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ATTORNEY AT LAW

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January 12, 2015

**Via US Mail**

Daniel Shearouse  
Clerk of Court  
South Carolina Supreme Court  
Post Office Box 11330  
Columbia, South Carolina 29211

**RECEIVED**

JAN 20 2015

**S.C. SUPREME COURT**

**Re: *Notice of Intent to Appeal from Brandon Christian v. The State of South Carolina C.A. No.: 2013-CP-23-6891***

Dear Mr. Shearouse:

I was Court Appointed in the above referenced matter, and I expect that appellate defense will handle the appeal and petition for certiorari. On behalf of my client, enclosed for filing please find the Notice of Appeal and proof of service. I've enclosed a copy of the Honorable Letitia H. Verdin's Order of Dismissal to be challenged on appeal. By copy of this letter, I am also serving my client, counsel for the State of South Carolina, the South Carolina Commission of Indigent Defense - Appellate Defense Division and the Greenville County Clerk's Office.

Thank you for your assistance in this matter and if you have any questions, please feel free to contact me.

Sincerely,  
LAW OFFICE OF R. MILLS ARIAIL, JR.  
Attorney at Law

  
R. Mills Ariail, Jr.

RMAjr/dl  
Enclosures (as stated)

cc: Greenville County Clerk's Office  
Greenville County Courthouse  
305 East North Street  
Greenville, SC 29601

**RECEIVED**

JAN 20 2015

**S.C. SUPREME COURT**

Karen C. Ratigan  
Assistant Attorney General  
P.O. Box 11549  
Columbia, SC 29211-11549

Brandon Christian SCDC# 350508  
Perry Correctional Institution  
430 Oaklawn Road  
Pelzer, SC 29669

SC Commission of Indigent Defense  
Division of Appellate Defense  
PO Box 11433  
Columbia, SC 29211-1433

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

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Letitia H. Verdin, Circuit Court Judge

Case No. 2012-CP-23-6891

---

Brandon Christian,..... Appellant,

v.

State of South Carolina ..... Respondent.

**NOTICE OF APPEAL**

Appellant appeals the Honorable Letitia H. Verdin's Order of Dismissal dismissing Appellant's application for post-conviction relief. On December 8, 2014, the Honorable Letitia H. Verdin signed an order dismissing Appellant's application for post-conviction relief with prejudice. Appellant, through counsel, received written notice of entry of this order on December 20, 2014. A copy of the Honorable Letitia H. Verdin's Order of Dismissal is attached.



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Telephone (864) 232-9390  
Facsimile (864) 232-9392  
Attorney for Brandon Christian

Greenville, South Carolina  
January 12, 2015

Other Counsel of Record and Interested Parties:

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Assistant Attorney General  
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Greenville County Courthouse  
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Brandon Christian SCDC# 350508  
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THE STATE OF SOUTH CAROLINA  
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APPEAL FROM GREENVILLE COUNTY  
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Letitia H. Verdin, Circuit Court Judge

Case No.2012-CP-23-6891

---

Brandon Christian,..... Appellant,

v.

State of South Carolina ..... Respondent.

**CERTIFICATE OF SERVICE**

I, Denise Tanner LaBeck, paralegal to R. Mills Ariail, Jr., do hereby certify that on this January 12, 2015, I served upon the below named individuals copies of the **NOTICE OF APPEAL** by depositing copies of the same via U.S. Mail, postage prepaid, Registered Mail in an envelope addressed as set forth herein below:

**Karen C. Ratigan, Esq.**  
**Assistant Attorney General**  
**PO Box 11549**  
**Columbia, SC 29211**  
**Attorney for the State of South Carolina**

**Greenville County Clerk's Office**  
**Greenville County Courthouse**  
**305 East North Street**  
**Greenville, SC 29601**

**Brandon Christian SCDC# 350508**  
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**SC Commission of Indigent Defense**  
**Division of Appellate Defense**  
**PO Box 11433**  
**Columbia, SC 29211-1433**

*Denise Tanner LaBeck*  
Denise Tanner LaBeck

January 12, 2015

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

JUDGMENT IN A CIVIL CASE  
CASE NO: 2012CP2306891

RECORDED  
INDEXED  
FILED  
DEC 19 PM 4:41  
CLERK OF COURT  
GREENVILLE, SOUTH CAROLINA

Brandon Christian 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):**  
SCRC (Vol. Nonsuit);  Rule 43(k), SCRC (Settled);  Rule 12(b), SCRC;  Rule 41(a);  Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  
 Other: \_\_\_\_\_  
 Rule 40(j) SCRC;  Bankruptcy;
- 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 .

Court Reporter:

\_\_\_\_\_  
**PRESIDING JUDGE - Letitia H Verdin**

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

\_\_\_\_\_  
R. Mills Ariail Jr. 11 North Irvine Street, Suite 11  
Greenville, SC 29601

\_\_\_\_\_  
Karen Christine Ratigan PO Box 11549 Columbia,  
SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

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

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GREENVILLE )  
 )  
 Brandon Jabar Christian, )  
 S.C.D.C. No. 350508, )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS

C.A. No. 2012-CP-23-6891

**ORDER OF DISMISSAL**

FILED IN COURT OF COMMON PLEAS  
 GREENVILLE COUNTY, S.C.  
 PAUL N. WATKINS, CLERK  
 2014 OCT 19 10 49 PM  
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This matter comes before the Court by way of an application for post-conviction relief (PCR) filed October 25, 2012. The Respondent made its return on May 2, 2013. A hearing into the matter was held on October 21, 2014 before Judge Letitia H. Verdin at the Greenville County Courthouse. The Applicant was present and represented by R. Mills Ariail, Jr., 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 plea counsel, Christopher D. Scalzo. The Court had before it the transcript of the sentencing hearing; the Greenville County Clerk of Court records, including the arrest warrant, indictment and sentencing sheet; the Applicant's South Carolina Department of Corrections Records; the PCR Application; and the Return. The Court reconstructed the record of the Applicant's plea hearing prior to conducting the PCR hearing.

**PROCEDURAL HISTORY**

The Applicant is 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 May 2011 term of the Greenville County Grand Jury for murder (2011-GS-23-3395, count 1), possession of a weapon during the commission of a violent crime (2011-GS-23-3395, count 2), armed robbery (2011-GS-23-3396), and attempted murder (2011-GS-23-3397). He was represented by Christopher Scalzo, Esquire, and Nihar M. Patel, Esquire.

On May 15, 2011, the Applicant pled guilty to voluntary manslaughter, armed robbery, and attempted murder. The Honorable Edward W. Miller deferred sentencing to a later date. On April 17, 2012, Judge Miller levied concurrent sentences of twenty-five years for voluntary manslaughter, twenty years for armed robbery, and twenty years for attempted murder. The Applicant did not appeal.

### **ALLEGATIONS**

In this application, the Applicant alleges that he is entitled to PCR for the following reasons:

1. He received ineffective assistance of counsel, in that his attorney failed to file a motion for dismissal; and
2. His guilty plea was involuntary, particularly:
  - a. He was not notified about changes in his assigned attorney;
  - b. He was not timely indicted; and
  - c. He had to plea guilty twice.

At the PCR hearing, the Applicant proceeded upon his ineffective assistance of counsel argument and further alleged that he was improperly sentenced as an adult.

### **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 (2014).

### **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, 686 (1984); Porter v. State, 368 S.C. 378, 629 S.E.2d 353, 356 (2006). Regarding the first prong, the Applicant must in essence show that counsel's advice was not “within the range of competence demanded of attorneys in criminal cases.” Hill v. Lockhart, 474 U.S. 52, 56 (1985). 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, 466 U.S. at 686).

In a proceeding for post-conviction relief involving a guilty plea, an applicant may collaterally attack the voluntary or the intelligent character of his plea. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). Where ineffective assistance of counsel is the subject of the PCR action, the applicant must show that counsel's representation fell below an objective standard of reasonableness and that, but for counsel's errors, there is a reasonable probability that




he would have insisted on proceeding to trial. Suber v. State, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007) (citing Strickland, 466 U.S. at 686 and Roscoe, 345 S.C. at 20, 546 S.E.2d at 419); see also Rolen v. State, 384 S.C. 409, 413, 683 S.E.2d 471, 474 (2009).

To find a guilty plea is made knowingly and voluntarily, the record must establish that the applicant has a full understanding of the consequences of his plea and the charges against him. See Boykin v. Alabama, 395 U.S. 238, 243–44 (1969). A criminal defendant must know the nature of the constitutional rights he is waiving, as well as the nature and crucial elements of the offense to which he is pleading. Boykin, 395 U.S. at 243–44; Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999). A criminal defendant's knowledge may be established by the plea colloquy between court and defendant, between the court and the defendant's counsel, or both. Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000).

Furthermore, the decisions and advice of trial counsel should be assessed for reasonableness under all the circumstances, with heavy deference given to counsel's judgment. Simpson v. Moore, 367 S.C. 587, 597, 627 S.E.2d 701, 706 (2006). A criminal defense attorney has a duty to conduct a reasonable investigation so that he may discover all reasonably available mitigation evidence, as well as any reasonably available evidence tending to rebut evidence produced by the state. McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 361 (2008). There is a strong presumption that adequate assistance of counsel was rendered and that reasonable care was exercised—particularly in the arena of professional judgments. Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 597 (2007).

Finally, a motion to dismiss may be made at any point before a criminal trial for a variety of reasons. For example, defense counsel may move to dismiss due to a constitutional violation, a discovery issue, or a failure to prosecute. E.g., State v. Cooper, 386 S.C. 210, 216–17, 687



S.E.2d 62, 67 (Ct. App. 2009); State v. Robinson, 335 S.C. 620, 625, 518 S.E.2d 269, 272 (Ct. App. 1999).

The Applicant claims that trial counsel was ineffective because he failed to file a motion to dismiss the charges. However, the Applicant has not specified the grounds upon which the motion should have been made. Nor has the Applicant demonstrated how trial counsel's failure to make such a motion fell below the range of competent representation expected of criminal defense attorneys. Furthermore, during the sentencing colloquy the Applicant affirmed that he was "completely satisfied" with his lawyer. (Sentencing Tr. 7.) Therefore, this Court finds that 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 has failed to prove the second prong of Strickland—that he was prejudiced by plea counsel's performance. The Applicant has not met his burden of proving counsel failed to render effective assistance. Frasier, 351 S.C. at 389, 570 S.E.2d at 174.

#### **Involuntary Plea**

The Applicant claims that his guilty plea was entered involuntarily because he was not informed of any changes in his assigned attorney, he was not timely indicted, and because he was required to affirm his plea prior to sentencing. The Applicant bears the burden of proving these allegations by a preponderance of the evidence. Frasier, 351 S.E. at 389, 570 S.E.2d at 174.

As discussed above, a guilty plea must be knowingly, intelligently, and voluntarily made in order to satisfy the requirements of the Fourteenth Amendment. Pittman v. State, 337 S.C. 597, 599 524 S.E.2d 623, 624 (1999). In South Carolina, a defendant entering a guilty plea must be aware of the consequences of his plea—including the nature and crucial elements of the offense charged, the maximum and any mandatory minimum penalty the charge carries, and the



nature of the constitutional rights being waived. State v. Hazel, 275 S.C. 392, 394, 271 S.E.2d 602, 603 (1980) (citing Boykin v. Alabama, 395 U.S. at 243).

Pre-indictment delay will only violate the Due Process Clause where (1) such a delay caused substantial actual prejudice to a defendant's right to a fair trial and (2) the prosecution can present no justification for the delay that outweighs the prejudice experienced by the defendant. State v. Brazell, 325 S.C. 65, 68-69, 480 S.E.2d 64, 72 (1997) (citing United States v. Lovasco, 431 U.S. 783 (1977)). To prove substantial prejudice, a defendant must show that he was meaningfully impaired in his ability to defend against the state's charges, to the extent that the outcome of the proceeding was likely affected. Brazell, 325 S.C. at 73, 480 S.E.2d at 69. Applying Brazell, the South Carolina Supreme Court previously found that a delay of twelve years before seeking an indictment violated the Due Process Clause because it presented a significant obstacle to the defendant in preparing an adequate defense and receiving a fair trial. State v. Lee, 375 S.C. 394, 399, 653 S.E.2d 259, 261 (2007).

In this case, the reconstructed record of the Applicant's guilty plea supports the conclusion that the Applicant entered his plea voluntarily, knowingly, and intelligently. The change in the Applicant's assigned attorney does not change the character of the plea itself. Additionally, there was only a 120 day delay between the events giving rise to the Applicant's charges and the indictment returned by the Greenville County Grand Jury. The Applicant has not demonstrated that any prejudice resulted from this delay. This Court therefore finds that the Applicant has failed to meet his burden of proving that his guilty plea was involuntarily made.

Finally, there is no error in a sentencing judge requiring a defendant to affirm that he pleads guilty, where sentencing has been delayed for a substantial amount of time after the entry

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of a plea. During the sentencing hearing, the Court conducted a thorough colloquy with the Applicant to determine that his plea was still voluntary. (Sentencing Tr. 4-7.)

### **Sentencing as an Adult**

The Applicant claimed at the hearing that he is entitled to PCR because he was improperly sentenced as an adult. The Applicant argued that his sentence was improper because he was seventeen years of age and he was in the custody of the South Carolina Department of Juvenile Justice at the time of the events at issue. These two circumstances, the Applicant asserts, should have required his case to be initiated in the Greenville County Family Court and then waived to the Circuit Court upon the State's motion. The Applicant relies on S.C. Code Ann. § 63-19-1210 to support this contention.

The Applicant's trial counsel testified at the PCR hearing that he had not discussed the issue of juvenile jurisdiction with the Applicant.

This Court finds that the Applicant has failed to meet his burden of proof on this ground, because § 63-19-1210(1) requires a defendant who is seventeen years of age to be charged and tried as an adult. The mere fact that the Applicant was in state custody at the time the events of this case occurred does not reduce or even permit the State to charge him as a juvenile. Therefore, the Applicant is not entitled to PCR because he was sentenced as an adult.

### **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 testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

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**CONCLUSION**

Based on all the foregoing, this Court finds that 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 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 8 day of <sup>Dec.</sup>~~November~~, 2014.



\_\_\_\_\_  
Letitia H. Verdin  
Circuit Court Judge  
Thirteenth Judicial Circuit

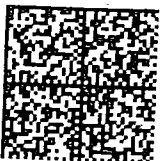


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