

# The Supreme Court of South Carolina

DANIEL E. SHEAROUSE  
CLERK OF COURT

BRENDA F. SHEALY  
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330  
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

October 8, 2010

Benji Dale Bowen #308133  
McCormick Correctional Institution  
386 Redemption Way  
McCormick, SC 29899

Re: Bowen, Benji Dale v. The State

Dear Mr. Bowen:

Your counsel has submitted a Petition for Writ of Certiorari indicating that this appeal is without merit and moves to be relieved as your counsel. Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988). The records of this Court reflect that counsel served you with a copy of the Petition & Appendix on October 4, 2010.

You may, within forty-five (45) days of the date of this letter, file with this Court a pro se response to the Petition filed by your counsel. In this response, you may raise and argue any issues you believe the Court should consider in this appeal. Upon receipt of your pro se response or the expiration of forty-five (45) days, the matter will be submitted to the Court for its consideration.

If you do decide to file a pro se response, the response must be either typewritten or legibly hand printed, and must have at least a one inch margin on all sides. Further, you will need to only submit one copy of your response, and this copy should not be stapled or bound in any manner.

Very truly yours,

*Daniel E. Shearouse*  
DS

CLERK

DES/jj

cc: Appellate Defender Kathrine H. Hudgins  
Assistant Attorney General Karen Ratigan



# SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense  
1330 Lady Street, Suite 401  
Columbia, South Carolina 29201-3332

Post Office Box 11589  
Columbia, South Carolina 29211-1589  
Telephone: (803) 734-1343  
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender  
Wanda H. Carter, Deputy Chief Appellate Defender  
Joseph L. Savitz, III, Senior Appellate Defender

RECEIVED

AUG 17 2010

S.C. SUPREME COURT

August 17, 2010

The Honorable Daniel E. Shearouse  
Clerk, S.C. Supreme Court  
Post Office Box 11330  
Columbia, SC 29211

Dear Mr. Shearouse:

The following case falls under the 60 day rule for appeals, and the date we received the transcript is listed to the side.

Benji Dale Bowen v. State of South Carolina

8/13/2010

I would appreciate you beginning our time limits from the above date, and if you need additional information, or have any questions please contact me.

Thank you for your assistance in this matter.

Sincerely,

Lorie French  
Legal Services Coordinator



Division of Appellate Defense  
1330 Lady Street, Suite 401  
Columbia, South Carolina 29201-3332  
Post Office Box 11589  
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Telephone: (803) 734-1330  
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Robert M. Dudek, Chief Appellate Defender  
Wanda H. Carter, Deputy Chief Appellate Defender  
Joseph L. Savitz, III, Senior Appellate Defender

August 3, 2010

RECEIVED

AUG - 3 2010

S.C. SUPREME COURT

Ms. Theresa Johnson  
Circuit Court Reporter  
Post Office Box 2812  
Greenville, SC 29602

Dear Ms. Johnson:

Our office has been requested to perfect the appeal arising out of:

Benji Dale Bowen v. State of South Carolina      Case #:      09-CP-23-06066.

County: Greenville      Date of Trial: May 24, 2010

Presiding Judge: Robin B. Stilwell

It is my understanding that you were the court reporter at this time. That being the case, I request that you send this office the original trial transcript along with your bill. If you send a copy to this office, please bill us accordingly. To ensure prompt payment of this bill, please prepare it on the enclosed CID FORM 3500 (Substitution for SCCA DI-4) and include the original criminal case number (Indictment number) where the space is provided.

We request that the lines on the paper be numbered from 1-25, and that you include in the transcript any and all recorded motions, pre and post-trial. Additionally, please transcribe the jury selection, and the State and defense counsel's opening and closing arguments. We have found that even if there are no objections, we need to review both opening and closing arguments for appeal.

If you are aware of the existence of co-defendants not listed in the prior captioned case, please contact us prior to transcribing the transcript. In this manner, we can consult our records to ensure that in ordering a transcript, a duplication has not occurred. In addition, if the Attorney General's Office has already requested an original transcript, please notify us.

Ms. Theresa Johnson  
August 3, 2010  
Page Two

I am sorry for any inconvenience this may cause, but I appreciate your assistance in this matter. If you have any questions, or problems, please contact me.

Thank you for your kind cooperation in this matter.

Sincerely,

  
Lorie French  
Legal Services Coordinator

cc: S.C Supreme Court  
Attorney General's Office

RICHEY AND RICHEY

ATTORNEYS AT LAW

A Professional Association

Rodney W. Richey  
Lola S. Richey

24 Vardry Street, Suite 301  
Greenville, South Carolina 29601

*Mailing Address:*  
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Greenville/Spartanburg

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www.richeyandrichey.com

July 14, 2010

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

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JUL 15 2010

S.C. SUPREME COURT

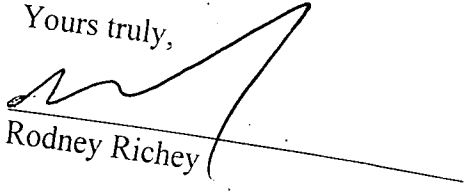
Re: Benji Dale Bowen, SCDC # 308133 vs. The State of South Carolina  
Case No: 2009-CP-23-6066

Dear Mr. Shearouse:

Please find enclosed a Notice of Appeal and an affidavit of service for the same. Also, I have enclosed a copy of the Order from which the appeal is taken. Thank you for your help and if you should have any questions please feel free to call me.

RICHEY AND RICHEY, P.A.

Yours truly,

  
Rodney Richey

RWR/tlg  
enclosures

cc: Karen Ratigan, Esquire

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

HONORABLE ROBIN B. STILWELL

2009-CP-23-6066

BENJI DALE BOWEN, SCDC#: 308133,

APPELLANT,

against

STATE OF SOUTH CAROLINA,

RESPONDENT.

RECEIVED

JUL 15 2010

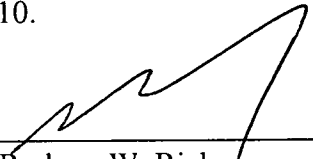
S.C. SUPREME COURT

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**NOTICE OF APPEAL**

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Benji Bowen appeals the denial of his Post Conviction Relief. The Post Conviction Relief Action was heard and denied by the Honorable Robin B. Stilwell, Circuit Judge on May 24, 2010 and Order issued on July 7, 2010 and filed on July 9, 2010. The Appellant received notice of the judgment on July 13, 2010.



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Rodney W. Richey  
Attorney for the Appellant  
Post Office Box 10916  
Greenville, South Carolina 29603  
(864) 467-0503

Other Counsel of Record:  
Karen Ratigan, Esquire  
Office of Attorney General State of SC  
Post Office Box 11549  
Columbia, SC 29211-1549

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

JUDGMENT IN A CIVIL CASE  
CASE NO: 2009CP2306066

**Benji Bowen 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: \_\_\_\_\_

2010 JUL 9 PM 2:48  
FRED CLERK OF COURT  
GREENVILLE COUNTY  
PAUL B. WICKENSIMER

**IT IS ORDERED AND ADJUDGED:**  See attached order;  Statement of Judgment by the Court:

Dated at Greenville, South Carolina, this .

Court Reporter:

**PRESIDING JUDGE -**

This judgment was entered on the 9th day of July, 2009, and a copy mailed first class this 9th day of July, 2009, to attorneys of record or to parties (when appearing pro se) as follows:

✓ **Rodney Wade Richey Richey & Richey, PA**  
P.O. Box 10916 Greenville, SC 296030916

**Karen Ratigan**

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

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

SCRPC APP-24/FORM 4

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

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GREENVILLE )  
 )  
 Benji Dale Bowen, )  
 S.C.D.C. No. 308133, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 C.A. No. 2009-CP-23-6066

**ORDER OF DISMISSAL**

FILED CLERK OF COURT  
 GREENVILLE COUNTY  
 PAUL B. WIDENSON  
 2010 JUL -9 P 2:48

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed July 21, 2009. The Respondent made its return on November 18, 2009. An evidentiary hearing into the matter was convened on May 24, 2010, at the Greenville County Courthouse. The Applicant was present at the hearing and represented by Rodney W. Richey, 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 were the Applicant's mother, Debra Bowen, and the Applicant's plea counsel, Scott D. Robinson, Esquire. The Court had before it the transcript of the guilty plea hearing, the records of the Greenville County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief and the Respondent's return.

**PROCEDURAL HISTORY**

The Applicant is presently 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 January 2007 term of the Greenville County Grand Jury for possession of

*R39*

ecstasy (2007-GS-23-0051), two (2) counts of possession with intent to distribute (PWID) methamphetamine (2007-GS-23-0072, -0089), possession of methamphetamine (2007-GS-23-0076), possession of a controlled substance (2007-GS-23-0086) and unlawful carrying of a pistol (2007-GS-23-0088). He was represented by Scott D. Robinson, Esquire.

On August 11, 2008, the Applicant pled guilty.<sup>1</sup> The Honorable D. Garrison Hill sentenced the Applicant to concurrent terms of one (1) year for possession of ecstasy, second offense, seventeen (17) years for each count of PWID methamphetamine, third offense, seven (7) years for possession of methamphetamine, third offense, one (1) year for possession of a controlled substance, third offense, and one (1) year for unlawful carrying of a pistol. The Applicant did not appeal.

### **ALLEGATIONS**

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

1. Ineffective assistance of counsel.
2. 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).

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<sup>1</sup> The State not prossed four pending indictments: 2007-GS-23-0068, -0075, -0077, -0087.

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### **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) (citing Rule 71.1(e), SCRCP).

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 his first plea attorney conveyed an eight (8) year plea offer from the

State. The Applicant stated he rejected this plea offer and hired plea counsel to attempt to get a better recommendation. The Applicant stated plea counsel was hired because he said the Applicant would receive a sentence of house arrest or drug court. The Applicant testified that he was informed on May 21, 2008, that his charges carried a mandatory minimum sentence of fifteen (15) years imprisonment. The Applicant testified that once he learned this, he told plea counsel he wanted to accept the eight (8) year plea offer. The Applicant testified plea counsel should have told him – before that plea offer expired – that he would not be eligible for a sentence of either drug court or house arrest.

The Applicant's mother stated the first plea attorney had discussed the eight (8) year plea offer with the Applicant and that this offer was still available when she hired plea counsel. The Applicant's mother stated plea counsel said he was confident the Applicant could receive a sentence of house arrest or probation.

Plea counsel testified that when the Applicant's mother hired him, the eight (8) year plea offer had expired. Plea counsel testified the Applicant was facing a sentence between fifteen (15) and thirty (30) years imprisonment when he got the case. Plea counsel testified he discussed the possible minimum and maximum sentences with the Applicant and that he was facing these sentences because of his prior drug convictions. Plea counsel testified he never told either the Applicant or his mother that the Applicant would be sentenced to drug court or house arrest. Rather, plea counsel stated he spoke to the Applicant about getting him into a drug rehabilitation program. Plea counsel stated that after the May 21, 2008, hearing, he attempted to have the State re-open the eight (8) year plea offer, but was unsuccessful. Plea counsel stated the Applicant pled guilty without a sentence recommendation and had no real expectation of receiving an eight (8) year sentence because that deal had expired.

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 his representation.

The Applicant admitted to the plea judge both that he was guilty and that the facts recited by the solicitor were true. (Plea transcript, pp.7-8; p.17). 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.7-11).

This Court finds the Applicant failed to meet his burden of proving plea counsel was ineffective. The Applicant admitted he turned down the eight (8) year plea offer conveyed by his first plea attorney and then hired plea counsel. The rejection of the plea offer was mentioned at the plea hearing and corroborated by the Applicant. (Plea transcript, pp.17-18). Plea counsel testified the eight (8) year offer had expired before he was retained. This was also mentioned at the plea hearing. (Plea transcript, p.22). The State noted this case was pleading guilty off the trial docket and that there was no sentence recommendation. (Plea transcript, p.17; pp.19-20). This Court finds the Applicant was aware of the charges and possible punishments he was facing in pleading guilty that day. When taking into consideration both the Applicant's prior criminal record and the variety of drugs found on his person, this Court does not find credible the allegation that plea counsel unequivocally promised the Applicant he would receive a sentence such as probation, drug court or house arrest.<sup>2</sup>

Accordingly, this Court finds the Applicant has failed to prove the first prong of the

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<sup>2</sup> Plea transcript, pp.15-17.

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RB 9

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.

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 evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

#### **CONCLUSION**

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner, nor was the Applicant prejudiced by counsel’s representation. Furthermore, the Applicant’s guilty plea was entered knowingly and voluntarily within the mandates of Boykin. Therefore, this application for PCR must be denied and dismissed with prejudice.


This Court advises the Applicant that he must file a notice of intent to appeal within thirty

(30) days from the receipt of 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:**

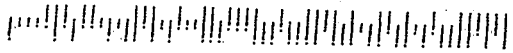
1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

**AND IT IS SO ORDERED** this 7 day of July, 2010.



Robin B. Stilwell  
Presiding Judge  
Thirteenth Judicial Circuit

Greenville, South Carolina.



GREENVILLE, SOUTH CAROLINA 29603

Richey & Richey, PA  
Attorneys at Law  
Post Office Box 10916  
Greenville, South Carolina 29603

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Chapman,  
James  
Welch,  
Beryl  
Wade  
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The Honorable Daniel E. Shearouse  
Clerk of Court  
The Supreme Court of South Carolina  
Post Office Box 11330  
Columbia, SC 29211