

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM HORRY COUNTY  
Court of Common Pleas

Honorable Kristi Lea Harrington, Circuit Court Judge

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Case No.: 2013-CP-26-2547

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Shannon T. Parker, #352462, ..... Petitioner,

v.

State of South Carolina, ..... Respondent.

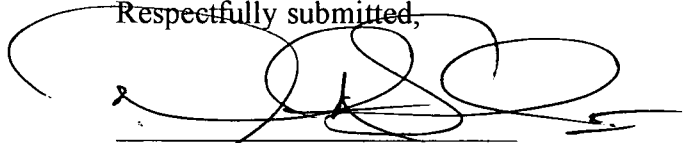
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**NOTICE OF APPEAL**

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The Petitioner appeals the Honorable Kristi Lea Harrington, November 19, 2014, order, denying the Applicant's Petition for post-conviction relief. Undersigned counsel received notice of entry of the order on December 9, 2014. A copy of the order on appeal is attached to this notice.

Respectfully submitted,



Daniel A. Selwa, II  
1053 London Street, Suite A  
Myrtle Beach, SC 29577  
*Attorney for the PCR Applicant*

Jan.  
December 5, 2015



*Other counsel of record:*

Alan Wilson, Attorney General

Joshua L. Thomas, Assistant Attorney General

Post Office Box 11549

Columbia, SC 29211-1549

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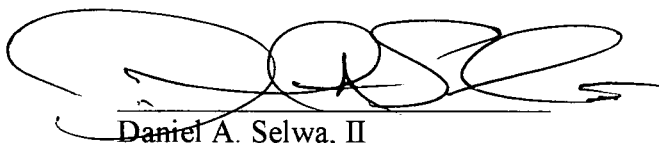
State of South Carolina, ..... Respondent.

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**PROOF OF SERVICE**

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I, Daniel A. Selwa, II, certify that I have served the within Notice of Appeal on the Respondent, the State of South Carolina, by depositing a copy of the same in the United States Mail, postage prepaid, addressed to his attorney of record, Alan Wilson, Attorney General, Post Office Box 11549, Columbia, SC 29211-1549. I further certify that all parties required by Rule to be served have been served this 5<sup>th</sup> day of January 2015.



Daniel A. Selwa, II  
1053 London Street, Suite A  
Myrtle Beach, SC 29577  
*Attorney for the PCR Applicant*

STATE OF SOUTH CAROLINA  
COUNTY OF HORRY

)  
)

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Shannon T. Parker, #352462,

)  
)

Case No. 2013-CP-26-2547

Applicant,

)  
)

v.

)  
)

**ORDER OF DISMISSAL**

State of South Carolina,

)  
)

Respondent.

)  
)

FILED  
HORRY COUNTY  
14 JULY 19 AM 9:46  
MELANIE HIGGINS-WALKER  
CLERK OF COURT

This matter comes before the Court by way of an Application for Post-Conviction Relief filed April 17, 2013. Respondent made a timely Return on or about September 20, 2013. The Court convened an evidentiary hearing into the matter on August 26, 2014, at the Horry County Courthouse. Applicant was present at the hearing and represented by Daniel A. Selwa II, Esquire. Joshua L. Thomas, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's plea counsel, James C. Galmore, Esquire, also testified. The Court had before it a copy of the plea transcript, the records of the Horry County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the return. The Court finds as follows:

**I. PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. In May 2012, the Horry County Grand Jury indicted Applicant for first degree burglary (2012-GS-26-1711). James C. Galmore,

Esquire ("plea counsel"), represented Applicant. On September 12, 2012, Applicant pled guilty as indicted. In exchange for the plea, the State dismissed two (2) charges of first degree burglary, three (3) charges of grand larceny, and three (3) charges of second degree burglary, The Honorable W. Jeffrey Young accepted the plea and sentenced Applicant to fifteen (15) years in the State Department of Corrections with credit for time served. Applicant did not appeal his plea or sentence.

## **II. ALLEGATIONS**

In his application, Applicant alleged he is being held in custody unlawfully because of ineffective assistance of counsel. At the evidentiary hearing, Applicant proceeded on an allegation of ineffective assistance of plea counsel for advising Applicant to reject a plea to a lesser included offense of second degree burglary.

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

The Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the evidentiary hearing. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

### **A. Summary of Testimony**

Applicant testified he was initially offered a sentence of fifteen (15) years for second degree burglary. He alleged plea counsel informed him to reject the plea because he could beat these charges. Applicant stated he only rejected the initial offer because plea counsel told him he would prevail at trial. Applicant testified the State had no evidence connecting him to the burglaries. However, he admitted on cross-examination he gave a confession to police. He also admitted it was his decision to reject the initial plea. Applicant also recalled reviewing and

waiving his rights at the plea hearing.

Plea counsel testified he discussed Applicant's numerous charges with him. He explained the State's initial burglary second offer. Plea counsel testified he felt Applicant understood the plea negotiations. He testified Applicant rejected the State's initial offer. Plea counsel testified he advised Applicant to take that offer because it was significantly less time than he was facing if convicted. He testified Applicant wanted a three (3) year offer, which the State was unwilling to make. Plea counsel testified he later advised Applicant to accept the offer to enter a plea to first degree burglary for a recommended fifteen (15) year sentence. He based this advice on the fact Applicant confessed to the burglary and led authorities to the location of the stolen gun.

#### **B. Ineffective Assistance of Plea Counsel**

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing *Griffin v. Martin*, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove "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." *Id.* at 442, 334 S.E.2d at 814 (citing *Strickland v. Washington*, 466 U.S. 668 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Id.* (citing *Strickland*, 466 U.S. at 687; *Turner v. Bass*, 753 F.2d 342 (4th Cir. 1985); *Marzullo v. Maryland*, 561 F.2d 540 (4th Cir. 1977)). Courts presume counsel rendered adequate assistance and made all significant decisions

in the exercise of reasonable professional judgment. *Id.* (citing *Strickland*, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. *Cherry v. State*, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. *Id.* at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. *Id.* Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." *Id.* (citing *Strickland*, 466 U.S. at 688). Second, any 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." *Id.* at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show 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, 59 (1985).

The Court finds Applicant failed to meet his burden of proving trial counsel ineffective. Applicant's allegation plea counsel advised him to reject the initial plea is without merit. Applicant was advised to accept the State's initial plea offer, but chose to reject the offer. Once Applicant realized the State would not make a better offer, he made decided to accept the plea he received. Plea counsel properly advised Applicant throughout the process. Plea counsel's advice was appropriate in light of the overwhelming evidence against him, including his confession and his cooperation in locating the stolen property. *See Stalk v. State*, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009) (applicant must show "something that would have affected

counsel's advice to [the applicant] to accept the plea bargain offered or that would have caused [the applicant] to decline to accept it”).

The plea dialogue between Applicant and Judge Young shows Applicant fully understood the nature of the charges against him and the consequences of his plea. *Simpson v. State*, 317 S.C. 506, 508, 455 S.E.2d 175, 176 (1995) (citing *Dover v. State*, 304 S.C. 433, 405 S.E.2d 391 (1991)). He was informed of the privilege against self-incrimination, the right to a jury trial, and the right to confront his accusers. *Roddy v. State*, 339 S.C. 29, 33, 528 S.E.2d 418, 421 (2000) (citing *Boykin v. Alabama*, 395 U.S. 238 (1969)). The Court finds Applicant's plea was knowingly and voluntarily entered. Applicant has failed to demonstrate his plea was the result of faulty advice of plea counsel. See *Dalton v. State*, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (“A guilty plea is a solemn, judicial admission of the truth of the charges against an individual[.] ... 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. (citations omitted)).

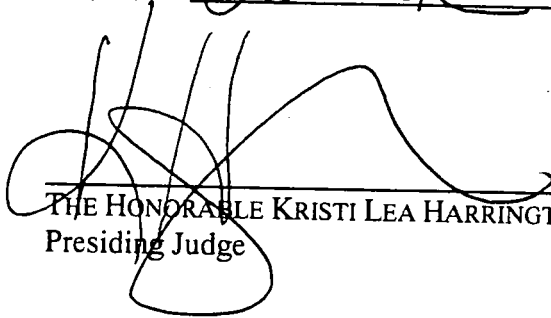
#### **IV. CONCLUSION**

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

#### **IT IS THEREFORE ORDERED THAT:**

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 7<sup>th</sup> day of October, 2014.

  
\_\_\_\_\_  
THE HONORABLE KRISTI LEA HARRINGTON  
Presiding Judge

Charles, South Carolina

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF HORRY )  
 )  
SHANNON T. PARKER, #352462 )  
 )  
vs )  
 )  
STATE OF SOUTH CAROLINA, )  
 )  
Respondent. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS


2013-CP-26-2547

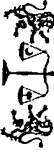
AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a filed copy of the Order of Dismissal the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Daniel A. Selwa, II, Esquire**  
**1053 London St., Suite A**  
**Myrtle Beach, SC 29577**

DATED this 8<sup>TH</sup> day of December, 2014.

  
Norma Bigbee, Legal Assistant  
For Respondent



DANIEL A. SELWA, II  
ATTORNEY AT LAW, L.L.C.

1053 London Street, Ste. A  
Myrtle Beach, S.C. 29577

The Honorable Daniel E. Shearouse  
Clerk of Court, South Carolina Supreme Court  
P.O. Box 11330  
Columbia, SC 29211



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**DANIEL A. SELWA, II**  
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**RECEIVED**

January 5, 2015

JAN 08 2015

Daniel E. Shearouse  
Clerk of Court – SC Supreme Court  
Supreme Court  
P.O. Box 11330  
Columbia, SC 29211

**S.C. SUPREME COURT**

Re: Tyrone Beaty v. State of South Carolina, Case No.: 2013-CP-26-5929; John Elvis Bostic vs. State of South Carolina, Case No.: 2012-CP-26-7917; Keion Griffin vs. State of South Carolina, Case No.: 2011-CP-26-10757; Lorenzo Cross vs. State of South Carolina, Case No.: 2013-CP-26-3958; Nelson H. Castro vs. State of South Carolina, Case No.: 2013-CP-26-1591; Jeffrey Riebe vs. State of South Carolina, Case No.: 2013-CP-26-5292; Shannon T. Parker vs. State of South Carolina, Case No.: 2013-CP-26-2547; and Nearim Blackwell-Selim vs. State of South Carolina, Case No.: 2013-CP-26-6066.

Dear Mr. Shearouse:

Enclosed please find the original Notice of Appeal in each of the above-entitled actions and two copies for each. Please file and return one copy to me in the self addressed stamped envelope enclosed.

If you should have any questions or concerns, please do not hesitate to contact me.

Sincerely,

Daniel A. Selwa, II