

FILED  
BAMBERG COUNTY

STATE OF SOUTH CAROLINA  
COUNTY OF BAMBERG

) 2014 JUN 15 10:37 AM  
) IN THE COURT OF COMMON PLEAS  
) FOR THE SECOND JUDICIAL CIRCUIT  
) JAMES B. HIERS  
) CLERK OF COURT  
) 2012 PCP-05-0059  
) BAMBERG, SC

Thomas Pierce, #345698,

Applicant,

v.

State of South Carolina,

Respondent.

**ORDER OF DISMISSAL**

This matter is before this Court by way of an application for post-conviction relief (PCR) filed March 20, 2012. The State made its return on June 14, 2012. A hearing on the matter was convened at the Aiken County Courthouse. Applicant was present and represented by W.D. Rhoad, IV, Esquire. The State was represented by David Spencer of the South Carolina Office of the Attorney General.

This Court heard testimony from Applicant and his plea counsel, Nicholas R. McCarley. This Court also had before it the pleadings of both parties, the transcript of Applicant's guilty plea proceeding, the Clerk of Court's records regarding the subject convictions, and Applicant's records from the South Carolina Department of Corrections.

**PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Bamberg County Clerk of Court. Applicant was indicted during the June 2011 term of the Bamberg County Grand Jury for Criminal Sexual Conduct With A Minor In The First Degree (2011-GS-05-00048). As previously mentioned, Applicant was

represented by Nicholas R. McCarley, Esquire. On April 13, 2011, Applicant pled guilty as indicted. Applicant was sentenced by the Honorable Doyet A. Early, III, to thirty-five years imprisonment. Applicant did not appeal his conviction and sentence.

### ALLEGATIONS

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

1. Ineffective assistance of counsel  
-“My Guilty Plea attorney failed to discuss or explain the nature and crucial elements of the offense of sex/criminal sexual conduct with minor- victim under 11 years of age- first Degree, prior to or during my trial.”
2. Due process violation  
-“I contend that I was denied Due Process and Equal Protection of Law under the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution as well as Article I Section 3, of the South Carolina Constitution, through and by way of Ineffective Assistance of Counsel. Guilty plea attorney failed to file a motion for direct appeal, against his client’s wishes or request”

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1985).

#### Ineffective Assistance of Counsel and Involuntary Plea

Applicant alleges ineffective assistance of counsel rendered his plea was involuntary.

The burden of proof is on the applicant in a PCR proceeding to prove the allegations in his application. Bell v. State, 321 S.C. 238, 467 S.E.2d 926 (1996); Rule 71.1(e), SCRPC.

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1996). In order to prove prejudice, an applicant must show that but for counsel's errors, there is a reasonable probability the result at trial would have been different. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Id. Where trial counsel articulates a valid reason for employing certain trial strategy, such conduct should not be deemed ineffective assistance of counsel. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1995); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985); Stalk v. State, 383 S.C. 559, 681 S.E.2d 592 (2009); Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001).

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

Applicant stated at his guilty plea, "I done the crime, I might as well pay for it." Tr. p. 15. Additionally, he stated at the PCR hearing that he was guilty of his crime. Applicant testified that he does not want a new trial. Applicant wants his sentence lowered. This Court cannot grant such relief. After the court which sentenced the Applicant ends its term of General Sessions, neither this Court nor the sentencing court may grant a change in the Applicant's sentence. State v. Best, 257 S.C. 361, 186 S.E.2d 272 (1972). If this Court finds a defect in the original trial/plea proceedings, the only relief available to the Applicant would be a new trial on the original indictments. Gilstrap v. State, 252 S.C. 625, 168 S.E.2d 88 (1969).

Applicant complains that the plea agreement was for a recommendation of twenty-five years and the plea court gave him thirty-five years imprisonment. However, Applicant was made aware at the plea that the plea court did not have to follow the solicitor's recommendation. Tr. pp. 8-9.

Applicant alleges counsel should have filed an appeal from the guilty plea. He claims that he told counsel he wanted to discuss appealing the sentence when counsel approached him at the county jail after the plea, but shortly before being transported to corrections. Counsel testified that Applicant never spoke to him about appealing from the guilty plea hearing. This Court finds Counsel's testimony to be more credible and denies the allegation that Applicant did not freely and voluntarily waive his right to appeal.

Applicant alleges counsel should have emphasized facts reflecting his character, including the nature of his security clearance for civilian work with the military. This Court finds counsel make an excellent presentation concerning Applicant's background and his presentation did not fall below professional norms. Further, this Court does not believe that a

different presentation would have altered the outcome of the sentencing proceeding. Accordingly, any claims relevant to the sentencing proceeding are denied.

This Court finds it must deny this application with prejudice.

### CONCLUSION

Based on the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this Application for Post-Conviction Relief must be denied and dismissed with prejudice.

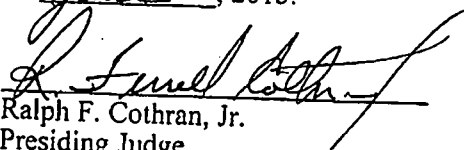
This Court advises the parties that in order to secure the appropriate appellate review, notice of appeal must be served and filed within thirty (30) days after receipt by counsel of notice of entry of this order. See Rules 203 and 243 of the South Carolina Appellate Court Rules. This Court notes that post-conviction relief counsel must advise an applicant of the right to seek appellate review of a post-conviction relief order. State v. Bray, 366 S.C. 137, 620 S.E.2d 743 (2005). Also, pursuant to Austin v. State, 305 S.C. 453, 409 S.E. 2d 395 (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), SCRCR, 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.


### 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 24 day of June, 201<sup>4</sup>8.

  
Ralph F. Cothran, Jr.  
Presiding Judge  
Second Judicial Circuit

 South Carolina

Thomas Pierce #345698 ALU-155  
McLormick, S.C. 29899  
386 Redemption WAY

Honorable Kenneth Richstad, Clerk  
South Carolina Court of Appeals  
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