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February 26, 2015

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

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MAR 02 2015

S.C. Supreme Court

In RE: Walter Chase Alley, #354190 vs. State of South Carolina
Case #: 2013-CP-04-1391

Dear Sir/Madam:

Please find enclosed herewith the original and one (1) copy of the Appellant's Notice of Appeal in connection with the foregoing matter which I ask that you file for record, returning the clocked copy to my office. I also enclose a copy of the Order of Dismissal and the original Proof of Service on Walt Whitmire, Office of the Attorney General. Please use the enclosed self-addressed envelope to return the clocked copy to my office.

With kind regards,



Hugh W. Welborn

HWW/sba

cc: Office of the Appellate Defense
cc: Office of the Attorney General

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
APPEAL FROM ANDERSON COUNTY
COURT OF COMMON PLEAS

HONORABLE CARMEN T. MULLEN

2013-CP-04-1391

WALTER CHASE ALLEY #354190

APPELLANT,

vs

STATE OF SOUTH CAROLINA,

RESPONDENT.

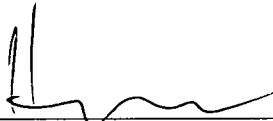
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MAR 02 2015

S.C. Supreme Court

NOTICE OF APPEAL

Walter Chase Alley, #354190 appeals the denial of his Post Conviction Relief. The Post Conviction Relief Action was heard and denied by the Honorable Carmen T. Mullen, Circuit Court Judge on December 1, 2014, and Order of Dismissal issued on February 6, 2015, and filed on February 12, 2015. The Appellant received Order of Dismissal on February 26, 2015.



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THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
APPEAL FROM ANDERSON COUNTY
COURT OF COMMON PLEAS
HONORABLE CARMEN T. MULLEN

2013-CP-04-1391

WALTER CHASE ALLEY #354190

APPELLANT,

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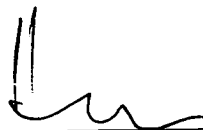
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S.C. Supreme Court

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the State of South Carolina by depositing a copy of it in the United States Mail postage prepaid on February 26, 2015, addressed to its attorney of record Walt Whitmire, Office of the Attorney General, Post Office Box 11549, Columbia, South Carolina 29211-1549



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Anderson, South Carolina

February 26, 2015

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Walter Chase Alley,
S.C.D.C. No. 354190,

A TRUE COPY
FEB 12 2015
Richard M. Brier
CLERK OF COURT

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

C.A. No. 2013-CP-04-1391



Applicant,

v.

State of South Carolina,

Respondent.

ORDER OF DISMISSAL

COMMON PLEAS AND
GENERAL SESSIONS

2015 FEB 12 AM 11:00

FILED-CLERK'S OFFICE
ANDERSON SC

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed June 10, 2013. Respondent subsequently filed its responsive pleadings. An evidentiary hearing into the matter was convened on December 1, 2014 at the Anderson County Courthouse. Applicant was present and was represented by Hugh W. Welborn, Esq. Respondent was represented by Walt Whitmire, Esq., of the Office of the Attorney General.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Anderson County. Applicant was indicted at the October 2011 term of the Court of General Sessions for Anderson County for murder. (2011-GS-04-1723). He was represented by Scott Robinson, Esq. On February 4, 2013, the State called its case to trial. On February 5, 2013, Applicant entered a Guilty But Mentally Ill (GBMI) plea as indicted. The Honorable J.C. Nicholson accepted Applicant's plea and found he met his burden to prove GBMI. Judge Nicholson sentenced Applicant to a term of thirty-seven (37) years imprisonment. Applicant did not appeal his guilty plea or sentence.

At the PCR hearing, Applicant proceeded on the limited allegations of ineffective assistance of counsel in his assertion that he was being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel:
 - a. failure to reasonably consult with Applicant and communicate developments in the case;
 - b. failure to elicit a plea bargain;
 - c. failure to prepare Applicant's case in light of counsel's purported "high case volume;"
 - d. failure to reasonably investigate a suppression defense concerning Applicant's confession;
 - e. failure to call Joyce Means as a witness at the Jackson v. Denno¹ hearing.
 - f. failure to investigate a defense theory of accident;
 - g. failure to investigate the ownership of the firearm used during the commission of the offense;
 - h. failure to move to suppress a purportedly defective arrest warrant;
 - i. failure to investigate and present an adequate mitigation defense during the sentencing phase of the plea hearing;
 - j. failure to file a notice of appeal from Applicant's plea hearing
2. Involuntary Guilty Plea:
 - a. failure to apprise Applicant that he was pleading, as indicted, to murder;
 - b. failure to apprise Applicant of the elements of the murder.

Summary of Evidence and Testimony from the PCR Hearing

Applicant testified and offered his *post-hoc* assessment of counsel's representation during his case. Applicant alleged that counsel did not consult him concerning substantive matters in the case. He testified that counsel discussed the State's evidence with him without providing him a physical copy of the State's discovery disclosures. Yet, he also testified that he was unaware of the State's evidence against him. He noted that counsel did make periodic visits to the county

¹ Jackson v. Denno, 378 U.S. 368 (1964)

detention center to meet with him. He further testified that counsel employed a private investigator (P.I.) on the case, but he asserted that he was unaware of how counsel utilized the P.I. in his case. He testified that counsel would tell him "I have it under control" in response to his questions and concerns. Applicant testified that counsel disparaged his intellectual capabilities during their consultations.

Applicant alleged counsel did not properly investigate his case and prepare for trial. Applicant speculated that counsel had too many cases to devote sufficient time and resources to his case. He based this assessment on purported conversations with other inmates at the county detention center. He testified to his version of facts of the murder as follows: he did drugs with the co-defendants before they decided to commit the burglary at the victim's residence; that the "attorneys" all knew he would be the fall guy for the murder because "everyone" blamed him for causing the victim's death. Applicant alleged counsel did not mount an adequate suppression defense concerning his confession. The allegation was based on his assertion that Joyce Means (the Aunt) would have testified that the police coerced his confession. He opined that the police misconstrued his apology for a confession. Next, Applicant alleged counsel should have investigated and moved to suppress the purported defective arrest warrant because it lacked a signature from a magistrate judge. Applicant also alleged counsel should have investigated the State's ballistic evidence that, according to him, showed that he did not own the firearm that he used to kill the victim. When questioned on how he was able to locate the weapon for police, he responded that it was just a random coincidence. Applicant alleged counsel should have investigated a defense theory of accident. Applicant testified that the firearm accidentally discharged after he pointed it at the victim. Last, Applicant alleged counsel should have further investigated and presented a better mitigation defense at the plea hearing. He opined that his

disabilities and minor criminal history should have resulted in a more favorable prison sentence. He further based this allegation on the purported lower sentences his co-defendant's received.

Applicant alleged counsel did not file a notice of appeal despite his desire to appeal the guilty plea. He testified that he asked the Aunt to contact counsel to ensure he got an appeal. Applicant alleged that his guilty plea was rendered involuntary because counsel did not apprise him that he was pleading guilty to the offense of murder. He testified that he was under the impression that he was pleading guilty to the lesser-included offense of voluntary manslaughter. Alternatively, he alleged his guilty plea was rendered involuntary because counsel did not apprise him on the elements of murder. When questioned on what distinguished counsel's purported deficient performance from his prior attorneys on prior offenses, Applicant was unable to provide an answer.

Applicant's Aunt testified to the relationship with Applicant and involvement in his case. She noted that she was acquaintances with the local law enforcement and testified to conduct on the day Petitioner confessed, gave a written statement, and was arrested. She testified to her concerns of purported police misconduct where she accused the police of coercion and dishonesty. However, she noted that she was not in the interview room with Applicant when he was being questioned about the murder. The Aunt opined that counsel should have complied with her requests during the representation because she paid to have counsel retained. Last, the Aunt testified that after the plea hearing, she told counsel to file an appeal and to ensure that Applicant did not get placed in general population when he got to the Department of Corrections.

Counsel testified to his course of conduct during the representation. He noted that he met with Applicant on numerous occasions. Upon being retained, counsel elicited Applicant's version of the facts of the murder from him. Counsel noted that the fact that Applicant was

armed and involved in the burglary, and that he had used drugs with the other co-defendant's prior to the murder were not in dispute. Counsel reviewed all the discovery disclosures from the State, apprised Applicant accordingly, and provided a copy for him. Counsel covered all of Petitioner's concerns and questions. Furthermore, counsel retained a private investigator (P.I.) to assist him in the preparation of the case. He noted that they discussed accomplice liability theory of guilt and elements of murder. The ownership of the weapon was neither relevant nor material to the case. He testified that condition of ballistics retrieved from the crime scene inhibited an identification to the murder weapon, yet he noted that murder weapon was one of several possible firearm models that matched the ballistics.

Based on the overwhelming evidence of guilt, counsel pursued a diminished capacity theory that alternatively aided in his suppression defense concerning the confession and established a substantial mitigation case in sentencing. Counsel was adamant that State never made a plea offer to manslaughter during the case. He testified that he felt as if he was fully prepared for trial. He noted that he was precluded from interviewing the co-defendants. Counsel interviewed the Aunt and apprised her of his strategy to refrain from presetting her as defense witness at the Denno hearing, electing to present her as a trial witness.

Also, counsel did not indicate the manner in which the State disclosed its witness list for trial adversely affected his ability to provide effective assistance. Counsel was adamant that Applicant was not adversely effected in anyway whatsoever because of his case load.

He testified that Applicant made the decision to enter a guilty plea to murder after the Trial Judge found his confession to be admissible. Counsel met with Applicant in a private room within the courthouse, just prior to the plea, to discuss the implications and consequences of Applicant's decision to plead and forgo his trial. Counsel was adamant that there was no

confusion on the fact that Applicant was pleading as indicted and not to a phantom lesser-included offense. His mitigation investigation proved fruitful and resulted in the Judge finding that Applicant was Guilty but Mentally Ill (GMBI). Furthermore, Applicant received a favorable sentence on the lower end of the sentencing range. Last, Counsel testified that he had no independent recollection or notations that Applicant or the Aunt requested that he file a notice of appeal.

APPLICABLE LAW

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application 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. at 441, 334 S.E.2d at 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland, *supra*. 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.

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. Kolle v. State, 386 S.C. 578, 588, 690 S.E.2d 73, 78 (2010)

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court reviewed the Clerk of Court records regarding the subject's convictions, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the transcripts and documents from the prior proceedings, and legal arguments of counsel. Pursuant to S.C. Code Ann. §17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

As a matter of general impression, this Court finds Applicant fell well short of meeting his burden to prove that he was denied constitutionally effective representation. In light of counsel's extensive labor and admirable efforts in Applicant's case despite the simplicity of State's case and its overwhelming evidence of Applicant's guilt, the majority of Applicant's allegations are illogical and facially unsound. For instance, Applicant and the Aunt made numerous speculative assertions on the impropriety and inaccuracy of the confession entirely inconsistent to Applicant's allegation that counsel should have pursued an accident theory based on the substance of his confession. Furthermore, this Court is further dissuaded in assessing

credibility to Applicant's *post-hoc* testimony because he was a seasoned participant in the criminal justice system. This Court finds the all too familiar impetus behind this PCR action derived from Applicant's current frustration that his co-defendants received lighter sentences than him. Instead, this Court finds that the record here shows that Applicant made the knowing, intelligent and voluntary decision to plead guilty during trial. Simply, Applicant shot and killed the victim and received the benefit of the bargain and competent assistance of counsel when he was exposed to a possible term of life imprisonment. Simply, Applicant cannot have his cake and eat it to.

A.

This Court finds that Applicant has failed to prove that counsel was either deficient or ineffective for purportedly failing to adequately communicate with Applicant during the representation. "From counsel's function as assistant to the defendant derive the overarching duty to advocate the defendant's cause and the more particular duties to consult with the defendant on important decisions and to keep the defendant informed of important developments in the course of the prosecution." Strickland v. Washington, 466 U.S. 668, 688, 104 S. Ct. 2052, 2065, 80 L. Ed. 2d 674 (1984). "There is no claim of deficient consultation without a showing of prejudice from the deficiency." U.S. v. Mealy, 851 F.2d 890, 908 (7th Cir. 1988). This Court finds the conclusory allegation itself is facially inadequate and without merit. See Jones v. Gomez, 66 F.3d 199, 204 (9th Cir. 1995) ("Conclusory allegations not supported by specifics do not warrant relief."). Therefore the generic allegation, as pled and pursued, is summarily denied and dismissed.

This Court finds Applicant has failed to meet his burden to prove that counsel's performance was either deficient or ineffective for purportedly failing to apprise him of the

State's witnesses prior to trial. Applicant testified that he was forced to plead because counsel did not explain the purpose of a purported State witness "Diane Ruth's" testimony to State's case against him. Applicant has failed to meet his burden to make a *prima facie* showing that the purported witness was even material to State's case. Regardless, Applicant's allegation here is wholly unsupported by the Record before this Court. Furthermore, this Court finds counsel's testimony to be credible that Applicant's decision to plead guilty was independent and intelligently made as a result of the Judge's adverse finding on the admissibility of his confessions. Therefore, this allegation is denied and dismissed.

B.

This Court finds Applicant's allegation that counsel's failure to elicit a plea bargain from State constituted ineffective assistance to be without merit. Absent detrimental reliance, not present in this case, a criminal defendant has no right to a plea bargain. Instead, the constitutional authority here rests solely within the purview of the prosecuting office. See Ex parte Harrell v. Attorney Gen. of State, 409 S.C. 60, 66, 760 S.E.2d 808, 810-11 (2014) (citing State v. Thrift, 312 S.C. 282, 306, 440 S.E.2d 341, 355 (1994) (internal quotations omitted) ("Noting that the State possesses "wide latitude in selecting what cases to prosecute and what cases to plea bargain, the Court observed that the Attorney General's authority to prosecute derives from our state constitution.")). Therefore, the allegation is summarily denied and dismissed.

C.

This Court finds Applicant has failed to prove that his guilty plea was rendered involuntary because of counsel's purported failure to apprise him that he was pleading to guilty to murder as indicted. "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). "[T]he voluntariness of a guilty plea is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing." Dalton v. State, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Harres v. Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984)).

In light of counsel's credible testimony on the matter, this Court finds Applicant has failed to produce a compelling or even remotely credible reason why he should be able to depart from the truthfulness of his assurances and statements made to Judge Nicholson during the plea hearing. See Id. at 137, 654 S.E.2d at 874 (citing Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977) (A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed.")). Similarly, this Court rejects Applicant's allegation that his guilty plea was rendered involuntary because counsel never apprised him of the elements of murder. This Court finds both allegations are incredible in light of the substantial number of consultations counsel held with Applicant during the representation. Therefore, both allegations are denied and dismissed.

D.

Applicant failed to meet his burden to prove counsel's performance was either deficient or ineffective for purportedly failing to further investigate and pursue a suppression defense to admissibility of his confession. "This Court has stated previously that criminal defense attorneys

have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case.” Edwards v. State, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011) (internal citation omitted). “State must show the statement was voluntarily made by a preponderance of the evidence.” Jackson v. Denno, 378 U.S. 368, 376, 84 S.Ct. 1774, 12 L.Ed.2d 908 (1964). If the statement is found to have been given voluntarily, it is then submitted to the jury, where its voluntariness must be established beyond a reasonable doubt. State v. Washington, 296 S.C. 54, 56, 370 S.E.2d 611, 612 (1988). “When reviewing a trial court’s ruling concerning voluntariness, this Court does not reevaluate the facts based on its own view of the preponderance of the evidence, but simply determines whether the trial court’s ruling is supported by any evidence.” State v. Parker, 381 S.C. 68, 74, 671 S.E.2d 619, 622 (Ct. App. 2008).

Applicant fell well short of his burden here. Applicant asserts that the written manifestation of his statement did not accurately comport to what he described as “an apology” he gave police. This Court finds that Applicant failed to make a prima facie showing of what additional investigation could have altered Judge Nicholson’s finding that the Applicant’s confession was made voluntarily. See Nickel v. Hannigan, 97 F.3d 403 (10th Cir. 1996) (Failure to object to an allegedly involuntary confession failed the prejudice prong where there was no evidence of police coercion as required.). This Court finds that counsel made a valid strategic decision to pursue the best available defense here in presenting expert testimony from Dr. Price on diminished capacity. See Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992) (where counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel). Therefore, this allegation is denied and dismissed.

Similarly, this Court finds Applicant failed to meet his burden to prove that counsel was either deficient or ineffective for not presenting the Aunt as a witness at the Denno hearing. This Court finds counsel made a valid strategic decision to wait until trial to present the Aunt. This Court finds the majority of her account of Applicant's arrest and interactions with police to be emotionally charged, suspicious, and conclusory. This Court finds that the potential import of her testimony to Applicant's case was substantially diminished by her abject bias demonstrated by her emotional outbursts. Had the Aunt testified at the Denno hearing, the State would have certainly been on notice of her eccentricities, thereby allowing the State to prepare to expose her limitations during cross-examination at trial. Most important, her testimony was immaterial to the pre-trial determination concerning the voluntariness of Applicant's statement because she was not present with Applicant during his interviews and interactions with police. Skillicorn v. Luebbers, 475 F.3d 965, 974 (8th Cir. 2007) (not ineffective to fail to ask questions of a witness which would elicit information either beyond the witnesses knowledge or that would be inadmissible); Amendment). Therefore, this allegation is denied and dismissed.

Applicant failed to meet his burden to prove that counsel was either deficient or ineffective for failing to investigate and pursue an accident theory of the case. "A homicide will be excusable on the ground of accident when (1) the killing was unintentional, (2) the defendant was acting lawfully, and (3) due care was exercised in the handling of the weapon." State v. Commander, 396 S.C. 254, 271, 721 S.E.2d 413, 422 (2011). This Court finds counsel's testimony on the matter to be credible. This Court further finds that even in a light most favorable to Applicant, his PCR testimony failed to meet both the second and third elements. See Baker v. Corcoran, 220 F.3d 276, 294 (4th Cir. 2000) (failure to investigate trigger pull for the

possibility of accident was not ineffective assistance of counsel). Therefore, this allegation is denied and dismissed.

Applicant's allegation that counsel was ineffective for failing to investigate the ballistics evidence is without merit. Counsel pursued the matter through a pre-trial hearing. Therefore, the allegation is summarily dismissed and denied where it was entirely refuted by counsel's performance at trial. Similarly, Applicant's allegation that counsel's purported high case load rendered him ineffective to be without merit. Therefore, this allegation is summarily denied and dismissed.

Last, Applicant's allegation that counsel was ineffective for failing to investigate the murder weapon to determine ownership is without merit. It was undisputed that Applicant possessed the pistol during the robbery where he ultimately shot and killed the victim. This Court finds the claim to be illogical in light of Applicant's failure to present any testimony or evidence to the contrary. Therefore, this allegation is denied and dismissed.

E.

Applicant's allegation that counsel was ineffective for failing to quash the purported defective arrest warrant is without merit. Applicant was on notice that the State intended to pursue its murder and burglary case against him from the outset of his arrest. Any other *post-hoc* contention is absurd and devoid of credibility. Therefore, this allegation is summarily denied and dismissed.

F.

Applicant failed to meet his burden to prove that counsel was either deficient or ineffective for failing to file a notice of appeal on his behalf. "[C]ounsel has a constitutionally imposed duty to consult with the defendant about an appeal when there is reason to think either

(1) that a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing." Roe v. Flores-Ortega, 528 U.S. 470, 480, 120 S. Ct. 1029, 1036, 145 L. Ed. 2d 985 (2000). Although counsel lacks a recollection here, this Court finds Applicant and the Aunt's testimonies on the matter to be not credible. See Burt v. Titlow, 134 S. Ct. 10, 17, 187 L. Ed. 2d 348 (2013) ("It should go without saying that the absence of evidence cannot overcome the strong presumption that counsel's conduct [fell] within the wide range of reasonable professional assistance"). Judge Nicholson found Applicant met his burden to prove he qualified as GBMI; moreover, Applicant received a favorable sentence close to the mandatory minimum. The Court finds the lack of correspondence from Applicant's camp to counsel on the matter to be telling in light of the Aunt's substantial involvement in the case. Therefore, this allegation is denied and dismissed.

G.

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

CONCLUSION


Based on all the forgoing, 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 for post-conviction relief. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of intent to appeal within thirty (30) days from receipt of this Order to secure the appropriate appellate review. See Rule 203, SCACR. Rule 71.1(g), SCRCP; Bray v. State, 336 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant's counsel to file and serve notice of appeal. The Applicant's attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely filed.

IT IS THEREFORE ORDERED

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of Respondent

AND IT IS SO ORDERED this 6 day of Feb., 2015.


CARMEN T. MULLEN
Presiding Judge
Tenth Judicial Circuit

Beaufort, South Carolina

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2015 FEB 12 AM 11:02
COMMON PLEAS AND
GENERAL SESSIONS

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