

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Clifton B. Newman, Circuit Court Judge

Case No. 2011-CP-40-07255

YaShawnus L. Patterson, #249829, Appellant

v.

State of South Carolina, Respondent.

NOTICE OF APPEAL

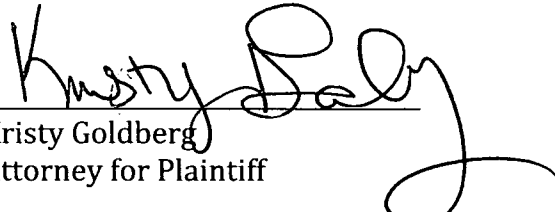
Applicant YaShawnus L. Patterson hereby appeals from the Order of the Honorable Clifton B. Newman presiding Judge for the 5th Judicial Circuit, filed December 4, 2012 in the matter of YaShawnus L. Patterson v. State of South Carolina, Case No. 2011-CP-40-7255. This Notice of Appeal is filed under the authority of the Order of Dismissal Granting Appellate Review pursuant to Austin v. State, signed by the Honorable Robert E. Hood on September 5, 2014 and received by counsel for the Applicant on or about September 8, 2014 in the matter of YaShawnus L. Patterson v. State of South Carolina, Case No. 2013-CP-40-5126.

September 8, 2014

RECEIVED

SEP 09 2014

S.C. SUPREME COURT



Kristy Goldberg
Attorney for Plaintiff

Law Office of Kristy Goldberg, LLC.
1720 Main Street, Suite 301
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Other Counsel of Record:

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Columbia, South Carolina 29211

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Clifton B. Newman, Circuit Court Judge

Case No. 2011-CP-40-07255

YaShawnus L. Patterson, #429829, Appellant

v.

State of South Carolina, Respondent.

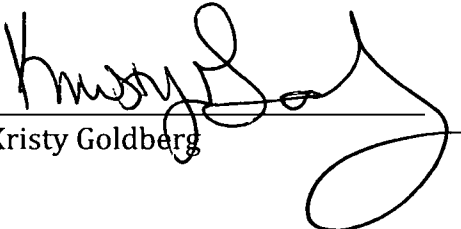
PROOF OF SERVICE

Personally appeared before me, Kristy Goldberg, Esquire, who being duly sworn, deposes
and states:

She is the counsel of record for Applicant;
Service by mail is proper in this instance; and
She has served the NOTICE OF APPEAL on the following party on September 8, 2014 by
depositing one copy in the U.S. Mail, postage prepaid:

Assistant Attorney General, Walt Whitmire
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

September 8, 2014



Kristy Goldberg

Attorney for Plaintiff

Law Office of Kristy Goldberg, LLC.
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kristy@kristygoldberglaw.com

RGR

LAW OFFICE OF
Kristy Grafton Goldberg, LLC

ATTORNEY AT LAW

September 8, 2014

RECEIVED

SEP 09 2014

S.C. SUPREME COURT

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

RE: YaShawnus L. Patterson, SCDC # 249829, vs. State of South Carolina
Appeal of Case No. 2011-CP-40-07255
Authorization for Appeal pursuant to Austin v. State Case No. 2013-CP-40-5126

Dear Mr. Shearouse,

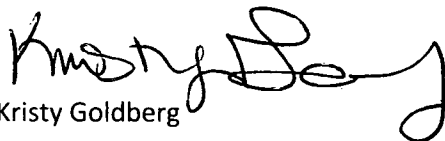
Enclosed for filing is a Notice of Appeal in the above referenced case. Also enclosed are a certificate of service, a copy of the original court order which is to be challenged on appeal, and a copy of the court order granting an appeal pursuant to Austin v. State.

I would appreciate it if you could file the Notice of Appeal and mail a date-stamped copy back to me in the enclosed pre-stamped envelope.

By copy of this letter I am informing the Office of Appellate Defense of this Appeal so that they may begin representation of Mr. Patterson, as I was appointed counsel in this matter. I am also hereby requesting that Appellate Defense obtain a copy of the court transcript within the time required by this court.

Please let me know if you have any questions or concerns regarding this matter.

Respectfully,


Kristy Goldberg

CC: Walt Whitmire
Assistant Attorney General
Post Office Box 11549
Columbia, South Carolina 29211-1549

YaShawnus L. Patterson, SCDC # 249829
Ridgeland Correctional Institution
P.O. Box 2039
Ridgeland, South Carolina 29936

Jeanette McBride, Clerk of Court
1701 Main Street, Room 205
Post office Box 2766
Columbia, South Carolina 29202

Office of Appellate Defense
Chief Appellate Defender – Robert Dudek
PO Box 11433
Columbia, SC 29211-1433

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

YASHAWNUS L. PATTERSON)
SCDC # 249829,)
Applicant,)

2013-CP-40-5126

vs.)

ORDER OF DISMISSAL GRANTED
APPELLATE REVIEW PURSUANT TO
AUSTIN V. STATE¹

STATE OF SOUTH CAROLINA,)
Defendant.)

RICHLAND COUNTY
FILED
2014 SEP - 8 PM 12:37
JEANETTE W. MCBRIDE
CLERK OF COURT
& G.S.

This matter comes before the Court by way of an Application for post-conviction relief (PCR) filed August 28, 2013. The Respondent made its Return and “Motion to Dismiss all Claims beyond Austin Review” on December 12, 2013. Applicant thereafter filed an Amended Application on June 24, 2014 clarifying his intention to pursue relief under Austin v. State. The matter was scheduled for an evidentiary hearing on September 3, 2014 at the Richland County Courthouse. Applicant was present and represented by Kristy Goldberg, Esq. Respondent was represented by Walt Whitmire, Esq. of the Office of the Attorney General. Also present was L. Cody Smith, Esquire.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. Applicant was indicted at the November 2008 term of the Richland County Grand Jury for Strong Arm Robbery (2008-GS-40-8804) and a the February 2009 term of the Richland County Grand Jury for two counts of Criminal Sexual Conduct with a Minor, 2nd Degree (2009-GS-40-9253 and -9740). James May, Esquire represented him on his guilty plea on November 2, 2010 whereupon he was sentenced to

¹ Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991)

a negotiated sentence of thirteen years concurrent for each charge by the Honorable L. Casey Manning. No direct appeal was filed.

2011-CP-40-7255

Applicant filed a first application for post-conviction relief on or about October 28, 2011 wherein he alleged involuntary guilty plea. An evidentiary hearing was held at the Richland County Courthouse on October 17, 2012 whereupon applicant was present and represented by L. L. Cody Smith, Esquire. The Respondent was represented by Robert D. Corney of the Office of the Attorney General.

At the hearing the Applicant testified on his own behalf. The State offered James May, Esquire as a witness at the proceeding. A review of the transcript shows that The Honorable Clifton B. Newman stated his intention to deny the PCR Application at the conclusion of the hearing. The Application was officially denied and dismissed with prejudice in a written order dated November 5th, 2012. This order was filed with the Richland County Clerk of Court on December 4, 2012 and a civil coversheet states that a copy of the Order of Dismissal was mailed to the Applicant and counsel L. Cody Smith on December 4, 2012. The order stated that Applicant must file and serve notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. The order further stated that "if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf."

Counsel for the Applicant did not file a Notice of Appeal. Applicant submitted a *pro se* Notice of appeal with a Proof of Service stating that it was sent to the Court on January 25, 2013. On February 25, 2013 the Supreme Court issued an Order dismissing the appeal as untimely. A Remittitur was issued March 15, 2013.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In Applicant's current Amended Application for post-conviction relief the Applicant alleged he was being held unlawfully due to counsel's failure to file Notice of Appeal in a timely manner. This court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court reviewed and considered the Clerk of Court's records regarding the subject convictions, the Applicant's prior PCR, the Applicant's appellate records, the Applicant's record from the South Carolina Department of Corrections, the new application for post-conviction relief, the transcripts and exhibits from the prior proceedings, and legal arguments of counsel. Pursuant to § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application 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, 104 S.Ct. 2052, 2064, (1984); Butler, 286 S.C. at 441, 334 S.E.2d at 813.

Applicant alleges that he was denied the right to appeal the dismissal of his previous post-conviction relief application. Pursuant to Austin, a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of his prior application.

This Court finds that PCR counsel was ineffective for failing to file a notice of appeal from the PCR judge's order of dismissal. Applicant testified that he stated to counsel his

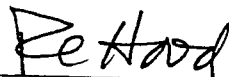
intention to pursue his PCR as far as it would go including appellate and habeas corpus relief. Applicant also testified that he specifically told counsel on two occasions that he intended to appeal the decision of the court if his PCR was dismissed. PCR counsel stated that this is the only case whereupon he has acted as counsel for a PCR Applicant. PCR counsel testified that he remembers Applicant stating his interest in appealing the court's decision. PCR counsel testified that he informed the Applicant of his right to file Notice of Appeal within thirty days but it is undisputed that PCR counsel did not file Notice of Appeal on behalf of the Applicant.

This court finds that counsel was deficient because it was objectively and subjectively reasonable to believe Applicant desired an appeal and would reasonably assume that counsel would file Notice of Appeal on his behalf. Therefore, this Court denies and dismisses this Application pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395, (1991).

IT IS THEREFORE ORDERED:

1. That this current Application for Post-Conviction Relief be dismissed.
2. That the Applicant is granted an appeal from the denial of his first PCR application – filed October 28, 2011 and captioned 2011-CP-40-07255.

AND IT IS SO ORDERED this 5 day of September, 2014.



The Honorable Robert E. Hood
Presiding Judge

Columbia, South Carolina

Sthr RC

FORM 4

JUDGMENT IN A CIVIL CASE

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

CASE NUMBER: 2011CP4007255

YaShawn Lee #249829 Patterson

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for: Plaintiff Defendant or 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.
- ACTION DISMISSED (CHECK REASON): Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonshit); 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 PUBLIC 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
		\$ _____
		\$ _____
		\$ _____

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 _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 4th day of Dec., 2012 to attorneys of record or to parties (when appearing pro se) as follows:

YaShawn Lee #249829 Patterson L. Cody Smith
ATTORNEY(S) FOR THE PLAINTIFF(S)

Robert Daniel Comey
ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court Jeanette W. McBride

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)
)
 YaShawnus L. Patterson,)
 a/k/a Shawn Lee Patterson, #249829,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE FIFTH JUDICIAL CIRCUIT

2011-CP-40-07255

ORDER OF DISMISSAL

JEANETTE W. McBRIDE
 C.C.P. & G.S.
 2012 DEC -4 PM 2:18
 RICHLAND COUNTY
 FILED

PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed October 28, 2011. An evidentiary hearing into the matter was convened on Wednesday, October 17, 2012, at the Richland County Courthouse. The Applicant was present at the hearing and was represented by L. Cody Smith, Esquire. The Respondent was represented by Robert D. Corney of the South Carolina Attorney General's Office.

At the hearing, Applicant testified on his own behalf. Also testifying was Applicant's former plea counsel, James H. May, Esquire ("counsel"). This Court also had before it a copy of the transcript of the proceedings against Applicant, the records of the Richland County Clerk of Court, and Applicant's records from the South Carolina Department of Corrections.

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. Applicant was true bill indicted at the November 2008 term of the Richland County Grand Jury for Strong Arm Robbery and at the February 2009 term for two (2) counts of Criminal Sexual Conduct with a Minor – Second Degree (2008-GS-40-8804; 2009-GS-40-9250,

-9740). On November 2, 2010, Applicant appeared with counsel, James H. May, Esquire, before the Honorable L. Casey Manning, where Applicant pled guilty to the charges as indicted as part of a negotiated plea agreement with the state for concurrent sentences. Judge Manning sentenced Applicant to thirteen (13) years imprisonment on each charge, all to run concurrently as set forth in negotiations. One count of Burglary – First Degree was *nolle prossed* by the state pursuant to the plea. No direct appeal was filed.

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

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Counsel
 - (b) Constitutional and Statutory Violation
 - (c) Involuntary and Unintelligent Plea

10. a) That counsel's representation fell on the low end of an objective standard of reasonableness and, but for counsel's error, the applicant would not have pled guilty but would have insisted on going to trial.

b) That the conviction and sentence is in violation of the U.S. Constitution, S.C. Constitution and laws of the state.

c) That the applicant made an unintelligent and involuntary 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 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. 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), SCRPC; 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, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (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). The 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, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

Advisement of Consequences

As a preliminary matter, this Court would note Applicant has been fully advised of the potential consequences of having his request for post-conviction relief granted prior to the start of the merits hearing, and Applicant has made a voluntary and informed decision to pursue relief with those things in mind. Specifically, after placing Applicant under oath in open court, this Court advised Applicant of its inability to directly impose a reduced sentence and the realistic possibility of Applicant incurring the previously dismissed Burglary – First Degree charge again if relief were granted. Further, Applicant was fully advised that the state would not be bound by any previous plea negotiations in the event that relief was granted, and the possibility that he may receive a longer sentence upon re-trial or new guilty plea. With all of this in mind, Applicant made clear his wish to pursue relief through the current application.

Involuntary Guilty Plea

Applicant first asserts his guilty plea was entered involuntarily and unintelligently as a result of counsel's erroneous sentencing advice. Specifically, Applicant testified counsel led him to believe he would receive a four (4) to six (6) year, no-parole (85% service) jail sentence upon entry of his plea, but was instead sentenced to thirteen (13) years imprisonment on each of his three counts to run concurrently.

Applicant testified he met with counsel three (3) times prior to his plea for roughly fifteen (15) to twenty (20) minutes each time. He said counsel was his second appointed attorney and noted that counsel took over Applicant's representation about two years after Applicant's initial arrest when Applicant had his previous attorney relieved. Applicant said he believed that was in

October of 2010. Applicant stated he was aware of the maximum sentences he was facing on the charges including life imprisonment for the Burglary charge, but alleged counsel told him he would get less time if he pled guilty than if he went to trial. Applicant went on to say counsel advise him he would get a sentence between four (4) and six (6) years if he pled guilty to the charges. Applicant stated he understood the plea he was entering was for a sentence between zero (0) and twenty (20) years, but said he was encouraged by counsel to "go forward" with the plea and to "give respectful answers" to the judge in order to get the four to six year sentence. In the end, Applicant said, the "counsel's plea was not honored" by the plea judge and he did not receive the four to six year sentence he was promised by counsel. Applicant also alleged he was never properly advised on the elements of the charges and, therefore, didn't know "what [he] was pleading to".

On cross-examination, Applicant conceded his DNA had been recovered from the twelve (12) year old victim by vaginal swab and that the victims' mother had caught him in the house with the victims while she was at work. He went on to agree he had told Judge Manning at the plea hearing that he wasn't promised anything to induce his guilty plea, and testified that answer was true as he never was "promised" a particular sentence, but rather "induced" by counsel to believe he would get a four to six year sentence. Applicant finally recognized he was facing a potential fifty-five (55) year prison sentence on the charges exclusive of the dismissed Burglary charge, there was DNA linking him to sexual conduct with a twelve (12) year old victim, and that his story involving mistake of age would not be a valid defense to the charges at trial, but said he would have gone to trial to challenge the charges had counsel not induced him to believe he was going to get a four to six year sentence for the plea.

Counsel took the witness stand next, testifying he is currently employed as a United States Attorney and previously served as a Richland County public defender for roughly four-and-a-half (4 ½) years. Counsel went on to say he recalled Applicant's case well, noting it involved sexual conduct with two sisters ages fourteen (14) and twelve (12). Counsel reiterated that Applicant's DNA matched that taken from a vaginal swab of the twelve year old victim. The strong arm robbery, counsel stated, was from an unrelated incident at a hotel. Counsel testified he was assigned to take over representation of Applicant as he was generally given the "more difficult clients" represented by the public defender's office. He said he met with Applicant several times during which he was able to review the charges and discovery materials with Applicant. Counsel said he ultimately advised Applicant he did not believe going to trial on the CSC charges was a good idea based on the evidence. Counsel noted that he did not believe the Burglary charge was a strong case for the state, but that the facts did sufficiently meet the elements of the charge and it was a case that could have been either won or lost at trial.

Regarding plea negotiations with the state, counsel said Applicant was offered a "package deal" under which Applicant would be required to plead to all three charges in exchange for negotiated concurrent sentences and no recommendation from the state as to the time to be imposed. Counsel noted that the plea offer was all-inclusive and hinged on Applicant's plea to *all three* charges, *including* the strong arm robbery. Counsel stated he suggested they ask for a ten (10) year sentence in mitigation, but that Applicant was adamant he wanted a four (4) to six (6) year sentence. Counsel said he told Applicant that he would ask the plea judge to impose a 4 – 6 year sentence, but said Applicant was well aware the judge could impose a sentence anywhere up to twenty (20) years under the terms of the plea. Counsel finished by testifying he specifically remembered this case and that he never made any

representations to Applicant that he would receive a four to six year sentence upon entry of the guilty plea.

Based on the foregoing and after a thorough review of the record, this Court denies Applicant's request for relief. First, this Court finds counsel's testimony to be very credible, while conversely finding Applicant's testimony to be **not** very credible. Applicant has failed to show this Court how counsel's performance was objectively unreasonable in advising him of the realistic potential sentences he was facing under the plea, in evaluating the strength of his case or in advising Applicant of his options to challenge the state's case. The credible testimony presented firmly convinces this Court that at no point did counsel insinuate or otherwise lead Applicant to believe the court would likely impose a four to six year sentence under the terms of the plea. Rather, the testimony and record before this Court plainly prove Applicant was well aware of the realistic consequences of entering the plea, which he knowingly and voluntarily chose to accept in an effort to avoid a potentially harsher sentence at trial. Applicant's wishful thinking regarding sentencing under the plea does not equal misapprehension as to the realistic possible range of sentences he was facing, especially where Applicant acknowledged on the record that he was well aware of the range of sentences he was facing and agreed that no promises had been made in exchange for his plea. See Wolfe v. State, 326 S.C. 158, 485 S.E.2d 367 (1997).

Further, this Court finds no reasonable probability that, but-for counsel's alleged erroneous sentencing advice, Applicant would not have pled guilty but rather would have gone to trial to challenge the charges. While Applicant testified such was the case, this Court finds that contention to be **not** credible, as well as wholly disputed by the record. Without the benefit of the concurrent sentence negotiation, Applicant was facing an aggregate fifty-five (55) year sentence,

exclusive of the potential life sentence for the dismissed Burglary charge. Further, Applicant was facing conclusive DNA evidence tending to prove his guilt to at least one of the CSC charges, which standing alone subjected Applicant to the same twenty (20) year term of imprisonment he faced as a maximum for all three charges under the terms of the plea. With all of this in mind, this Court finds Applicant has failed to prove but-for counsel's alleged deficiency, he would not have pled guilty but rather gone to trial on the charges.

Applicant has failed to carry his burden in proving that his plea was entered involuntarily or unintelligently as a result of counsel's ineffective representation. Accordingly, this Court must deny the current application for post-conviction relief.

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.

Except as discussed above, this Court finds that the Applicant failed to raise all additional allegations raised in his application at the hearing and has, thereby, waived them. 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

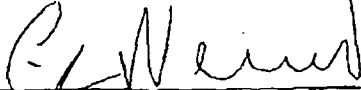
relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

This Court notes Applicant must file and serve a notice of appeal within thirty (30) 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 PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

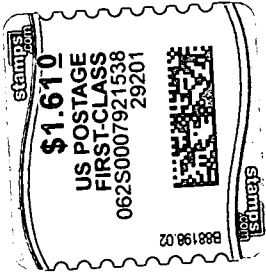
1. That the Application for Post-Conviction Relief must be denied and dismissed **with prejudice**; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 5th day of November, 2012.



Clifton B. Newman
Presiding Judge
Fifth Judicial Circuit

Columbia, South Carolina.



LAW OFFICE OF
Kristy Grafton Goldberg, LLC
ATTORNEY AT LAW
1720 MAIN STREET, SUITE 301
COLUMBIA, SOUTH CAROLINA 29201

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