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October 28, 2014

**RECEIVED**

OCT 30 2014

**S.C. SUPREME COURT**

South Carolina Supreme Court  
PO Box 11330  
Columbia, SC 29211

RE: Gary L. Grant, 280988 v State of South Carolina  
2012-CP-08-2271

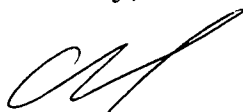
Dear Sir or Madam:

Enclosed herewith you will find the **Notice of Appeal, Order of Dismissal**, along with a **Proof of Service** in reference to the above named Applicant.

If you have any questions or concerns, please contact my office at the number stated above.

With kind regards, I am

Sincerely,



Charles T. Brooks, III  
CTB/srw

Enclosed as stated

cc: Ashleigh R. Wilson, Office of Attorney's General  
South Carolina Office of Appellate Defense  
Gary L. Grant, 280988

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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APPEAL FROM BERKELEY COUNTY  
Court of Common Pleas  
Honorable Stephanie P. McDonald, Circuit Court Judge

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Case No: 2012-CP-08-2271

Gary L. Grant.....Appellant  
S.C.D.C. 280988  
v.  
The State.....Respondent

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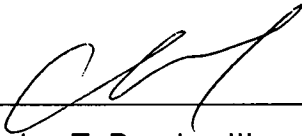
NOTICE OF APPEAL

Gary L. Grant, appeals his Denial for Post Conviction Relief in this case. The order of Dismissal was imposed and signed by the Honorable Stephanie P. McDonald, October 27, 2014, which I, Charles T. Brooks, III, received on October 28, 2014.

**RECEIVED**

OCT 30 2014

**S.C. SUPREME COURT**



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(803) 418-5708  
Attorney for Appellant

Other Counsel on Record:  
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THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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APPEAL FROM BERKELEY COUNTY  
Court of Common Pleas  
Honorable Stephanie P. McDonald, Circuit Court Judge

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Case No: 2012-CP-08-2271

Gary L. Grant.....Appellant  
S.C.D.C. 280988  
v.  
The State.....Respondent

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**PROOF OF SERVICE**

I, the undersigned, do hereby certify that on this 29<sup>th</sup> day of October, 2014, I served the foregoing **Notice of Appeal, Order of Dismissal**, as well as **Proof of Service** in this matter by depositing a true copy of it in the United States Mail, postage prepaid, on October 29, 2014, addressed to the following as indicated below:

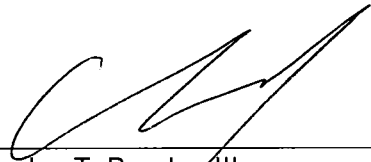
South Carolina Supreme Court  
Post Office Box 11330  
Columbia, South Carolina 29211

South Carolina Office of Appellate Defense  
1330 Lady Street, Suite 401  
PO Box 11589  
Columbia, SC 29211-1589

Office of Attorney's General  
Attn: Ashleigh R. Wilson, Esquire  
Post Office Box 11549  
Columbia, South Carolina 29211-1549

Mr. Gary Grant, 280988  
Perry Correctional Institution/Bx. 14  
430 Oaklawn Road  
Pelzer, SC 29669

Dated: October 29, 2014



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Charles T. Brooks, III  
Attorney for the Appellant  
309 Broad Street  
Sumter, South Carolina 29150  
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STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF BERKELEY )  
 )  
Gary L. Grant, #280988, )  
 )  
Applicant, )  
 )  
v. )  
 )  
State of South Carolina, )  
 )  
Respondent. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
2012-CP-08-2271

**ORDER OF DISMISSAL**

Presiding Judge:	The Honorable Stephanie P. McDonald
Applicant's Attorney:	Charles T. Brooks, III, Esquire
Respondent's Attorney:	Ashleigh R. Wilson, Esquire
Trial Counsel:	Michael T. Bolus, Esquire
Date of Hearing:	November 18, 2013
Court Reporter:	Sharon L. Vizer

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed August 6, 2012. The Respondent made its Return on February 21, 2013, and its Amended Return on November 18, 2013. An evidentiary hearing on the matter was convened on November 18, 2014, at the Charleston County Courthouse. The Applicant was present at the hearing and represented by Charles T. Brooks, III, Esquire. Ashleigh R. Wilson, Esquire, of the South Carolina Office of the Attorney General represented the Respondent.

Also present and testifying was Michael T. Bolus, Esquire. The Court had before it the trial transcript, the Berkeley County Clerk of Court records, the Applicant's records from the South Carolina Department of Corrections, the Applicant's application, the Respondent's return, and the Applicant's appellate records.<sup>1</sup>

<sup>1</sup> At the evidentiary hearing, the Applicant submitted what appeared to be a *pro se* amended application for post-conviction relief in the form of an exhibit. While the first page of the amendment was signed by counsel, it is clear

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## PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Berkeley County Clerk of Court. The Applicant was indicted at the February 2007 term of the Berkeley County Grand Jury for armed robbery (2007-GS-08-0314), murder (2007-GS-08-0319), two counts of burglary - first degree (2007-GS-08-0343, -0347), and four counts of kidnapping (2007-GS-08-0315, -0316, -0317, -0318). He was represented by Michael T. Bolus, Esquire.

The Applicant proceeded to trial and was found guilty as indicted. On August 20, 2007, the Applicant was sentenced by the Honorable Deadra L. Jefferson to confinement for life for murder and thirty (30) years for all remaining charges. The sentences are to be served concurrently.

A Notice of Appeal was filed on Applicant's behalf at the South Carolina Court of Appeals. Robert Dudek, Esquire, of the South Carolina Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals vacated the Applicant's kidnapping conviction for victim Dexter Perry because the Applicant received a concurrent murder sentence for the same victim<sup>2</sup>. State v. Grant, 2012-UP-406 (S.C. Ct. App. July 11, 2012). The Remittitur was issued on July 27, 2012.

## ALLEGATIONS

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

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from the remaining pages of the document that the document was drafted and signed by the Applicant and not counsel for the Applicant. There is no Sixth Amendment right to hybrid representation. State v. Stuckey, 333 S.C. 56, 57, 508 S.E.2d 564 (1998). The South Carolina Supreme Court has stated that Counsel cannot serve as a mere conduit for *pro se* documents in an effort to avoid the prohibition against hybrid representation, but must use his professional judgment in reviewing the documents and shall only submit those arguments that are relevant and have been edited by counsel. Jones v. State, 348 S.C. 13, 14, 558 S.E.2d 517, 517 (2002).

<sup>2</sup> The Applicant's kidnapping sentence was vacated pursuant to S.C. Code §16-3-910.

1. Ineffective assistance of counsel.
  - a. "Applicant has never been induced into studying legal law until recently as a result of legal events."
2. Due process violation.
  - a. "Violations of Applicant's 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, and 14<sup>th</sup> amendment rights."

At the hearing, Applicant proceeded solely on the following claims:

1. Ineffective assistance of counsel.
  - a. Counsel failed to make a motion regarding a last minute witness.
  - b. Counsel failed to call an EMS worker as a witness at trial.
2. Brady violation.

The Court finds that Applicant failed to present any evidence or testimony with regard to any other allegations raised by the Applicant in his application for post-conviction relief. The Court finds that all other allegations not addressed in this Order are deemed abandoned by the Applicant.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. The Court has further had the opportunity to observe each witness who testified at the hearing, to closely pass upon their credibility, and to weigh the testimony accordingly. Set forth below are the relevant findings of fact and conclusion of law as required by S.C. Code Ann. Sec. 17-27-80 (2003).

#### **Summary of the Testimony**

The Applicant was present and testified that Attorney Bolus was appointed to represent him. The Applicant testified that he saw his attorney twice prior to trial. He testified that he wrote letters to his attorney and that they spoke by phone a few times. The Applicant testified that he reviewed discovery with his attorney and was told about the statements made against him. He testified that he never received a copy of his Rule 5 materials and that he did not see his

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evidence until trial. He testified that his attorney should have objected to certain photographs that the State was late in producing.

The Applicant had a joint trial with his two co-defendants, and he discussed a letter written by one of his co-defendants with counsel. He testified that his attorney should have objected to his co-defendant's testimony at trial. The Applicant testified that his attorney also should have called an emergency medical person as a witness at his trial.

Michael T. Bolus, Esquire, was present and testified that he was appointed to represent the Applicant less than a year prior to the Applicant's trial. He testified that he has been practicing law for thirty-seven years. Counsel testified that he met with the Applicant ten or eleven times prior to trial. He testified that at least five of the times he met with the Applicant were in the two weeks prior to the Applicant's trial.

Counsel testified that he received most of the evidence against the Applicant prior to the Applicant's preliminary hearing. He testified that he learned all of the State's evidence against the Applicant at the preliminary hearing. Counsel testified that he discussed with the Applicant the elements of the charges against him and what the State was required to prove. Counsel testified that the Applicant's case was a typical "hand of one, hand of all case". Counsel testified that Applicant's defense was that the shootout was not started by the Applicant's co-defendants.

Counsel filed Brady and Rule 5 motions on the Applicant's behalf. He testified that there was not much to review in the Applicant's discovery materials and that he sent a copy of the materials to the Applicant. Counsel testified that he is aware of Brady and the case law regarding discovery. He testified that Applicant's case did not involve complex issues and he received everything he needed from the solicitor prior to trial.

Counsel testified that he did not object to the photos presented by the State at trial that were not included in the Applicant's Rule 5 materials. He testified that he did not object to the photos at trial because they were insignificant photos of the crime scenes. There were no Brady violations in the Applicant's case, and he saw no basis to object to the photos. Counsel also testified that none of the evidence exculpated the Applicant and he had all he needed from the State with the exception of an inconclusive ballistics report that they received before trial.

Counsel testified that Applicant did not provide any witnesses or potential leads to investigate. He testified that Applicant told him the victim died of pneumonia, so he requested a copy of the victim's complete coroner's report. Counsel testified that evidence against the Applicant included two eyewitnesses who saw the kidnapping, an eyewitness who saw the Applicant at the second crime scene, and other evidence that showed that the Applicant was the shooter. Counsel testified that Applicant was also identified in a photo line-up. Counsel testified he did not recall how the Applicant was developed as a suspect and that he did not know how to find out the identity of an anonymous tipster.

Counsel testified that Applicant never wanted to plead guilty, so he did not spend a lot of time trying to negotiate with the State. Counsel testified that he had ample time to prepare for trial.

#### **Ineffective Assistance of Counsel**

The Applicant alleges that he received ineffective assistance of counsel. In a PCR action, "the burden of proof is on the applicant to prove his allegation by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For the 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 (1984), Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. 115, 117-118, 386 S.E.2d 624, 625 (1989). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) citing Strickland v. Washington, 466 U.S. 668.

As an initial matter, the Court finds that Applicant's testimony at the evidentiary hearing was not credible. The Court further finds that trial counsel's testimony at the evidentiary hearing was credible. Counsel has extensive experience in the practice of criminal law and has been practicing law for the last thirty-seven (37) years. Counsel met with the Applicant numerous times prior to trial and fully investigated the Applicant's case. He filed Brady and Rule 5 motions on the Applicant's behalf and reviewed the received discovery with the Applicant. Counsel discussed with the Applicant the elements of the charges he was facing and what the State was required to prove, as well as the Applicant's version of the facts and possible defenses.

With respect to Applicant's claims of ineffective assistance of counsel, the Court finds the Applicant has failed to meet his burden of proof. Applicant's attorney demonstrated the normal degree of skill, knowledge, and professional judgment expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, 466 U.S. at 668; Butler, 286 S.C. 441, 334 S.E.2d 813. Counsel adequately conferred with the Applicant, conducted a proper investigation, and provided thorough representation. His representation did not fall below an objective standard of reasonableness.

The Applicant alleges that counsel was ineffective in failing to object to a last-minute witness presented by the State. The Court finds this allegation to be without merit. Applicant provided no evidence or testimony in support of this claim and failed to provide the name of the witness that he alleges the State called at the last minute. After reviewing the record, this Court finds that counsel adequately cross-examined the State's witnesses at trial. Thus, Applicant has failed to carry his burden of proving that counsel should have objected to a last-minute witness presented by the State at trial.

The Applicant also alleges that counsel was ineffective in failing to call an emergency service worker (EMS) as a witness at trial. The Court finds that this allegation is without merit. The South Carolina Supreme Court has repeatedly held that a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial. Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998). The applicant's mere speculation regarding what the witnesses' testimony might have been cannot, by itself, satisfy the applicant's burden of showing prejudice. Id. (citing Glover v. State, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995)). The Court finds that Applicant has failed to provide the identity of the EMS worker whom he alleges counsel should have called as a witness. The Court also finds that Applicant has failed to present the testimony of this proposed witness, and the Court will not speculate as to the substance of the witness' testimony or any effect that it might have had on the outcome of the Applicant's proceeding. Applicant has failed to carry his burden of proving that counsel was ineffective in failing to call an EMS worker as a witness at trial.

Accordingly, this Court finds that Applicant failed to prove the first prong of the Strickland test - that trial counsel failed to render reasonably effective assistance under

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prevailing professional norms. The Applicant failed to present specific and compelling evidence that trial counsel committed either errors or omissions in his representation of the Applicant. This Court also finds that Applicant has failed to satisfy the second prong of Strickland - proving that he was prejudiced by trial counsel's performance. Thus, Applicant has not met his burden of proving that counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

### **Brady Violation**

The Applicant next alleges that the State violated Brady<sup>3</sup> by failing to timely disclose photos admitted into evidence during trial. Brady requires the State to disclose evidence in its possession favorable to the accused and material to guilt or punishment. Clark v. State, 315 S.C.385, 388, 434 S.E.2d 266, 268 (1993). A Brady claim is based upon the requirements of due process. Such a claim is complete if the accused can demonstrate (1) the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment. Gibson v. State, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999). Impeachment or exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. Clark, 315 S.C. at 388, 434 S.E.2d at 268 (citing U.S. v. Bagley, 473 U.S. 667 (1985)).

The Court finds that Applicant has failed to carry his burden of proving the existence of a Brady violation in this matter. As the State satisfied its continuing duty to disclose, this allegation is without merit. Applicant failed to carry his burden of proving that the late-produced

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<sup>3</sup> Brady v. Maryland, 373 U.S. 83 (1963).

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photos presented by the State of the crime scene were favorable to his defense, or, indeed, that he was in any way prejudiced by their disclosure just prior to trial.

Counsel provided credible testimony that the photos presented by the State during trial were not material to the case and that he could not identify any Brady violation by the State, with respect to the photos or otherwise. The Court finds that counsel provided credible testimony that he had no basis to object to the admission of the crime scene photos by the State during trial and that no Brady violation existed with regard to the Applicant's trial proceeding. Thus, any failure of counsel to object to the admission of the crime scene photos by the State did not result in ineffective assistance of counsel.

**All Other Allegations**

As to any and all other allegations that may have been raised in the application in this matter and not specifically addressed in this Order, the Court finds that Applicant failed to present any evidence or testimony regarding such allegations. Accordingly, the Court finds that Applicant abandoned those allegations. Therefore, they are hereby dismissed.

**CONCLUSION**

Based on the forgoing, the Court finds and concludes that Applicant has not established that any constitutional violation or deprivation occurred before or during his trial and sentencing proceedings. Counsel was not deficient, and Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

The 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

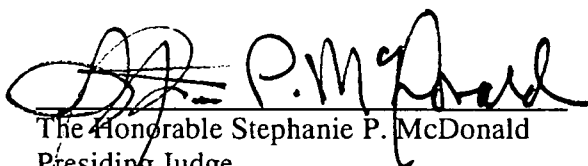
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attention is directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

**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 21<sup>st</sup> day of October, 20 14

  
The Honorable Stephanie P. McDonald  
Presiding Judge  
9th Judicial Circuit

Charleston, South Carolina.

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