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February 26, 2015

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

RECEIVED

MAR 02 2015

S.C. Supreme Court

In RE: Nathaniel Dickson, #336982 vs. State of South Carolina  
Case #: 2010-CP-04-3054

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

2010-CP-04-3054

NATHANIEL DICKSON #336982

APPELLANT,

vs


STATE OF SOUTH CAROLINA,  
RESPONDENT.

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**NOTICE OF APPEAL**

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Nathaniel Dickson, #336982 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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Attorney for Nathaniel Dickson, #336982

Other Counsel of Record:  
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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

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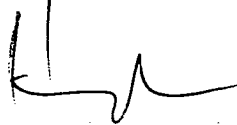
S.C. Supreme Court

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**PROOF OF SERVICE**

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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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Attorney for Nathaniel Dickson, #336982

Anderson, South Carolina

26 Feb 2015



STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF ANDERSON ) FOR THE TENTH JUDICIAL CIRCUIT

**A TRUE COPY**  
**FEB 12 2015**  
*Richard A. Kiser*  
CLERK OF COURT

Nathaniel Dickson,  
S.C.D.C. No. 336982,

C.A. No. 2010-CP-04-3054

Applicant,

v.

State of South Carolina,

Respondent.

**ORDER OF DISMISSAL**

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COMMON PLEAS AND  
GENERAL SESSIONS

This matter comes before the Court pursuant to an application for post-conviction-relief (PCR) filed August 25, 2010. Respondent made its Return. 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 Saluda County. Applicant was indicted at the May 2011 term of the Court of General Sessions for Anderson County on four counts of murder and possession of a weapon during a violent crime (2008-GS-958; -959; -960; -961). He was represented by Kurt Tavernier, Esq., and Andrew Potter, Esq. On September 21, 2009, Applicant pled guilty as indicted pursuant to a plea agreement where the State agreed to not pursue the death penalty and recommended Applicant be sentenced to consecutive terms of life imprisonment without the possibility of parole 'LWOP'. As a result of an extensive colloquy,

The Honorable J. Cordell Maddox, Jr. accepted Applicant's plea and sentenced Applicant pursuant to the State's recommendation. Applicant did not appeal his convictions or sentences.

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 investigate purportedly exculpatory alibi evidence;
  - b. failure to adequately investigate and evaluate the State's purportedly lack of trace evidence
  - c. failure to adequately investigate and evaluate the State's evidence and purportedly apprise Applicant that there were no eyewitnesses to the murders;

#### **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, 104 S.Ct. 2052, 2064, (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, 104 S.Ct. at 2064. 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 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, 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's allegations and assertions to be wholly incredible, unsupported, and entirely lacking in merit. Instead, this Court finds Applicant received the benefit of exemplary assistance of counsel. Attorney Tavernier and

Attorney Potter testified to their course of conduct during the representation. This Court finds their testimonies to be not only credible but convincing. Applicant's attorneys expended extensive labor immediately upon the outset of the representation leaving no stone unturned in investigating the underlying facts surrounding the murders and State's extensive evidence of Applicant's guilt. The attorneys sought out esteemed mental health experts in assembling its defense team. In light of the foregoing, the Court finds Applicant's assertions that his attorneys were deficient in their communications with him to be utterly base. This Court also finds Applicant's casual testimony that he feigned amnesia on countless occasions to his attorneys, and to defense experts to be endemic of this meritless-PCR action.

**A.**

This Court finds Applicant has failed to meet his burden to prove his attorneys were either deficient or ineffective in their performances for failing to investigate purported exculpatory alibi evidence. "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." Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007). Moreover, while the scope of a reasonable investigation depends upon a number of issues, "at a minimum, counsel has the duty to interview potential witnesses and to make an **independent** investigation of the facts and circumstances of the case." Troedel v. Wainwright, 667 F.Supp. 1456, 1461 (S.D.Fla.1986), aff'd, 828 F.2d 670 (11th Cir.1987) (emphasis in original).

Applicant argues that his attorneys were ineffective for failing to investigate an alibi defense. The allegation was supported by Applicant's testimony that he was 'four-wheeling' when his family was murdered. He further testified that credit card receipts and phone records

would support an alibi. This Court finds Applicant's testimony here not credible. In comparison, this Court finds Attorney Tavernier's testimony to be credible that Applicant confirmed the authenticity and accuracy of his confession, that Applicant apprised him of the particular details of the murders, and that he and Attorney Potter conducted an extensive investigation of the State's evidence, visited the scene, and determined the relevant facts surrounding the murders, to be credible. This Court similarly finds Attorney Potter's testimony on this matter. Regardless, the allegation here is fatally reliant on non-credible speculation. See Porter v. State, 368 S.C. 378, 386, 629 S.E.2d 353, 358 (2006) ("Mere speculation of what a witness' testimony may be is insufficient to satisfy the burden of showing prejudice in a petition for PCR."); see also Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998) ("Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result."). Therefore, this allegation is summarily denied and dismissed.

This Court also finds Applicant failed to meet his burden to prove his attorneys were ineffective for failing to further investigate latent prints found on the murder weapon. He testified that it was his opinion that the prints were inconclusive to prove identity. This Court also finds Applicant failed to meet his burden to prove his attorneys were ineffective for failing to challenge the authenticity of his confession. Both allegations are summarily denied and dismissed similarly because they are solely reliant on Applicant's unfounded speculative testimony.

B.

Applicant testified that his attorneys inaccurately told him that a passing motorist witnessed him commit the murder. He testified that he has since learned otherwise after his post-

sentencing review of his "Brady" materials. Attorney Potter testified that a neighbor phoned police to report the disturbance and that he reviewed the 911 audio recording. Attorney Potter noted that a motorcyclist traveled by scene around the time of the offense. He testified that he and Attorney Tavernier fully reviewed all the State's evidence with Applicant. This Court finds Attorney Potter's testimony on the matter to be credible and Applicant's testimony suspect and not credible. This Court finds that Applicant's allegation that his attorneys misadvised him on the import any legitimacy of the State's evidence to be farcical. Therefore, this allegation is denied and dismissed.

C.

Last, Applicant readily failed to prove Strickland's prejudice prong on all allegations in light of the overwhelming evidence of his guilt. See Ford v. State, 314 S.C. 245, 442 S.E.2d 604 (1994) (Where there is overwhelming evidence of guilt, a trial counsel's deficient representation).

D.

Except as discussed above, this Court finds that the Applicant affirmatively abandons 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.

  
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 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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