

PCR

THE LAW OFFICE OF JONATHAN WALLER, LLC  
1720 MAIN STREET, SUITE 104  
COLUMBIA, SC 29201

September 15, 2014

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

**RECEIVED**

SEP 18 2014

**S.C. SUPREME COURT**

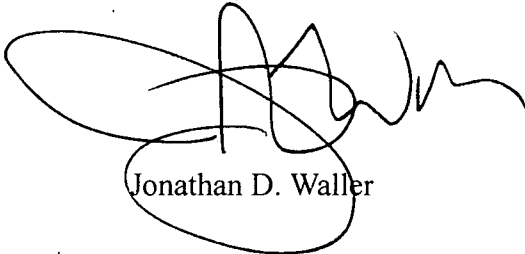
Re: Jeffrey N. Grimes vs. State of South Carolina  
C/A No: 2013-CP-38-00432

Dear Mr. Shearouse:

Please find enclosed one (1) original and one (1) copy each of Applicant's Notice of Appeal and Certificate of Service in the above referenced case. I would appreciate you filing the original and returning the clocked copy in the enclosed envelope.

If you have any questions, please do not hesitate to ask. My telephone number is 803-256-0011.

Sincerely,



Jonathan D. Waller

Enclosures

STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM ORANGEBURG COUNTY  
Maité Murphy, Circuit Court Judge

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2013-CP-38-00432

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Jeffrey N. Grimes, #353213,

Appellant,

v.

STATE OF SOUTH CAROLINA,

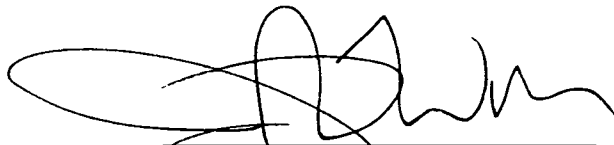
Respondent.

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NOTICE OF APPEAL

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Jeffrey N. Grimes, #353213, appeals the Order of Dismissal denying his Application for Post-Conviction Relief filed August 22, 2014 and served on counsel by letter dated September 3, 2014 and received by counsel September 4, 2014, issued by the Honorable Maité Murphy, Presiding Judge, First Judicial Circuit.



Jonathan D. Waller

**RECEIVED**

SEP 18 2014

**S.C. SUPREME COURT**

The Law Office of Jonathan Waller, LLC  
SC Bar No.: 76290  
1720 Main Street, Suite 104  
Columbia, SC 29201  
803-256-0011 (phone)  
866-213-8870 (fax)  
jonathanwallerlaw@gmail.com  
ATTORNEY FOR PETITIONER

This 15<sup>th</sup> day of September, 2014.

Other Counsel of Record:

Megan Harrigan, Assistant Attorney General

Post Office Box 11549

Columbia, SC 29211

(803) 734-3319

STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM ORANGEBURG COUNTY  
Maité Murphy, Circuit Court Judge

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2013-CP-38-00432

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Jeffrey N. Grimes, #353213,

Appellant,

v.

STATE OF SOUTH CAROLINA,

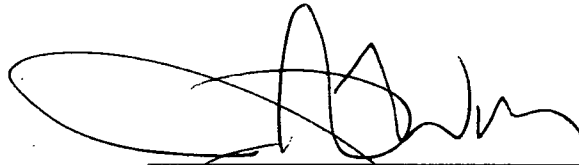
Respondent.

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CERTIFICATE OF SERVICE

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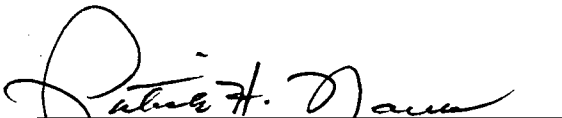
The undersigned hereby certifies that one copy of the Appellant's Notice of Appeal in the above-entitled case has been served upon opposing counsel, Megan Harrigan, Assistant Attorney General, by mailing in an envelope properly addressed with postage prepaid on this 15<sup>th</sup> day of September 2014.



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Jonathan D. Waller

SWORN TO BEFORE me this 15<sup>th</sup> day  
of September, 2014.



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Notary Public for South Carolina

My Commission Expires: 08/17/2015

STATE OF SOUTH CAROLINA )  
 COUNTY OF ORANGEBURG )  
 )  
 Jeffrey N. Grimes, #353213, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 FOR THE FIRST JUDICIAL CIRCUIT

Case No. 2013-CP-38-00432

**ORDER OF DISMISSAL**

FILED FOR THE CLERK OF COURT  
 ORANGEBURG COUNTY, SC

2014 AUG 22 PM 3:35

This matter comes before the Court by way of an application for post-conviction relief filed March 25, 2013. The State made its Return on September 5, 2013, requesting an evidentiary hearing be held. An evidentiary hearing into the matter was convened on May 27, 2014, at the Dorchester County Courthouse. Applicant was present at the hearing and was represented by counsel, Jonathan Waller, Esquire. Respondent was represented by Assistant Attorney General Megan E. Harrigan of the South Carolina Attorney General's Office. After reviewing all testimony and other evidence presented at the hearing, along with a review of all records provided to the Court, this Court finds that there are no constitutional deprivations or other grounds warranting relief and is denying and dismissing this application with prejudice.

**PROCEDURAL HISTORY**

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 Orangeburg County Clerk of Court. Applicant was true bill indicted during the June 2012 term of the Orangeburg County Grand Jury for Attempted Murder (2012-GS-38-01259). Mark Wise,

ATTEST: TRUE COPY  
*Wingja B. Clark*  
 CLERK OF COURT  
 ORANGEBURG COUNTY, SC

**RECEIVED**  
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Esquire, represented Applicant. On November 15, 2012, Applicant appeared before the Honorable Howard P. King, where he waived presentment to the grand jury and pled guilty to Assault and Battery of a High and Aggravated Nature. Judge King sentenced Applicant to confinement for eighteen years.

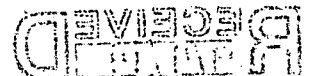
A timely Notice of Appeal was filed with the South Carolina Court of Appeals. On January 13, 2013, the Court of Appeals dismissed Applicant's appeal for failure to provide a sufficient explanation as required by Rule 203(d)(1)(B)(iv), SCACR. The Remittitur was issued on February 5, 2013.

In his application for post-conviction relief, Applicant alleged that he was being held in custody unlawfully based on an allegation of ineffective assistance of counsel, with the specific claims that Counsel failed to enforce a plea deal for ten years imprisonment and that counsel failed to secure a plea offer for Criminal Domestic Violence of a High and Aggravated Nature or Assault and Battery – First Degree.

#### **SUMMARY OF TESTIMONY PRESENTED AT EVIDENTIARY HEARING**

At the evidentiary hearing, Applicant testified on his own behalf and presented testimony from plea counsel, Mark Wise, Esquire (hereinafter "Counsel"). This Court also had before it Applicant's guilty plea transcript, the records from the Orangeburg County Clerk of Court regarding the subject convictions, Applicant's appellate records, and Applicant's records from the South Carolina Department of Corrections.

Applicant testified first on his own behalf. He testified that he was originally indicted for Attempted Murder, but pled guilty to the lesser included offense of Assault and Battery of a High



and Aggravated Nature. He testified that Counsel was appointed to represent him and that he met with Counsel "four to five times." He testified that Counsel explained all the elements of the charge and the potential sentences to him. He testified that Counsel reviewed all discovery materials with him, including his statement to law enforcement, and the statements of the victim and her daughter. Applicant testified that he is guilty and he did shoot the victim, his girlfriend, five times while she was in the shower. He testified that he thought he should have been charged with Criminal Domestic Violence of a High and Aggravated Nature, not Attempted Murder. He testified that Counsel reviewed the statutes with him and explained why he was charged with Attempted Murder based on the facts of the case.

He testified that he asked Counsel to secure him a favorable plea deal for ten years imprisonment to a lesser included offense. He testified that he thought he was pleading guilty to Assault and Battery of a High and Aggravated Nature for a negotiated ten year sentence. He acknowledged that he signed the sentencing sheet with the appropriate box checked for "Without Negotiations or Recommendations" and that he told the plea court that he knew his plea was without negotiations or recommendations. He elaborated that he thought Counsel would clarify that there was a negotiation for a ten year sentence and he was surprised when he received an eighteen year sentence.

Following Applicant's testimony, Applicant called Counsel to testify. Counsel testified that he was appointed to represent Applicant as an Assistant Public Defender for Orangeburg County. He testified that he met with Applicant numerous times, during which he explained the charges Applicant was facing, potential sentences, the General Session process, Applicant's

background, and the facts of the case. He testified that he initially discussed self-defense with Applicant, but quickly realized that this was not a viable defense because the victim was in the shower, unarmed, and could not reach any weapons. He testified that Applicant never wanted to proceed to trial and told him this several times. He testified that he discussed the possible charges of Criminal Domestic Violence of a High and Aggravated Nature and Assault and Battery – First Degree with Applicant at length and reviewed the statutes as well. He testified that Applicant was appropriately charged and indicted based on the facts, but was attempting to negotiate with the State for a lesser included offense. He testified that he was able to secure a plea offer for the lesser included offense of Assault and Battery of a High and Aggravated Nature, which significantly reduced his sentence exposure. He testified that he tried to get the State to agree to Criminal Domestic Violence of a High and Aggravated Nature or Assault and Battery – First Degree, but that the State refused to reduce the charges any further. He testified that the plea offer was without any negotiation or recommendation as to sentence length, which he explained to Applicant. He testified that Applicant understood that he could receive up to a twenty year sentence. He adamantly denied that he ever told Applicant that ten years was a likely 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. This Court finds that Counsel's testimony is credible and should be

afforded great weight; this Court also finds that Applicant's testimony lacks credibility. 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).

### *Ineffective Assistance of Counsel*

In a post-conviction relief action, the applicant has the burden of proving the allegations in his or her 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.

The proper measure of performance is whether an 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. 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 (1985).

After careful review based on the standard discussed above, including a review of the testimony of the witnesses presented at the evidentiary hearing, this Court denies this application on the basis that Counsel's performance did not fall below the standard required and there was no resulting prejudice to Applicant. This Court finds that Counsel's credible testimony reveals that he met with Applicant numerous times, explained all elements and possible sentences of the offense to Applicant, reviewed all possible lesser included offenses and sentence with Applicant, and negotiated the most favorable plea offer possible at Applicant's request. This Court is not persuaded by Applicant's assertions that there was a negotiated offer for a ten year sentence, as this is sharply refuted by the guilty plea transcript, sentencing sheet, and testimony from Counsel. This Court finds that Counsel's performance was reasonable according to professional standards and, therefore, did not perform deficiently in regards to this allegation. Furthermore, this Court finds that Applicant cannot establish any resulting prejudice, as there is no reasonable probability that he would have insisted on going to trial absent Counsel's advice. Applicant testified that he was guilty and wanted to plead guilty. Furthermore, Applicant was sentence within the appropriate statutory range. Therefore, this Court finds that this allegation must be denied and dismissed with prejudice.

## CONCLUSION

Based on all the foregoing, this Court finds and concludes that 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 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), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on an 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 shall be denied and dismissed with prejudice; and
2. The Applicant shall remain remanded to the custody of the State.

AND IT IS SO ORDERED this 18 day of August, 2014.

St. Gray, South Carolina.

Maité Murphy  
MAITÉ MURPHY  
Presiding Judge  
First Judicial Circuit



ALAN WILSON  
ATTORNEY GENERAL

August 21, 2014

2014 AUG 22 PM 2:35  
CW

The Honorable Winnifa Brown-Clark  
Clerk of Court, Orangeburg County  
Post Office Box 9000  
Orangeburg, South Carolina 29115-9000

Re: Jeffrey N. Grimes, #353213 v. State of South Carolina  
2013-CP-38-00432

Dear Ms. Brown-Clark:

Enclosed please find the signed original **Order of Dismissal** in the above captioned case for filing in your office. Please return a clocked copy to me once you have filed this document. If you have any questions or concerns, please contact me at (803) 734-3737 or [MHarrigan@scag.gov](mailto:MHarrigan@scag.gov).

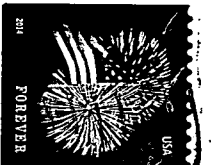
Sincerely,

Megan E. Harrigan  
Assistant Attorney General

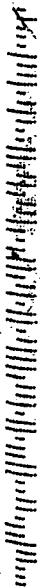
MEH/sbm  
Enclosure

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Daniel E. Shearouse  
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Supreme Court of South Carolina  
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