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April 8, 2015

The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, SC 29211

RE: THE STATE VS. James Eubanks

Dear Mr. Shearouse:

Enclosed for filing is a notice of appeal in the above case. Also enclosed are the following:

(1) Original Proof of Service upon opposing counsel.
(2) Order of Dismissal.

If I can be of any further assistance please feel free to call me.

Sincerely,

Christopher D. Brough

Enclosure

cc: South Carolina Office of the Attorney General
James Eubanks

RECEIVED
APR 13 2015
S.C. Supreme Court

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

The Honorable Deadra L. Jefferson, Circuit Court Judge

Case No.: 2012-CP-42-4826

The State, Respondent,

v.

James Eubanks, Appellant.

NOTICE OF INTENT TO APPEAL

James Eubanks appeals the denial of his application for Post-Conviction Relief in this case. The Order of Dismissal was imposed by the Honorable Deadra L. Jefferson on March 26, 2015. Appellant received notice of the same on that date.

April 8, 2015

CHRISTOPHER D. BROUGH
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ATTORNEY FOR APPELLANT

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PROOF OF SERVICE

The undersigned hereby certifies that he is a person of such age and discretion as to be competent to serve papers and that a copy of the **Notice of Intent to Appeal**, was served upon the following person(s) on the State, by depositing copies of the same in the United States Mail, with sufficient postage affixed thereto, on April 8, 2015, addressed as follows:

The Honorable Alan Wilson
SC Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, S.C. 29201

Kirby Lanford

SWORN BEFORE ME THIS
3 DAY OF April, 2015.

Catherine D. Helmet
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: Aug 3, 2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	
	)	2012–CP–42–4826
James R. Eubanks, #213678,	)	
	)	
Applicant,	)	
	)	
v.	)	**ORDER OF DISMISSAL**
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

Presiding Judge:	The Hon. Deadra L. Jefferson
Applicant's Attorney:	Christopher D. Brough, Esquire
Respondent's Attorney:	Suzanne H. White, Esquire
Plea Counsel:	Dorothy A. Manigault, Esquire
Date of Hearing:	January 13, 2015
Court Reporter:	Pamela E. Green

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed November 26, 2012, but received by Respondent on June 20, 2013. The Respondent made its Return on or about March 27, 2014. An evidentiary hearing into the matter was convened on January 13, 2015, at the Spartanburg County Courthouse. The Applicant was present at the hearing and was represented by Christopher D. Brough, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. Investigator Matt Hutcheus and Dorothy A. Manigault, Esquire, also testified. This Court also had before it a copy of the records of the Spartanburg County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the Return, the Appellate Court records, and the trial transcript.

1 10/14

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. He was indicted at the March 2009 term of the Spartanburg County Grand Jury for Trafficking in Cocaine 200–400 grams[1] (2009–GS–42–1852). The Applicant was represented by Dorothy A. Manigault, Esquire. On February 24, 2010, the Applicant proceeded to trial and was convicted by a jury. The Honorable Roger L. Couch sentenced Applicant to life without parole pursuant to S.C. CODE ANN. § 17–25–45 (2008). Judge Couch heard and denied the Applicant's motion for new trial on March 31, 2010.

The South Carolina Commission on Indigent Defense, Division of Appellate Defense timely filed a notice of appeal and brief on the Applicant's behalf. The South Carolina Court of Appeals dismissed the Applicant's appeal in an unpublished opinion. State v. Eubanks, Op. No. 2012–UP–602 (filed November 7, 2012), *available at* 2012 WL 10864152. The South Carolina Court of Appeals returned the Remittitur on December 3, 2012.

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel, in that;
   i. Counsel failed to challenge the truthfulness of the affidavit.

[1] Trafficking in Cocaine, two hundred (200) grams or more, but less than four hundred (400) grams, is punishable by "a mandatory term of imprisonment of twenty-five [(25)] years, no part of which may be suspended nor probation granted, and a fine of one hundred thousand dollars [($100,000)]." S.C. CODE ANN. § 44–53–370 (2008). Trafficking in Cocaine is a violent, most serious felony. See S.C. CODE ANN. § 16–1–60 (2008); S.C. CODE ANN. § 17–25–45 (2008).

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. CODE ANN. § 17–27–80 (2008).

Summary of Testimony and Proceeding

Investigator Matt Hutchins testified that he was the officer who signed the search warrant for the Applicant's investigation for the incident that occurred on June 18, 2008. (Applicant's Exhibit #1). He testified that this search warrant was the result of a prearranged confidential informant operation and purchase. Hutchins testified that the property sought with the search warrant included various items related to the drug trade. Hutchins testified that during the search of the property, he and Officer Joe Pharis discovered a large amount of cocaine. Hutchins testified that he acknowledged that the transaction between the confidential informant and Applicant occurred in a truck in the driveway of the home, not inside the home. He testified that that even though the drug transaction occurred in the curtilage, that area was under the Applicant's dominion and control and the warrant would still issue. Hutchins testified that after the transaction, he observed the Applicant going back into the residence. Finally, Investigator Hutchins testified that he was present at the motion to compel and search warrant suppression pretrial hearing.

The Applicant testified that by proceeding to trial on the charges, he was eligible to serve life in prison without possibility of parole if ultimately found guilty. The Applicant testified he did not believe that Counsel researched issues with the search warrant fully because the affidavit

3 of 14

sworn by Investigator Hutchins was not accurate. The Applicant testified that he believes Counsel should have subpoenaed the magistrate judge who signed off on the search warrant for his trial. The Applicant admitted that his attorney filed suppression motions challenging the validity of the search warrant and seeking suppression of the admission of the drugs. Further, the Applicant alleged that Hutchins' affidavit was not based on the "right proof." Rather, the Applicant alleged, Hutchins' affidavit was based only on observations. The Applicant admitted that Counsel cross-examined Investigators Hutchins and Pharis. The Applicant also complained that the federal authorities arrested him "on Hutchins' say so" and kept him under house arrest for seven (7) months before dismissing the case.

Counsel testified that the Applicant's trial was going well until the suppression hearing. She testified that her trial strategy in attacking the search warrant was to focus on the words in the affidavit regarding the confidential information gained at the residence. She testified that she was arguing semantics by highlighting the distinction between the drug sale occurring in the residence versus out in the driveway. She testified she "didn't have anything really" to help defend the Applicant against admission of the search warrant, especially since the information obtained about the confidential informant was reliable. Counsel testified that she performed a great deal of case research regarding the search warrant issues, as well as discussed the issue extensively with her client. In fact, Counsel testified that in her research, she found a case directly on point regarding a residence versus outside that was contrary to the Applicant's argument. Counsel opined that she had no basis to really challenge the search warrant, but did so anyway at her client's direction.

She explained that the Applicant's complaints about Hutchins stemmed from purported records of his unethical activity, which were not applicable. Upon investigation, she discovered

4 of 14

no direct evidence of improper dealings with Hutchins. She further explained that the federal charges against the Applicant were dropped and the case passed off so that the state could "deal with" the Applicant's case and imprisonment. Counsel testified that she did attempt to obtain personnel records regarding the investigators involved in the case because Applicant and his family members believed there were issues with the investigators' truthfulness. However, Counsel testified that she had no concrete basis for the request.

Counsel testified that the Applicant was offered a plea deal for a sentence of fifteen (15) years, which was "good" until after the suppression hearing and ultimately remained open until the case was called for trial. The Solicitor had agreed to reduce the Applicant's Trafficking in Cocaine charge to a Distribution of Cocaine charge in order to offer a fifteen (15) year sentence. Counsel testified that the current Trafficking in Cocaine charge was the Applicant's fourth or fifth drug offense and as part of the plea negotiations was treated as his third Trafficking in Cocaine charge. Counsel testified that they discussed the plea agreement. She further testified that because the Applicant suffered from severe health issues and heart problems he perceived a fifteen (15) year sentence was effectively a life sentence for him. She further testified that as a result of these conversations she deduced the Applicant did not want to plead guilty. Counsel testified that based on the severity of the charges, she wrote a letter to the Applicant to confirm his desire to reject the plea offer, the likelihood of a LWOP sentence if convicted and all the attendant consequences.

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. This Court finds the testimony of Counsel to be more credible than the testimony of the Applicant as to all allegations raised in the application and at the hearing.

5/6/14

In a PCR action, "the burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 622, 300 S.E.2d 482, 483 (1983)). Where the Applicant alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 686, 104 S. Ct. at 2064).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. See Strickland at 690, 104 S. Ct. at 2066. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. See id. The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

Courts use a two-pronged test to evaluate allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. See id. at 117–18, 386 S.E.2d at 625. Under this prong, attorney performance is measured by its "'reasonableness under prevailing professional norms.'" Id. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 668, 104 S. Ct. at 2052). 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.'" Id. at 117–18, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 694, 104 S. Ct. at 2068). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial." Johnson v. State,

6 of 14

325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland, 466 U.S. at 694, 104 S. Ct. at 2068).

This Court finds Counsel is a criminal practitioner who has extensive experience in the trial of serious offenses. This Court finds Counsel provided credible testimony during the Applicant's evidentiary hearing. Counsel conferred with the Applicant on numerous occasions. During conferences with the Applicant, Counsel discussed the pending charges, the elements of the charges and what the State was required to prove, range of penalty, the Applicant's constitutional rights, the Applicant's version of the facts, and his possible defenses or lack thereof. Counsel also more than adequately conveyed the State's guilty plea offer.

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds that the Applicant's attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation that is expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 5, 239 S.E.2d 750, 752 (1977); Strickland, 466 U.S. at 687–88, 104 S. Ct. 2052, 2064–65; Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 687–88, 104 S. Ct. at 2064–65, Turner v. Bass, 753 F.2d 342, 348 (4th Cir. 1985), *rev'd on other grounds*, Turner v. Murray, 106 S. Ct. 1683 (1986); Marzullo v. Maryland, 561 F.2d 540, 543 (4th Cir. 1977)). This Court further finds Counsel adequately conferred with the Applicant, conducted a proper investigation, and provided thorough representation. This Court finds that Counsel's representation did not fall below an objective standard of reasonableness.

Failure to Adequately Challenge the Search Warrant

In his Application, the Applicant alleges Counsel was ineffective for failing to challenge the truthfulness of the affidavit underlying the search warrant. Regarding Applicant's allegation

7/14

that Counsel failed to properly object to the search warrant, this Court finds that this allegation lacks merit and this Court finds that the Applicant has failed to meet his burden of proof as to this claim. At the hearing, the State argued that Counsel was effective for filing a suppression motion and arguing against the search warrant and admission of its fruit.

South Carolina's search warrant statute provides:

> A warrant issued hereunder shall be issued only upon affidavit sworn to before the magistrate, municipal judicial officer, or judge of a court of record establishing the grounds for the warrant. If the magistrate, municipal judge, or other judicial officer abovementioned is satisfied that the grounds for the application exist or that there is probable cause to believe that they exist, he shall issue a warrant identifying the property and naming or describing the person or place to be searched.

S.C. CODE ANN. § 17–13–140 (2008). "A search warrant may issue only upon a finding of probable cause." State v. Herring, 387 S.C. 201, 212, 692 S.E.2d 490, 495 (2009) (State v. Baccus, 367 S.C. 41, 625 S.E.2d 216 (2006)). "The duty of the reviewing court is to ensure the issuing magistrate had a substantial basis upon which to conclude that probable cause existed." Id. (citing State v. Adams, 291 S.C. 132, 352 S.E.2d 483 (1987)). The court determines whether probable cause exists based on the "totality of the circumstances":

> The task of the issuing magistrate is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the "veracity" and "basis of knowledge" of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place.

Illinois v. Gates, 462 U.S. 213, 238 (1983). A magistrate's determination of probable cause to search is entitled to substantial deference by this Court on review. State v. Crane, 296 S.C. 336, 339, 372 S.E.2d 587, 588 (1988) (citing State v. Pressley, 288 S.C. 128, 341 S.E.2d 626 (1986)).

The record reflects that Counsel filed a Motion for Disciplinary Records of All Officers Involved in the Search and Arrest on February 17, 2010, pursuant to Rule 5 and 6, SCRCrimP.

and Brady v. Maryland. Counsel also filed a Motion to Suppress Evidence on February 17, 2010 seeking suppression of any and all evidence seized as a result of the search. Counsel further filed a Continuing/Supplemental Motion to Produce Pursuant to Rule 5, Rules of Criminal Procedure on February 17, 2010 seeking all relevant discovery materials including information pertaining to the confidential informant and the search warrant. Further, the transcript of the pretrial hearings reflects that Counsel argued her client's legal position in order to seek disclosure of the confidential informant's identity (Tr. 30:4–37:20) and quash the search warrant based on insufficient probable cause supporting the affidavit (Tr. 37:21–39:20; 75:19–76:15). Further Counsel thoroughly cross-examined Investigator Hutchins and Officer Pharis in support of her suppression motion. (Tr. 48:20–54:10; 67:1–71:5). Counsel also attempted to introduce video of the confidential informant buy in support of her argument that the affidavit was not properly before the magistrate when swearing the search warrant. (Tr. 72:5–74:14). Additionally, Counsel moved to discover the disciplinary records of Officers Hutchins and Pharis, to no avail. (Tr. 76:16–84:14).

Therefore, this court finds Counsel properly filed and argued all pre-trial motions, including a motion to suppress the evidence based upon an erroneous affidavit and improperly issued search warrant. Further, the record reflects that Counsel fully and vigorously argued each ground of error assigned by the Applicant.[2] Counsel's arguments supported the Applicant's

[2] The Court of Appeals' opinion confirms that "[a]t trial, Eubanks moved to quash the search warrant solely on the ground that the affidavit in support of the search warrant did not contain sufficient information to support probable cause." See State v. Eubanks, Op. No. 2012–UP–602 (filed November 7, 2012), *available at* 2012 WL 10864152. Further, the Court of Appeals determined that Counsel had not only preserved the issue for appellate review, but that the magistrate had a substantial basis for concluding that probable cause supported the search warrant. Id. The Applicant's assertions that Counsel failed to defend him by properly challenging the search warrant are without merit. The Court of Appeals found that the issue of whether the affidavit was misleading and demonstrated a reckless disregard for the truth was not preserved for appellate review. The Court of Appeals found that the issue of whether false information supporting the affidavit had been recklessly or intentionally excluded from the affidavit, or exculpatory information was recklessly omitted from the affidavit under Franks v. Delaware, 438 U.S. 154 (1978) was not raised as error before the trial court. Franks v. Delaware holds:

9/9/14

contention that inconsistencies, untruths, and other deficiencies in the affidavit do not form probable cause sufficient to issue a search warrant.

Additionally, this Court finds, as the Court of Appeals concluded, that the totality of the circumstances supported the magistrate's probable cause determination and issuance of the warrant. The warrant was sufficiently particular in its description of the place to be searched by describing the premises, location, address, and directions with sufficient particularity. The warrant also adequately described the property sought and the area of the premises and person to be searched. The warrant included the curtilage of the home, including the driveway, which is reasonable in scope. The Applicant furthers no argument that the affidavit in support of the magistrate's probable cause determination is deficient based on Investigator Hutchins' propensity to lie. Whether Officers Hutchins or Pharis were disciplined or investigated for alleged unethical behavior in the past is irrelevant to the magistrate's determination of whether probable cause existed to issue the search warrant in the present case.

Further, the Applicant's bald assertions that Counsel was ineffective for failing to show that Hutchins' affidavit lacked veracity based on Hutchins' propensity for untruthfulness are inadequate arguments. Additionally, the Applicant's allegation that Counsel should have subpoenaed the magistrate does not form a legal basis for relief.[3] Cf. Bannister v. State, 333 S.C.

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where the defendant makes a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was *156 included by the affiant in the warrant affidavit, and if the allegedly false statement is necessary to the finding of probable cause, the Fourth Amendment requires that a hearing be held at the defendant's request. In the event that at that hearing the allegation of perjury or reckless disregard is established by the defendant by a preponderance of the evidence, and, with the affidavit's false material set to one side, the affidavit's remaining content is insufficient to establish probable cause, the search warrant must be voided and the fruits of the search excluded to the same extent as if probable cause was lacking on the face of the affidavit.

Franks, 438 U.S. at 155–56. The Applicant failed to articulate that Counsel was ineffective for failing to successfully suppress the search warrant under Franks v. Delaware.

[3] Nonetheless, this Court finds that had these issues been raised to the Court of Appeals, they likely would have been dismissed pursuant to an Anders brief. Anders v. California, 386 U.S. 738, 741–42, 87 S. Ct. 1396, 1398–99 (1967).

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298, 303, 509 S.E.2d 807, 809 (1998) (citing Pauling v. State, 31 S.C. 606, 503 S.E.2d 468 (1998); Glover v. State, 318 S.C. 496, 498–99, 458 S.E.2d 538, 540 (1995); Underwood v. State, 309 S.C. 345, 495 S.E.2d 768 (1998)) (the Applicant's mere speculation as to what a witness' testimony would have been by itself, cannot satisfy the Applicant's burden of showing prejudice). See Edwards, 392 S.C. at 457, 710 S.E.2d at 65 ("So long as a defendant's attorney conducts a reasonable investigation, including interviewing potential witnesses when it is reasonable to do so, his performance will not be deficient."); Simpson v. Moore, 367 S.C. 587, 597, 627 S.E.2d 701, 706 (2006) (citing Strickland, 466 U.S. at 691, 104 S. Ct. at 2066) ("Counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.").

Moreover, this Court can discern no case law in support of the Applicant's argument that the driveway is not included in the curtilage of the home and thus outside of the Applicant's dominion and control under the particular facts of this case. South Carolina's warrant statute further provides, "[t]he property described in this section, or any part thereof, may be seized from any place where such property may be located, or from the person, possession or control of any person who shall be found to have such property in his possession or under his control." S.C. CODE ANN. § 17–13–140 (2008).

Precedent holds that the driveway is clearly a part of the residence and curtilage of the home for purposes of possession. See State v. Dickey, 394 S.C. 491, 506, 716 S.E.2d 97, 104 (2011) (citing State v. Wiggins, 330 S.C. 538, 548 n. 15, 500 S.E.2d 489, 494 n. 15 (1998)) ("Curtilage includes outbuildings, the yard around a dwelling, a garden of the dwelling, or the parking lot of a business."). Further, "[a]ctual possession occurs when the drugs are found to be in the actual physical custody of the person charged with possession, while constructive possession occurs

1/9/14

when the person charged with possession has dominion and control over either the drugs or the premises upon which the drugs are found." State v. Fripp, 397 S.C. 455, 458, 725 S.E.2d 136, 138 (Ct. App. 2012) (citing State v. Ballenger, 322 S.C. 196, 199, 470 S.E.2d 851, 854 (1996)). "Mere presence is insufficient to prove constructive possession." State v. Heath, 370 S.C. 326, 329-30, 635 S.E.2d 18, 19 (2006) (citing State v. Tabory, 260 S.C. 355, 364, 196 S.E.2d 111, 113 (1973)). In order to prove constructive possession, the "State must show a defendant had dominion and control, or the *right to exercise dominion and control* over the [illegal substance]." Id. (citing State v. Halyard, 274 S.C. 397, 400, 264 S.E.2d 841, 842 (1980)) (emphasis added). "Further, the State may establish constructive possession by either circumstantial or direct evidence." Id. "The defendant's knowledge and possession may be inferred if the substance was found on premises under his *control.* Id. (citing State v. Adams, 291 S.C. 132, 135, 352 S.E.2d 483, 486 (1987)) (emphasis added). See also State v. Kimbrell, 294 S.C. 51, 54, 362 S.E.2d 630, 631 (1987) (after Defendant told confidential informant that cocaine was in his bedroom and Defendant showed confidential informant marijuana outside of his residence in his truck, Defendant had actual knowledge of the presence of cocaine and ability to control its disposition and use to support finding of constructive possession of cocaine). Cf. State v. Hammond, 270 S.C. 347, 354, 242 S.E.2d 411, 415 (1978) ("We think that the presence of the truck containing a large quantity of marijuana on Hammond's property, ostensibly under his control, together with the fact that the officers were there to search his premises for illegal narcotics, gave the officers sufficient probable cause to arrest him.").

Additionally, this Court finds that the affidavit and search warrant are facially sufficient; therefore, Counsel had no basis to challenge those documents. Accordingly, this Court finds that the Applicant has failed to meet his burden of proof as to this claim and failed to establish that

12/8/14

Counsel was deficient in this regard. Therefore, this claim is denied and dismissed.

All Other Allegations

As to any and all allegations that the Applicant raised in the application and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant abandoned such allegations. Therefore, they are hereby denied and dismissed.

CONCLUSION

This Court finds in regards to the allegations of ineffective assistance of counsel, Applicant's testimony as a whole was not credible. This Court further finds Counsel adequately conferred with the Applicant, conducted a proper investigation, was thoroughly competent in her representation, and that Counsel's conduct does not fall below the objective standard of reasonableness.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test specifically that counsel failed to render reasonably effective assistance under prevailing professional norms. See Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). The Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in her representation of the Applicant. The Applicant failed to show that Counsel's performance was deficient. Therefore, this Court need not address whether the Applicant was prejudiced by counsel's representation. See id. The Applicant's complaints concerning counsel's performance are without merit and are denied and dismissed.

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 cautions Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 454, 409 S.E.2d 395, 396 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. The Applicant's attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

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 26th **day of** March **, 2015.**

Deadra L. Jefferson
Presiding Judge
Seventh Judicial Circuit

Charleston, South Carolina
At Chambers

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2015 MAR 31 AM 10: 20
M. HOPE BLACKLEY

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The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
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