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April 22, 2015

The South Carolina Supreme Court
P.O. Box 11330
Columbia, SC 29211

RE: Terrence D. Patterson #353407 v. State of South Carolina
Docket No.: 2013-CP-40-5970

Dear Sir or Madam:

Enclosed please find an Original and a copy of a Notice of Appeal, along with a Certificate of Service and attachments. Please be advised that I was appointed to represent Mr. Patterson in this matter. I have forwarded an Affidavit of Indigency to Appellate Defense, by copy of this letter.

Kindly return a clocked copy to me in the enclosed envelope. Thank you and should you have any questions, or need any additional information, please do not hesitate to contact me.

Yours truly,

Tommy A. Thomas,
Attorney at Law

TAT/jem
cc: J. Clayton Mitchell, Esq.
Terrence D. Patterson #353407
Appellate Defense

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Post-Conviction Relief

J. Ernest Kinard, Jr., Presiding Judge

Case No.: 2013-CP-40-5970

Terrence D. Patterson #353407 .....Appellant,

vs.

State of South Carolina .....Respondent.

NOTICE OF INTENT TO APPEAL

Terrence D. Patterson #353407 appeals the Order of Dismissal of the Honorable J. Ernest Kinard, Jr., signed on February 19, 2015, and received by this office on February 25, 2015. A timely Notice of Motion and Motion to Alter or Amend was file. An Order Denying Plaintiff's Motion to Reconsider Rehear, Alter or Amend was signed by The Honorable J. Ernest Kinard, Jr. on March 31, 2015.

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Other Counsel of Record:
J. Clayton Mitchell, Esq.
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Irmo, South Carolina
April 22, 2015

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Post-Conviction Relief
J. Ernest Kinard, Jr., Presiding Judge

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Terrence D. Patterson #353407 .....Appellant,
vs.
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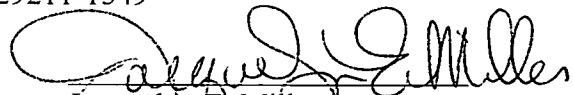
CERTIFICATE OF SERVICE

I, Jacquelyn E. Miller, secretary to Tommy A. Thomas, Attorney for the Applicant, hereby certify that I placed in the United States Mail, a copy of a Notice of Appeal with postage prepaid and the return address clearly shown on said envelope to J. Clayton Mitchell, Esq. with the Office of the Attorney General at:

J. Clayton Mitchell, Esq.
Office of the Attorney General
PCR Division – 5th Circuit
P.O. Box 11549
Columbia, SC 29211-1549



Jacquelyn E. Miller
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April 22, 2015

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
Terrence D. Patterson, #353407, Applicant, v. State of South Carolina, Respondent.	**2013-CP-40-05970** **ORDER OF DISMISSAL**

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed October 1, 2013. Respondent made its Return on February 26, 2014, requesting an evidentiary hearing be convened. Kristy G. Goldberg, Esquire, was appointed by the Richland County Clerk of Court. On October 14, 2013, Tommy A. Thomas was substituted as counsel.

An evidentiary hearing was held on December 10, 2014, at the Richland County Courthouse. Applicant was present and represented by Counsel Thomas. J. Clayton Mitchell, Esquire, of the South Carolina Attorney General's Office represented Respondent.

At the PCR hearing, Applicant testified on his own behalf. Also testifying was Applicant's plea counsel, E. Deon O'Neil, Esquire. The Court had before it the Richland County Clerk of Court records, Applicant's South Carolina Department of Corrections records, the PCR application, the Return, and the guilty plea transcript.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. Applicant was indicted during the February 2011 term of the Richland County Grand Jury for Murder and Attempted Murder (2011-GS-40-0866, -0884). He was represented by Deon O'Neil, Esquire. On December 3, 2012,

Applicant appeared before the Honorable DeAndrea G. Benjamin, where he pleaded guilty as indicted. Judge Benjamin sentenced Applicant to forty (40) years' imprisonment for murder and a concurrent thirty (30) years' imprisonment for attempted murder. Applicant filed a Motion to Reconsider on December 4, 2012. A hearing was held on that motion on January 29, 2013, before Judge Benjamin who issued an order modifying Applicant's sentence to thirty-five (35) years imprisonment on March 4, 2014. Applicant did not appeal his guilty pleas or sentences.

In this action, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Involuntary guilty plea in that counsel misadvised Applicant as to the sentence he would receive and that counsel failed to review discovery with Applicant prior to the plea.
2. Ineffective assistance of counsel in that counsel failed to investigate the State's ballistic evidence.

II. SUMMARY AND EVIDENCE PRESENTED AT THE PCR HEARING

Applicant's Testimony

Applicant testified he was originally sentenced to forty (40) years' imprisonment on the murder charge, but after a successful motion for reconsideration his sentence was reduced to thirty-five (35) years' imprisonment. Applicant testified Counsel promised him that if he pled guilty, he would receive a sentence of thirty (30) years imprisonment. Applicant complained that certain co-defendants received plea offers allowing them to plead down to voluntary manslaughter. He also testified the victim's mother was agreeable with a thirty (30) year sentence. Applicant testified he only pled guilty because he thought he would receive a thirty (30) year sentence. Applicant stated that he disagreed with certain facts in the solicitor's recitation of events the day of the incident.

Applicant testified he received discovery prior to trial and that Counsel reviewed these materials with him. Applicant stated he believed a ballistics report would show which individual fired the fatal shot, but no such report was included in discovery. Applicant testified he knew the victim and that he had no intention of killing him. Applicant explained that he was caught in the cross-fire.

Counsel E. Deon O'Neil's Testimony

Counsel testified he represented Applicant on the charges currently before the Court. Counsel testified he reviewed the charges and the maximum sentences for each in detail with Applicant. Counsel indicated Applicant initially wanted to take the case to trial. Counsel testified the State did not make any plea offers because Applicant did not wish to testify against other co-defendants. Counsel testified he reviewed discovery with Applicant. He further explained that Applicant gave a statement to law enforcement implicating himself in the retaliatory shooting. In that statement, Applicant described being shot at earlier that day and described he and his co-defendants' plan to get revenge by shooting at those who they believed were responsible for the earlier shooting. The State considered the statement a confession. Counsel stated that there were over forty (40) rounds fired but law enforcement could not identify which individual fired the fatal shot because the ballistics were too damaged. Counsel concluded it did not matter who fired the fatal shot because the prosecution was proceeding under a "hand of one is the hand of all theory," and Applicant had already admitted to firing a weapon. Counsel testified he fully explained the "hand of one is the hand of all" theory to Applicant in their meetings.

Counsel testified that he was prepared to try the case and that the defense theory would likely be that the events warranted a voluntary manslaughter charge if anything. Counsel stated

he would have argued that Applicant and his co-defendants were acting under a heat of passion in their retaliation of the shooting earlier that day.

Counsel described he and Applicant's disagreement with the prosecuting solicitor's recitation of events. This led Counsel to file a motion for reconsideration which was ultimately successful in reducing Applicant's sentence from forty (40) years to thirty-five (35) years on the murder conviction. Counsel argued that a thirty-five (35) year sentence was more in line with what his more culpable co-defendants' sentences.

III. APPLICABLE LAW

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

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

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any

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. With respect to guilty plea counsel, the Applicant must show 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, 59 (1985).

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

As a matter of general impression, this Court finds Applicant's testimony and assertions to be not credible. In contrast, this Court finds counsel's testimony to be credible and persuasive on all matters. These credibility findings have been applied to the Court's findings and conclusions set forth below.

Involuntary Guilty Plea

Applicant argues he did not plead guilty knowingly and voluntarily. This Court finds otherwise and concludes that Applicant's guilty plea was entered freely and voluntarily. 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. Boykin v.

Alabama, 395 U.S. 238, 89 S. Ct. 1709, 23 L.Ed.2d 274 (1969). Defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 97 S. Ct. 1621, 52 L.Ed.2d 136 (1977)). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. United States, 519 F.2d 347 (4th Cir.1975).

Applicant claims Counsel advised him he would receive a sentence of thirty (30) years' imprisonment, thus rendering his guilty plea involuntary. This Court finds this contention without merit. This Court finds the record reflects Applicant was advised of the waiver of his constitutional rights by the plea court. This Court finds very credible Counsel's testimony regarding his preparation and advice concerning the case and the amount of time Applicant was facing. The record reflects Applicant admitted his guilt to the plea court. This Court finds Applicant's testimony regarding a promise of a particular sentence not credible. The record reflects that Applicant was further advised by the plea court of the maximum sentence he could receive on each charge, which included a life sentence on the murder charge. (Plea Tr. P. 14); See Wolfe v. State, 326 S.C. 158, 164, 485 S.E.2d 367, 370 (1997) (any possible misconceptions about sentence length cured by colloquy at guilty plea hearing). Applicant was fully informed of

the nature and consequences of his plea. Correspondingly, this Court finds Applicant's testimony regarding his potential sentencing range to be neither credible nor supported by the record.

This Court finds Applicant's allegation that Counsel failed to review discovery with him to be meritless. Counsel's credible testimony on the issue is persuasive. Counsel met with Applicant and reviewed the discovery materials.

This Court finds the plea judge correctly found Applicant's plea was freely, voluntary, and intelligently made. This allegation is denied and dismissed with prejudice.

Failure to Investigate Ballistics Evidence

This Court finds Applicant failed to meet his burden to prove that counsel's performance was either deficient or ineffective for failing to investigate the State's ballistics evidence. "Criminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." Edwards v. State, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011) (internal citations omitted). In light of Counsel's credible testimony that he evaluated and apprised Applicant on the matter, Applicant has produced no credible testimony that would even remotely diminish his culpability in the murder. Counsel gave credible testimony that he apprised Applicant of the "hand of one is the hand of all" and its application to the case. See State v. Dickman, 341 S.C. 293, 295, 534 S.E.2d 268, 269 (2000) ("It is well-settled that a defendant may be convicted on a theory of accomplice liability pursuant to an indictment charging him only with the principal offense."). Regardless, the allegation rests entirely on speculation. See Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998) ("failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the

allegation is supported only by mere speculation as to the result.") Therefore, this allegation is readily denied and dismissed.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this order, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

V. CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Applicant failed to demonstrate counsels' performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt 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, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and

2. Applicant will remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 19 day of February, 2015.

J. ERNEST KINARD, JR.
Presiding Judge

Camden, South Carolina.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	IN THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
	)	Case No. 2013-CP-40-05970
Terrence D. Patterson #353407	)	
	)	
Plaintiff,	)	
	)	
v.	)	**ORDER DENYING PLAINTIFF'S MOTION TO RECONSIDER, REHEAR, ALTER, OR AMEND**
	)	
State of South Carolina	)	
	)	
Defendant.	)	
	)	

This matter comes before the Court by way of Plaintiff's Motion to Alter or Amend pursuant to Rule 59(e), SCRCP. Specifically, Plaintiffs ask this Court to reconsider its Order of Dismissal filed February 19, 2015.

After consideration of the record in this case and the submissions of the parties, this Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or facts not appropriately considered. Furthermore, Plaintiff's Motion fails to specify grounds upon which relief may be granted. Accordingly, this Court hereby **DENIES** Plaintiff's Motion under Rule 59(e), SCRCP, to Alter or Amend this Court's Order filed February 19, 2015. Pursuant to Rule 59(f), the Court is of the opinion that oral argument is not necessary.

IT IS SO ORDERED.

Columbia, South Carolina
March 31, 2015

J. Ernest Kinard, Jr., Judge
Fifth Judicial Circuit

Tommy A. Thomas, P.C.
ATTORNEY AND COUNSELOR AT LAW
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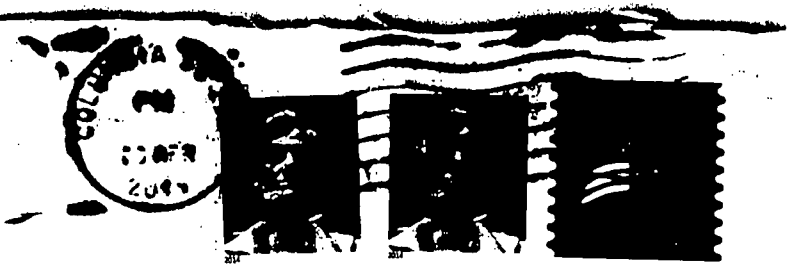

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