

STATE OF SOUTH CAROLINA )  
 COUNTY OF ORANGEBURG )  
 )  
 Ezekial Haynes, SCDC # 309200, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 FOR THE FIRST JUDICIAL CIRCUIT

Case No. 2006-CP-38-0462

*fm*

**ORDER OF DISMISSAL**

**ATTEST: TRUE COPY**

*Winnifia B. Clark*

CLERK OF COURT

**ORANGEBURG COUNTY, SC**

This matter comes before the Court by way of an application for post-conviction relief filed July 13, 2010. An evidentiary hearing was convened on February 20, 2014, at the Calhoun County Courthouse. Applicant was present at the hearing and was represented by Tara D. Shurling, Esquire. Respondent was represented by Assistant Attorney General Megan E. Harrigan of the South Carolina Attorney General's Office. After reviewing all testimony and other evidence presented at the hearing, along with a review of all records provided to the Court, this Court finds that there are no constitutional deprivations or other grounds on which to grant relief and is denying and dismissing this application with prejudice.

**PROCEDURAL HISTORY**

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Orangeburg County Clerk of Court. Applicant was indicted during the March 2005 term of the Orangeburg County Grand Jury for Murder (2005-GS-38-0036). Applicant was represented by Margaret E. Hinds, Esquire. On May 17, 2005, Applicant appeared before the Honorable Perry M. Buckner, where he pled guilty as indicted. Judge Buckner sentenced Applicant to forty years imprisonment pursuant to a negotiated plea cap between Applicant and the State.

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Applicant filed a direct appeal, but elected to withdraw it on April 25, 2006. An Order of Dismissal and Remittitur were issued on May 23, 2006.

Applicant filed his first post-conviction relief application on April 20, 2006 (C.A. No. 2006-CP-38-00462), setting forth the following grounds for relief:

1. Ineffective assistance of counsel;
  - a. "Counsel failed to investigate case to prepare a defense for Applicant."
  - b. "Counsel was ineffective by the violations she committed in accordance of Professional Conduct Rules, Counsel showed more interest to intimidated Applicant to pled guilty to Murder charge."
  - c. "Plea Counsel failed to file pre-trial motions to have standing issues of the Murder Indictment, Rule 5 motion and waivers to be evaluated by trial court."
  - d. "Plea Counsel failed to examine statements, police investigated reports and failed to receive reports of pending investigation reports of case."
2. Prosecutorial and Judicial Misconduct; and
3. Involuntary guilty plea.

The State filed its Return on September 21, 2006. An evidentiary hearing was convened on May 19, 2008, before the Honorable James C. Williams, Jr. Applicant was present and represented by counsel, Glenn Walters, Sr., Esquire. Respondent was represented by Assistant Attorney General Lance Boozer. Prior to the entry of a written Order of Dismissal, Applicant submitted a *pro se* "Motion to Alter/Amend *pro se* Rule 59(e) SCRCF and Motion to Reconsider, *pro se* applicable S.C. Court Rules" on May 27, 2008. By written Order dated and filed October 29, 2008, Judge Williams denied and dismissed the application in full.<sup>1</sup> The State filed a Return to Applicant's *pro se* 59(e) Motion on November 4, 2008. By written Order dated March 4, 2009, Judge Williams dismissed the motion.

On November 5, 2008, Applicant appealed the denial of his first post-conviction relief application. Applicant's Petition for Writ of Certiorari was filed on August 17, 2009. The South

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<sup>1</sup> The Clerk of Court's stamp on the Order of Dismissal improperly reflects that the order was filed in 1998. The correct year of filing is 2008.

Carolina Supreme Court denied the Petition on June 10, 2010. The Remittitur was sent on June 29, 2010.

Thereafter, on July 13, 2010, Applicant filed a second application for post-conviction relief (C.A. No. 2010-CP-38-1000), alleging:

1. Judicial Misconduct;
  - a. "The S.C. Supreme Court in the cert for PCR case No. 2006-CP-38-462 engaged in acts of judicial fraud and an abuse of discretion failed to stay the cert pending removing the case, including this case, is petitioned to be removed to the California District Court under 3:08-CU-10-1105-MMC. A Writ of Mandamus for this is pending in the 9<sup>th</sup> Circuit under 10-71855."
2. "Fifth, Sixth, and Fourteenth Amendment Violation."
3. "Due Process."
4. "Subject Matter Jurisdiction."
5. "Ineffective Counsel."

The Orangeburg County Clerk of Court did not forward the application to Respondent until December 3, 2010. On May 17, 2011, Respondent made its Return and Motion to Dismiss, seeking summary dismissal of the application as successive to his prior post-conviction relief application and filed beyond the statute of limitations. On June 6, 2011, this Court signed a Conditional Order of Dismissal, provisionally dismissing the application but allowing Applicant twenty days from the date of service to object to the application's dismissal. This Conditional Order of Dismissal was filed on June 16, 2011 and Applicant was personally served on September 13, 2011. After receiving no reply from Applicant, this Court signed a Final Order of Dismissal on December 20, 2011; this Final Order of Dismissal was filed on January 9, 2012.

On January 31, 2012, Applicant, through retained counsel Tara D. Shurling, filed a Reply to the Conditional Order of Dismissal. On February 2, 2012, Applicant, though his counsel, filed a "Motion to Reconsider/Alter/Amend Final Order Pursuant to Rule 59(e) SCRCF"; in this Motion, Applicant asked this Court to allow him to proceed to a full merits hearing on his

successive application, or in the alternative, re-open his first post-conviction relief action (C.A. No. 2006-CP-38-0462) and allow Applicant to present testimony and evidence regarding the allegations he raised in his *pro se* 59(e), SCRCF, motion. Respondent made its Return to this motion on August 17, 2012. A hearing on this Motion was convened on August 20, 2012 at the Orangeburg County Courthouse before this Court. Following this hearing, this Court granted Applicant's motion and re-opened his initial post-conviction relief action, docket number 2006-CP-38-0462.<sup>2</sup> This Court allowed Applicant thirty days to file an amended application and specifically ruled that the amended application could not raise with any issues pertaining to Applicant's mental competency or any other issue presented in his initial action, finding that these issues were fully addressed and ruled upon in his earlier post-conviction relief hearing. An Order to this effect was signed March 12, 2013.

Applicant filed an amended Application on September 3, 2013, alleging:

1. Plea counsel was ineffective for neglecting to introduce evidence during Applicant's sentencing proceeding concerning the Applicant's medical history;
2. Plea counsel was ineffective for failing to clarify the Applicant's mental health history for the sentencing judge when the Applicant answered the Court's inquiry concerning whether he had a history of mental illness negatively;
3. Plea counsel was ineffective for failing to refute statements made by the prosecutor concerning footwear impressions found at the scene;
4. Plea counsel was ineffective for failing to adequately investigate the circumstances under which Applicant's statement was given and failing to discuss potential grounds for challenging its admissibility;
5. Plea counsel was ineffective for failing to adequately investigate the degree to which the Applicant's memory defects and impaired cognitive abilities may have impacted his ability to make a knowing and voluntary statement;
6. Plea counsel was ineffective for failing to advise Applicant of the procedures that could be employed during a jury trial to challenge the reliability and admissibility of his pre-trial statement;
7. Plea counsel was ineffective for failing to adequately explain to Applicant that substantive errors of law made during a jury trial could be appealed to a high court if convicted;

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<sup>2</sup> At the beginning of the evidentiary hearing, this Court ruled that the two actions (C.A. No. 2006-CP-38-0462 and 2010-CP-38-1000) are hereby consolidated into one action, with the surviving case number 2006-CP-38-0462.



8. Plea counsel was ineffective for failing to explain to Applicant that a challenge to the admissibility of his statement would have to be evaluated by both the trial judge and jury if challenged in a jury trial;
9. Plea counsel was ineffective for failing to advise Applicant of the ways in which he might challenge his statement to law enforcement based on his medical history;
10. Plea counsel was ineffective for allowing Applicant to plead guilty without first exploring the possibility that Applicant's mental deficits had been capitalized by law enforcement to obtain a false confession;
11. Plea counsel was ineffective for allowing Applicant to plead guilty without adequately advising him of the limited forensic value of the footwear impressions being asserted by the State as evidence of his guilt;
12. Plea counsel was ineffective for allowing Applicant to make the decision to waive his right to trial by jury without first adequately explaining all forensic evidence and how such evidence could be challenged during a jury trial;
13. Plea counsel was ineffective for failing to adequately advise Applicant of the fact that an adverse ruling on the admissibility of his statement could be appealed to a high court in the event he was convicted by a jury;
14. Plea counsel was ineffective for failing to petition the court for funding for an independent forensic expert to review the DNA evidence;
15. Plea counsel was ineffective for misleading Applicant of the evidentiary value of the forensic evidence related to his shoes;
16. Plea counsel was ineffective for failing to investigate the possible application of the lesser included offense to the facts in Applicant's case;
17. Plea counsel was ineffective for failing to advise Applicant on the law of lesser included offenses and possible application to his case; and
18. Plea counsel was ineffective for failing to petition the court for funding to hire an expert witness on false confessions.

A hearing on these allegations was convened on February 20, 2014 at the Calhoun County Courthouse. Applicant was present and represented by Tara D. Shurling, Esquire. Respondent was represented by Assistant Attorney General Megan E. Harrigan of the South Carolina Attorney General's Office. At the evidentiary hearing, Applicant expressly abandoned allegation number 14 regarding Counsel's alleged failure to consult with a DNA expert; therefore, this allegation must be denied and dismissed with prejudice and will not be analyzed in this Order.

At the beginning of the hearing, Respondent renewed its objections to this Court's ruling on Applicant's 59(e), SCRPC, reopening Applicant's original 2006 post-conviction relief action. After listening to argument and reply, this Court denied Respondent's motion. Additionally,

Respondent moved to dismiss allegations 1, 2, 5, 9, and 10 of Applicant's amended application, as in direct violation of this Court's oral and written ruling that this Court would not address any issues regarding Counsel's representation in regards to Applicant's mental health, competency, or state of mind based on this Court's satisfaction with Judge Williams' rulings in regards to Counsel's investigation into Applicant's mental health history and any decisions made in reference to his mental health or competency. This Court took Respondent's motion under advisement and allowed Applicant to delve into these issues at the evidentiary hearing. At this time, this Court grant's Respondent's motion to dismiss these allegations, finding them to be in violation of this Court's prior ruling. However, as these allegations were discussed at the evidentiary hearing, this Court will address the merits of each allegation below.

#### **TESTIMONY PRESENTED**

At the evidentiary hearing, Applicant testified on his own behalf and presented testimony from his mother and plea counsel, Margaret E. Hinds, Esquire, (hereafter "Counsel"). This Court also had before it a copy of the Applicant's plea transcript, records from the Orangeburg County Clerk of Court, Applicant's appellate records, records from Applicant's prior post-conviction relief action, and Applicant's South Carolina Department of Corrections records.

During the evidentiary hearing, Applicant testified first on his own behalf. He testified that Counsel was appointed to represent him and that she refused to discuss a trial with him. He testified that she repeatedly told him he needed to plead guilty. He testified that she did not review any of his rights with him, including his appellate rights. He testified that Counsel did advise him that the State would call witnesses against him if he proceeded to trial and that his statement would be used against him. He testified that they discussed his statement, but never discussed the possibility of suppression or otherwise challenging the statement. He testified that

his statement to law enforcement was his recollection of a dream, of which he informed law enforcement but was omitted from his statement. He testified that he gave his statement after being questioned by law enforcement for three hours.

Applicant testified that he was in a serious accident with significant head trauma years before and that he advised Counsel of this. He testified that he has difficulty with speech, severe mood swings, and memory impairment all related to the accident. Additionally, he testified that he informed Counsel that he “heard voices.” This Court notes that at times during the hearing, Applicant appeared to have a stutter, but that it was not continuous and appeared to be under Applicant’s control. Additionally, Applicant appeared to have difficulty concentrating and would stare into space a times, but was also able to quickly respond to questions and focus at other times. He testified that Counsel advised him that these medical concerns were a “problem” and that she was not going to bring them up in court. He testified that he asked Counsel to have him evaluated and to present this information to the court, but Counsel refused.

Applicant testified that Counsel never reviewed discovery materials with him, but then testified that she did review certain materials with him. He testified that Counsel advised him that his shoe print matched a shoe print found at the crime scene and that he needed to plead guilty or this would be introduced at trial. He introduced a copy of the SLED Latent Prints report discussing this shoe print as Applicant’s Ex. No. 2. He also introduced a SLED DNA Analysis report as Applicant’s Ex. No. 1 and testified that Counsel did not review this with him either.

Applicant testified that Counsel never reviewed lesser-included offenses (such as voluntary manslaughter) with him and did not explain that he could ask the trial court to instruct the jury on voluntary manslaughter if he went to trial. He testified that Counsel advised him that

she had negotiated a plea deal with the State for a cap of forty years imprisonment. He testified that Counsel explained to him, and he understood, that this would mean he would receive a sentence between thirty to forty years imprisonment if he pled guilty.

Following Applicant's testimony, his mother, Betty Haynes, testified. She testified that Applicant was in a serious car accident approximately six months prior to his arrest. She testified that his accident affected his memory and speech, and overall personality.


After Applicant's mother, Counsel testified. She testified that she has been practicing law since 1997 and that she has been exclusively employed as a public defender throughout her career. She testified that she was appointed to represent Applicant and that she met with him eighteen times. She testified that she filed the appropriate discovery motions and received these materials from the State. She testified that she thoroughly reviewed these materials with Applicant, including SLED DNA and Latent Print reports. She testified that she advised Applicant of all of his constitutional rights, including trial rights, in a standard colloquy that she uses with clients. She testified that she informed him of his appellate rights as well.

She testified that Applicant appeared to understand these conversations and that she had no difficulty communicating with Applicant. She testified that at the time of her representation, Applicant appeared to be engaged and fully functioning. She testified that Applicant's behavior today is completely incongruent with his behavior at the time she represented him and described Applicant currently as an "entirely different man" than the person she represented in 2005. She testified that she had no reason to doubt his competency or move for an evaluation. She testified that she was never informed by Applicant or his mother that he suffered from any mental defects or other impairments and that the information provided by Applicant and his mother in regards to what they told her is "completely inaccurate." She testified that Applicant and his mother never

advised her that he heard voices. She testified that Applicant's mother only advised her that he had been diagnosed with a seizure disorder four years prior. She testified that Applicant's mother did provide her with medical records, but that she made the decision not to use those records because they documented Applicant's very aggressive and hostile mood swings and violent behavior. She described these medical records as "very damning" and would have impacted Applicant negatively if she attempted to use them.

She testified that the evidence against Applicant was strong, including witness statements that the victim was last seen alive with Applicant, footprint impressions that were consistent with the type of shoes worn by Applicant, the victim's blood and earring found in an abandoned trailer across the street from Applicant's home, and Applicant's statements to law enforcement. She testified that she reviewed all evidence with Applicant and explained how it could possibly be used against him – and challenged – at trial. She testified that the SLED Latent Print report showed that shoe prints with the same class characteristics as Applicant's shoes were found at the crime scene across the street. She testified that she recalled that she was aware before the plea that the shoe prints were in blood, but that it has been so long since the plea that she cannot recall from where she received that information. She testified that she had no document in her file indicating that the shoes were in mud or any other substance other than blood. She testified that whether the prints were in blood or not was not exculpatory, it still showed that the shoe prints were likely left by Applicant's shoe. She testified that she also reviewed Applicant's statement with him several times.

Counsel testified that Applicant never informed her that the statement was false or a dream. She elaborated that Applicant's story was fluid and kept changing over time, but the final version of the facts he gave her was consistent with the statement he gave law enforcement. She

testified that Applicant informed her that he took the victim to the abandoned trailer across from his home because he wanted to have sexual relations with her and that when she rebuked him, he became angry and a fight ensued. She testified that she discussed voluntary manslaughter with Applicant, but explained that it would be hard to secure either a plea negotiation or conviction for the lesser-included offense because there were no witnesses that could corroborate his version of the facts. She testified that she advised Applicant that she could move to suppress his statement during a pre-trial hearing, and that if suppression was denied, he could still raise this issue before the jury and on an appeal. She testified that she did not employ a false confessions expert because Applicant never informed her that his statement was untrue or a result of any sort of coercion or other law enforcement tactic. Additionally, she testified that at the time of her representation of Applicant in 2005, false confession experts were rarely – if ever – used in Orangeburg, ~~if ever~~ 

She testified that she did a thorough investigation, including attempting to track down possible witnesses. She testified that Applicant informed her of “boys” who were present when he was with Applicant, but that he was unable to provide names, addresses, or descriptions that could assist in locating them. She testified that her investigation did not yield any exculpatory information.

She testified that she received two plea offers from the State, which she promptly presented to Applicant and his family. She testified that the first offer was for a negotiated sentence of forty years imprisonment. She testified that she informed Applicant that this would require him to serve forty years in full in prison before being released. She testified that the second offer that she received was for a negotiated cap of forty years imprisonment. She testified that she explained to Applicant and his family that this would require Applicant to serve

a sentence of between thirty to forty years imprisonment before he would be released, with the exact term between thirty to forty years within the court's discretion. She testified that she believed this plea offer was in Applicant's best interest, as he likely would have been convicted of murder at trial and received a harsher sentence. She testified that Applicant decided to accept the State's offer and plead guilty. She testified that he understood he could possibly receive a sentence of forty years. She testified that she explained all of the constitutional rights that Applicant would be forgoing with a guilty plea, including the right to challenge the State's witnesses and evidence, including his statement. She testified that once Applicant decided to plead guilty, she began working on mitigation to present to the court. She testified that she presented Applicant's lack of a violent record, age, family history, and community support to the court in mitigation.

#### **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 (1985).

#### ***Ineffective Assistance of Counsel***

In a post-conviction relief action, an applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel 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.

The proper measure of performance is whether an 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. The 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).

"A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of a 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." Holden v. State, 393 S.C. 565, 572, 713 S.E.2d 611, 615 (2011), citing Rolen v. State, 384 S.C. 409, 413, 683 S.E.2d 471, 474 (2009).

After careful review based on the standard discussed above, this Court finds that Applicant has failed to carry his burden in this action. Specifically, this Court finds that Counsel's testimony is very credible and should be afforded great weight; conversely this Court finds Applicant's testimony is lacking credibility. Below are this Court's findings in regards to each of Applicant's allegations of ineffective assistance of counsel.

*Allegation that Counsel failed to introduce Applicant's medical history in mitigation*

Applicant alleges that plea counsel was ineffective for neglecting to introduce evidence of Applicant's medical history during Applicant's sentencing proceeding. See Amended Application Allegation No. 1. Respondent moved to dismiss this allegation as in violation of this Court's "Order Re-Opening PCR Action Docketed at 2006-CP-38-0462," which expressly declined to address this issue based on *res judicata*. This Court agrees with Respondent and finds that this allegation must be dismissed as in violation of this Court's previous Order reopening Applicant's post-conviction relief action.

Furthermore, this Court also finds that this allegation must be dismissed on the merits. Applicant alleges that Counsel should have presented his medical history in mitigation to secure Applicant a more lenient sentence. At the evidentiary hearing, Applicant testified that he suffers from auditory hallucinations, memory impairment, speech impediment, and severe mood swings related to an accident shortly before his arrest. He testified that he informed Counsel of his medical history and that she replied that this was a "problem" and she would not present it to the plea court. In sharp contrast, Counsel testified that Applicant was a completely different person when she represented him and that she had absolutely no difficulty discussing Applicant's case with him. Additionally, she testified that the information she received for Applicant and his

family was wholly incongruent with what was presented during the hearing, elaborating that she was only informed that Applicant had a seizure disorder. She testified that she was provided with medical records of Applicant, but after reviewing them, made a strategic decision not to use them in mitigation as they documented Applicant's very aggressive and hostile mood swings and violent behavior. She described these medical records as "very damning" and would have impacted Applicant negatively if she attempted to use them.

This Court finds that Counsel made a reasonable and strategic decision not to introduce Applicant's medical records based on a legitimate concern that the records would harm rather than help Applicant. See Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000) (when counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel). Therefore, this Court finds that Counsel's performance was in accordance with professional standards and not deficient. Furthermore, this Court finds that Applicant is unable to prove any resulting prejudice. Applicant testified that he pled guilty with a full understanding that he could receive a sentence of up to forty years imprisonment and he was sentenced within the understood range. Furthermore, this Court agrees with Counsel that introduction of the medical records in question likely would have caused more harm to Applicant and would not have resulted in a shorter sentence. Based on the foregoing, this Court finds that Applicant has failed to demonstrate both deficiency and prejudice and is denying and dismissing this allegation with prejudice.

*Allegation that Counsel failed to clarify Applicant's mental health history to the plea court*

Applicant alleges that plea counsel was ineffective for failing to clarify the Applicant's mental health history for the sentencing judge when Applicant answered the court's inquiry concerning whether he had a history of mental illness negatively. See Amended Application

Allegation No. 2. Respondent moved to dismiss this allegation as in violation of this Court's "Order Re-Opening PCR Action Docketed at 2006-CP-38-0462." This Court agrees with Respondent and finds that this allegation must be dismissed as in violation of this Court's previous Order reopening Applicant's post-conviction relief action.

Furthermore, this Court also finds that this allegation must be dismissed on the merits. As discussed above, this Court finds that Counsel's credible testimony reveals that she had no knowledge of or reason to believe that Applicant had any mental conditions or defects that needed to be brought to the plea court's attention. Furthermore, this Court finds that Applicant's testimony regarding his mental status at the time of the incident and plea is not credible and sharply contrasts with Counsel's credible recollection. This Court finds that Counsel's performance was reasonable according to professional standards. Therefore, this allegation must be denied and dismissed with prejudice.

*Allegation that Counsel failed to refute statements made by the prosecutor concerning the footwear impression found at the scene, failed to fully explain and mislead the Applicant regarding the significance of these impressions*

Applicant alleges that plea counsel was ineffective for failing refute statements made by the prosecutor concerning footwear impressions found at the scene, which Applicant characterizes as "significantly overstated the findings of SLED regarding the impression in question and advised the [c]ourt that the State believed they could have proven that the impressions were made in the victim's blood, when, at the time of the plea, SLED had issued a report finding the impressions were negative for phenol and appeared to be in mud." See Amended Application Allegations No. 3, 11, and 15. At the evidentiary hearing, Counsel testified that the SLED Latent Print report showed that shoe prints with the same class characteristics as Applicant's shoes were found at the crime scene and she explained to

Applicant what this meant. She testified that she recalled that she was aware before the plea that the shoe prints were in blood, but that it has been so long since the plea that she cannot recall from where she received that information. She testified that she had no document in her file indicating that the shoes were in mud or any other substance other than blood. She testified that whether the prints were in blood or not was not exculpatory, as it still showed that the prints were likely left by Applicant's shoe – which she fully explained to Applicant. Applicant was unable to present any evidence showing that the shoe prints were not in blood or that Counsel knew or should have known this prior to Applicant's guilty plea. This Court finds that Applicant has failed to meet his burden of establishing any deficiency of counsel and finds that Counsel's performance was reasonable based on professional standards. Furthermore, this Court also finds that Applicant has failed to establish any prejudice, as the result of the proceeding would remain unchanged regardless of the material in which the shoeprint was made. Therefore, this allegation must be denied and dismissed with prejudice.

*Allegation that Counsel failed to adequately investigate the circumstances under which Applicant's statement was given, failed to discuss potential grounds for challenging its admissibility pre-trial, during trial, and on appeal, including how his alleged memory defects and cognitive impairment may have impacted the statement, and failed to consult with a false confession expert*

Applicant alleges that plea counsel was ineffective for failing to adequately investigate the circumstances under which Applicant's statement was given and failing to discuss potential grounds for challenging its admissibility. See Amended Application Allegations No. 4, 5, 6, 8, 9, 10, 13, and 18. At the evidentiary hearing, Counsel testified that she reviewed Applicant's statement with him several times. She testified that Applicant never informed her that the statement was false or a dream. She elaborated that Applicant's story was fluid and changed slightly over time, but the final version he gave her was consistent with the statement he

provided to law enforcement. She testified that the deviations in Applicant's account were not enough to cause her significant concern or lead her to believe that the statement was a false confession. She testified that Applicant informed her that he took the victim to the abandoned trailer across from his home because he wanted to have sexual relations with her, and that when she rebuked him, he became angry and a fight ensued. She testified that she had no reason to believe the statement was fabricated or consult with any experts regarding its admissibility. She testified that she reviewed with Applicant that he would not be able to challenge his statement's admissibility if he elected to plead guilty. This Court finds that Applicant has failed to meet his burden of establishing any deficiency of counsel and finds that Counsel's performance was reasonable based on professional standards. Counsel's credible testimony reveals that she saw no reason to believe that Applicant's statement was a fabrication and that she explained the possibility of challenging the statement's admissibility if he went to trial. Additionally, as discussed above, this Court finds that Counsel's credible testimony reveals that she had no knowledge of or reason to believe that Applicant had any mental conditions or defects on which to base such a challenge. Furthermore, this Court also finds that Applicant has failed to establish any prejudice, as the result of the proceeding would remain unchanged, i.e. – Applicant's statement would have been admissible even if challenged. Therefore, this allegation must be denied and dismissed with prejudice.

*Allegation that Counsel failed to explain to Applicant that substantive errors of law made during a jury trial could be appealed to a higher court if convicted*

Applicant alleges that plea counsel was ineffective for failing to explain that substantive errors of law could be appealed to a higher court if he was convicted. See Amended Application Allegation No. 7. Counsel's credible testimony reveals that she reviewed all of Applicant's

constitutional rights, including appellate rights, with him prior to trial and that she explained to him that he would be foregoing certain rights if he elected to plead guilty in lieu of proceeding to trial. This Court finds that Applicant has failed to meet his burden of establishing any deficiency of counsel and finds that Counsel's performance was reasonable based on professional standards. Furthermore, this Court also finds that Applicant has failed to establish any prejudice. Therefore, this allegation must be denied and dismissed with prejudice.

*Allegation that Counsel failed to adequately explain all forensic evidence to Applicant and how the evidence might be challenged during a jury trial*

Applicant alleges that plea counsel was ineffective for allowing Applicant to make the decision to waive his right to a jury trial without first explaining the forensic evidence claimed by the State and how it could be challenged during a jury trial. See Amended Application Allegation No. 12. Counsel's credible testimony reveals that she reviewed all discovery with Applicant, including forensic evidence, with Applicant, as well as explained how such evidence could be used at trial. After these discussions, Applicant voluntarily elected to accept the State's plea offer and forego a trial. This Court finds that Applicant has failed to meet his burden of establishing any deficiency of counsel and finds that Counsel's performance was reasonable based on professional standards. Furthermore, this Court also finds that Applicant has failed to establish any prejudice, as Applicant failed to establish what forensic evidence was not sufficiently reviewed with him or how it could have impacted his decision to plead guilty. Therefore, this allegation must be denied and dismissed with prejudice.

*Allegation that Counsel failed to investigate the possibility of a lesser-included offense and explain to Applicant the law of lesser-included offense and how it may relate to his case*

Applicant alleges that plea counsel was ineffective for failing to investigate the possible application of lesser-included offense to the facts of Applicant's case and for failing to explain to

Applicant how lesser-included offenses could possibility be used if he went to trial by jury. See Amended Application Allegations No. 16 and 17. Counsel testified that she discussed voluntary manslaughter with Applicant, but explained that it would be hard to secure either a plea negotiation or conviction for the lesser-included offense because there were no witnesses that could corroborate his version of the facts. This Court finds that Applicant has failed to meet his burden of establishing any deficiency of counsel and finds that Counsel's performance was reasonable based on professional standards and the facts of this case. Therefore, this allegation must be denied and dismissed with prejudice.

### 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.

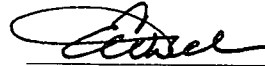
This Court notes that that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, 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 this application for post-conviction relief must be denied and dismissed with prejudice; and

2. The Applicant must remain remanded to and in the custody of the State

AND IT IS SO ORDERED this 5<sup>th</sup> day of November, 2014.



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EDGAR W. DICKSON  
Presiding Judge  
First Judicial Circuit

Orangeburg, South Carolina

STATE OF SOUTH CAROLINA )

COUNTY OF ORANGEBURG )

Ezekial Haynes, #309200 )

Plaintiff. )

vs. )

State of South Carolina )

Defendant. )

IN THE COURT OF COMMON PLEAS  
FIRST JUDICIAL CIRCUIT

CASE NO.: 2006-CP-38-0462

**MOTION AND ORDER INFORMATION  
FORM AND COVERSHEET**

Plaintiff's Attorney:

Tara D. Shurling, Bar No. 5099

Address:

3614 Landmark Drive, Ste. A, Columbia SC  
29204

Phone: \_\_\_\_\_ Fax \_\_\_\_\_

E-mail: \_\_\_\_\_ Other: \_\_\_\_\_

Defendant's Attorney:

Megan E. Harrigan, Bar No. 100108

Address:

PO Box 11549, Columbia SC 29211

Phone: \_\_\_\_\_ Fax \_\_\_\_\_

E-mail: \_\_\_\_\_ Other: \_\_\_\_\_

- MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
- FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
- PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

**SECTION I: Hearing Information**

Nature of Motion: \_\_\_\_\_

Estimated Time Needed: \_\_\_\_\_ Court Reporter Needed:  YES/ NO

**SECTION II: Motion/Order Type**

- Written motion attached
- Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Megan E. Harrigan  
Signature of Attorney for  Plaintiff/ Defendant

9/15/14  
Date submitted

**SECTION III: Motion Fee**

- PAID - AMOUNT: \$ \_\_\_\_\_
- EXEMPT: (check reason)
  - Rule to Show Cause in Child or Spousal Support
  - Domestic Abuse or Abuse and Neglect
  - Indigent Status  State Agency v. Indigent Party
  - Sexually Violent Predator Act  Post-Conviction Relief
  - Motion for Stay in Bankruptcy
  - Motion for Publication  Motion for Execution (Rule 69, SCRCP)
  - 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: \_\_\_\_\_
- Other: \_\_\_\_\_

**JUDGE'S SECTION**

Motion Fee to be paid upon filing of the attached order.

Other: \_\_\_\_\_

JUDGE CODE \_\_\_\_\_

Date: \_\_\_\_\_

**CLERK'S VERIFICATION**

Collected by: S.Z. Date Filed: 11/14/14

MOTION FEE COLLECTED: \$ 126 fee

CONTESTED - AMOUNT DUE: \$ \_\_\_\_\_



ALAN WILSON  
ATTORNEY GENERAL

November 13, 2014

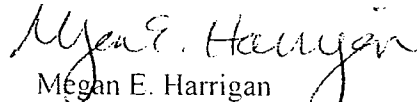
The Honorable Winnifa Brown-Clark  
Clerk of Court, Orangeburg County  
Post Office Box 9000  
Orangeburg, South Carolina 29115-9000

Re: Ezekial Haynes, #309200 v. State of South Carolina  
2006-CP-38-0462

Dear Ms. Brown-Clark:

Enclosed please find the signed original **Order of Dismissal** in the above captioned cases for filing in your office. If you have any questions or concerns, please contact me at (803) 734-3737 or MHarrigan@scag.gov.

Sincerely,

  
Megan E. Harrigan  
Assistant Attorney General

MEH/sbm