Post-Conviction Relief filed February 14, 2014, and the Order Denying the Applicant's Motion to Alter or Amend pursuant to Rule 59(e) SCRPC which was filed with the Sumter County Clerk of Court on April 14, 2014, but was not served upon counsel until July 31, 2014.

  
Tara Dawn Shurling  
Attorney and Counselor at Law  
S.C. Bar No. 5099

3614 Landmark Drive, Suite A  
Columbia, South Carolina 29204  
(803)738-8622  
(803)738-1600 FAX

ATTORNEY FOR APPLICANT

This 13<sup>th</sup> day of August, 2014.

Other Counsel of Record:  
Daniel Gourley, Assistant Attorney General  
P. O. Box 11549  
Columbia, SC 29211  
Attorney for Respondent  
(803) 734-3737

STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM SUMTER COUNTY  
Court of Common Pleas  
R. Ferrell Cothran, Jr., Presiding Judge

2012-CP-43-100

DIANE ELIZABETH BROWN, 344449

Applicant,

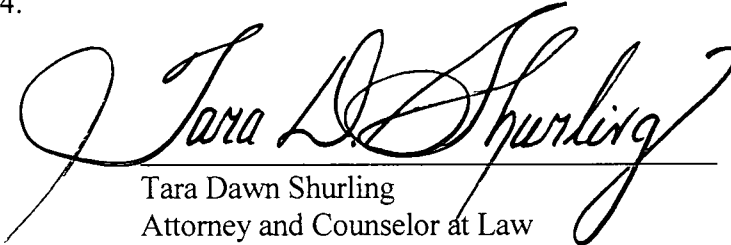
v.

THE STATE OF SOUTH CAROLINA,


Respondent.

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that one copy of the Applicant's Notice of Appeal in the above-entitled cause has been served upon opposing counsel, Daniel Gourley, Assistant Attorney General, by mailing in an envelope properly addressed with postage prepaid on this 13<sup>th</sup> day of August, 2014.

  
Tara Dawn Shurling  
Attorney and Counselor at Law

SWORN TO BEFORE me this 13<sup>th</sup> day  
of August, 2014.

  
Dunham M. Graham (L.S.)  
Notary Public for South Carolina  
My Commission Expires: 2/28/24

STATE OF SOUTH CAROLINA )  
COUNTY OF SUMTER )

IN THE COURT OF COMMON PLEAS  
THIRD JUDICIAL CIRCUIT

RECORDED

CASE NO: 2012-CP-43-0100

2014 FEB 14 PM 2:01

DIANNE ELIZABETH BROWN, #344449 )

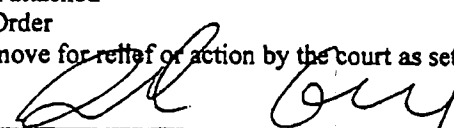
Plaintiff, )

vs. )

STATE OF SOUTH CAROLINA )

Defendant. )

JAMES C. CAMPBELL  
CLERK OF COURT  
SUMTER COUNTY, S.C.  
**MOTION AND ORDER INFORMATION  
FORM AND COVERSHEET**

Plaintiff's Attorney: Tara Dawn Shurling, Bar No. _____ Address: 3614 Landmark Drive, Suite A Columbia, SC 29204 Phone: _____ Fax _____ E-mail: _____ Other: _____		Defendant's Attorney: Daniel Gourley, Bar No. _____ Address: PO Box 11549 Columbia, SC 29211 Phone: _____ Fax _____ E-mail: _____ Other: _____	
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input checked="" type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input checked="" type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
<b>SECTION I: Hearing Information</b>			
Nature of Motion: _____ Estimated Time Needed: _____		Court Reporter Needed: <input type="checkbox"/> YES / <input checked="" type="checkbox"/> NO	
<b>SECTION II: Motion/Order Type</b>			
<input type="checkbox"/> Written motion attached <input checked="" type="checkbox"/> 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 <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant		February 3, 2014 Date submitted	
<b>SECTION III: Motion Fee</b>			
<input type="checkbox"/> PAID - AMOUNT: \$ _____ <input type="checkbox"/> EXEMPT: (check reason) <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input checked="" type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRCP) <input type="checkbox"/> 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: _____ <input type="checkbox"/> Other: _____			
<b>JUDGE'S SECTION</b> <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____		JUDGE CODE _____ Date: _____	
<b>CLERK'S VERIFICATION</b>			
Collected by: _____ Date Filed: _____ <input type="checkbox"/> MOTION FEE COLLECTED: \$ _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: \$ _____			

STATE OF SOUTH CAROLINA  
COUNTY OF SUMTER

Diane Brown, #344449,

Applicant,

v.

State of South Carolina,

Respondent.

RECORDED  
IN THE COURT OF COMMON PLEAS  
FOR THE THIRD JUDICIAL CIRCUIT  
FEB 19 11 2 10

JAMES D. CARROLL  
CLERK OF COURT  
SUMTER COUNTY, S.C.  
Case No. 2012-CP-43-0100

**ORDER OF DISMISSAL**

DEPUTY CLERK OF COURT  
SUMTER COUNTY, S.C.  
SOUTH CAROLINA

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on January 20, 2012. Respondent made its return on August 6, 2012. An evidentiary hearing into the matter was convened on December 17, 2013, at the Sumter County Courthouse. Applicant was present at the hearing and was represented by Tara D. Shurling, 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 Sumter County Clerk of Court. The Applicant was indicted at the October 2009 term of the Sumter County Grand Jury for two counts of Felony DUI (2009-GS-43-0208). She was represented by Marvin McMillan, Esquire. On January 20, 2011, the Applicant pled guilty before the Honorable George C. James, Jr. She was sentenced as indicted, without negotiations or recommendations to twelve years imprisonment and a \$20,000.00 fine for Felony DUI, death results, and twelve years imprisonment and a \$5,100 for Felony DUI, great bodily injury results. All sentences were to be

served concurrently.

### **ALLEGATIONS**

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

1. Ineffective assistance of trial counsel.
  - a. "Counsel failed to adequately investigate the Applicant's charge, failed to investigate and interview potential witnesses and failed to give his client adequate legal advice prior to the Applicant's guilty plea proceeding."
  - b. "Counsel failed to fully advise the Applicant of the consequences of her plea and further failed to investigate defenses against the charge against the Applicant."
  - c. "Counsel neglected to adequately review discovery materials with the Applicant."
2. Involuntary guilty plea
  - a. "Counsel failed to provide client effective assistance of counsel prior to and during her guilty plea proceeding."
  - b. "The Applicant's pleas of guilt were coerced by counsel's failure to provide adequate representation."

Applicant filed an amended application for post-conviction relief on December 11, 2013 alleging that she is being held in custody unlawfully based on the following allegations:

1. Ineffective Assistance of Counsel
  - a. "Plea Counsel was ineffective in that he neglected to present the sentencing judge with exhibits introduced in mitigation of sentence in a timely manner thereby depriving the Applicant of the opportunity to have the presiding judge sufficiently review these exhibits and more fully take them into consideration in determining the appropriate sentence to issue Applicant's case."
  - b. "Plea Counsel was ineffective for neglecting to research and present readily available information concerning the sentences imposed in other felony DUI cases involving death where said statistical data would have clearly been beneficial to the sentencing judge in determining what penalty to impose on particular facts and circumstances of the Applicant's case."

### **SUMMARY OF TESTIMONY PRESENTED**

At the evidentiary hearing, Applicant called plea counsel, Marvin McMillian (Counsel),

Applicant's husband, Bob Brown (Brown), and Applicant testified on her own behalf. Additionally, Applicant introduced various exhibits including records showing the recent sentences given for Felony DUI, and the accompanying arrest records for various individual's convicted of felony DUI. This Court also had before it a copy of guilty plea hearing, the Sumter 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 called Counsel to testify. Counsel stated he remembered this case better than any other case. Counsel stated he was retained days after the accident. Counsel stated Applicant had a wide circle of support from both her family and professional contacts. Counsel stated he dealt very closely with all attorneys involved in both the criminal and civil suit. Counsel stated he urged that the civil suit be resolved quickly in order to help mitigate the Victim's emotional state. Counsel stated both General Electric Company and Applicant settled the civil suit very quickly. Counsel stated he hoped that the settlement would help ease the pain of the Victims. Counsel stated he investigated the accident, causation, and cause and effect aspect of the case. Counsel stated he felt that he left "no stone unturned."

Counsel stated he was looking for any possible legal angle to help resolve the case. Counsel stated he was aware of the various sentences given for Felony DUI cases. Counsel stated that the sentences varied from case to case. Counsel recalled one case where the defendant received twenty five years. Counsel stated he was aware of the possibility to gather the various sentences given for Felony DUI, but in his opinion it would have hurt Applicant's chance to receive a lighter sentence. Counsel stated the judge knows more than any attorney and he would have been well aware of all the previously given sentences. Counsel stated the various sentences given for Felony DUI hurt Applicant's case more than it helped. Counsel explained

that every case and factual situation is different. Counsel ultimately concluded that presenting the various sentence given for Felony DUI to a sentencing judge was not a strategy he would ever use.

However, Counsel stated he had a private meeting with the Honorable Howard P. King to discuss the facts of the case and try to better gauge a possible sentencing range. Counsel stated he reviewed the sentencing guidelines with Judge King. Judge King stated that Applicant should expect to receive a sentence of approximately fifteen years. Counsel stated he advised Applicant of the possible sentences, Judge King's opinion and explained that the sentence could run consecutive.

Counsel stated Solicitor made a fifteen year negotiated plea offer, which Applicant rejected. Counsel stated that Applicant was an atypical client, because of her long history of service in the military; she had recently retired from the military, and was working for General Electric Company. Counsel stated Applicant had no prior drinking problem. However, Counsel stated Applicant was having emotional issues and was taking various prescription medications. Counsel further stated Applicant had a recent hysterectomy and was on prescription medication. Counsel stated he considered the possibility of a date rape drug being placed in her drink, but any drugs that were potentially in her system could not have been identified due to time period between the incident and Counsel being retained. Counsel stated he received Applicant's physician records.

Counsel stated he consulted with two investigators, Bill Hinnant and Roger Russell. Counsel stated he was investigating the potential impacts of mixing Alcohol and the prescription medicine Applicant was taking. Counsel stated he was investigating if the medicine could potentially influence the blood alcohol level readings. Counsel stated he reviewed the SLED

toxicologist report and had a long interview with the SLED investigator about whether Applicant's pills could potential alter her normal activity. However, Counsel stated none of the medications Applicant was taking had any impact on Applicant's blood alcohol level.

Counsel stated Applicant was given three separate tests to determine Applicant's blood alcohol level. First, Applicant blew a .21 when given a Breathalyzer test. Second, Applicant's blood was drawn and tested, which read .28. Third, Applicant's urine was tested and read .31. Counsel stated the receipts gathered for Chili's<sup>1</sup> revealed that Applicant had purchased eight glasses of wine. Counsel stated Applicant was the only person drinking wine. Counsel stated he and Roger Russell investigated the actual amount of wine Chili's poured in a single glass of wine. After a thorough investigation, Counsel concluded that there was no way to mitigate Applicant's blood alcohol level.

Counsel stated they put the guilty plea proceeding off as long as possible. Counsel stated he was in constant contact with the Solicitor, Kirk Griffin. Counsel stated he arranged for the Solicitor to actually meet the Browns in hopes that he would gain a better understanding of their family. Counsel stated that the Victim's family did not want to discuss the case at all and there was no question that they wanted Applicant to receive the maximum possible sentence. Counsel stated Applicant pled guilty on January 20, 2011 before the Honorable George C. James, Jr. Counsel stated prior to the guilty plea proceeding he gathered multiple emails, letters, and letters of recommendation for mitigation purposes. Counsel further stated he discussed Applicant's outstanding military career as well as her career with General Electric Company. Counsel stated he gave all the documentation very early to Judge James. Counsel stated he expected Applicant

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<sup>1</sup> Counsel stated Applicant was in town on a business trip and had a business dinner at Chili's the night of the incident. Counsel stated Applicant's hotel was directly behind the Chili's.

to receive a sentence from eight to twelve years. Counsel stated Applicant received twelve years.

Following Counsel's testimony, Applicant testified on her own behalf. Applicant testified she was fifty two years old. Applicant testified she served twenty three years in the military and reached the level of E(8). Applicant stated she was out on bond and returned to Ohio. Applicant testified that she stayed in contact with Counsel through telephone and email. Applicant stated Counsel asked her to come to Sumter, which she did. Applicant stated she was in Sumter for one to two weeks prior to her guilty plea. Applicant stated she gathered various letter's in order to present to the plea judge for mitigation purposes. Applicant stated she suffered two head injuries. Applicant stated the plea happened very quickly.

Following Applicant's testimony, Applicant presented testimony of Bob Brown (Brown). Brown testified he has been married to Applicant for twenty five years. Brown testified he communicated with Counsel through the telephone and email. Brown recalled talking with Counsel about his meetings with the Solicitor and Judge King. Brown testified that Applicant ultimately turned down a fifteen year plea offer and began to gather various letters in support of Applicant. Brown testified that Counsel did not promise Applicant would receive a certain sentence.

#### **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 and Brown'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), SCRCP; 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 adequately investigate and prepare a defense for trial.*

This Court finds Applicant's allegation that she was denied effective assistance of counsel for failing to adequately investigate and prepare a defense for trial is without merit. This Court finds plea counsel had discussions with Applicant prior to her plea and that they reviewed the discovery materials. Counsel testified he reviewed all medical records, explored the possible effects Applicant's medications had, and investigated any possible mitigating evidence. This Court notes Counsel employed two separate investigator's to explore both the effects of mixing alcohol and Applicant's prescription medication. Counsel stated he investigated the amount of wine that Chili pours for each individual glass of wine. This Court finds the Applicant failed to articulate what more Counsel should have done to investigate and change the outcome of her proceedings. See Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998) (finding the failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result); Davis v. State, 326 S.C. 283, 486 S.E.2d 747 (1997) (denying relief where applicant failed to present witnesses or specific testimony establishing he would have had a defense with additional time to prepare for trial). Furthermore, Applicant failed to show sufficient prejudice as a result of Counsel's alleged deficiency. Therefore, this Court finds this allegation should be denied and dismissed with prejudice.

*Counsel was ineffective for failing to gather and present mitigating evidence and present the evidence in a timely fashion to the plea judge so that he could properly consider it prior to sentencing.*

This Court finds Applicant's allegation that she received ineffective assistance of counsel

for failing to gather and present mitigation evidence to the plea judge in a timely fashion is without merit. Counsel stated he explored any and all possible angles that could help mitigate the fact that Applicant had a .21 blood alcohol level. Counsel explained that his investigation ranged from looking into the effects of Applicant's prescription medication to the amount of wine chili pours. Counsel stated in his opinion he left no stone unturned. This Court notes, Counsel, Applicant, and Brown all testified that they gathered various emails and letters of recommendation in support of Applicant. Counsel testified he compiled this material and presented the information to the plea judge prior to the plea hearing. Counsel testified that Applicant was an atypical client because of her outstanding military career and her lack of a criminal record. Counsel stated he made sure to focus on Applicant's professional reputation and family support. This Court further notes, Brown, Alease Brown (daughter of Applicant), Eric Brown (Applicant's son), Bob Murphy (Applicant's father), Cheryl Stone (Applicant's sister-in-law), and Susan Steele (Applicant's step-mother-in-law) all presented testimony during sentencing mitigation. (T. 42-72).

Based on the foregoing, this Court finds that the Applicant has not shown that plea counsel's performance fell below "professional norms." Cherry, 300 S.C. at 117. This Court further finds the Applicant failed to articulate what more Counsel should have done to investigate in order to present adequate mitigation. See Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998) (finding the failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result); Davis v. State, 326 S.C. 283, 486 S.E.2d 747 (1997) (denying relief where applicant failed to present witnesses or specific testimony establishing he would have had a defense with additional time to prepare for trial). This Court finds Counsel conducted and

presented sufficient mitigation material to the plea judge. Furthermore, Applicant failed to show sufficient prejudice as a result of Counsel's alleged deficiency. As a result, this Court finds this allegation should be denied and dismissed with prejudice.

*Counsel was ineffective for failing to present information concerning the sentences imposed in other felony DUI cases involving death.*

This Court finds Applicant's allegation that Counsel was ineffective for failing to present information concerning the sentences imposed in other felony DUI cases involving death is without merit. Counsel stated he was aware of the possibility to gather the various sentences given for Felony DUI, but in his opinion it would have hurt Applicant's chance to receive a lighter sentence. Counsel stated the judge knows more than the attorney and the judge was well aware of all sentences previously given. Counsel stated the various sentences given for Felony DUI hurt Applicant's case more than it helped. Counsel explained that every case and factual situation is different. Counsel ultimately concluded that presenting the various sentence given for Felony DUI to a sentencing judge was not a strategy he would ever use. Where counsel articulates valid reasons for employing a certain strategy, counsel's choice of tactics will not be deemed ineffective assistance. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 530 (1992). See also Dempsey v. State, 363 S.C. 365, 610 S.E.2d 812 (2005) and McLaughlin v. State, 352 S.C. 476, 575 S.E.2d 841 (2003). This Court finds Counsel articulated a valid strategic reason for not presenting the various sentences given for Felony DUI. Furthermore, Applicant failed to show sufficient prejudice as a result of counsel's alleged deficiency. As a result, this Court finds this allegation should be denied and dismissed with prejudice.

#### *Involuntary Guilty Plea*

This Court finds that the Applicant's guilty plea was entered freely and voluntarily. To

find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). Defendant's knowing and voluntary waiver of statutory or constitutional rights 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) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977)). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. United States, 519 F.2d 347 (4th Cir.1975).

This Court finds that this allegation is without merit and the Applicant has failed to carry her burden of proving that his guilty plea was involuntarily made. This Court finds that the Applicant's testimony was entered freely and voluntarily. The Applicant testified at the evidentiary hearing that she was pleading guilty freely and voluntarily. This Court finds further that the record reflects the Applicant was thoroughly advised of the waiver of her constitutional rights by both counsel and the plea judge. The record reflects the Applicant at her plea proceeding told the court that she wished to plead guilty. (T. 22). The record also reflects that the Applicant told the court that she had not been promised or threatened by anyone to get him to plead guilty. (T. 23). This Court finds that the Applicant had a full understanding of the

consequences of his plea and the charges against him. This Court finds that the plea judge correctly found that the Applicant's plea was freely, voluntarily, and intelligently made. (T. 41).

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 her burden of proving counsel failed to render reasonably effective assistance. This Court also concludes the Applicant has failed to meet her 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 her right to do so. Therefore, any and all remaining allegations are denied and dismissed.

**CONCLUSION**

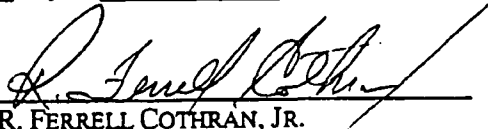
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

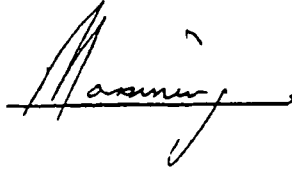
This Court notes that that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right 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 5 day of Feb., 2014.

  
R. FERRELL COTHAN, JR.  
Presiding Judge  
Third Judicial Circuit

  
South Carolina

RECORDED FORM 4

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

2014 FEB 14 PM 4:24

JUDGMENT IN A CIVIL CASE  
CASE NUMBER 2012CP4300100

Diane Elizabeth Brown

JAMES C. LAMM, South Carolina State of  
CLERK OF COURT  
SUMTER COUNTY, S.C.

CERTIFIED TRUE COPY  
OF ORIGINAL FILED

DEPUTY CLERK OF COURT

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Clerk of Court

Attorney for:  Plaintiff  Defendant  
 Self-Represented Litigant

DISPOSITION TYPE (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.  See Page 2 for additional information.
- 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; (formal order to follow)  Statement of Judgment by the Court:

ORDER INFORMATION

This order  ends  does not end the case.  
Additional Information for the Clerk: \_\_\_\_\_

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order: \_\_\_\_\_

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

2144

Judge Code

2/14/2014

Date

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on-, to attorneys of record or to parties (when appearing pro se) as follows:

Alan McCrory Wilson PO Box 11549 Columbia, SC 29211-1549

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

*James C. Campbell*

Court Reporter

James C. Campbell - Clerk of Court

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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

DIANNE ELIZABETH BROWN, #344449

Applicant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Order of Dismissal** has been served upon the applicant by mailing one (1) copy in the United States mail, postage prepaid, addressed to:

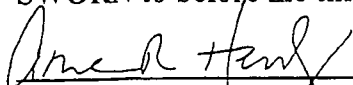
**Tara Dawn Shurling, Esquire  
Law Office of Tara Dawn Shurling, PA  
3614 Landmark Drive  
Suite A  
Columbia, SC 29204**

This 25<sup>th</sup> day of February, 2014.



Caroline Kaiser, Legal Assistant  
For Respondent

SWORN to before me this 25<sup>th</sup> day of February, 2014.



Notary Public for South Carolina.

My Commission Expires:

7/18/2017

STATE OF SOUTH CAROLINA  
COUNTY OF SUMTER

Dianne Elizabeth Brown, #344449,  
Applicant,

v.

State of South Carolina,  
Respondent.

RECORDED

2014 APR 14 PM 1:13

IN THE COURT OF COMMON PLEAS  
FOR THE THIRD JUDICIAL CIRCUIT

JAMES C. CAMPBELL Case No. 2012-CP-43-0100  
CLERK OF COURT  
SUMTER COUNTY, SC

ORDER DENYING APPLICANT'S  
MOTION TO ALTER OR AMEND A  
JUDGMENT

CERTIFIED TRUE COPY  
OF ORIGINAL FILED

DEPUTY CLERK OF COURT  
SUMTER COUNTY  
SOUTH CAROLINA

This matter comes before this Court by way of Applicant's "Rule 59(e) Motion to Alter or Amend" asking this Court to alter or amend its Order of Dismissal denying Applicant post-conviction relief.

I.

An evidentiary hearing was convened before this Court on December 17, 2013, at the Sumter County Courthouse, at which Applicant was present with counsel, Tara D. Shurling. The state was represented by Daniel Gourley of the South Carolina Attorney General's Office. By order filed February 14, 2013, this Court denied Applicant's request for relief with prejudice. On March 10, 2014, Applicant filed a motion to alter or amend, asking this Court to alter or amend, and reconsider its ruling. Respondent made a Return to this motion, asking that said motion be denied and dismissed.

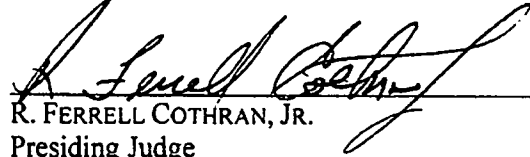
III.

*DJC*  
This Court's Order of Dismissal contains the required findings of facts and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1976) and Rule 52(a) SCRPC. See also McCray v. State, 305 S.C. 329, 408 S.E.2d 241 (1991). Having carefully reviewed the entire record in this matter, this Court finds that there is no basis for altering or amending its prior

ruling. Therefore, this Court hereby denies the Applicant's Motion in its entirety, and affirms the previous Order of Dismissal.

This Court notes that if the Petitioner desires to secure appellate review of this Order and the Order of Dismissal, a notice of appeal must be filed and served within thirty days of the service of this Order. Petitioner is directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of appeal has been timely filed.

AND, IT IS SO ORDERED this 9 day of April, 2014

  
R. FERRELL COTHRAN, JR.  
Presiding Judge  
Third Judicial Circuit

Manning, South Carolina

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

DIANNE ELIZABETH BROWN, #344449

Applicant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Order Denying Applicant's Motion to Alter and Amend a Judgment** has been served upon the applicant by mailing one (1) copy in the United States mail, postage prepaid, addressed to:

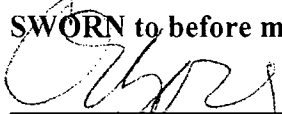
Tara Dawn Shurling, Esquire  
Law Office of Tara Dawn Shurling, PA  
3614 Landmark Drive  
Suite A  
Columbia, SC 29204

This 30<sup>th</sup> day of July, 2014.



Caroline Kaiser, Legal Assistant  
For Respondent

SWORN to before me this 30<sup>th</sup> day of July, 2014.



Notary Public for South Carolina.

My Commission Expires: 10/28/2014

FIRST-CLASS



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Law Office of

**TARA DAWN SHURLING, PA**

3614 LANDMARK DRIVE, SUITE D  
COLUMBIA, SOUTH CAROLINA 29204



The Honorable Daniel E. Shearouse  
Clerk of Court, South Carolina Supreme Court  
Post Office Box 11330  
Columbia, South Carolina 29211-1330