

LAW OFFICE OF



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OCT 23 2014

**TARA DAWN SHURLING, PA**

Attorney and Counselor at Law

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Suite A

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S.C. SUPREME COURT

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October 20, 2014

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

Re: Kevin C. Bradley v. State of South Carolina; 2013-CP-45-098.

Dear Mr. Shearouse:

Enclosed please find for filing a Notice of Appeal in the above captioned Post-Conviction Relief matter along with proof of service on opposing counsel. This Notice addresses the client's intent to appeal the Order of Dismissal issued by Judge Cothran in this matter. This PCR action was filed in connection with a guilty plea entered following Applicant's jury trial on other charges. This client filed a second PCR in that jury trial. The evidentiary hearings on both cases were heard on the same date before the same judge. I have received an Order of Dismissal in that case, however I had to file a Motion pursuant to Rule 59(e), SCRPC in that action docketed at 2010-CP-45-389. That post-hearing motion is still pending. I will file my Notice of Appeal in that action as soon as I receive the Court's Order on the Rule 59(e).

I already obtained a transcript from the PCR hearing held on this case. I would therefore ask that my time limits for filing the Petition for Writ of Certiorari be run from the date the Notice of Appeal is filed.

I was originally hired by this client's mother to handle his circuit court PCR actions only. My fee agreement expressly *excluded* representation in any subsequent PCR appeal unless a separate fee was paid. Sadly, the client's mother has since passed away. I am advised by the client that his father will be hiring me for the PCR appeals, however, the father has not yet hired me nor has he confirmed that he intends to do so. By separate correspondence I have advised the client and his father that I must have his decision within ten (10) days. I will, of course, advise the Court of their decision as quickly as I know myself.

I enclose an extra copy of my Notice of Appeal which I would appreciate having clocked and returned to me in the self-addressed stamped envelope provided. For now, I thank you as always for your assistance and remain,

Sincerely yours,

A handwritten signature in black ink, appearing to read "Tara Dawn Shurling".

Tara Dawn Shurling  
Attorney and Counselor at Law

TDS/sg

Enclosure

cc: Daniel Gourley, Assistant Attorney General  
Lorienne French, Legal Service Coordinate, Appellate Defense  
Kevin Bradley, #339031  
Carol Bradley

STATE OF SOUTH CAROLINA  
In The Supreme Court

RECEIVED

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

OCT 23 2014

S.C. SUPREME COURT

2013-CP-45-098

KEVIN C. BRADLEY, 339031

Applicant,

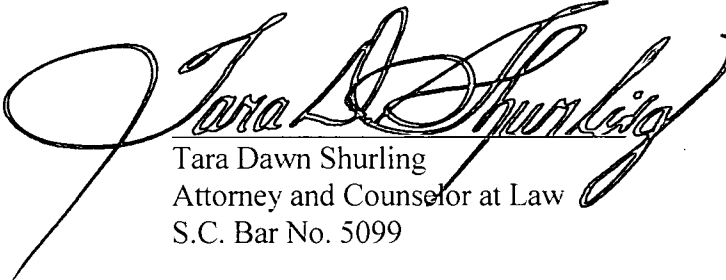
v.

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 his undersigned counsel, giving notice of his appeal from the Order of Dismissal denying his Post-Conviction Relief filed August 25, 2014 and received by Counsel on September 30, 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 21<sup>st</sup> day of October, 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 WILLIAMSBURG COUNTY  
Court of Common Pleas  
R. Ferrell Cothran, Jr., Presiding Judge

2013-CP-45-098

RECEIVED

OCT 23 2014

S.C. SUPREME COURT

KEVIN C. BRADLEY, 339031

Applicant,

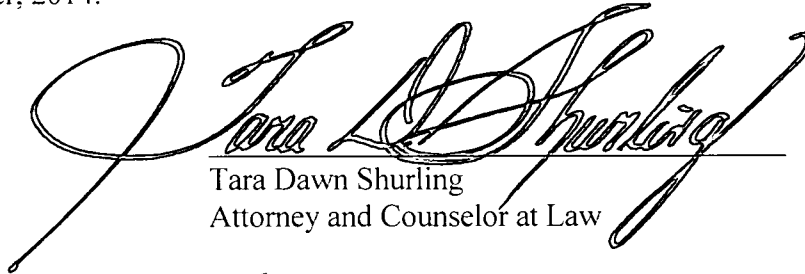
v.

THE STATE OF SOUTH CAROLINA,

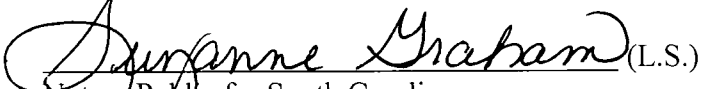
Respondent.

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 21<sup>st</sup> day of October, 2014.

  
Tara Dawn Shurling  
Attorney and Counselor at Law

SWORN TO BEFORE me this 21<sup>st</sup> day  
of October, 2014.

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

RECEIVED

OCT 23 2014

STATE OF SOUTH CAROLINA )  
COUNTY OF WILLIAMSBURG )  
Kevin C. Bradley, #339031, )  
Applicant, )  
v. )  
State of South Carolina, )  
Respondent. )

IN THE COURT OF COMMON PLEAS  
FOR THE THIRD JUDICIAL CIRCUIT

Case No. 2013-CP-45-098

S.C. SUPREME COURT

ORDER OF DISMISSAL

WILLIAMSBURG COUNTY  
CLERK OF COURT  
KINGSTREE, S.C.

2014 AUG 25 PM 12:01

FILED

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on February 25, 2013<sup>1</sup> and May 20, 2014. Respondent made its amended return on October 28, 2013. An evidentiary hearing into the matter was convened on May 27, 2014, 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 that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Williamsburg County Clerk of Court. Applicant was true bill indicted at the January 2010 term of the Williamsburg County Grand Jury for Criminal Sexual Conduct with a Minor—Second Degree (2010-GS-45-30). William LeGrand Carraway, Esquire represented Applicant. On January 28, 2010, Applicant pled guilty before the Honorable Clifton Newman. Judge Newman sentenced

<sup>1</sup> Applicant originally filed a timely post-conviction relief application (Case No. 2010-CP-45-389) on September 29, 2010. In this original application, Applicant raised various allegations stemming from both indictment # 2009-GS-45-249 and indictment # 2010-GS-45-030. Due to the fact that both of these indictments are completely unrelated, the State requested PCR Counsel to file a separate PCR application for indictment # 2010-GS-45-030. Subsequently, PCR Counsel filed a new PCR application (Case No. 2013-CP-45-098) for indictment # 2010-GS-45-030 on February 25, 2013.

Applicant to five years for Criminal Sexual Conduct in the Second Degree to run consecutive to his current sentences. Applicant did not appeal his guilty plea or sentence.

### ALLEGATIONS

1. Plea Counsel was ineffective for advising the Applicant to plea guilty on Indictment No. 2010-GS-45-30 to Second Degree Criminal Sexual Conduct when the results of DNA testing had confirmed that the Applicant was not the father of a child conceived by the victim.
2. Plea Counsel was ineffective for advising the Applicant to plea guilty on Indictment No. 2010-GS-45-30 to Second Degree Criminal Sexual Conduct when the victim was not cooperating with the prosecution of the charges against the Applicant.
3. Plea Counsel was ineffective for neglecting to interview Diamond D. concerning these charges where her original accusation against Applicant, that he had impregnated her, had been proved false by DNA testing.
4. Plea Counsel was ineffective for advising the Applicant to plea guilty on Indictment No. 2010-GS-45-30 to Second Degree Criminal Sexual Conduct without discussing with him the ways in which the forensic evidence in this case, specifically the DNA test results, could be used to impeach the credibility of the victim's claims against the Applicant.
5. Plea Counsel was ineffective for permitting his client to enter a plea of guilty to Second Degree Criminal Sexual Conduct on Indictment No. 2010-GS-45-30 where the Applicant openly declared his innocence at the time of his plea.
6. Plea Counsel was ineffective for advising the Applicant to plea guilty on Indictment No. 2010-GS-45-30 to Second Degree Criminal Sexual Conduct without explaining to him that if he were to succeed in getting his convictions and sentences from his jury trial overturned on appeal, such a reversal would not afford him the opportunity to challenge the judgment and sentence entered pursuant to his plea on Indictment No. 2010- GS-45-30.
7. The Plea Court erred in accepting the Applicant's plea of guilty on Indictment No. 2010-GS-45-30 to Second Degree Criminal Sexual Conduct where the Applicant clearly protested his guilt on the record during the plea proceeding.
8. Plea Counsel was ineffective for failing to preserve the Applicant's right to a direct appeal from the judgment and sentence entered pursuant to his plea on Indictment No. 2010-GS-45-30 to Second Degree Criminal

Sexual Conduct where the Applicant clearly did not waive his right to such an appeal.

9. Plea Counsel was ineffective for failing to discuss with the Applicant the potential use of character witnesses to testify in the Applicant's behalf if he went to trial by jury; specifically Sgt. Robert McClary, Debra Black, Manager at Skyes in Kingstree, South Carolina, Sgt. Stagers, employed with the 1052nd Transportation Company Army National Guard, and Frederick Davis of the Kingstree Police Department.
10. Plea Counsel was ineffective for failing to interview Joshua Edwards as a potential witness for the Applicant and failing to discuss with the Applicant the manner in which Joshua Edwards could be used as a defense witness if the Applicant proceeded to trial by jury where said witness was charged with and convicted for criminal sexual conduct relating to the victim in Applicant's indictment No. 2010-GS-45-30; Diamond D.
11. Plea Counsel was ineffective for failing to object to a material amendment to Applicant's indictment without presentation to the Grand Jury and for failing to fully explain to the Applicant his right to object to such an amendment.
12. Plea Counsel was ineffective for neglecting to obtain clarification from the presiding judge concerning whether it was his intent that the five (5) year sentence imposed on Indictment No. 2010-GS-45-30 be served consecutively to both sentences imposed on 2009-GS-45-0249 or just consecutively to the twenty (20) year sentence imposed for criminal sexual conduct second degree.
13. Plea Counsel was ineffective for advising the Applicant to enter a plea of guilty on this charge based on the threat that the State could seek a life without parole sentence against him were he convicted on this indictment at trial by jury without discussing with the Applicant the possibility of arguing that he would be ineligible for life without parole sentence pursuant to S.C. Code Ann. § 17-25-25 where the sexual battery charged in this indictment was alleged to occurred sometime between October 1, 2006 and October 1, 2007 and the Applicant did not turn eighteen (18) years old until July 17, 2007.
14. Plea Counsel was ineffective for failing to disclose to the Applicant a potential conflict of interest in representing the Applicant where Plea Counsel had represented Joshua Edwards on a number of criminal charges including one count of Criminal Sexual Conduct with a Minor involving Diamond D., the same minor alleged to be the victim on Indictment No. 2010-GS-45-30.

15. Plea Counsel was ineffective for failing to disclose to the Applicant a potential conflict of interest in representing the Applicant where Plea Counsel represented the victim in a number of legal matters.

### **SUMMARY OF TESTIMONY PRESENTED**

At the evidentiary hearing, Applicant testified on his own behalf. Additionally, Applicant presented testimony from plea counsel, William Legrand Caraway, Esquire (hereinafter "Plea Counsel"). This Court also had before it a copy of plea transcript, the Williamsburg County Clerk of Court records, Applicant's South Carolina Department of Corrections records, the PCR application, and the amended return.

During the evidentiary hearing, Applicant called Plea Counsel to testify. Plea Counsel stated that he has been a public defender for Williamsburg County for the majority of his career. Plea Counsel stated he has represented hundreds of criminal clients during the course of his career. Plea counsel stated he was appointed to represent Applicant and met with him three or four times prior to his guilty plea. Plea Counsel stated he reviewed and discussed the discovery material with Applicant prior to his plea. Plea Counsel stated Applicant informed him that he wanted to plead guilty the day after he was convicted of a separate unrelated indictment (2009-GS-45-249). Plea Counsel stated that he advised Applicant that he might want to present the charge to the Grand Jury, but Applicant was adamant that he wanted to plead guilty. As a result, Applicant initialed everything and waived his right to present the charge to the Grand Jury. Plea Counsel recalled that Applicant was not willing to accept the guilty plea offer because it was too much time. Plea Counsel could not recall whether he appeared before Judge Newman for Applicant's joint guilty plea involving both indictment 2009-GS-45-0249 and 2010-GS-45-30.

Plea Counsel stated Applicant was charged with Criminal Sexual Conduct—Second Degree. Plea Counsel stated the Victim alleged that Applicant was the father of her child.

However, Plea Counsel stated a paternity test proved that Applicant was not the father of the Victim's child. Plea counsel recalled discussing the results of paternity test with Applicant prior to his plea. Plea counsel stated that he did not discuss any defenses because Applicant never denied committing the crime. Plea Counsel explained that he and Victim were in a relationship. Plea Counsel stated the mother of the Victim was aware of the relationship and Victim wrote a letter to the plea court stating that she and Applicant had sex. Plea Counsel stated that he was aware of the letter and had reviewed the letter with Applicant. Plea Counsel stated that there was no question that Judge Newman sentenced Applicant to five years consecutive to the higher of the two sentences from his previous conviction.<sup>2</sup>

Plea Counsel stated that he only advised Applicant that he could be sentenced up to twenty years. Plea Counsel stated Applicant was never noticed for life without parole. Plea Counsel did not recall advising Applicant that this was his second or third most serious strike. Plea Counsel stated the solicitor was allowing Applicant to plead as if this were his first most serious strike. Plea Counsel stated Applicant was seventeen turning eighteen during the dates alleged in the indictment. Plea Counsel stated that he was not aware of Graham v. Florida, 560 U.S. 48, 176 L.Ed. 2d 825 (2010). Plea Counsel stated that Graham was decided well after Applicant's guilty plea. Id.

Plea Counsel stated that he represented Joshua Edwards (hereinafter "Edwards") in a prior Criminal Sexual Conduct case involving the same Victim. Plea Counsel stated that he represented Edwards several years prior to his representation of Applicant. Plea Counsel stated that his prior representation of Edwards did not affect his representation of Applicant. Plea

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<sup>2</sup> Applicant was previously convicted on January 27, 2010, for Criminal Sexual Conduct of a Minor—First Degree and Criminal Sexual Conduct of a Minor—Second Degree (2009-GS-45-249). The Honorable Clifton Newman sentenced Applicant twenty-five years imprisonment for Criminal Sexual Conduct with a Minor—First Degree and twenty years for Criminal Sexual Conduct with a Minor—Second Degree. The sentences were to run concurrently.

Counsel stated he did not feel he owed Edwards any type of duty of loyalty. Plea Counsel concluded that he represented and advised Applicant to the best of his abilities.

Plea Counsel stated he represented Victim two or three times for some truancy issues several years prior to his representation of Applicant. Plea Counsel stated Victim actually liked Applicant and did not want him to be sent to jail. Plea Counsel recalled that Victim wrote a letter to the plea court explaining that they did have sex, but he never hurt her. Plea Counsel stated the mother of the Victim knew Applicant visited their house on multiple occasions. Plea Counsel stated Victim's mother knew of their relationship but was under the impression Applicant was much younger than his actual age. Plea Counsel stated Applicant was aware that he had represented Victim on prior occasions. Plea Counsel stated that his prior representation of Victim in no way affected his representation of Applicant. Plea Counsel further stated that his prior representation of Victim may have helped his representation of Applicant. Plea Counsel concluded that his prior representation was not a conflict and he represented Applicant to the best of his abilities.

Following Plea Counsel's testimony, Applicant called Assistant Solicitor Tyler Brown to testify. Assistant Solicitor Brown testified that he had a partial copy of the solicitor's file relating to Joshua Edwards case. Assistant Solicitor Brown stated the Victim in Edward's case was Diamond D. the same victim in Applicant's case. Assistant Solicitor Brown further stated William Legrand Caraway was counsel of record for Edwards' case.

Following Assistant Solicitor Brown's testimony, Applicant testified on his own behalf. Applicant stated that he met with Plea Counsel twice prior to his plea. Applicant could not recall reviewing discovery material or discussing any possible defenses. Applicant stated that he wrote Plea Counsel requesting his discovery material but never received them. Applicant stated that he

did not give Plea Counsel any leads or witnesses to investigate. Applicant recalled the plea court reviewing his constitutional rights. Applicant testified that he was going to plea on January 25, 2010 to both indictment numbers 2009-GS-45-249 and 2010-GS-45-030. Applicant stated he was to plead guilty to Criminal Sexual Conduct—First Degree and all other charges would be dropped. Applicant stated he would not have pled guilty to indictment number 2010-GS-45-030 if he had not been threatened with the possibility of life without parole. Applicant recalled the plea court advising him that the sentence he received as a result of his guilty plea was totally separate from his sentences he received as a result of his prior conviction.<sup>3</sup> Applicant further stated he was under the impression that he was pleading guilty pursuant to a recommendation by the State. However, Applicant agreed that the plea court advised him that there was no recommendation or negotiations during the guilty plea colloquy.

Applicant recalled telling the plea court that he was satisfied with his attorney's services and he had enough time to speak with Plea Counsel. Applicant recalled telling the plea court that no one had promised or threatened him in order to get him to plead guilty. Applicant recalled telling the plea court that he wished to plead guilty. Applicant recalled telling the plea court that he had sex with the Victim, who was a person under the age of fourteen (14). Applicant stated that he lied to the plea court because he did not have sex with the Victim

Applicant stated he was not told of a possible conflict of interest from Plea Counsel's prior representation of Edwards or Victim. Applicant stated had he known about Plea Counsel's prior representation he would not have wanted Plea Counsel as his attorney. Applicant stated he asked Plea Counsel to file an appeal of his guilty plea immediately following his guilty plea.

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<sup>3</sup> Applicant was previously convicted on January 27, 2010, for Criminal Sexual Conduct of a Minor—First Degree and Criminal Sexual Conduct of a Minor—Second Degree (2009-GS-45-249). The Honorable Clifton Newman sentenced Applicant twenty-five years imprisonment for Criminal Sexual Conduct with a Minor—First Degree and twenty years for Criminal Sexual Conduct with a Minor—Second Degree. The sentences were to run concurrently.

## 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 Trial Counsel's testimony credible and Applicant's testimony not 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).

### INEFFECTIVE ASSISTANCE OF COUNSEL

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, (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.

*Plea Counsel was ineffective for advising the Applicant to plea guilty on Indictment No. 2010-GS-45-30 to Second Degree Criminal Sexual Conduct when the results of DNA testing had confirmed that the Applicant was not the father of a child conceived by the victim.*

This Court finds that the Applicant's allegation that Plea Counsel was ineffective for advising Applicant to plead guilty to indictment 2010-GS-45-30 when DNA results proved Applicant was not the father of the Victim's child is without merit. This Court finds Plea Counsel's testimony credible while Applicant's testimony is not credible. Plea Counsel stated he reviewed and discussed the discovery material with Applicant prior to his plea. Plea Counsel stated Victim alleged that Applicant was the father of her child. However, Plea Counsel stated a paternity test proved that Applicant was not the father of the Victim's child. Plea counsel recalled discussing the results of paternity test with Applicant prior to his plea. Plea Counsel stated Applicant informed him that he wanted to plead guilty the day after he was convicted of a separate unrelated indictment (2009-GS-45-249). As a result, Applicant waived his right to the grand jury process. Plea Counsel further stated it was Applicant's decision to plead guilty.

Additionally, a review of the record reveals Applicant's guilty plea was entered freely and voluntarily and Applicant had a full understanding of the consequences of pleading guilty. The plea court advised Applicant of the potential sentences for the charges he was facing. (Pl. tr. p. 3-4). The plea court advised Applicant that he was pleading to strike offenses, and if convicted of another strike offense, he would be sentenced to life without the possibility of parole. (Pl. tr. p.

3-4). Applicant was advised of his right to a jury trial, his right to have the indictment presented to grand jury, his right to challenge the State's evidence, and his right to testify at trial. (Pl tr. p. 4-7). Lastly, Applicant told the Court it was his decision alone to plead guilty, that he was pleading straight up without any promises as to sentence, and that he had not been threatened in any way to plead guilty. (Pl tr. p. 4-6). This Court finds Counsel thoroughly explained the guilty plea proceeding with the Applicant.

Based on the foregoing, this Court finds Plea Counsel thoroughly advised Applicant prior to his guilty plea. This Court finds Applicant pled guilty with full knowledge of the results of the DNA paternity test. Plea Counsel stated there was no question Applicant and Victim had a sexual relationship. Plea Counsel's conclusion is further supported by letter written by Victim admitting their sexual relationship (Pl tr. p. 9). This Court finds Applicant knowingly, voluntarily, and intelligently pled guilty with the advice of competent counsel. Furthermore, this Court finds Counsel's actions were reasonable under the circumstances, and did not fall below professional norms of reasonableness. Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Additionally, this Court finds that Applicant has failed to establish the requisite prejudice required for relief pursuant to Strickland. Therefore, this Court finds that Plea Counsel was not ineffective and that this allegation must be denied and dismissed with prejudice.

*Plea Counsel was ineffective for advising the Applicant to plea guilty on Indictment No. 2010-GS-45-30 to Second Degree Criminal Sexual Conduct when the victim was not cooperating with the prosecution of the charges against the Applicant*

This Court finds Applicant's allegation that Plea Counsel was ineffective for advising Applicant to plead guilty when the Victim was not cooperating with the prosecution to be without merit. This Court finds Plea Counsel's testimony credible while Applicant's testimony is not credible. Plea Counsel stated Victim actually liked Applicant and did not want him to be

sent to jail. Plea Counsel recalled that Victim wrote a letter to the plea court explaining that she and Applicant had sex, but he never hurt her. Plea Counsel stated the mother of the Victim knew Applicant visited their house on multiple occasions. Plea Counsel stated Victim's mother knew of their relationship but was under the impression Applicant was much younger than his actual age.

This Court finds Applicant has failed to provide any competent evidence that Victim was not cooperating with the prosecution. To the contrary, Victim provided prosecution with a letter admitting that they had a sexual relationship. Additionally, Victim's mother was aware of their relationship and would have objected to it had she known Applicant's true age. This Court notes Victim did not testify at the PCR hearing, and there is no evidence that Victim would have testified to anything that would have been favorable to Applicant. Prejudice from trial counsel's failure to interview or call witnesses cannot be shown where the witnesses do not testify at post-conviction relief. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Bassette v. Thompson, 915 F.2d 932 (4th Cir. 1990), cert. denied, 499 U.S. 982 (1991). The Applicant's mere speculation as to what a witnesses' testimony would have been cannot, by itself, satisfy his burden of showing prejudice. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993); Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995). An 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. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998). Accordingly, this Court finds that Applicant has failed to meet his burden of proof in regards to this allegation, and accordingly this allegation must be denied and dismissed with prejudice.

*Plea Counsel was ineffective for neglecting to interview Diamond D. concerning these charges where her original accusation against Applicant, that he had impregnated her, had been proved false by DNA testing.*

This Court finds Applicant's allegation that Plea Counsel was ineffective for failing to interview Victim after the DNA results had proven Applicant was not the father of her child to be without merit. This Court notes Victim did not testify at the PCR hearing, and there is no evidence that Victim would have testified to anything that would have been favorable to Applicant. Prejudice from trial counsel's failure to interview or call witnesses cannot be shown where the witnesses do not testify at post-conviction relief. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Bassette v. Thompson, 915 F.2d 932 (4th Cir. 1990), cert. denied, 499 U.S. 982 (1991). The Applicant's mere speculation as to what a witnesses' testimony would have been cannot, by itself, satisfy his burden of showing prejudice. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993); Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995). An 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. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998). Accordingly, this Court finds that Applicant has failed to meet his burden of proof in regards to this allegation, and accordingly this allegation must be denied and dismissed with prejudice.

*Plea Counsel was ineffective for advising the Applicant to plea guilty on Indictment No. 2010-GS-45-30 to Second Degree Criminal Sexual Conduct without discussing with him the ways in which the forensic evidence in this case, specifically the DNA test results, could be used to impeach the credibility of the victim's claims against the Applicant*

This Court finds Applicant's allegation that Plea Counsel was ineffective for advising Applicant to plead guilty without discussing with him the ways in which the DNA evidence

could be used to impeach the Victim's credibility is without merit. This Court finds Plea Counsel's testimony credible while Applicant's testimony is not credible. Plea Counsel stated Victim actually liked Applicant and did not want him to be sent to jail. Plea Counsel recalled that Victim wrote a letter to the plea court explaining that they did have sex, but he never hurt her. Plea Counsel stated the mother of the Victim knew Applicant visited their house on multiple occasions. Plea Counsel stated Victim's mother knew of their relationship but was under the impression Applicant was much younger than his actual age. Plea Counsel further stated he discussed the results of the DNA test with Applicant prior to his guilty plea.

This Court finds Plea Counsel thoroughly discussed the potential impacts of the results of the DNA test with Applicant prior to his guilty plea. This Court finds Counsel's actions were reasonable under the circumstances, and did not fall below professional norms of reasonableness. Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Additionally, this Court finds that Applicant has failed to establish the requisite prejudice required for relief pursuant to Strickland. Therefore, this Court finds that Plea Counsel was not ineffective and that this allegation must be denied and dismissed with prejudice.

*Plea Counsel was ineffective for permitting his client to enter a plea of guilty to Second Degree Criminal Sexual Conduct on Indictment No. 2010-GS-45-30 where the Applicant openly declared his innocence at the time of his plea.*

This Court finds Applicant's allegation that Plea Counsel was ineffective for permitting his client to enter a plea of guilty to Second Degree Criminal Sexual Conduct where Applicant had previously denied his guilt is without merit. This Court finds Counsel's testimony credible while Applicant's testimony is not credible. This Court characterizes Applicant's allegation as a claim that his guilty plea was involuntary. However, Plea Counsel stated Applicant informed him that he wanted to plead guilty the day after he was convicted of a separate unrelated

indictment (2009-GS-45-249). As a result, Applicant waived his right to the grand jury process and pled guilty. Plea Counsel stated that it was Applicant's decision to plead guilty.

Additionally, a review of the record reveals Applicant's guilty plea was entered freely and voluntarily, and Applicant had a full understanding of the consequences of pleading guilty. The plea court advised Applicant of the potential sentences for the charges he was facing. (Pl tr. p. 3-4). The plea court advised Applicant that he was pleading to strike offenses and if convicted of another strike offense would be sentenced to life without the possibility of parole. (Pl. tr. p. 3-4). Applicant was advised of his right to a jury trial, his right to have the indictment presented to grand jury, his right to challenge the State's evidence, and his right to testify at trial. (Pl tr. p. 4-7). Lastly, Applicant told the Court it was his decision alone to plead guilty, that he was pleading straight up without any promises as to sentence, and that he had not been threatened in any way to plead guilty. (Pl tr. p. 4-6). This Court finds Counsel thoroughly explained the guilty plea proceeding with the Applicant.

Based on the foregoing, this Court finds Plea Counsel thoroughly advised Applicant prior to his guilty plea. This Court finds Applicant knowingly, voluntarily, and intelligently pled guilty with the advice of competent counsel. Furthermore, this Court finds Counsel's actions were reasonable under the circumstances, and did not fall below professional norms of reasonableness. Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Additionally, this Court finds that Applicant has failed to establish the requisite prejudice required for relief pursuant to Strickland. Therefore, this Court finds that Plea Counsel was not ineffective and that this allegation must be denied and dismissed with prejudice.

*Plea Counsel was ineffective for advising the Applicant to plea guilty on Indictment No. 2010-GS-45-30 to Second Degree Criminal Sexual Conduct without explaining to him that if he were to succeed in getting his convictions and sentences from his jury trial overturned on appeal, such a reversal would not afford him the opportunity to challenge the judgment and sentence entered pursuant to his plea on Indictment No. 2010- GS-45-30.*

This Court finds Applicant's allegation that Plea Counsel was ineffective for failing to advising him to plead guilty without explaining to him that if he were he were to succeed in getting his convictions and sentences from his jury trial overturned on appeal, such a reversal would not afford him the opportunity to challenge the judgment and sentence entered pursuant to his plea on Indictment No. 2010- GS-45-30 is without merit. This Court finds Plea Counsel's testimony credible while Applicant's testimony was not credible.

The Court notes Applicant proceeded to a jury trial and was convicted of a completely unrelated indictment on January 27, 2010.<sup>4</sup> Applicant was represented by separate counsel. Applicant is now attempting to argue that Plea Counsel had a duty to advise Applicant that if he were to succeed in getting his convictions and sentences from his jury trial<sup>5</sup> overturned on appeal, such a reversal would not afford him the opportunity to challenge the judgment and sentence entered pursuant to his plea on Indictment No. 2010-GS-45-30. This Court is not inclined to extend Plea Counsel's duties to include informing Applicant of possible outcomes resulting from a wholly separate indictment and conviction in which he did not represent Applicant. Additionally, this Court notes the plea court advised Applicant "that this is a totally separate indictment in which you face a totally separate sentence." (Pl tr. p. 6) This Court finds Counsel's actions were reasonable under the circumstances, and did not fall below professional

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<sup>4</sup> Applicant was previously convicted on January 27, 2010, for Criminal Sexual Conduct of a Minor—First Degree and Criminal Sexual Conduct of a Minor—Second Degree (2009-GS-45-249). The Honorable Clifton Newman sentenced Applicant twenty-five years imprisonment for Criminal Sexual Conduct with a Minor—First Degree and twenty years for Criminal Sexual Conduct with a Minor—Second Degree. The sentences were to run concurrently

<sup>5</sup> Applicant proceeded to jury trial on indictment # 2009-GS-45-249.

norms of reasonableness. Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Additionally, this Court finds that Applicant has failed to establish the requisite prejudice required for relief pursuant to Strickland. Therefore, this Court finds that Plea Counsel was not ineffective and that this allegation must be denied and dismissed with prejudice.

*The Plea Court erred in accepting the Applicant's plea of guilty on Indictment No. 2010-GS-45-30 to Second Degree Criminal Sexual Conduct where the Applicant clearly protested his guilt on the record during the plea proceeding.*

This Court finds Applicant's allegation that Counsel was ineffective for allowing Applicant to plead guilty where he protested his guilt on the record during the plea proceeding is without merit. This Court finds Plea Counsel's testimony credible while Applicant's testimony is not credible. This Court characterizes Applicant's argument as a claim that his plea was involuntary. A review of the record reveals Applicant's guilty plea was entered freely and voluntarily and Applicant had a full understanding of the consequences of pleading guilty. The plea court advised Applicant of the potential sentences for the charges he was facing. (Pl tr. p. 3-4). The plea court advised Applicant that he was pleading to strike offenses and if convicted of another strike offense would be sentenced to life without the possibility of parole. (Pl. tr. p. 3-4). Applicant was advised of his right to a jury trial, his right to have the indictment presented to grand jury, his right to challenge the State's evidence, and his right to testify at trial. (Pl tr. p. 4-7). Lastly, Applicant told the Court it was his decision alone to plead guilty, that he was pleading straight up without any promises as to sentence, and that he had not been threatened in any way to plead guilty. (Pl tr. p. 4-6). This Court finds Counsel thoroughly explained the guilty plea proceeding with the Applicant.

Based on the foregoing, this Court finds Plea Counsel thoroughly advised Applicant prior to his guilty plea. This Court finds Applicant knowingly, voluntarily, and intelligently pled

guilty with the advice of competent counsel. Furthermore, this Court finds Counsel's actions were reasonable under the circumstances, and did not fall below professional norms of reasonableness. Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Additionally, this Court finds that Applicant has failed to establish the requisite prejudice required for relief pursuant to Strickland. Therefore, this Court finds that Plea Counsel was not ineffective and that this allegation must be denied and dismissed with prejudice.

*Plea Counsel was ineffective for failing to preserve the Applicant's right to a direct appeal from the judgment and sentence entered pursuant to his plea on Indictment No. 2010-GS-45-30 to Second Degree Criminal Sexual Conduct where the Applicant clearly did not waive his right to such an appeal.*

This Court finds Applicant's allegation that Plea Counsel was ineffective for failing to preserve Applicant's right to a direct appeal is without merit. This Court finds Counsel's testimony credible while Applicant's testimony is not credible. The United States Supreme Court has rejected a "bright-line rule that counsel must always consult with the defendant regarding an appeal." Roe v. Flores-Ortega, 528 U.S. 470, 480 (2000). They instead held that "counsel has a constitutionally imposed duty to consult with the defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing." Id. "[A]lthough not determinative, a highly relevant factor in this inquiry will be whether the conviction follows a trial or a guilty plea, both because a guilty plea reduces the scope of potentially appealable issues and because such a plea may indicate that the defendant seeks an end to judicial proceedings." Id.

This Court also finds the Applicant has failed to carry his burden of proving he expressed his desire to appeal to plea counsel. This Court finds there is no proof that any appeal taken from the Applicant's guilty plea would have been meritorious. This Court also finds there is no proof that a rational defendant would want to appeal especially since the Applicant received the five years out of a possible twenty year sentence. This Court finds this allegation is without merit and the Applicant has failed to carry his burden of proving counsel was ineffective in this regard.

*Plea Counsel was ineffective for failing to discuss with the Applicant the potential use of character witnesses to testify in the Applicant's behalf if he went to trial by jury; specifically Sgt. Robert McClary, Debra Black, Manager at Skyes in Kingstree, South Carolina, Sgt. Stagers, employed with the 1052nd Transportation Company Army National Guard, and Frederick Davis of the Kingstree Police Department.*

This Court finds Applicant's allegation that Plea Counsel failed to discuss the potential use of various character witnesses is without merit. This Court finds Plea Counsel's testimony to be credible while Applicant's testimony is not credible. This Court notes that none of the above listed character witnesses testified at the PCR hearing, and there is no evidence that any of these witnesses would have testified to anything that would have been favorable to Applicant. Prejudice from trial counsel's failure to interview or call witnesses cannot be shown where the witnesses do not testify at post-conviction relief. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Bassette v. Thompson, 915 F.2d 932 (4th Cir. 1990), cert. denied, 499 U.S. 982 (1991). The Applicant's mere speculation as to what a witnesses' testimony would have been cannot, by itself, satisfy his burden of showing prejudice. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993); Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995). An 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. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998). Accordingly, this Court finds that Applicant has failed to meet his burden of proof in regards to this allegation, and accordingly this allegation must be denied and dismissed with prejudice.

*Plea Counsel was ineffective for failing to interview Joshua Edwards as a potential witness for the Applicant and failing to discuss with the Applicant the manner in which Joshua Edwards could be used as a defense witness if the Applicant proceeded to trial by jury where said witness was charged with and convicted for criminal sexual conduct relating to the victim in Applicant's indictment No. 2010-GS-45-30; Diamond D.*

This Court finds Applicant's allegation that Plea Counsel was ineffective for failing to interview Edwards as a potential witness is without merit. This Court finds Plea Counsel's testimony to be credible while Applicant's testimony is not credible. This Court notes that Edwards did not testify at the PCR hearing, and there is no evidence that Edwards would have testified to anything that would have been favorable to Applicant. Prejudice from trial counsel's failure to interview or call witnesses cannot be shown where the witnesses do not testify at post-conviction relief. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Bassette v. Thompson, 915 F.2d 932 (4th Cir. 1990), cert. denied, 499 U.S. 982 (1991). The Applicant's mere speculation as to what a witnesses' testimony would have been cannot, by itself, satisfy his burden of showing prejudice. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993); Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995). An 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. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998). Accordingly, this Court finds that Applicant has

failed to meet his burden of proof in regards to this allegation, and accordingly this allegation must be denied and dismissed with prejudice.

*Plea Counsel was ineffective for failing to object to a material amendment to Applicant's indictment without presentation to the Grand Jury and for failing to fully explain to the Applicant his right to object to such an amendment.*

This Court finds Applicant's allegation that Plea Counsel was ineffective for failing to object to a material amendment to Applicant's indictment without presentation to the Grand Jury and his failure to fully explain Applicant's right to object to such an amendment to be without merit. This Court finds Plea Counsel's testimony credible while Applicant's testimony is not credible. Plea Counsel stated Applicant informed him that he wanted to plead guilty the day after he was convicted of a separate unrelated indictment (2009-GS-45-249). Plea Counsel stated he advised Applicant that he should present the charge to the Grand Jury. However, Plea Counsel stated Applicant insisted that he plead guilty. As a result, Applicant waived his right to the grand jury process. Additionally, the record reveals Applicant wishing to give up his right to have the case presented to the Grand Jury of Williamsburg County. (Pl tr. p. 4; p. 7). After being fully advised of his rights, Applicant freely admitted his guilt. (Pl tr. p. 7) This Court finds Plea Counsel fully advised Applicant of his rights to the Grand Jury process and Applicant knowingly and intelligently waived his rights. This Court finds Counsel's actions were reasonable under the circumstances, and did not fall below professional norms of reasonableness. Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Additionally, this Court finds that Applicant has failed to establish the requisite prejudice required for relief pursuant to Strickland. Therefore, this Court finds that Plea Counsel was not ineffective and that this allegation must be denied and dismissed with prejudice.

*Plea Counsel was ineffective for neglecting to obtain clarification from the presiding judge concerning whether it was his intent that the five (5) year sentence imposed on Indictment No. 2010-GS-45-30 be served consecutively to both sentences imposed on 2009-GS-45-0249 or just consecutively to the twenty (20) year sentence imposed for criminal sexual conduct second degree.*

This Court finds Applicant's allegation that Plea Counsel was ineffective for failing to request the plea judge to clarify whether it was his intent that the five (5) year sentence imposed on Indictment No. 2010-GS-45-30 be served consecutively to both sentences imposed on 2009-GS-45-0249 or just consecutively to the twenty (20) year sentence imposed for criminal sexual conduct second degree is without merit. This Court finds Plea Counsel's testimony credible while Applicant's testimony not credible. Plea Counsel stated that there was never any question that the sentence imposed by the plea judge was to run consecutive to the twenty-five year sentence imposed on 2009-GS-45-0249. This Court finds Counsel's actions were reasonable under the circumstances, and did not fall below professional norms of reasonableness. Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Additionally, this Court finds that Applicant has failed to establish the requisite prejudice required for relief pursuant to Strickland. Therefore, this Court finds that Plea Counsel was not ineffective and that this allegation must be denied and dismissed with prejudice.

*Plea Counsel was ineffective for advising the Applicant to enter a plea of guilty on this charge based on the threat that the State could seek a life without parole sentence against him were he convicted on this indictment at trial by jury without discussing with the Applicant the possibility of arguing that he would be ineligible for life without parole sentence pursuant to S.C. Code Ann. § 17-25-25 where the sexual battery charged in this indictment was alleged to occurred sometime between October 1, 2006 and October 1, 2007 and the Applicant did not turn eighteen (18) years old until July 17, 2007.*

This Court finds Applicant's allegation that Plea Counsel was ineffective for failing to advise Applicant that he could not face life without parole under S.C. Code Ann § 17-25-25 where the sexual battery charged in this indictment was alleged to occurred sometime between October 1, 2006 and October 1, 2007 and the Applicant did not turn eighteen (18) years old until July 17, 2007 is without merit. This Court finds Plea Counsel's testimony credible while Applicant's testimony not credible. Applicant relies on the recent United States Supreme Court decision Graham v. Florida, 560 U.S. 48, 176 L.Ed. 2d 825 (2010) in support of his argument that he could not have been sentenced to life without parole. Plea Counsel stated that Applicant was never noticed for life without parole and he only advised him that he could be sentenced up to twenty years. Furthermore, Graham was decided well after Applicant's guilty plea. See Gilmore v. State, 314 S.C. 453, 445 S.E.2d 454 (1994) (attorney is not required to be clairvoyant or anticipate changes in the law which were not in existence at time of trial), overruled on other grounds by Brightman v. State, 336 S.C. 348, 520 S.E.2d 614 (1999). Furthermore, Applicant was eighteen years old during a portion of the dates alleged in the indictment thereby making Graham inapplicable.

Based on the foregoing this Court finds Plea Counsel was not ineffective for failing to advise Applicant that he could potentially argue a life without parole sentence under S.C. Code Ann. § 17-25-25 would be unconstitutional. As stated above, Plea Counsel cannot be held ineffective for failing to anticipate changes in the law. Additionally, Applicant was never noticed for life without parole and it is pure speculation if he ever would have been. This Court finds Counsel's actions were reasonable under the circumstances, and did not fall below professional norms of reasonableness. Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Additionally, this Court finds that Applicant has failed to establish the requisite

prejudice required for relief pursuant to Strickland. Furthermore, Applicant's allegation that he only pled guilty in order to avoid a life sentence is insufficient to show prejudice. See Wicker v. State, 310 S.C. 8, 12, 425 S.E.2d 25, 27 (1992) (finding pleading guilty to avoid a possibly greater sentence, without more, does not render a guilty plea involuntary). Therefore, this Court finds that Plea Counsel was not ineffective and that this allegation must be denied and dismissed with prejudice.

*Plea Counsel was ineffective for failing to disclose to the Applicant a potential conflict of interest in representing the Applicant where Plea Counsel had represented Joshua Edwards on a number of criminal charges including one count of Criminal Sexual Conduct with a Minor involving Diamond D., the same minor alleged to be the victim on Indictment No. 2010-GS-45-30.*

This Court finds Applicant's allegation that Plea Counsel was ineffective for failing to disclose a potential conflict of interest in representing Applicant where he represented Edwards on one count of Criminal Sexual Conduct with a Minor involving Victim to be without merit. This Court finds Plea Counsel's testimony credible while Applicant's testimony is not credible. This Court notes that the fact that counsel does not advise a defendant of a potential conflict of interest does not affect the constitutionality of a conviction. Jackson v. State, 328 S.C. 345, 354, 495 S.E.2d 768, 773 (1998). Furthermore, the mere possibility of a conflict of interest is insufficient to impugn a criminal conviction. State v. Gregory, 364 S.C. 150, 612 S.E.2d 449 (2005). Additionally, Applicant must show that his counsel actively represented conflicting interest to establish a claim of ineffective assistance of counsel. Duncan v. State, 281 S.C. 435, 315 S.E.2d 809 (1984).

During the PCR hearing, Plea Counsel stated that he has been a public defender for Williamsburg County for the majority of his career. Plea Counsel stated he has represented hundreds of criminal clients during the course of his career. Plea Counsel stated that he

represented Edwards in a prior Criminal Sexual Conduct case involving the same Victim. Plea Counsel stated that he represented Edwards several years prior to his representation of Applicant. Plea Counsel stated that his prior representation of Edwards did not affect his representation of Applicant. Plea Counsel stated he did not feel he owed Edwards any type of duty of loyalty. Plea Counsel concluded that he represented and advised Applicant to the best of his abilities.

This Court finds that Plea Counsel did not have an actual conflict because he represented Edwards several years prior to his representation of Applicant. Plea Counsel testified that no conflict existed and Applicant failed to point to an actual conflict. Nothing in Plea Counsel's representation suggests Plea Counsel's prior representation of Edwards in any way affected his representation of Applicant. To the contrary, Plea Counsel testified –and this Court found credible- that he represented Applicant to the best of his abilities and he owed no duty of loyalty to Edwards. Based on the foregoing, this Court finds Counsel's actions were reasonable under the circumstances, and did not fall below professional norms of reasonableness. Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Additionally, this Court finds that Applicant has failed to establish the requisite prejudice required for relief pursuant to Strickland. Therefore, this Court finds that Plea Counsel was not ineffective and that this allegation must be denied and dismissed with prejudice.

*Plea Counsel was ineffective for failing to disclose to the Applicant a potential conflict of interest in representing the Applicant where Plea Counsel represented the victim in a number of legal matters.*

This Court finds Applicant's allegation that Plea Counsel was ineffective for failing to disclose a potential conflict of interest in representing Applicant where he represented Victim on prior Department of Juvenile Justice matters is without merit. This Court finds Plea Counsel's testimony credible while Applicant's testimony is not credible. This Court notes that the fact

that counsel does not advise a defendant of a potential conflict of interest does not affect the constitutionality of a conviction. Jackson v. State, 328 S.C. 345, 354, 495 S.E.2d 768, 773 (1998). Furthermore, the mere possibility of a conflict of interest is insufficient to impugn a criminal conviction. State v. Gregory, 364 S.C. 150, 612 S.E.2d 449 (2005). Additionally, Applicant must show that his counsel actively represented conflicting interest to establish a claim of ineffective assistance of counsel. Duncan v. State, 281 S.C. 435, 315 S.E.2d 809 (1984).

During the PCR hearing, Plea Counsel stated he represented Victim two or three times for some truancy issues several years prior to his representation of Applicant. Furthermore, Plea Counsel stated Applicant was aware that he had represented Victim on prior occasions. Plea Counsel stated that his prior representation of Victim in no way affected his representation of Applicant. Plea Counsel further stated that his prior representation of Victim may have helped his representation of Applicant. Plea Counsel concluded that his prior representation was not a conflict and he represented Applicant to the best of his abilities.

This Court finds that Plea Counsel did not have an actual conflict because he represented Victim several years prior to his representation of Applicant. Plea Counsel testified that no conflict existed. Nothing in Plea Counsel's representation suggests Plea Counsel's prior representation of Victim negatively impacted his representation of Applicant. To the contrary, Plea Counsel testified –and this Court found credible– that he represented Applicant to the best of his abilities and he owed no duty of loyalty to Victim. Based on the foregoing, this Court finds Counsel's actions were reasonable under the circumstances, and did not fall below professional norms of reasonableness. Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Additionally, this Court finds that Applicant has failed to establish the requisite prejudice

required for relief pursuant to Strickland. Therefore, this Court finds that Plea Counsel was not ineffective and that this allegation must be denied and dismissed with prejudice.

Accordingly, this Court finds Applicant failed to prove the first prong of the Strickland test – that Plea Counsel failed to render reasonably effective assistance of 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 Applicant. This Court also finds Applicant failed to prove the second prong of Strickland – that he was prejudiced by Plea Counsel’s performance. This Court concludes Applicant has not met his burden of proving Plea Counsel failed to render reasonably effective assistance. See Frazier 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, the Court finds 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 the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Plea counsel rendered effective assistance and Applicant’s plea was knowingly and voluntarily entered. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

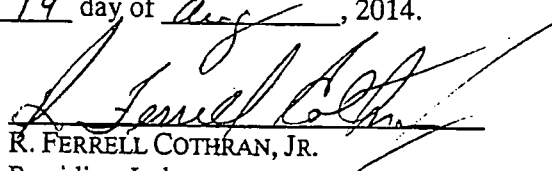
The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel’s receipt of written notice of entry of judgment to secure the appropriate

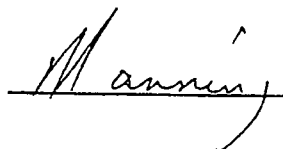
appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRPC, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on 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 19 day of Aug, 2014.

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

, South Carolina

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

KEVIN BRADLEY, #339031

Applicant,

v.

STATE OF SOUTH CAROLINA,

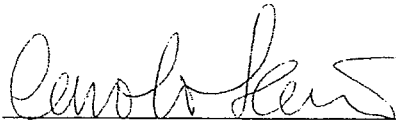
Respondent.

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:

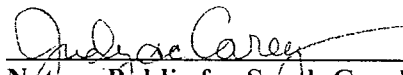
Tara Dawn Shurling, Esquire  
Law Office of Tara Dawn Shurling, PA  
3614 Landmark Drive, Suite A  
Columbia, SC 29204

This 29<sup>th</sup> day of September, 2014.



Caroline Kaiser, Legal Assistant  
For Respondent

SWORN to before me this 29<sup>th</sup> day of September, 2014.

  
Notary Public for South Carolina.  
My Commission Expires: 5/14/2024

RECEIVED

OCT 23 2014

S.C. SUPREME COURT

LAW OFFICE OF



**TARA DAWN SHURLING, PA**

Attorney and Counselor at Law

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

October 20, 2014

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

RE: Kevin C. Bradley, #339031 v. State of South Carolina; 2013-CP-45-098.

Dear Mr. Gourley:

Enclosed please find for your records a copy of the Notice of Appeal that was filed in the above-captioned matter. The family has not decided yet if they will be able to hire me to handle this appeal. I have requested that they make a decision as quickly as possible. I will let you know if they decide to hire someone else or let the Appellate Division of the South Carolina Commission on Indigent Defense handle this appeal. I remain,

Sincerely yours,

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

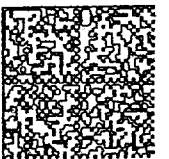
Tara Dawn Shurling  
Attorney and Counselor at Law

TDS/sg

Enclosure

cc: The Honorable Daniel E. Shearouse, Clerk, Supreme Court of South Carolina  
Kevin C. Bradley, #339031  
Carol Bradley

FIRST-CLASS



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REGISTERED MAIL

Law Office of

**TARA DAWN SHURLING, PA**

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COLUMBIA, SOUTH CAROLINA 29204



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