

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

RECORDED

2014 APR -8 PM 2:12

CASE NO.: 2013-CP-43-218

LESLIE HUNT, JR., #316022

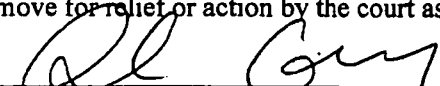
vs.

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

STATE OF SOUTH CAROLINA

Defendant.

Plaintiff's Attorney: Fulton Casey Dale Cornwell, Bar No. _____ Address: PO Box 50143 Columbia, SC 29250 Phone: _____ Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: Daniel Gourley, Bar No. _____ Address: PO Box 11549 Columbia, SC 29211 Phone: _____ Fax _____ E-mail: _____ Other: _____
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input checked="" type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input checked="" type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: _____ Estimated Time Needed: _____ Court Reporter Needed: <input type="checkbox"/> YES / <input checked="" type="checkbox"/> NO	
SECTION II: Motion/Order Type	
<input type="checkbox"/> Written motion attached <input checked="" type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
 Signature of Attorney for <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant	
March 27, 2014 Date submitted	
SECTION III: Motion Fee	
<input type="checkbox"/> PAID - AMOUNT: \$ _____ <input type="checkbox"/> EXEMPT: (check reason)	
<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input checked="" type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRCF) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ <input type="checkbox"/> Other: _____	
JUDGE'S SECTION <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE CODE _____ Date: _____
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____ <input type="checkbox"/> MOTION FEE COLLECTED: \$ _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: \$ _____	

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)

RECORDED
2014 APR -8 PM 2:10

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Leslie Hunt, Jr., #316022,

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

Case No. 2013-CP-43-218

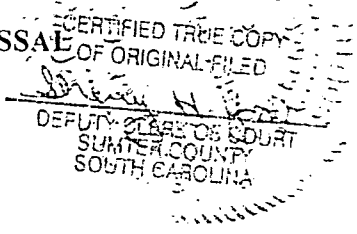
Applicant,

v.

State of South Carolina,

Respondent.

ORDER OF DISMISSAL



This matter comes before the Court by way of a post-conviction relief (PCR) application filed on February 8, 2013. Respondent made its return on January 24, 2014. An evidentiary hearing into the matter was convened on February 28, 2014, at the Sumter County Courthouse. Applicant was present at the hearing and was represented by Casey Cornwell, 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 Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. Applicant was indicted at the 2010 term of the Sumter County Grand Jury for two counts of Burglary-Second Degree, Non-Violent (2010-GS-43-1063). Applicant was then true bill indicted at the January 2012 term of the Sumter County Grand Jury for four counts Burglary-Second Degree, non-violent (2012-GS-43-172; -0183; -0184; -0187) and two counts of Burglary-Second Degree (non-violent) (2012-GS-43-0203; -0208). Applicant was true bill indicted at the February 2012 term for three counts Burglary-Second Degree (non-violent) and

two counts of Criminal Conspiracy (2012-GS-43-0288). Applicant waived presentment to the February 2012 term of the Sumter County Grand Jury for Larceny/ Breaking into Motor Vehicle (2012-GS-43-0354; -0355; -0356; -0357; -0359), Indecent Exposure (2012-GS-43-0370), and Grand Larceny (2012-GS-43-358). Susan Elaine Cook, Esquire, represented Applicant. On May 13-15, 2012 Applicant pled guilty as indicted. The Honorable R. Ferrell Cothran, Jr., sentenced Applicant to the following structure:

Indecent Exposure (2012-GS-43-0370)	2 years, concurrent;
Burglary (violent) (2012-GS-43-0183)	10 years, concurrent;
Burglary (non-violent) (2010-GS-43-1063)	9 years, concurrent;
Burglary (violent) (2012-GS-43-1072)	12 years, concurrent;
Burglary (non-violent) (2012-GS-43-0203)	9 years, concurrent;
Burglary (violent) (2012-GS-43-0184).	10 years, concurrent;
Burglary (violent) (2012-GS-43-0187)	10 years, concurrent;
Burglary (violent) (2012-GS-43-0208)	10 years, concurrent;
Larceny/Breaking into motor (2012-GS-43-0354)	4 years, concurrent;
Larceny/Breaking into motor (2012-GS-43-0355)	4 years, concurrent;
Larceny/Breaking into motor (2012-GS-43-0357)	4 years, concurrent;
Larceny/Breaking into motor (2012-GS-43-0359)	4 years, concurrent;
Larceny/Breaking into motor (2012-GS-43-0356)	4 years, concurrent;
Grand Larceny (2012-GS-43-0358)	4 years, concurrent;
Criminal Conspiracy (2012-GS-43-0288)	4 years, concurrent;
Burglary (non violent) (2012-GS-43-0288)	9 years, concurrent.

ALLEGATIONS

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following allegations:

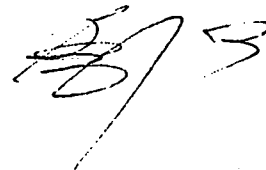
1. Involuntary Guilty Plea; in that,
 - a. "I was getting mental help"
 - b. "I was getting help every month"
 - c. "I did not do the crimes and have a falsely been accused"
 - d. "DNA, I told my lawyer that I didn't do all the crimes"
 - e. "I suffer them from a mental disorder waiving my rights"
 - f. "I was check in by Sumter PD to the hospital."

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. The State presented testimony from plea counsel, Susan Elaine Cook, Esquire. This Court also had before it a copy of guilty plea hearing, the Sumter County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, and the return.

During the evidentiary hearing, Applicant testified he did not plead guilty. Applicant stated that he did not remember having an attorney. Applicant could not recall going in front of a judge. Applicant stated that he did not have his rights explained to him. Applicant stated that he did not tell the judge that he was guilty. Applicant stated that he did not review discovery with his attorney. Applicant stated that he spoke with his attorney one time.

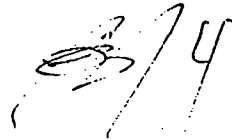
Following Applicant's testimony, Susan Elaine Cook (Counsel) was called to testify by Applicant. Counsel stated she has been practicing law since 2001. Counsel stated she was appointed and met with Applicant numerous times prior to his guilty plea. Counsel stated she filed for and received Brady and Rule 5 material. Counsel testified that she did not have much of an opportunity to review discovery material with Applicant as she received approximately two



hundred pages shortly before the trial date. Counsel stated Applicant was well aware of the fact that he was pleading guilty without the benefit of going through the discovery material extensively. Counsel stated Applicant had previously backed out of two prior guilty pleas. Counsel stated she reviewed the elements of the various offenses with Applicant prior to his guilty plea. Counsel stated the State had overwhelming evidence against Applicant. Counsel stated Applicant did not give her any leads or witnesses to investigate. Counsel stated she reviewed Applicant's constitutional rights prior to his guilty plea and that Applicant appeared to understand them. Counsel stated Applicant knew that he wanted to plead guilty from the start of her representation. Counsel stated Applicant appeared to understand the consequences of his guilty plea.

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 that Counsel's testimony is very credible while Applicant's testimony is not credible. This Court notes the hearing was originally set for Tuesday, February 25. Applicant appeared before this Court and clearly and coherently requested that his appointed attorney be dismissed so he could retain private counsel. After colloquy with the Court, the Applicant decided to keep his appointed counsel, and at no time exhibited even a hint of mental problems. At the hearing on Friday, February 28, the Applicant tried to portray himself as incoherent and incompetent. This Court is convinced that Applicant chose to feign mental illness at the post-conviction relief hearing instead of taking advantage of his opportunity to meet his burden of proof. 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).

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). Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985). Below are this Court's findings in regards to each of Applicant's allegations of ineffective assistance of counsel.

INVOLUNTARY GUILTY PLEA

Applicant was mentally incompetent at the time of his guilty plea.

This Court finds Applicant's allegation that he ^{was (D-3)} mentally incompetent at the time of his guilty is without merit. As previously stated above, this Court finds Applicant's testimony not credible. This Court notes that the hearing was originally set for Tuesday, February 25. Applicant appeared before this Court and clearly and coherently requested that his appointed attorney be dismissed so he could retain private counsel. After colloquy with the Court, the Applicant decided to keep his appointed counsel, and at no time exhibited even a hint of mental problems. At the hearing on Friday, February 28, the Applicant tried to portray himself as incoherent and incompetent. This Court is convinced that Applicant chose to feign mental illness at the post-conviction relief hearing instead of taking advantage of his opportunity to meet his burden of proof.

A criminal defendant is competent to enter his guilty plea if "the accused [has] sufficient capability to consult with his lawyer with a reasonable degree of rational understanding and [has] a rational as well as a factual understanding of the proceeding against him." Jeter v. State, 308 S.C. 230, 417 S.E.2d 594, 596 (1992). An Applicant challenging his competency to plead must prove this allegation by a preponderance of the evidence. Id.

An Applicant claiming that trial counsel was ineffective in failing to pursue this defense "must produce some evidence of insanity or showing that with the exercise of due diligence, an insanity defense could have been developed." Jeter v. State, 308 S.C. 230, 233-34, 417 S.E.2d 594 (1992). The Applicant must show that he was "unable to distinguish moral or legal right from wrong and to recognize the particular act charged as morally or legally wrong."

The Applicant presented no testimony or evidence regarding the elements of the defense.

Therefore, the Applicant has failed to meet his burden of proof on this issue. This allegation lacks merit and is dismissed.

Involuntary Guilty Plea

This Court finds that the Applicant's guilty plea was entered freely and voluntarily. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). Defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977)). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. United States, 519 F.2d 347 (4th Cir.1975).

This Court finds that this allegation is without merit and the Applicant has failed to carry his burden of proving that his guilty plea was involuntarily made. This Court finds that the Applicant's testimony was entered freely and voluntarily. This Court finds further that the record reflects the Applicant was thoroughly advised of the waiver of his constitutional rights by both counsel and the plea judge (T. 8-9). The record reflects the Applicant at his plea proceeding



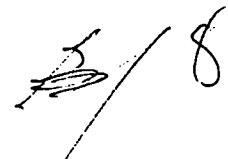
told the court that he wished to plead guilty. (T. 6). The record also reflects that the Applicant told the court that he had not been promised or threatened by anyone to get him to plead guilty. (T. 6). This Court finds that the Applicant had a full understanding of the consequences of his plea and the charges against him. This Court finds that the plea judge correctly found that the Applicant's plea was freely, voluntarily, and intelligently made. (T. 18)

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that plea counsel failed to render reasonably effective assistance 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 the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by plea counsel's performance.

The Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. This Court also concludes the Applicant has failed to meet his burden of proving his guilty plea was not knowing and voluntary. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

ALL OTHER ALLEGATIONS

Except as discussed above, this Court finds that the Applicant affirmatively waived the remaining allegations set forth in his application at the hearing. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. '1987). The Applicant's



failure to address these issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

CONCLUSION

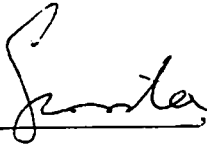
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.


This Court notes that that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRPC, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the 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 2 day of April, 2014.


_____, South Carolina



GEORGE C. JAMES, JR.
Presiding Judge
Third Judicial Circuit

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

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2013CP4300218

RECORDED

2014 APR -8 PM 2:54

JAMES C. CAMPBELL
 CLERK OF COURT
 SUMTER COUNTY, S.C.

South Carolina State of: Plaintiff Defendant
 Self-Represented Litigant
 CERTIFIED TRUE COPY
 OF ORIGINAL FILED
 DEPUTY CLERK OF COURT
 SUMTER COUNTY

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Clerk of Court

DISPOSITION TYPE (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. See Page 2 for additional information.
- 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; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: **See attached Order.**

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge _____ Judge Code 2143 Date 4/8/2014

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on, to attorneys of record or to parties (when appearing pro se) as follows:

Leslie Centell Jr #316022 Hunt Kershaw Correctional
Institution 4848 Goldmine Hwy Kershaw, SC 29607
Fulton Casey Dale Cornwell PO Box 50143 Columbia, SC
29250

Alan McCrory Wilson PO Box 11549 Columbia, SC 29211-
1549

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

James C. Campbell

Court Reporter

James C. Campbell - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
