

STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

APR 13 2015

The Honorable Eugene C. Griffith, Jr., Circuit Court Judge

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**S.C. Supreme Court**

Case No. 2013-CP-23-5236

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Edward Rorecuse Young, ..... Respondent,

v.

State of South Carolina, ..... Petitioner.

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**NOTICE OF APPEAL**

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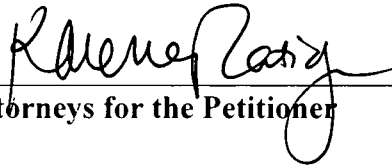
The State of South Carolina appeals the Honorable Eugene C. Griffith, Jr.'s order filed March 19, 2015 granting post-conviction relief to the Respondent. The State received notice of entry of the order on March 24, 2015. A copy of the order on appeal is attached to this notice.

Respectfully submitted,

ALAN WILSON  
Attorney General

KAREN C. RATIGAN  
Senior Assistant Deputy Attorney General  
S.C. Bar # 68331

P.O. Box 11549  
Columbia, S.C. 29211  
(803) 734-3737

By:   
Attorneys for the Petitioner

Columbia, South Carolina

April 13, 2015

*Other counsel of record:*

Brian P. Johnson, Esquire  
522 North Church Street  
Greenville, SC 29601

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The Honorable Eugene C. Griffith, Jr., Circuit Court Judge **S.C. Supreme Court**

Case No. 2013-CP-23-5236

Edward Rorecuse Young, ..... Respondent,

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**PROOF OF SERVICE**

I, Karen C. Ratigan, Counsel for the Petitioner, certify that I have today served the within notice of appeal upon the Respondent by depositing a copy of it in the United States Mail, postage prepaid, addressed to his attorney of record:

Brian P. Johnson, Esquire  
522 North Church Street  
Greenville, SC 29601

I further certify that all parties required by Rule to be served have been served this 13th day of April, 2015.



KAREN C. RATIGAN  
Office of Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3737  
**Attorney for the Petitioner**

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GREENVILLE )  
 )  
 Edward Rorecuse Young, )  
 S.C.D.C. No. 314830 )  
 )  
 Applicant, )  
 )  
 VS. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 C.A. No.: 2013-CP-23-5236

FILED-CLERK OF COURT  
 GREENVILLE CO. S.C.  
 PAUL B. WICKENSIMMER  
 2015 MAR 19 AM 11:35

**ORDER GRANTING  
 POST-CONVICTION RELIEF**

ENTERED COMPUTER

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed September 27, 2013. The Respondent made its return on March 26, 2014. An evidentiary hearing into the matter was convened on December 16, 2014, at the Greenville County Courthouse. The Applicant was present at the hearing and represented by Brian P. Johnson, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying on behalf of the Applicant was his brother, Adidas Glenn. Testifying on behalf of the State was Applicant's plea counsel, Scott D. Robinson, Esquire. The Court had before it a copy of the guilty trial transcript, the records of the Greenville County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the return.

**PROCEDURAL HISTORY**

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant at the November 2010 term of General Sessions for

trafficking cocaine base (2010-GS-23-9215A). Scott D. Robinson, Esquire represented the Applicant.

On October 9, 2012, the Applicant pled guilty as indicted. The Honorable William H. Seals, Jr. sentenced the Applicant to seven years imprisonment for trafficking cocaine base (10-28 grams), second offense. The Applicant did not appeal.

### **ALLEGATIONS**

In his Application, the Applicant alleged he was being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel:
  - a. Failed to call witnesses who would have testified favorably on the Applicant's behalf.
  - b. Failed to discuss the elements of constructive possession.
  - c. Utilized invalid strategic reasoning.
2. Involuntary guilty plea.

### **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 the witnesses who testified at the hearing, and closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

### **INEFFECTIVE ASSISTANCE OF COUNSEL**

The Applicant alleges he received ineffective assistance of counsel. For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629

SCD/

S.E.2d 353, 356 (2006).

The two-part test adopted in Strickland also "applies to challenges to guilty pleas based on ineffective assistance of counsel." Hill v. Lockhart, 474 U.S. 52, 58 (1985).

"A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of a plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial." Rolen v. State, 384 S.C. 409, 413, 683 S.E.2d 471, 474 (2009).

"To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him." Roddy v. State, 339 S.C. 29, 33, 528 S.E.2d 418, 421 (2000). "The longstanding test for determining the validity of a guilty plea is 'whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant.'" Hill, 474 U.S. at 56 (quoting North Carolina v. Alford, 400 U.S. 25, 31 (1970)).

The record reflects that the Applicant pled guilty after the Plea Court took testimony on plea counsel's motion to suppress the drugs. Plea counsel argued that the Court should suppress the drugs because the Applicant did not have dominion and control over the drugs. (Trial transcript, pp.71-13). Plea counsel confirmed the same at the PCR Hearing.

The Applicant testified that plea counsel told him that the Plea Court was going to deny his motion to suppress and because of that, he should plead guilty. Plea counsel admitted the same. The Applicant testified that he learned about actual and constructive possession after his guilty plea and that plea counsel erroneously explained the subject. Specifically, he learned that actual possession occurs when the drugs are found to be in the actual physical custody of the

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person charged with possession, and that constructive possession occurs when one has dominion and control, or the right to exercise dominion and control. The Applicant testified that he learned that constructive possession was not a ground for suppression, but rather an argument that would have been made on his behalf for the finder of fact.

The Applicant testified that he never touched the drugs. The drugs were found in a field off of the side of the road. The Applicant did not own the land. The Applicant's brother, Adidas Glenn, provided testimony that supported the Applicant's claim that he did not touch the drugs. Mr. Glenn further stated that he told plea counsel the same and was available to testify on his brother's behalf.

I find that plea counsel failed to render reasonably effective assistance under prevailing professional norms by failing to accurately explain actual and constructive possession to the Applicant and giving erroneous legal advice. As such, the Applicant has satisfied the first prong of the Strickland test—deficient performance. Furthermore, after starting a trial, the Applicant pled guilty after relying on plea counsel's advice. As such, the Applicant has satisfied the second prong of the Strickland test—prejudice.

### CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant's application for Post-Conviction Relief shall be granted.

#### **IT IS THEREFORE ORDERED:**

1. That the Applicant's application for post-conviction relief be granted; and
2. That the Applicant be given a new trial.

AND IT IS SO ORDERED this 9<sup>th</sup> day of March, 2015.

SCM

*ECG*

Eugene C. Griffith, Jr.  
Presiding Judge  
Thirteenth Judicial Circuit

Newberry, South Carolina

*ECG*

STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE  
CASE NO: 2013CP2305236

Edward Young vs. South Carolina State Of

FILED - CLERK OF COURT  
GREENVILLE CO. S.C.  
PAUL B. WICKENSIMER  
2015 MAR 19 PM 11:35

**CHECK ONE:**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**  
SCRCP (Vol. Nonsuit):  Rule 12(b), SCRCP;  Rule 41(a).  
 Rule 43(k), SCRCP (Settled);  Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j) SCRCP;  Bankruptcy:  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  
 Other: \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  
 Other: \_\_\_\_\_

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order;  Statement of Judgment by the Court:  
Dated at Greenville, South Carolina, this 19<sup>th</sup> day of March, 2015.

Court Reporter: \_\_\_\_\_

\_\_\_\_\_  
PRESIDING JUDGE - Eugene C Griffith, Jr

This judgment was entered on the \_\_\_\_\_, and a copy mailed first class this \_\_\_\_\_ to attorneys of record or to parties (when appearing pro se) as follows:

\_\_\_\_\_  
Brian P Johnson 522 N Church St, Greenville Se  
29601  
ATTORNEY(S) FOR THE PLAINTIFF(S)

\_\_\_\_\_  
Karen Christine Ratigan PO Box 11549 Columbia,  
SC 29211  
ATTORNEY(S) FOR THE DEFENDANT(S)

\_\_\_\_\_  
Paul B. Wickensimer Greenville County Clerk Of Court  
- Clerk of Court



RECEIVED

APR 13 2015

S.C. Supreme Court

ALAN WILSON  
ATTORNEY GENERAL

April 13, 2015

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

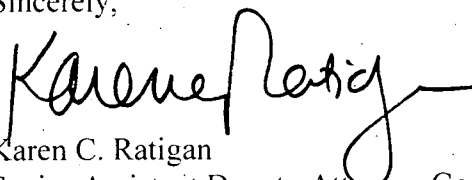
Re: Edward Young, Respondent v. State, Petitioner  
Case No. 2013-CP-23-5236

Dear Mr. Shearouse:

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

1. A copy of the order which is to be challenged on appeal.
2. Proof of service of notice of appeal on the Respondent.
3. A letter ordering the PCR transcript from the court reporter.

Sincerely,

  
Karen C. Ratigan  
Senior Assistant Deputy Attorney General

cc: Brian P. Johnson, Esquire  
South Carolina Department of Corrections  
Greenville County Clerk of Court  
Solicitor Walt Wilkins  
Office of Appellate Defense  
Trisha Allen, Victim Services