



# SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense  
1330 Lady Street, Suite 401  
Columbia, South Carolina 29201-3332  
Post Office Box 11589  
Columbia, South Carolina 29211-1589  
Telephone: (803) 734-1330  
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender  
Wanda H. Carter, Deputy Chief Appellate Defender

April 17, 2012

Ms. Desiree R. Allen  
Court Services Manager  
1015 Sumter Street  
Columbia, SC 29201

**RECEIVED**

APR 17 2012

**S.C. Supreme Court**

Dear Ms. Allen:

Please provide us with the following transcript:

David Bacchus v. State of South Carolina      Case #:      10-CP-31-00051

County: Lee      Date of Trial: October 25, 2011

Presiding Judge: R. Ferrell Cothran, Jr.

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,

  
Lorlene French  
Legal Services Coordinator

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

# The Brooks Law Offices, LLC

---

**Charles T. Brooks, III**  
**Attorney**

309 Broad Street  
Sumter, South Carolina 29150  
Post Office Box 3512, Sumter, SC 29151  
Post Office Box 291226, Columbia, SC 29229  
OFFICE: (803) 418-5708  
FAX: (803) 934-9618 TOLL FREE: (877) 770-8792  
Email: [cbrooks@ctbrooks.com](mailto:cbrooks@ctbrooks.com)

**Irma R. Brooks**  
**Attorney**

March 7, 2012

South Carolina Supreme Court  
PO Box 11330  
Columbia, SC 29211

RE: David Bacchus v State of South Carolina  
Case No. 2010-CP-31-0051

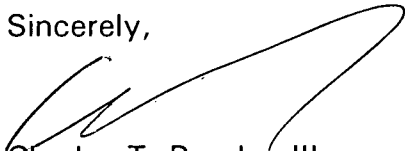
Dear Sir or Madam:

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/jlb

Enclosed as stated

Cc: J. Rutledge Johnson, Office of Attorney's General  
South Carolina Office of Appellate Defense  
David Bacchus, 315173

**RECEIVED**

MAR 12 2012

**S.C. SUPREME COURT**

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

---

APPEAL FROM LEE COUNTY  
Court of Common Pleas  
Honorable R. Ferrell Cothran, Jr., Circuit Court Judge

---

Case No: 2010-CP-31-0051

David Bacchus, . . . . . Appellant  
S.C.D.C. No.: 315173

v.

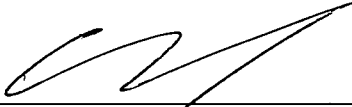
The State . . . . . Respondent

---

NOTICE OF APPEAL

David Bacchus, appeals his Denial for Post Conviction Relief in this case. The Order of Dismissal was imposed and signed by the Honorable R. Ferrell Cothran, Jr., on February 21, 2012, which I, Charles T. Brooks, III, received on March 7, 2012.

March 7, 2012



---

Charles T. Brooks, III  
309 Broad Street  
Post Office Box 3512  
Sumter, South Carolina 29151  
(803) 418-5708  
Attorney for Appellant

Other Counsel on Record:  
J. Rutledge Johnson, Esquire  
Assistant Attorney General  
Post Office Box 11549  
Columbia, SC 29211-1549  
(803) 734-3970

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

---

APPEAL FROM LEE COUNTY  
Court of Common Pleas  
Honorable R. Ferrell Cothran, Jr., Circuit Court Judge

---

Case No: 2010-CP-31-0051

David Bacchus.....Appellant  
S.C.D.C. No.: 315173

v.

The State.....Respondent

---

PROOF OF SERVICE

I, the undersigned, do hereby certify that on this 7<sup>th</sup> day March, 2012, 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 March 7, 2012 addressed to the following as indicated below:

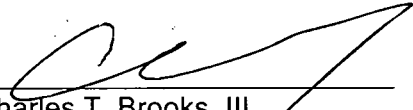
South Carolina Supreme Court  
Post Office Box 11330  
Columbia, South Carolina 29211

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

Office of Attorney's General  
Attn: J. Rutledge Johnson, Esquire  
Post Office Box 11549  
Columbia, South Carolina 29211-1549

David Bacchus, 315173  
Broad River Correctional Institution  
4460 Broad River Road  
Columbia, South Carolina, 29210

Dated: March 7, 2012



---

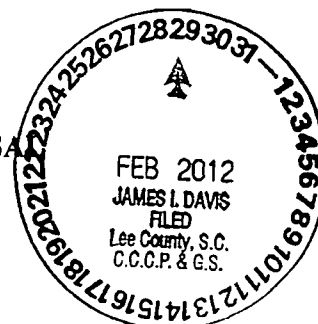
Charles T. Brooks, III  
Attorney for the Appellant  
309 Broad Street  
Sumter, South Carolina 29150  
(803) 418-5708

STATE OF SOUTH CAROLINA )  
 COUNTY OF LEE )  
 )  
 )  
 David Bacchus, #315173, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 THIRD JUDICIAL CIRCUIT

2010-CP-31-0051

ORDER OF DISMISSAL



This matter comes before the Court by way of an Application for Post-Conviction Relief filed March 4, 2010 and amended in November 2010. The Respondent made its Return on August 20, 2010. An evidentiary hearing into the matter was convened on October 25, 2011, at the Sumter County Courthouse. Charles T. Brooks, III, Esquire, represented the Applicant. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. Deborah Butcher, Esquire, also testified. This Court also had before it a copy of the records of the Lee County Clerk of Court, records from the South Carolina Department of Corrections, and the guilty plea transcript.

**PROCEDURAL HISTORY**

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lee County Clerk of Court. The Applicant was indicted at the October 2009 term of the Lee County Grand Jury for Assault and Battery of a High and Aggravated Nature (ABHAN) and Assaulting a Corrections Officer (2009-GS-31-0111). Deborah Butcher, Esquire, represented the Applicant. On October 8, 2009, the Applicant pled guilty to

*RJC*

Page 1 of 8  
**RECEIVED**  
 MAR 18 2012  
 S.C. SUPREME COURT

Assaulting a Corrections Officer and the charge of ABHAN was *nolle prossed*.. The Honorable George C. James sentenced him to confinement for a period of thirty-six (36) months consecutive to the sentence the Applicant is currently serving on his Florence County charges. The Applicant did not appeal his conviction or sentence.

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

1. Ineffective assistance of counsel;
2. Involuntary Guilty Plea;
3. "Violations of U.S. Const. Amend. 5<sup>th</sup>, 6<sup>th</sup>, 8<sup>th</sup>, and 14<sup>th</sup>";
4. "Indictment is Defective; and
5. "False Imprisonment"

#### **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. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to 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) (citing Rule 71.1(e), SCRCP). 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,

RSCB

104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 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, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

#### *Sentencing Advice*

The Applicant testified that Counsel promised that he would only receive two and a half (2 ½) years consecutive to his current sentence. He also testified that he pled on the advice of counsel. On cross-examination, the Applicant admitted his guilt. He also testified that he knew Judge James did not have to follow the State's recommendation. The Applicant further testified that he understood the maximum penalty was five (5) years and that the State dropped the ABHAN charge

R3CJ

in exchange for the guilty plea.

Counsel testified that she explained the State's recommendation to the Applicant. Counsel testified that she did not promise the Applicant that the Court would or had to follow the State's recommendation.

This Court finds the Applicant understood that Judge James did not have to follow the State's recommendation of two and a half (2 ½) years. This Court also finds Counsel did not promise that Judge James would or had to follow the State's recommendation. Knowing this information, the Applicant still chose to plea. Accordingly, this allegation is dismissed.

#### *Involuntary Guilty Plea*

The Applicant further alleges he involuntarily pled guilty to Assaulting a Corrections Officer.

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). Further, because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. 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. U.S., 519 F.2d 317 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

RACJ

A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993).

The Applicant testified he pled guilty but never received a warrant. He also testified he pled guilty on the advice of counsel. The Applicant further testified there were no threats involve in his pleading guilty. Counsel testified she did not promise the Applicant he would receive a two and a half (2 ½) year sentence. She also testified that it was ultimately the Applicant's decision to plead guilty.

This Court finds the Applicant's plea was freely and voluntarily made. This Court also finds the Applicant failed to present any evidence to the contrary. Accordingly, this allegation is dismissed.

#### *Failure to Investigate*

The Applicant alleged Counsel failed to investigate his case.

To establish counsel was inadequately prepared, an Applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel been more fully prepared. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998); Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial).

While his allegation was presented by testimony, the Applicant provided no evidence of such claim. Counsel testified she assessed the State's case against the Applicant. She also

RJC

testified she discussed and explained the Rule 5, SCrimP, discovery to the Applicant. Counsel further testified she discussed interviewing potential witnesses with the Applicant.

This Court finds that the Applicant has failed to establish that Counsel was ineffective with investigating and preparing for this matter. Counsel testified that she reviewed discovery materials with the Applicant, met with and spoke with the Applicant, and was willing to speak with potential witnesses. The record clearly indicates that counsel was considerably prepared for this case. Moreover, the Applicant put forth no evidence suggesting what evidence Counsel failed to discover or investigate. Therefore, based on the foregoing, this allegation is denied.

#### *Summary*

This Court finds in regards to the allegations of ineffective assistance of counsel, involuntary guilty plea, and failure to investigate, that the Applicant's testimony is not credible, while also finding Plea Counsel's testimony is credible. This Court further finds Plea Counsel adequately conferred with the Applicant, conducted a proper investigation, was thoroughly competent in her representation, and that Plea Counsel's conduct did not fall below the objective standard of reasonableness. Further, this Court also finds that the record in this case fully demonstrates that the Applicant understood the nature of his plea, and that his plea was made freely and voluntarily.

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 her 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. This Court concludes the Applicant has not met

Ryc

his burden of proving counsel failed to render reasonably effective assistance. Therefore, these allegations are denied.

### 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.

Except as discussed above, this Court finds that the Applicant failed to raise the remaining allegations set forth in his application at the hearing and has, thereby, waived them. 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 issue 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.

This Court advises Applicant that he must file and serve a notice of appeal within thirty (30) 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 PCR. Rule 71.1(g), SCRCPP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention 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!**



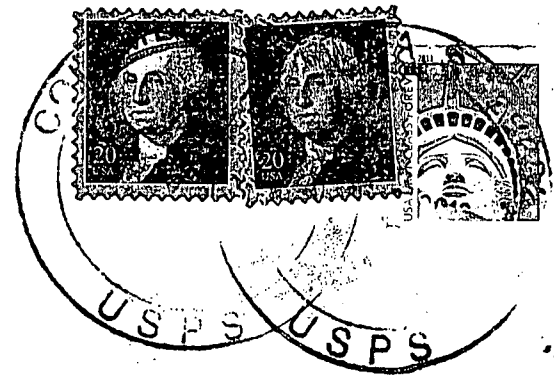
R. Ferrell Cothran, Jr.  
Presiding Circuit Court Judge

Feb. 21, 2012

Manning, South Carolina

CHARLES T. BROOKS, III  
THE BROOKS LAW OFFICE, LLC  
POST OFFICE BOX 3512  
SUMTER, S. C., 29151

*David  
Bacchus*



South Carolina Supreme Court  
PO Box 11330  
Columbia, SC 29211