

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

Robin B. Stilwell, Circuit Court Judge

Case No. 2013-CP-23-3438

**RECEIVED**

SEP - 3 2014

**S.C. Supreme Court**

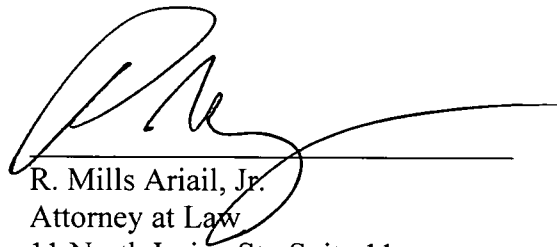
Travis Brown, ..... Appellant,  
SCDC # 353358

v.

State of South Carolina ..... Respondent.

**NOTICE OF APPEAL**

Appellant appeals the Honorable Robin Stilwell's Order of Dismissal dismissing Appellant's application for post-conviction relief. On August 11, 2013, the Honorable Robin Stilwell signed an order dismissing Appellant's application for post-conviction relief with prejudice. Appellant, through counsel, received written notice of entry of this order on August 13, 2013. A copy of the Honorable Robin Stilwell's Order of Dismissal is attached.



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Telephone (864) 232-9390  
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Attorney for Travis Brown

Greenville, South Carolina  
August 15, 2014

Other Counsel of Record and Interested Parties:

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Assistant Attorney General  
PO Box 11549  
Columbia, SC 29211

Greenville County Clerk's Office  
Greenville County Courthouse  
305 East North Street  
Greenville, SC 29601

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

Travis Brown SCDC# 353358  
Turbeville Correctional Institution  
PO Box 252  
Turbeville, SC29162

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v.

State of South Carolina ..... Respondent.

**CERTIFICATE OF SERVICE**

I, Denise Tanner LaBeck, paralegal to R. Mills Ariail, Jr., do hereby certify that on this August 15, 2014, I served upon the below named Respondents copies of the **NOTICE OF APPEAL** by depositing copies of the same via U.S. Mail, postage prepaid, Registered Mail in an envelope addressed as set forth herein below:

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

**Greenville County Clerk's Office**  
**Greenville County Courthouse**  
**305 East North Street**  
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**Travis Brown SCDC# 353358**  
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**SC Commission of Indigent Defense**  
**Division of Appellate Defense**  
**PO Box 11433**  
**Columbia, SC 29211-1433**

August 15, 2014

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

cc: Greenville County Clerk's Office  
Greenville County Courthouse  
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PHONE 864.232.9390 • FAX 864.232.9392 • E-MAIL MILLS@RMALAWOFFICE.COM

August 15, 2014

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**Via US Mail**

Jenny Abbott  
Clerk of Court  
South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

S.C. Supreme Court

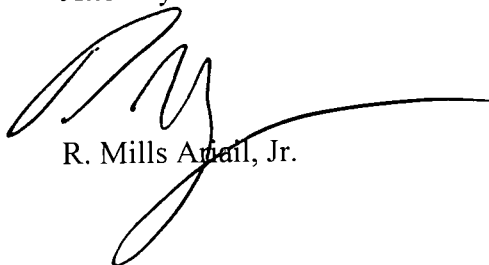
**Re: *Notice of Intent to Appeal from Travis Brown v. The State of South Carolina***  
***C.A. No.: 2013-CP-23-3438***

Dear Ms. Kitchings:

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

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

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



R. Mills Ariail, Jr.

RMAjr/dcd  
Enclosures (as stated)

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

JUDGMENT IN A CIVIL CASE  
CASE NO: 2013CP2303438

FILED-CLEMSON COUNTY COURT  
GREENVILLE, S.C.  
PAUL B. WICKENSIMER  
2014 NOV 11 PM 4:11

**Travis M Brown 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 43(k), SCRPC (Settled);                       Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**                       Rule 40(j) SCRPC;                       Bankruptcy:  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  
 Other: \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;                       Reversed;                       Remanded;  
 Other: \_\_\_\_\_

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:**                       See attached order;                       Statement of Judgment by the Court:  
Dated at Greenville, South Carolina, this .

*Court Reporter:*

**PRESIDING JUDGE - Robin B Stilwell**

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:

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

**Karen Christine Ratigan** PO Box 11549 Columbia,  
SC 29211

**ATTORNEY(S) FOR THE PLAINTIFF(S)**

**ATTORNEY(S) FOR THE DEFENDANT(S)**

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

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GREENVILLE )  
 )  
 Travis Montgomery Brown, Jr., )  
 S.C.D.C. No. 353358, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

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IN THE COURT OF COMMON PLEAS  
 C.A. No. 2013-CP-23-3438

**ORDER OF DISMISSAL**

FILED-CLERK OF COURT  
 GREENVILLE CO. S.C.  
 PAUL B. WICKENSIMMER  
 2014 AUG 11 PM 4 21

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed June 21, 2013. The Respondent made its return on October 18, 2013. An evidentiary hearing into the matter was convened on June 19, 2014 at the Greenville County Courthouse. The Applicant was present at the hearing and represented by R. Mills Ariail, Jr., Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's plea counsel, Caroline Horlbeck, 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 February 2012 term of the Greenville County Grand Jury for possession with intent to distribute (PWID) cocaine base (2011-GS-23-4776), and manufacturing cocaine base (crack

cocaine) (2011-GS-23-4777). He was represented by Caroline Horlbeck, Esquire.

On December 3, 2012, the Applicant pled guilty. The Honorable William H. Seals, Jr. sentenced the Applicant to concurrent terms of twelve years for PWID cocaine base, second offense and twelve years for manufacturing cocaine base, second offense. The Applicant did not appeal.

### **ALLEGATIONS**

In his application and an "Amendment Application for P.C.R. Hearing" filed on September 5, 2013, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
2. Due process.
3. Illegal search/indictment information.

At the PCR hearing, the Applicant proceeded upon allegations of ineffective assistance of plea counsel and 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 further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

#### **Ineffective Assistance of Counsel/Involuntary Guilty Plea**

The Applicant alleges his guilty plea was involuntary and that he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his

allegations by a preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel’s ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). 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, 106 S. Ct. 366, 370 (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, 89 S. Ct. 1709, 1712 (1969); 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)).

The Applicant stated he first met plea counsel in March 2011 and that they discussed his charges. The Applicant stated he had been staying at his sister’s residence (where the drugs were found after police were there to execute a warrant) but that he had moved. The Applicant stated he was charged with these offenses but that the focus of the warrant was his sister’s boyfriend (Christopher Todd), who said the drugs were his. The Applicant stated plea counsel mentioned

the idea of constructive possession, but he did not understand. The Applicant stated plea counsel did not investigate the search warrant and the search. The Applicant stated he was not in the position to go to trial, so he pled guilty even though he was innocent. The Applicant stated he lied when he told the plea judge he was guilty and that he was satisfied with counsel, but that he went forward to get the plea over with.

Plea counsel testified she was appointed on May 1, 2012 after a bench warrant was issued. Plea counsel testified she filed discovery motions, received those materials, and reviewed them with the Applicant. Plea counsel testified they also reviewed the charges, the elements of the charges, and the sentencing ranges. Plea counsel testified the Applicant had been staying with his sister and a bag of glassware (with his fingerprints) was found in his room. Plea counsel testified her investigator contacted the Applicant's sister, who denied any knowledge of the drugs and angry with the Applicant and unhelpful. Plea counsel testified they discussed the search warrant and that she stated a motion to suppress would be difficult. Plea counsel testified she did not recall Christopher Todd. Plea counsel testified she and the Applicant would have reviewed the concept of constructive possession and acknowledged the Applicant "struggled" with the PWID charge. Plea counsel testified the Applicant did not want to go to trial and decided to plead guilty on November 19, 2012.

This Court notes 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.2-5). This Court finds there is no evidence in the guilty plea transcript to support the Applicant's assertion that he was pressured 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.

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 the Applicant's testimony is not credible, while also finding plea counsel's testimony is credible. This Court further finds plea counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in her representation.

This Court finds the Applicant failed to meet his burden of proving plea counsel should have challenged the search warrant and search in this case. Cocaine base was found at the residence and the Applicant's fingerprints were found on glassware that contained cocaine residue. (Plea transcript, p.5). Plea counsel testified that, while this was the Applicant's sister's residence, the glassware was located in the Applicant's room. Plea counsel testified it would have been difficult to prevail upon a suppression motion. This Court agrees and finds plea counsel was not deficient. The Applicant cannot prove he was prejudiced by the lack of a suppression motion because such a motion would have been unsuccessful. See Sikes v. State, 323 S.C. 28, 30, 448 S.E.2d 560, 562 (1994) ("When the defendant claims that counsel's failure to articulate a Fourth Amendment claim was ineffective assistance, defendant must show that such claim is meritorious and that the verdict would have been different absent the evidence that should have been excluded.") (citation omitted).

This Court finds the Applicant failed to meet his burden of proving plea counsel failed to

investigate his sister's boyfriend, Christopher Todd. Plea counsel testified she did not recall this name but that she sent her investigator to speak with the Applicant's sister. Plea counsel testified the sister was angry with the Applicant and not helpful. Regardless, as the Applicant failed to present testimony at the PCR hearing from either his sister or Todd, this Court cannot speculate as to whether these witnesses would have had an impact upon the defense case. See Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (the South Carolina Supreme Court "has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial.") (emphasis in original); see also Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (holding applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial).

Accordingly, this Court finds the Applicant 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 her 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.

This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. This Court also concludes the Applicant has failed to meet his 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

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

### CONCLUSION


Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner and the Applicant was not prejudiced by counsel's representation. 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 11 day of AUG, 2014.



Robin B. Stilwell  
Presiding Judge  
Thirteenth Judicial Circuit

GIVIE, South Carolina.

R. MILLS ARIALL, JR.

11 NORTH IRVINE STREET, SUITE 11  
GREENVILLE, SC 29601

**RECEIVED**

AUG 18 2014

**SC Court of Appeals**

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, SC 29211

