



# SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense  
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Columbia, South Carolina 29211-1589  
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Robert M. Dudek, Chief Appellate Defender  
Wanda H. Carter, Deputy Chief Appellate Defender

March 5, 2012

RECEIVED

MAR 5 2012

S.C. Supreme Court

Ms. April P. Herron  
Circuit Court Reporter  
P O Box 17675  
Greenville, SC 29606

Dear Ms. Herron:

Please provide us with the following transcript:

Ronnie Middleton v. State of South Carolina      Case #:      10-CP-23-01754

County: Greenville      Date of Trial: November 8, 2011

Presiding Judge: Edward W. Miller

To ensure prompt payment, please sign and complete the enclosed CID FORM 3500 and include the original criminal case number (Indictment number) where the space is provided.

Please number the lines on the paper from 1-25, and include any and all recorded motions, pre and post-trial. Additionally, please transcribe the jury selection, and the State and defense counsel's opening and closing arguments.

If you are aware of any co-defendants or if the Attorney General's Office has already requested a transcript, please let us know.

Sincerely,

Sharon A. Graham  
Administrative Coordinator

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

PCR

# Law Office of Lawrence W. Crane

101 WHITSETT STREET  
GREENVILLE, SOUTH CAROLINA 29601

LAWRENCE W. CRANE, ESQ.  
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CAROLINE M. HORLBECK, ESQ.

TELEPHONE (864) 235-2900  
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January 28, 2012

**Via Regular Mail**

Mr. Daniel E. Shearouse  
Clerk, The S.C. Supreme Court  
Post Office Box 11330  
Columbia, South Carolina 29211

**Re:** RONNIE MIDDLETON v. State

Dear Mr. Shearouse:

Enclosed you will find the original Notice of Appeal in the above matter along with Proof of Service upon the Respondents. The Notice has been filed with the Greenville County Clerk of Court.

These matters are being referred to the Office of Appellate Defense in that we were participating as Court appointed counsel at trial.

Thank you for your attention to this matter.

**RECEIVED** Yours very truly,

JAN 31 2012

**S.C. SUPREME COURT** Caroline Horlbeck  
Caroline M. Horlbeck, Esq.

Enclosure

cc: Office of the Attorney General  
Office of Appellate Defense

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas  
THE HONORABLE EDWARD W. MILLER

CA No. 2010-CP-23-1754

RONNIE MIDDLETON,

APPELLANT,

vs.

STATE OF SOUTH CAROLINA

RESPONDENT.

FILED-CLERK OF COURT  
GREENVILLE CO. S.C.  
PAUL B. WICKENSIMER  
2012 JAN 18 P 2:08

NOTICE OF APPEAL

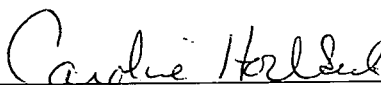
Appellant RONNIE MIDDLETON, appeals from the Order of the Honorable Edward W. Miller, Circuit Court Judge clocked December 29, 2011.

Respectfully submitted,

**RECEIVED**

JAN 31 2012

**S.C. SUPREME COURT**



Caroline M. Horlbeck, Esq.  
101 Whitsett St  
Greenville, SC 29601

Date: January 9, 2012

Other Counsel of Record: Karen Ratigan, Esq.  
Assistant Attorney General  
Post Office Box 11549  
Columbia, SC 29211

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

IN THE SUPREME COURT

Ronnie Middleton, )  
 )  
Appellant, )

C.A. No. 2010-CP-23-1754

-vs- )

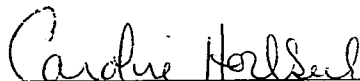
CERTIFICATE OF SERVICE

State of South Carolina, )  
 )  
Respondent. )

This is to certify that I am an employee in the law office of Lawrence W. Crane, attorneys for Applicant, and that I have this day caused to be served upon the person(s) named below Applicant's Notice of Appeal by placing copies of same in the United States mail, with adequate postage thereon, addressed as follows:

Ms. Lorie French  
S.C. Office of Appellate Defense  
1205 Pendleton St., Suite 306  
Columbia, SC 29201

Karen Ratigan, Esq.  
Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211

  
\_\_\_\_\_  
Caroline M. Horlbeck

Greenville, South Carolina

January 28, 2012

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

JUDGMENT IN A CIVIL CASE  
CASE NO: 2010CP2301754

RECORDED  
INDEXED  
NOV 29 PM 12:17

Ronnie Middleton vs. South Carolina State Of

CHECK ONE:

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a).  
SCRPC (Vol. Nonsuit):  Rule 43(k), SCRPC (Settled);  Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j) SCRPC;  Bankruptcy:  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  
 Other: \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  
 Other: \_\_\_\_\_

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

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

Dated at Greenville, South Carolina, this 29th day of December, 2011.

Court Reporter:

\_\_\_\_\_  
PRESIDING JUDGE - Edward W Miller

This judgment was entered on the 29th day of December, 2011, and a copy mailed first class this 29th day of December, 2011, to attorneys of record or to parties (when appearing pro se) as follows:

✓ Caroline M.W. Horlbeck Law Offices Of Lawrence  
W. Crane 101 Whitsett Street Greenville, SC 29601

ATTORNEY(S) FOR THE PLAINTIFF(S)

Karen Christine Ratigan Attorney Generals Office  
Po Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE DEFENDANT(S)

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

Voucher ID 133  
M-2010-02538

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )  
 )  
Ronnie Middleton, )  
S.C.D.C. No. 118225, )  
 )  
Applicant, )  
 )  
v. )  
 )  
State of South Carolina, )  
 )  
Respondent. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
C.A. No. 2010-CP-23-1754

**ORDER OF DISMISSAL**

FILED  
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This matter comes before the Court by way of an application for post-conviction relief (PCR) filed March 4, 2010. The Respondent made its return on August 20, 2010. An evidentiary hearing into the matter was convened on November 8, 2011 at the Greenville County Courthouse. The Applicant was present at the hearing and represented by Caroline Horlbeck, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's trial counsel, C. Timothy Sullivan, Esquire. The Court had before it the trial transcript, the records of the Greenville County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the Respondent's return, and the appellate records.

**PROCEDURAL HISTORY**

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted at the February 2006 term of the Greenville County Grand Jury for kidnapping

(2006-GS-23-1045), assault and battery with intent to kill (2006-GS-23-1046), resisting arrest with a deadly weapon (2006-GS-23-1047), possession of a weapon during commission of a violent crime (2006-GS-23-1048), and first-degree burglary (2006-GS-23-1049). He was represented by C. Timothy Sullivan, Esquire.

After the State called the case to trial, the Applicant was found not guilty of first-degree burglary and guilty of kidnapping, assault and battery of a high and aggravated nature (ABHAN), resisting arrest with a deadly weapon, and possession of a weapon during commission of a violent crime. On June 13, 2007, the Honorable G. Edward Welmaker sentenced the Applicant to concurrent terms of life imprisonment without parole for kidnapping, ten (10) years for ABHAN, ten (10) years for resisting arrest with a deadly weapon, and five (5) years for possession of a weapon during commission of a violent crime.

A notice of appeal was filed at the South Carolina Court of Appeals. Robert M. Dudek, Esquire of the South Carolina Office of Appellate Defense perfected the appeal in the form of an Anders<sup>1</sup> brief. The Court of Appeals dismissed the appeal. State v. Middleton, Op. No. 2010-UP-113 (S.C. Ct. App. filed February 8, 2010).

### ALLEGATIONS

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

1. Ineffective assistance of counsel:
  - a. Failure to properly advise.
  - b. Failure to properly investigate.
  - c. Failure to assert possible defense.

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<sup>1</sup> Anders v. California, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967).

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

### Ineffective Assistance of Counsel

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

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel’s ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show “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, 117-18, 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, 104 S. Ct. 2052).

The Applicant admitted he discussed the State’s evidence with trial counsel and relayed his version of the events. The Applicant admitted he ran from police, returned to the victim’s

house, and put his arm around her neck. The Applicant stated the police testified he had a knife to the victim's throat and that, while the victim had a cut on her throat, he did not know how that happened. The Applicant stated his actions that day were directed towards the police, not the victim. The Applicant stated he did not kidnap the victim, he was using her as a human shield. The Applicant stated trial counsel never explained the elements of kidnapping. The Applicant stated trial counsel failed to investigate the victim (to ascertain whether she had been pressured into testifying) or challenge that the victim did not say she was scared in her statement but later testified that she was scared. The Applicant stated trial counsel failed to challenge whether the police officer had probable cause to have picked him up in one place and taken him back to the victim's house.

Trial counsel testified he filed discovery motions, reviewed the discovery materials with the Applicant, and gave him a copy of those materials. Trial counsel testified the Applicant also told him his version of what happened that day. Trial counsel testified he would not have given a legal definition of kidnapping to the Applicant but would have explained that restraining her against her will was kidnapping. Trial counsel testified the facts were clear, so the key question was intent. Trial counsel testified the trial strategy was to argue the police overreacted to the situation. Trial counsel testified he argued to the jury that the Applicant did not kidnap the victim, but used her as a shield. Trial counsel testified he argued at trial that it was unclear how the victim was cut because the Applicant fell after he was tased. Trial counsel testified he did not recall whether the Applicant asked him to investigate the victim. Trial counsel testified there was no basis to challenge that the police had picked up the Applicant because he was in investigative detention.

This Court finds the Applicant's testimony is not credible, while also finding trial

counsel's testimony is credible. This Court further finds trial counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his representation.

This Court finds the Applicant failed to meet his burden of proving trial counsel did not adequately prepare or present his case. Trial counsel testified he reviewed the discovery materials with the Applicant, as well as his version of what happened that day. Trial counsel also testified he explained the legal concept of kidnapping to the Applicant. This Court finds trial counsel's testimony is credible. Trial counsel testified that, based upon his review of the facts, he determined the best trial strategy was to argue the police over-responded, the Applicant had no intent to harm or kidnap the victim, and the Applicant did not cut the victim. This Court finds this was a reasonable trial strategy under the circumstances. This Court notes trial counsel argued all of these points during his closing argument. (Trial transcript, pp.187-96). Regardless of trial counsel's arguments on behalf of the Applicant, it is clear the jury simply did not accept the Applicant's version of events. See Craven v. Cunningham, 292 S.C. 441, 443, 357 S.E.2d 23, 25 (1987) ("The credibility of witnesses is for the triers of fact."); see also Bruno v. State, 347 S.C. 446, 556 S.E.2d 393 (2001) (noting that, by its verdict, the jury clearly rejected the defendant's account of what transpired).

This Court finds the Applicant failed to meet his burden of proving trial counsel should have investigated the victim in this case. The Applicant, however, has failed to present any evidence of what information trial counsel would have found if he had performed such an investigate. Therefore, it is speculative to argue that an investigation of the victim would have changed the outcome of the trial. See Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998) (finding the failure to conduct an independent investigation does not constitute ineffective

assistance of counsel when the allegation is supported only by mere speculation as to the result); Davis v. State, 326 S.C. 283, 486 S.E.2d 747 (1997) (denying relief where applicant failed to present witnesses or specific testimony establishing he would have had a defense with additional time to prepare for trial).

This Court finds the Applicant failed to meet his burden of proving trial counsel should have argued the police lacked probable cause to bring him back to the victim's house. Trial counsel testified there was no basis to have challenged the Applicant's investigative detention. This Court agrees. The victim called the police after the Applicant broke her window and entered her home with a knife. (Trial transcript, pp.53-57). The police arrived after the Applicant left the home (though he had stated he would be back). (Trial transcript, pp.56-57). The Applicant called the victim twice after he left – and spoke to both the victim and the officer – and the officer picked him up and brought him back to the victim's house. (Trial transcript, pp.57-58; pp.87-89). The officer testified he that when he picked up the Applicant, he conducted a Terry frisk, “placed him in the rear of [his] patrol vehicle in investigative detention,” and returned to the victim's house. (Trial transcript, pp.92-94). This Court finds the Applicant has failed to articulate a cognizable ground for trial counsel to have challenged the lawfulness of the Applicant's investigative detention.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that trial counsel failed to render reasonably effective assistance under 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 the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by trial counsel's performance. This Court concludes the Applicant has not met

his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

#### **All Other Allegations**

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

#### **CONCLUSION**

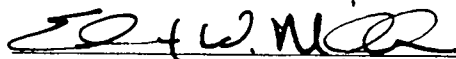
Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient and the Applicant was not prejudiced by counsel's representation. Therefore, this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

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

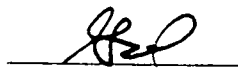
**IT IS THEREFORE ORDERED:**

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

**AND IT IS SO ORDERED** this 21 day of December, 2011.



Edward W. Miller  
Presiding Judge  
Thirteenth Judicial Circuit

, South Carolina.

Lawrence W. Crane

*Attorney At Law*

101 WHITSETT STREET  
GREENVILLE, SOUTH CAROLINA 29601

*Ronnie  
Middleton*

Via Regular Mail

Mr. Daniel E. Shearouse  
Clerk, The S.C. Supreme Court  
Post Office Box 11330  
Columbia, South Carolina 29211

