

Dear Clerk,

Can you please be notified that the petitioner Terrence Bradshaw #320341 / Do Here By now file's A motion to pertain's to A (Rule 243-C) motion for explanation in regard's to case 2014-Cp-45-205 / And in reference to Respondent's motion for the final order of dismissal, please review <sup>#</sup>10 pages in all (also) with regard's to (And) Exhibit A that's in reference to #2008-Cp-45-0008 and Exhibit B that's in reference to #2014-Cp-45-205, please can you please, notified applicant that all above information was received by you that's all thank you in regard's of your kindness.

SX Terrence Bradshaw 03-10-2015

Terrence Bradshaw #320341  
Kershaw Institution Magnolia #A31  
4848 Goldmine Hwy Kershaw  
SC 29067

**RECEIVED**

MAR 13 2015

**S.C. SUPREME COURT**



Terrence Bradshaw #320361  
Applicant

- VS -

The State of South Carolina  
Respondent

In Regards of Applicant case # 2014-cp-45-205  
This is petitioner motion In Regards to Rule 243c  
for notice of Appeal, In Reference to The Respondent's  
motion for The final order of Dismissal, Here  
By This motion is only, The Applicant's Exhibit  
A/motion...

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MAR 13 2015

**SC SUPREME COURT**

Here By, The Applicant Terrence Bradshaw now Bring's fact's Exhibit A  
this exhibit Implicates The procedural History In Connection to The Judge's  
ruling for The order of Dismissal, from The Applicant original PCR Application  
case file # 2008-cp-45-0008 / ~~please Review the Responce At The Involuntary~~  
~~guilty plea At pages 6 And 7,~~ The Applicant Just Discover in A Conside ~~ment~~  
manner, That ISSUE's pretaining to Involuntary guilty has Been rule on By  
The PCR Judge MR George C. James, JR. This is where PCR Judge Implicate  
The Transcript pages from Reviewing, And Ruling on The ISSUE's to The  
Involuntary guilty plea.

The Applicant now please needs the Court to Review The ISSUE's to  
Ineffective Assistance of Counsel, In Connection ~~to the PCR Judge only Rule~~  
~~to the Applicant (ISSUE part A) PCR Judge finding are Base upon (D.M.H.)~~  
~~Report, in Regards of Competency to Stand trial,~~ In Regards The petitioner  
contend's in Connection to issue's (part B And part C) / were Inadequately  
raise in The original PCR Application, ~~The Applicant Just discovered this~~  
~~ISSUE, The PCR Judge MR Honorable George C. James JR, have not take~~  
~~in Applicant's issue to (part B And part C) in Applicant's Application,~~  
~~PCR Attorney MR Brooks is Ineffective Assistance of Counsel, By not~~  
~~making And objection to PCR Judge Ruling, And By not filing A~~  
~~motion to A Rule 59-e/ to the Judge Decision to correct the Inadequente~~  
ISSUE's to part B And part C, in Applicant's Behalf of Ineffective Assistance  
of Counsel to Applicant's original Application. The each issue that the Applicant  
resented did not been reviewed. The petitioner contend's that it would  
be A violation to the equal protection of the 8th the 14th, the 5th and the  
13th Amendment of due process.

"Please Read Back page to petitioner's Exhibit A"

Under Rule 60-A/ Clerical mistakes (And) Rule 29-B, To After  
Discovered evidence, ~~Please Review Exhibit B Pages 3 And page~~  
~~5 | This information came from case file # 2014 CP 45 205 from~~  
The Respondent's motion In the final order of Dismissal, ~~This is the~~  
~~issue from the Respondent's motion for the final order of dismissal,~~  
~~from part B and part C, In connection to the Confrontation~~  
~~Clause and for perjured testimony, they have never been Acknowledge~~  
~~upon PCR Judge's finding. The Respondent Implicate That the court~~  
finds the Applicant had the opportunity to litigate all issues related  
to his case at the evidentiary hearing for his first PCR Application  
on April 1st 2009.

The PCR Judge failed to follow the guidelines of SC code 17-27-80  
with in respect to the Conviction or Sentence proceedings. This court  
shall make specific findings of fact and state expressly its conclusions  
of law relating to each issue presented, under 17-27-90 / This  
statute Implicate that any ground finally adjudicated or not  
so raised or knowingly voluntarily and intelligently waived in the  
proceedings that resulted in the applications of the applicants conviction  
or sentence or in any other proceeding the applicant has taken, ~~to~~  
~~secure relief may not be the basis for subsequent applications.~~  
~~application, unless the court finds a ground for relief asserted~~  
~~which for sufficient reason was not asserted or was inadequately~~  
~~raised in the original supplement or amended applications.~~

From Inmate / Terrence Bradshaw #320361  
Kershaw Institution magnolia #A31  
4848 Goldmine Hwy Kershaw  
SC, 29067.

Terrence Bradshaw #320361	)	This is Rule 243(c)
Applicant	)	Explanation In Regards of
	)	Applicant case#2014-cp-45-
-vs-	)	2051/In Reference to Respond-
The State of South Carolina	)	ent's motion for The final
Respondent	)	Order of Dismissal Please
	)	Review # <u>10</u> pages In All.
	)	

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Here By Terrence Bradshaw, Applicant request the court to modify and correct a Judgement in the final order of dismissal. In order to Reflect a Ruling upon the issues contained in the original Application, based on the following misconstruction of facts.

Procedural History

The Record before this court indicate the Applicant is presently confined in the South Carolina Department of Corrections pursuant to order of commitment of the Clerk of Court for williamsburg County. The Applicant was indicted for (1) Murder, (2) Assault and Battery with Intent to kill, (3) Possession of a Weapon During A Violent Crime, (4) Armed Robbery, (5) Criminal Conspiracy, (7) Possession of a Firearm by A person under the age of 21 (2005-GS-45-0181). Debra Jackson, Esquire, represented him. Applicant pled guilty to Armed Robbery on February 5, 2007, he was sentenced by the Honorable Clifton Newman to twenty-two (22) years imprisonment. Applicant did not appeal his conviction and sentence.

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MAR 13 2015

S.C. SUPREME COURT

### The Relevant facts to Applicant case

This matter comes before the court of and Application for post-conviction Relief filed January 11, 2008. The Respondent made its return on July 2, 2008. And Evidentiary Hearing into the matter was convened on April 1, 2009, at the Sumter County Courthouse. This case has went before The Honorable Mr. George C. James, Jr. The Applicant was present at the hearing, and was represented by Mary s. Williams of the South Carolina Attorney General's Office. At the hearing, the Applicant testified on his own behalf. Also testifying was Debra Jackson Esq. This court had before it the records of the Williamsburg County Clerk of Court, the guilty plea transcript.

### The Law Analysis

- (1) 17-27-80... The hearing on Application for final Judgement.
- (2) 17-27-90... All grounds for relief.
- (3) 17-27-100... A final Judgment entered for Appeal.

Under South Carolina Law/ A person in custody has two primary remedies when attacking the validity of a conviction, direct appeal and (PCR) Relief. As it relates to presentation on direct appeal. The issue must be raised to and ruled upon at the trial level in order for issue to be considered preserved for appellate review please observe State-vs-Dunbar 356 SC 138 142 587 Se2d 691 693-94 (2003).

### Pursuant To Rule's 60-A

Under This Statue in regards to rule 60-A/ This Rule Implicates Clerical mistakes in Judgments order or, other parts of the record and errors therein arising from oversight or omission may be corrected by the Court at any time of its own initiative or on the motion of any party and offer such notice.

Pursuant To Rule's 29-B

Under This Statute in regards to rule 29-B/ This rule implicates New Trial base on after Discovered evidence of actual discovery of the evidence by the defendant or after the date when the evidence could have Been Ascertained By the exercise of reasonable diligence.

Pursuant To petitioner Argument

The Applicant Here By Bring forth and objection to the Relevent merits In case file # 2014-cp-45-205. This is Here By in The Regard's to The Respondent's motion for the final order of Dismissal Please observe pg#5 from Exhibit B. The Applicant Just Discovered issue in regards of his original application under ineffective assistance of counsel in regards of part B and part C/ The applicant did not have a full review in connection to Inabiequately Issues to ineffective assistance of counsel with in the original application at here by in violation of the Applicants right. This Rules Bar's Applicant from Raising claim from PCR Application PCR Counsel Mr. Brooks had fail to file Applicant Terrance Bradshaw Rule 59-e on the following issue's from the Judge's Decision. The Applicant Here By contends By PCR Judge failing to rule on each issue presented in the PCR Application there by procedure bar the Applicant from Appellate review in this case.

Here By This is where The Applicant observe The Respondent's motion in regard By Stating. This motion Implicates That This court notes Successive PCR application are disfavored under Land-vs-State 274 SC 243 246 262 Se2d 735 737 (1980) By Stating That This court finds the Applicant had the opportunity to litigate all issues related to his case at the evidentiary hearin for his first PCR application on April 1, 2009. See Odom-vs-State 337 SC 256 261 523 Se2d 753 755 (1999). The Respondent's

had here By Stated that and Applicant is entitled to a full Adjudication on the merits of the original petition, or one full bite at the apple.

The record Reflect that, The Applicant did not have a one full Bite At the Apple Rule. The Applicant Brings forth a Competent Substantial finding that would Reflect the Burden for proving issues for In adequately Raise claim's. Please observe the Applicants case file # 2008-cp-45-0008 at the Ineffective Assistance of Counsel pages #2 part B and Part C. The Applicant alleges that the Honorable Mr. George C. James Jr., has violated the Applicants due process and equal protection of law.

PCR Judge has failed to make specific ruling of finding facts and conclusions of law concerning issues for part B and Part C. PCR Counsel Mr. Brooks has fail to file A rule 59-e/ on The motion to alter or Amend Judgment for PCR Judge to rule on The Remaining PCR proceeding. The Applicant alleges Ineffective Assistance of counsel issues in regards to Part B and Part C. each issue that the Applicant presented have not been reviewed. The petitioner contends that it would be a violation to the equal protection of the 8th the 14th, the 5th and the 6th amendment of due process. The existence of cause must ordinarily turn on whether the prison can show some objective factor external to the defense impeded counsel's or his effort to comply with the States procedural rule. See Murray-vs-Carrier 447 US 478 488 (1986).

Attorney ignorance or inadvertence is not cause, because the Attorney is petitioners Agent when acting or failing to act in furtherance of the litigation, and the petitioner must bear the risk of Attorney error. See Coleman-vs-Thompson 501 US 722 750 (1991) also Link-vs-Wabash R. Co 370 US 626 634 (1962) And Martinez-vs-Ryan 566 US 1, 132 Sct 1309 1315 (2012) McQuiggin-vs-perkins no. 12-126 Slip op at 1-2 (Sct filed may 28, 2013) In order to demonstrate a miscarriage of Justice. Petitioner must show he is actually innocent. See Bousley-vs-United States 523 US 614 622 (1998).

To obtain habeas relief under 2254, A petitioner must show the State Court decision was either (1) contrary to, or involved an unreasonable Application of clearly established federal Law as determined by the Supreme Court of the United States or (2) was an unreasonable determination of the fact in light of the evidence presented in the State Court proceedings. 28 USC 2254 (D1) Carey-vs-Musladin 549 US 70 74 (2007) Williams-vs-Taylor 529 US 362 413 (2000) quoting Jackson-vs-Virginia 443 US 307 332 n. 5 (1979) See Richter, 562 US at 131 SCT at 736 Wong-vs-Belmontes 558 130 SCT 383 390 175 Led 2d 328 (2009) Strickland-vs-Washington 466 US at 693-696 Hill-vs-Lockhart 474 US 52 (1985) US-vs-Schaflander 743 f2d 714 721 (9th Cir 1984) Hamilton-vs-Vasquez 17 f3d 1149 1157 (9th Cir 1994) Wade-vs-Calderon 29 f3d 1312 1316-17 (9th Cir 1994) US-vs-Popoola 881 f2d 811 813 (9th Cir 1989) See Also Nelson-vs-Hargett 989 f2d 847 850 (5th Cir 1993) US. ex rel Cross-vs-DeRobertis 811 f2d 1008 1010-11 (7th Cir 1987) See M1-Lee Acquisition Fund, Lp-vs-Deloitte & Touche 327 SC 238 489 Se2d 470 472 (1997) Boykin-vs- Alabama 395 US 238 (1969).

The PCR Judge failed to follow the guidelines of 3C code 17-27-80 under this Statute in regards to 17-27-80/ It states that if the Courts find in favor of the Applicant it shall enter and Appropriate order with in respect to the conviction or sentence proceedings. This Court shall make specific findings of fact and state expressly it conclusions of law relating to each issue presented.

Inmates failure to pursue claims at state hearing on post conviction relief Constituted Abandonment of the claims and the Claims were there after procedurally barred as basis for writ of habeas corpus. See Smith-vs-Padula 2006 444 f Supp 2d 531 Post Conviction Relief Statute that conferred authority upon post conviction Judges grant of (90) additional days of credit time where Judge did not make finding of error in sentencing order by trial court Judge. See Crooks-vs-State (SC 1997) 326 SC 171 485 Se2d 374 Criminal Key. law 1556.

There was no evidence to support post conviction relief (PCR) courts finding that defendant failed to present any evidence in support of his PCR claims such that vacation of order dismissing defendants petition on basis of lack of evidence was required as well as remand for a new PCR hearing. Marlar-vs-State (SC APP 2007) 373 SC 275 644 Se2d 769 rehearing denied Certiorari granted, Certiorari granted opinion reversed 375 SC 407 653 Se2d 266 Criminal law Key 1158.36 1177. 7-2) Criminal law 1181.5 (3.1).

Under this Statute in regards to 17-27-90 any grounds finally adjudicated or not so raised or knowingly voluntarily and intelligently waive in the proceedings that resulted in the applications of the applicant has taken to secure relief may not be the bases for subsequent applicants application unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was Inadequately raised in the original supplement or amended application.

Under South Carolina law any issue which could have been raised in and initial State Post Conviction Relief action can not be raised in a second PCR action. Primus-vs-Padula 2008 555 f supp 2d 596 appeal dismissed 298 Appx 236 2008 WL 4790104 Certiorari denied 129SCT-1-1621 173 Led 2d 1004 Criminal Law Key 1668 (3) Defendant was precluded from raising claim in Successive/ Petition for post conviction relief claim that malice instruction given in trial was defective, in light or subsequent case holding that instruction was unconstitutional. Where claim could have been raised in initial petition See Gibson-vs-State SC2003 355 SC 429 586 Se2d 119 Certiorari denied 124 SCT 1439 540 US 1191 158 Led 2d 102 Criminal law Key 1668 (3) Defendants failing of four post conviction relief actions, one of which was successful was not repetitive numerous or totally frivolous and thus defendant was not subject to strict restriction on future post conviction relief filings see Williams-vs-State SC 2003 354 Sc 630 583 Se2d 52.

A petitioners motion to amend his post conviction relief petition was untimely made after the circuit had issue its order denying such relief or remand from the United States Supreme Court where the petitioner sought after full hearings and decisions on the merits to add new grounds and new claim for post conviction relief. See Arnold-vs-State SC 1992 309 SC 157 507 US 927 122 led 2d 691. Under this statue in regards too 17-27-100/ A final Judgement entered under this chapter may be reviewed by writ of Certiorari as provided by the South Carolina Appellate Court Rules.

And order in a post conviction matter which does not include specific findings of fact and conclusions of law relating to each issue presented. But instead dismisses some of the issues without prejudice to them being raised in a future post conviction proceeding does not constitute a final order or judgement and therefore is not reviewable by Writ of Certiorari See Garner-vs-State SC 2006 371 SC 1-636 Se2d 860 Criminal law Key 1011.

In order to be entitled to a successive PCR application The Applicant must establish that grounds raised in the subsequent application could not have been raised in the previous application. See Tilley-vs-State 334 SC 24 511 Se2d 689 (1999) under the PCR rules and original petition or one bite at the apple. There by finding of a post conviction relief PCR judge will be upheld by the Supreme Court when they are supported by any competent evidence in the record, However the Supreme Court will not uphold the findings of the PCR Court if no probative evidence support those findings See Jackson-vs-State SC 2003 355 SC 568 586 Se2d 562 rehearing denied criminal law Key 1158.36 The Applicant is on medication and pleads in competence prevented a timely filing. This is what prejudice the Applicant from having a fair court PCR proceeding. PCR judge did not rule on applicants issues part B and part C. Issue's by the Applicant was inadequately raise from original PCR application. Here by PCR counsel Mr. Brooks failed to file a rule 59-e on motion to alter or amend judgement for PCR judge to rule on the remanding issue. See Ferguson-vs-State 679 Se2d 600 2009. The record of my incompetence can be gotten If counsel is appointed. However in Austin-vs-State 409 Se2d 395 SC 1991 percuriam the South Carolina

Supreme Court has also suggested that a mentally incompetent PCR applicant should after regaining competency be allowed to raise issues in a successive proceeding that could not have been raised earlier because of incompetency. See Alice-vs-State 305 SC 448 452 409 Se2d 392 (1991). This case includes and applicant right to appeal the denial of a PCR application and the right to assistance of counsel in that appeal. See Alice-vs-State 305 SC 448 409 Se2d at 392.

The Supreme Court will sustain the post conviction relief PCR judges findings regarding ineffective assistance of counsel if there is any probative evidence to support those findings See Hampries-vs-State SC 2002 351 SC 362 570 Se2d 160 rehearing denied. Criminal law Key 1158.36. The applicant was denied his direct appeal due to ineffective assistance of counsel and then was denied his right to a pcr application because of the one year statute of limitations. See Wilson-vs-State 559Se2d 681 SC 2002. The Applicant never had a direct appeal because in regards of PCR counsel Mr. Brooks failed to pursue applicants claim for Ineffective Assistance of Counsel issues part B and part C.

The right of the accused in a criminal prosecution to the assistance of counsel under the Sixth Amendment to the Constitution of the United States is made obligatory upon the states by the Fourteenth amendment. The effective assistance of counsel is a necessary requisite of due process. See State-vs-Cowart 251 SC 360 162 Sed 535. Appellate Court must affirm a post conviction relief PCR courts decision when its findings are supported by any evidence of probative value. Pauling-vs-State SC 2002 350 SC 278 565 Se2d 769. Appellate court will not uphold the findings of a post conviction relief PCR court if there is no probative evidence to support those findings Pauling-vs-State SC 2002 350 SC 278 565 Se2d 769.

Appellate court must affirm the post conviction relief PCR courts decision when it's findings are supported by any evidence of probative value, See Gilchrist-vs-State SC 2002 350 SC 221 565 Se2d. Appellate Court will not uphold the findings of a post conviction relief PCR court if no probative evidence supports those findings see Gilchrist-vs-State SC 2002 350 SC 221 565 Se2d 281.

The supreme Court will not sustain the post conviction relief PCR Court's factual findings and conclusion regarding ineffective Assistance of counsel if there is any probative evidence in the record to support those findings See patrick-vs-State SC 2002 349 SC 203 562 Se2d 609 rehearing denied. And in reviewing A post conviction relief grant the Supreme Court is concerned only with whether there is any evidence to support the post conviction relief judge decision. If any evidence is found the Supreme Court must affirm the ruling of the post conviction relief judge. See Grier-vs-State SC 1989 299 SC 321 384 Se2d 722.

Under Section 17-601/ of the code provides that application for post conviction relief shall be heard in and before any judge of a court of competent jurisdiction in the county in which the conviction took place. See Roger-vs-The state of South Carolina 199 Se2d 761 See Rules/ (52-A) SCRPC provides that in action tried upon facts without a jury the court shall find facts specially and state seperately its conclusions of law. Failure of PCR court to make specific findings of fact/ and conclusions of law as to each allegation raised warrants remand for new PCR hearings. See Pruitt-vs-State SC 423 Se2d 127 (1992) And McCray-vs-State SC Se2d 241 1992.

The burden is on the applicant in a PCR proceeding to prove the allegations in his application. See bulter-vs-State 334 Se2d 813 (1985) and appellate court must affirm the pcr courts decision when its findings are supported by any evidence of probative value See Cherry-vs-State 386 Se2d 624 1989.

Accordingly as there is no evidence supporting the PCR court/ ruling we remand for and evidiary hearing on the matter. If his withdrawal was not knowingly voluntary then Bradshaw may proceed with his PCR application. The court held a pcr applicat- ion is entitled to a full bite at the apple. See Odom-vs-State 523 Se2d 753 1999 and Gamble-vs-State 379 Se2d 118, 119 1989 Also Carter-vs-State 362 Se2d 20 1987 and Case-vs-State 289 Se2d 413 (1982).

1) Based on the for going, applicants prays this court will here these PCR claims.

In closing please finds the following material with the applicant brief in regards to and objection to the respondents motion for the final order of dismissal to a Rule (243-C) In all this was a total of 10 pages. The applicant claim on this 9<sup>th</sup> Day month of March year of 2015. While at Kershaw institution mail room. The mail room personal observe each of the following material that (pretains) to this case. One which was to mail this to williamsburg County clerk of court, Mrs. Sharon W. Staggers 125 west main street Kingstree SC, 29556-3347/ and the other one to Attorney General Office addressed to the clerk of court PCR division Mr. Daniel Gourley P.O. Box 115 Columbia SC 29211. And too The South Carolina Supreme Court clerk of court P.O. Box 11330 Columbia SC 29211. Please supply with return file to applicant. Everything is true and accurate to the best of the applicants ability.

Terrance Bradshaw 03-09-2015

Terrance Bradshaw #320361 Dated

The Sworn To and Subscribed Before me this 9<sup>th</sup> day of March  
2015

Catherine A. Amara  
Notar of public for South Carolina

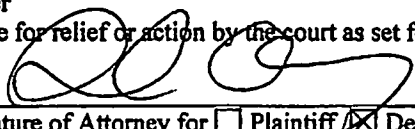
**My Commission Expires December 22, 2018**

My Commission Expires: \_\_\_\_\_

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF WILLIAMSBURG )  
 )  
TERRENCE BRADSHAW, #320361 )  
 Plaintiff, )  
 vs. )  
 )  
STATE OF SOUTH CAROLINA )  
 Defendant. )

IN THE COURT OF COMMON PLEAS  
 THIRD JUDICIAL CIRCUIT  
 CASE NO.: 2014-CP-45-205  
**MOTION AND ORDER INFORMATION  
 FORM AND COVERSHEET**

2015 FEB 13 AM 8:52  
 COURT REPORTERS  
 & VIDEO  
 S.C.

Plaintiff's Attorney: Terrence Bradshaw, #320361, Bar No. _____ Address: Kershaw Correctional Institution Kershaw, SC 29067 Phone: _____ Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: Daniel Gourley, Bar No. _____ Address: PO Box 11549 Columbia, SC 29211 Phone: _____ Fax _____ E-mail: _____ Other: _____
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input checked="" type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input checked="" type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
<b>SECTION I: Hearing Information</b>	
Nature of Motion: _____ Estimated Time Needed: _____ Court Reporter Needed: <input type="checkbox"/> YES / <input checked="" type="checkbox"/> NO	
<b>SECTION II: Motion/Order Type</b>	
<input type="checkbox"/> Written motion attached <input checked="" type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
 Signature of Attorney for <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant	January 30, 2015 Date submitted
<b>SECTION III: Motion Fee</b>	
<input type="checkbox"/> PAID - AMOUNT: \$ _____ <input checked="" type="checkbox"/> EXEMPT: (check reason)	
<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input checked="" type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRCP) <input type="checkbox"/> 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: _____ <input type="checkbox"/> Other: _____	
<b>JUDGE'S SECTION</b>	
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE CODE _____ Date: _____
<b>CLERK'S VERIFICATION</b>	
Collected by: _____ Date Filed: _____ <input type="checkbox"/> MOTION FEE COLLECTED: \$ _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: \$ _____	

STATE OF SOUTH CAROLINA )  
COUNTY OF WILLIAMSBURG )

Terrence Bradshaw, #320361 )

Applicant, )

v. )

State of South Carolina, )

Respondent. )

IN THE COURT OF COMMON PLEAS )  
FOR THE THIRD JUDICIAL CIRCUIT )

Case No. 2014-CP-45-205 )

**FINAL ORDER OF DISMISSAL** )

FILED  
2015 FEB 11 AM 8:53  
CLERK OF COURT  
THIRD JUDICIAL CIRCUIT  
WILLIAMSBURG, S.C.

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed April 23, 2014.<sup>1</sup> The Respondent made its return on August 22, 2014, requesting the application be summarily dismissed based upon statute of limitations, successiveness, and the doctrine of *res judicata*.

Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal signed August 28, 2014 and filed September 8, 2014, provisionally denying and dismissing this action, while giving the Applicant twenty (20) days from the date of service of said Order in which to show why the dismissal should not become final. Attached to this Final Order and incorporated herein by reference is an Affidavit of Service dated October 3, 2014, serving the above mentioned Conditional Order of Dismissal on the Applicant.

Applicant filed various responses to the Conditional Order of Dismissal. In those documents Applicant claims that he was suffering from hallucinations during his original PCR hearing. Applicant states that it would be a violation of his constitutional rights if he were not afforded another PCR hearing. In support of his argument, Applicant attached a copy of his

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<sup>1</sup>The application for post-conviction relief was received by the South Carolina Attorney General's office on June 16, 2014.

clinical assessment form conducted on March 5, 2002. The report reveals that Applicant suffered from various learning disabilities. Applicant argues that his plea counsel was ineffective for failing to have him mentally evaluated. This Court finds Applicant claims that he lacked the requisite competency to assist his PCR Counsel during his first PCR hearing to be meritless. This Court notes PCR proceedings generally are not delayed due to an Applicant's incompetence. PCR's are not "extraordinarily fact intensive and do not warrant the assistance of a mentally competent applicant." Council v. Catoe, 359 S.C. 120, 597 S.E.2d 782 (2004). Additionally, this Court notes Applicant's exhibit 3 is dated March 5, 2002. Applicant pled guilty on February 5, 2007 and had an evidentiary hearing on April 1, 2009. Any concerns with lack of competency should have been addressed prior to his plea or during his first PCR hearing.

Additionally, Applicant argues that he did not knowingly and intelligently waive his right to a direct appeal following the entry of his guilty plea. A defendant has the right to be informed of the right to an appeal and the manner and method for taking the appeal. Frasier v. State, 306 S.C. 158, 161, 410 S.E.2d 572, 574 (1991) (retained counsel have an express duty to assist their clients to properly perfect their appeals). Further, if a defendant has been denied his right to direct appeal from trial, he may receive belated review of trial errors in conjunction with his appeal of the ruling on his post-conviction application. White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974); Davis v. State, 288 S.C. 290, 291, 342 S.E.2d 60, 60 (1986). Even though Applicant has the right to a direct appeal, this Court finds his direct appeal claim is now barred because he raised it in his third and successive post-conviction relief application. A successive PCR application is one that raises grounds not raised in a prior application, raises grounds not previously heard and determined, or *raises grounds waived in prior proceedings*. Odom v. State, 337 S.C. 256, 261, 523 S.E.2d 753, 755 (1999) (emphasis added). By failing to raise his claim of

the denial of his right to direct appeal in his first PCR application, Applicant waived his claim and is barred from raising that claim in a successive application. See Graham v. State, 378 S.C. 1, 3, 661 S.E.2d 337, 338 (2008).

~~Applicant further complains that Investigator Tisdale was allowed to state that the Victim identified an unknown third party as Applicant.~~ Applicant argues Plea Counsel should have objected to this statement as a violation of the confrontation clause. This Court finds this allegation is barred from being raised in a successive application. This Court notes a successive PCR application is one that raises grounds not raised in a prior application, raises grounds not previously heard and determined, or *raises grounds waived in prior proceedings*. Odom v. State, 337 S.C. 256, 261, 523 S.E.2d 753, 755 (1999) (emphasis added). By failing to raise his claim that his plea counsel was ineffective for failing to object to Investigator Tisdale's statement in his first PCR application, Applicant waived his claim and is barred from raising that claim in a successive application. See Graham v. State, 378 S.C. 1, 3, 661 S.E.2d 337, 338 (2008).

~~Additionally, Applicant argues a claim of actual innocence. Applicant argues that his two Co-Defendants were 6'1" and 6'2" and Applicant is only 5'6". Applicant claims Victim should have been able to easily identify him.~~ Applicant concludes that his imprisonment resulted from perjured testimony knowingly used by the state authorities to obtain his conviction. This Court finds this allegation is barred from being raised in a successive application. A successive PCR application is one that raises grounds not raised in a prior application, raises grounds not previously heard and determined, or raises grounds waived in prior proceedings. Odom v. State, 337 S.C. 256, 261, 523 S.E.2d 753, 755 (1999) (emphasis added). By failing to raise this claim in his first PCR application, Applicant waived his claim and is barred from raising that claim in a successive application. See Graham v. State, 378 S.C. 1, 3, 661 S.E.2d 337, 338 (2008).

Applicant further filed a document captioned "Rule 59(e) motion to amend/the Applicant now brings forth and objection to the Respondent motion/in the conditional order of dismissal in #2014-CP-45-205." This Court notes Applicant's Rule 59(E) motion to alter or amend judgment is premature because the conditional order of dismissal is not a final judgment. Rule 59(e), SCRPC. Further, a rule 59(E) motion to alter or amend must be filed within ten days after the receipt of written notice of the final judgment. Rule 59(e), SCRPC. Therefore, this Court will interpret Applicant's 59(E) motion to alter or amend the conditional order of dismissal as an additional response to the Conditional Order of Dismissal.

Additionally, Applicant argues that his plea was involuntary and unintelligent because Applicant pled guilty to a negotiated sentence of twenty two years for armed robbery when the minimum sentence was 10 years. This Court finds Applicant's allegation that his plea was involuntary is barred from being raised in a successive application. A successive PCR application is one that raises grounds not raised in a prior application, raises grounds not previously heard and determined, or raises grounds waived in prior proceedings. Odom v. State, 337 S.C. 256, 261, 523 S.E.2d 753, 755 (1999) (emphasis added). By failing to raise his claim of the claim of involuntary guilty plea in his first PCR application, Applicant waived his claim and is barred from raising that claim in a successive application. See Graham v. State, 378 S.C. 1, 3, 661 S.E.2d 337, 338 (2008).

Applicant argues that the solicitor does not have authority to negotiate sentences that exceed the minimum sentence. This Court finds Applicant's allegation is barred from being raised in a successive application. A successive PCR application is one that raises grounds not raised in a prior application, raises grounds not previously heard and determined, or raises grounds waived in prior proceedings. Odom v. State, 337 S.C. 256, 261, 523 S.E.2d 753, 755

(1999) (emphasis added). By failing to raise this claim in his first PCR application, Applicant waived his claim and is barred from raising that claim in a successive application. See Graham v. State, 378 S.C. 1, 3, 661 S.E.2d 337, 338 (2008).

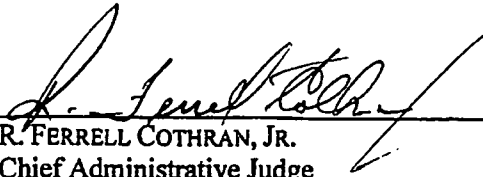
Applicant further claims that he received ineffective assistance of PCR Counsel. Applicant argues PCR Counsel failed to investigate all reliable and resource information. Applicant's contention that he received ineffective assistance of counsel on his prior post-conviction relief application is not a ground for relief and not a sufficient claim to warrant a successive application. There is no constitutional right to appointed counsel for collateral review of a conviction. Pennsylvania v. Finley, 481 U.S. 551 (1987). The Sixth Amendment right to effective assistance of counsel does not extend to state post-conviction relief actions. Coleman v. Thompson, 501 U.S. 722 (1991).

This Court has reviewed the Applicant's response to the Conditional Order of Dismissal in its entirety, in conjunction with the original pleadings, and finds a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.

This Court notes the Applicant pled guilty on February 5, 2007. As this action was filed on April 23, 2014, it was clearly filed outside the expiration of the statute of limitations. See S.C. Code Ann. § 17-2745(a) (Supp.2003). This is the Applicant's third application for post-conviction relief. This Court notes successive PCR applications are disfavored. See Land v. State, 274 S.C. 243, 246, 262 S.E.2d 735, 737 (1980). ~~This Court finds the Applicant had the opportunity to litigate all issues related to his case at the evidentiary hearing for his first PCR application on April 1, 2009. See Odom v. State, 337 S.C. 256, 261-523 S.E.2d 753, 755 (1999). ("[A]n Applicant is entitled to a full adjudication on the merits of the original petition, or one bite at the apple.")~~

**IT IS THEREFORE ORDERED** that, for the reasons set forth in the Court's Conditional Order of Dismissal, the Application for post-conviction relief is hereby denied and dismissed with prejudice.

**AND IT IS SO ORDERED** this 5 day of Feb, 2015.

  
R. FERRELL COTHRAN, JR.  
Chief Administrative Judge  
Third Judicial Circuit Court

Morris, South Carolina.



STATE OF SOUTH CAROLINA )  
COUNTY OF WILLIAMSBURG )

IN THE COURT OF COMMON PLEAS

2008-CP-45-0008

Terrance Bradshaw, #320361,

Applicant,

v.

State of South Carolina,

Respondent.

A CERTIFIED TRUE COPY  
*(Signature)*  
ORDER OF DISMISSAL  
CAROLYN F. WILLIAMS  
CLERK OF COURT  
WILLIAMSBURG COUNTY

09 JUN -2 AM 10: 25  
CAROLYN F. WILLIAMS  
CLERK OF COURT  
KINGSTREE, S.C.

FILED

This matter comes before the Court by way of an Application for Post-Conviction Relief filed January 11, 2008. The Respondent made its Return on July 2, 2008. An evidentiary hearing into the matter was convened on April 1, 2009, at the Sumter County Courthouse. The Applicant was present at the hearing and was represented by Charles T. Brooks, III, Esquire. The Respondent was represented by Mary S. Williams of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. Also testifying was Debra Jackson, Esquire. This Court had before it the records of the Williamsburg County Clerk of Court,<sup>1</sup> the guilty plea transcript, and the Applicant's records from the South Carolina Department of Corrections.

**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 the Williamsburg County Clerk of Court. Applicant was indicted for (1) Murder, (2) Assault and Battery with Intent to Kill ("ABWIK"), (3) Possession of a Firearm During a Violent Crime, (4) Armed Robbery, (5) Criminal Conspiracy, and

<sup>1</sup> Clerk's records included the indictment, sentencing sheet, warrants, docket sheets, orders of appointment of counsel, orders for mental evaluations, and a DMH report of mental evaluation.

*(Handwritten signature)*

(7) Possession of a Firearm by a Person Under the Age of 21 (2005-GS-45-0181).<sup>2</sup> Debra Jackson, Esquire, represented him. On February 5, 2007, Applicant pled guilty to Armed Robbery before the Honorable Clifton Newman. Applicant received the negotiated sentence of twenty-two (22) years imprisonment, and the remaining charges were *not proessed*. Applicant did not appeal his conviction and sentence.

~~In his application for post-conviction relief (PCR), Applicant alleges that he is being held in custody unlawfully for the following reasons:~~

~~1. Ineffective assistance of counsel:~~

- ~~a. "failure to investigate the case and prepare a trial defense for Applicant"~~  
~~b. "failure to advise Applicant that his statement to law enforcement authorities was involuntary and therefore inadmissible against Applicant at trial"~~  
~~c. "...failure to advise Applicant of the relevant law as it applied to the particular facts and defenses of Applicant's case."~~

~~2. Involuntary guilty plea:~~

- ~~a. "during adversarial process, counsel was ineffective and Applicant was prejudiced by that ineffectiveness. Applicant did not have the requisite level of knowledge of the facts and the law and how the law applied to some of the facts of his case to make a knowing, voluntary, and intelligent decision on how best to proceed. Furthermore, Applicant was not advised, prior to entering the guilty plea, of all the constitutional rights he would be waiving by entering a guilty plea to the charge against him."~~

### 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.~~

<sup>2</sup> Applicant was charged along with his co-defendants in a seven count indictment. Count Six, Possession of a Firearm by a Convicted Felon, was charged only as to co-defendant Glen Wilson.

### Ineffective Assistance of Counsel/Involuntary Guilty Plea

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) (citing Rule 71.1(e), SCRPC).

Where ineffective assistance of counsel is alleged 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, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the 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, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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, 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 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). 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, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

An Applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for trial counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial, Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993). Given Applicant's burden of proof and the analysis to be applied to this claim, the Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it will be treated as such.

*Ineffective Assistance of Counsel*

Applicant submits that counsel was ineffective in failing to perform a thorough investigation. Applicant specifically alleges that counsel failed to investigate and present mitigating evidence and facts of the case. ~~Applicant testified that counsel failed to investigate his social history, his borderline IQ, and that he was on medications like Risperdal. Applicant argues that these should have been presented in mitigation during his plea. The records before this court show that counsel obtained an~~

Order for Competency to Stand Trial Evaluation pursuant to State v. Blair and an Order for Criminal Responsibility and Capacity to Conform Evaluation (M'Naughten). Counsel testified that Applicant's history, school records, and medications were "red flags" to her that he should be evaluated. The basis for the Blair order included specific concerns arising from family history of mental illness and school records. Therefore, it appears that counsel had reviewed Applicant's social history issues. Counsel testified that she was present at Applicant's DMH evaluation. She also considered securing additional doctors, but over the course of her representation ultimately did not feel an additional opinion would be necessary. I find that counsel's efforts to investigate her client's mental health and social history issues were reasonable under professional norms. As for using these facts in mitigation, counsel offered a statement on her client's behalf, and Applicant had an opportunity to speak in mitigation. (Trans. p.p. 27-28.)

I further find that Applicant has failed to demonstrate prejudice in this regard. There is no evidence that Applicant was incompetent either at the time of the plea or at the time of the crimes, and no evidence to contradict the DMH findings. See Jeter v. State, 308 S.C. 230, 417 S.E.2d 594 (1992). I further find no evidence of prejudice in terms of presentation of Applicant's social and mental issues in mitigation. The DMH report, which contains the information about Applicant's IQ and family history, was presented to the court during the plea, and Applicant was found to be competent (Trans. pp. 11-13.) Furthermore, Applicant pled to a negotiated sentence, so it is unclear what further benefit in terms of sentence could be had. Counsel testified that the solicitor had considered the case for the death penalty, and she had used Applicant's background in her discussions with the solicitor about a plea offer. For all of these reasons, I find that counsel was not ineffective with regard to her investigation of Applicant's mental abilities and her presentation of

mitigating evidence on Applicant's behalf.

Applicant further alleges ineffective assistance for failure to investigate certain evidence in the case and prepare a defense. Counsel testified that she had reviewed the evidence in the case with Applicant. She had concerns because one victim who had been left for dead had survived and was able to testify. Applicant's co-defendant was also prepared to testify at trial. Counsel was preparing for trial and had met with Applicant several times the week before trial was to be called on Monday. She had prepared requests for jury charges. Counsel attempted to speak with the victim who would testify, but he refused to speak with her. Counsel stated that she would have argued that Applicant's statement was involuntary had he proceeded with trial. Counsel did not feel she needed to retain an investigator because her own investigations had not panned out or developed any leads to pursue. I find that counsel's investigation was well within reasonable professional norms. I further find that Applicant has failed to demonstrate any prejudice in this regard. Applicant has presented no evidence which could or should have been found nor any additional preparation which counsel could have undertaken. See for example Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998) (no prejudice where allegation of failure to investigate is only supported by mere speculation as to the result).

#### *Involuntary Guilty Plea*

Applicant alleges that his plea was involuntarily made because counsel knew his medication and still advised him to plead. As discussed above, Applicant was found competent at the time of his plea, and no evidence has been presented to the contrary. Counsel reviewed the evidence with Applicant. Counsel had a "plea checklist" to make sure that she reviewed important points with Applicant. Counsel testified that they discussed Applicant's right to a trial; the hand of one, hand of

all; the elements of the offense in detail using examples to help him understand; and the maximum sentence of thirty years he faced. Applicant was also informed of the sentence he was facing by the plea judge. (Trans. p. 4.) The plea judge also reviewed the rights Applicant was giving up as a result of his plea, and Applicant indicated that he understood. (Trans. pp.6-8.) During the plea counsel also thought Applicant understood these rights. (Trans. p. 11.) Applicant told the plea judge that he understood the nature of the charges and the consequences of a guilty plea. (Trans. p. 11.) Applicant admitted his guilt at the plea hearing. Applicant stated that he *wanted* the sentence being offered at the time of the plea. I find no credible evidence that Applicant was coerced to plead guilty and there has been no evidence which would contradict the finding that Applicant was competent to enter his plea. For these reasons, I find that Applicant's plea was not involuntary.

#### Other Allegations

No other allegations were raised at the PCR hearing. Therefore, any additional allegations are deemed waived because no evidence was presented.

#### 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.

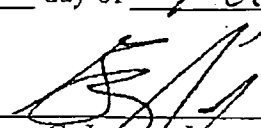
This Court advises Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order to secure the appropriate appellate review. His attention is also directed to South Carolina Appellate Court Rule 227 for appropriate procedures after notice has been timely filed.



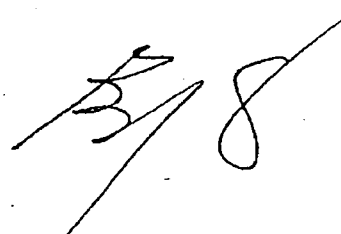
**IT IS THEREFORE ORDERED:**

1. That the Application for Post-Conviction Relief must be DENIED AND DISMISSED WITH PREJUDICE; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 15 day of May, 2009.

  
 \_\_\_\_\_  
 GEORGE C. JAMES, JR.  
 Presiding Judge  
 Third Judicial Circuit

Sumter, South Carolina.



Terrence Bradshaw #320361  
Kershaw Institution Magnolia #A31  
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SC, 29067.

To The South Carolina Supreme Court  
Clerk of Court PO Box 11330  
Columbia SC, 29211.

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