

LAW OFFICE

THE HENDERSON LAW FIRM, P.C.
ATTORNEY AND COUNSELOR AT LAW

109-B Oak Avenue
Greenwood, South Carolina 29646

Carson M. Henderson

Telephone: (864) 229-8000
Facsimile: (864) 229-8001

April 20, 2015

RECEIVED

APR 23 2015

S.C. Supreme Court

Honorable Daniel E. Shearouse
Clerk of Court
S.C. Supreme Court
1231 Gervais Street
P.O. Box 11330
Columbia, S.C. 29211

Re: Jeffrey Lee Moore v. State of South Carolina
Greenwood C/A No. 2012-CP-24-1378

Dear Clerk Shearouse:

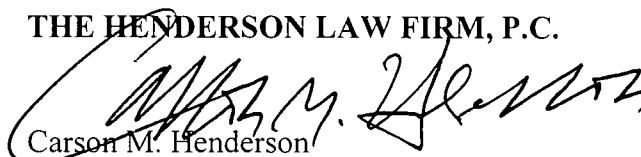
Please file the enclosed Notice of Appeal and Proof of Service and return clocked copies of both documents to me and the S.C. Commission on Indigent Defense, Appellate Division in the enclosed envelopes provided for your convenience.

My email address is carson@carsonhendersonlawfirm.com.

Thank you for your assistance and cooperation in this matter.

Cordially yours,

THE HENDERSON LAW FIRM, P.C.


Carson M. Henderson

CMH/lhc
enclosures as indicated

cc: James Rutledge Johnson, Esquire
S.C. Attorney General's Office
P.O. Box 11549
Columbia, S.C. 29211



S.C. Commission on Indigent Defense
Appellate Division
Attention: Sharon Graham
1330 Lady Street, Suite 401
Columbia, S.C. 29201

Jeffrey Lee Moore (#263267)
Allendale Correctional Institution
P.O. Box 1151
1057 Revolutionary Trail
Fairfax, S.C. 29827

#2

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GREENWOOD COUNTY
Court of Common Pleas.

RECEIVED

APR 23 2015

S.C. Supreme Court

Donald B. Hocker, Presiding Circuit Judge – Greenwood County

C/A No. 2012-CP-24-1378

JEFFREY LEE MOORE,

Appellant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

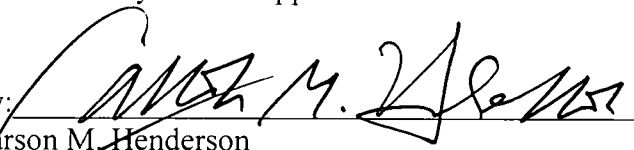
NOTICE OF APPEAL

Jeffrey Lee Moore appeals the Order of Dismissal issued by the Honorable Donald B. Hocker on Tuesday, March 24, 2015. This matter was heard in Greenwood on February 17, 2015. The Appellant's trial counsel received the Order of Dismissal from the Greenwood Clerk of Court on Monday, March 30, 2015.

THE HENDERSON LAW FIRM, P.C.

Trial Attorney for the Appellant

By: _____


Carson M. Henderson
109-B Oak Avenue
Greenwood, S.C. 29646
Phone: (864) 229-8000
Fax: (864) 229-8001

#1

Greenwood, South Carolina

April 20, 2015

Other Counsel of Record:

James Rutledge Johnson, Esquire
S.C. Attorney General's Office
P.O. Box 11549
Columbia, S.C. 29211

S.C. Commission on Indigent Defense
Appellate Division
Attention: Sharon Graham
1330 Lady Street, Suite 401
Columbia, S.C. 29201



THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED
APR 23 2015
S.C. Supreme Court

APPEAL FROM GREENWOOD COUNTY
Court of Common Pleas

Donald B. Hocker, Presiding Circuit Judge – Greenwood County

C/A No. 2012-CP-36-1378

JEFFREY LEE MOORE,

Appellant,

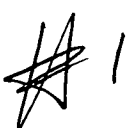
v.

STATE OF SOUTH CAROLINA,

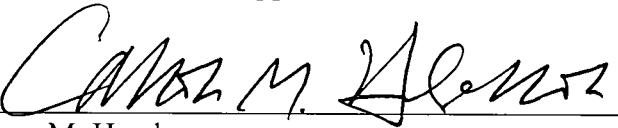
Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the Respondent, State of South Carolina, by depositing a copy of it in the United States Mail, postage prepaid, on April 20, 2015, addressed to its attorney of record, James Rutledge Johnson, Esquire, S.C. Attorney General's Office, P.O. Box 11549, Columbia, S.C. 29211, with a copy also being mailed to S.C. Commission on Indigent Defense, Appellate Division, Attention: Sharon Graham, 1330 Lady Street, Suite 401, Columbia, S.C. 29201.



THE HENDERSON LAW FIRM, P.C.
Trial Attorney for the Appellant

By: 

Carson M. Henderson
109-B Oak Avenue
Greenwood, S.C. 29646
Phone: (864) 229-8000
Fax: (864) 229-8001

Greenwood, South Carolina

April 20, 2015



FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2012 CP-24-1378

Jeffrey Lee Moore, #263267

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

| | |
|---------------------|--|
| Submitted by: COURT | Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant |
| | or <input type="checkbox"/> Self-Represented Litigant |

DISPOSITION TYPE (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):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; 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 (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

| Judgment in Favor of (List name(s) below) | Judgment Against (List name(s) below) | Judgment Amount To be Enrolled (List amount(s) below) |
|--|--|--|
| | | \$ |
| | | \$ |
| | | \$ |

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge
SCRPC Form 4C (12/2011)

2167
Judge Code

3/26/15
Date
Page 1

FILED COMMON PLEAS
8th JUDICIAL CIRCUIT
GREENWOOD, SC
2015 MAR 30 7 01 15 8

For Clerk of Court Office Use Only

This judgment was entered on the 27 day of March, 2015 and a copy mailed first class or placed in the appropriate attorney's box on this 27 day of March, 2015 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)
Charles W. Woodhurst
CLERK OF COURT

Court Reporter:

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENWOOD)
)
 Jeffery Lee Moore, #263267,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 EIGHTH JUDICIAL CIRCUIT

2012-CP-24-1378

ORDER OF DISMISSAL

FILED COMMON PLEAS
 8TH JUDICIAL CIRCUIT
 GREENWOOD, SC
 2015 MAR 27 PM 1:58

This matter comes before the Court by way of an Application for Post-Conviction Relief filed November 26, 2012. The Respondent made its Return on August 25, 2014. An evidentiary hearing into the matter was convened on February 17, 2015, at the Greenwood County Courthouse. Carson M. Henderson, Esquire, represented Applicant. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, Applicant testified on his own behalf. Janna A. Nelson, Esquire, who represented Applicant at his guilty plea, also testified. This Court also had before it a copy of the records of the Greenwood County Clerk of Court, records from the South Carolina Department of Corrections, and the guilty plea transcript.

PROCEDURAL HISTORY

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenwood County Clerk of Court's orders of commitment. Applicant was indicted by the May 2012 term of the Greenwood County Grand Jury for Burglary, 1st degree (2012-GS-24-0830). Applicant was represented by Janna A. Nelson, Esquire. On May 14, 2012, Applicant



appeared before the Honorable J. Cordell Maddox, Jr.; on May 15, 2012, Applicant pled guilty as indicted; and on May 16, 2012, Applicant was sentenced. Judge Maddox sentenced Applicant, pursuant to a negotiated sentence, to imprisonment for fifteen (15) years.

A notice of appeal was filed on Applicant's behalf, but the appeal was dismissed on October 10, 2012, for failure to provide a sufficient explanation as required by Rule 203(d)(1)(B)(iv) SCACR. The Remittitur was issued on October 31, 2012.

In his Application for Post-Conviction Relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
1. "Omission of Evidence"
2. "Involuntary Guilty Plea"

At the PCR hearing, the Applicant proceeded on his claim of ineffective assistance of counsel for Counsel's failure to provide and to review all of the State's discovery responses with him.

SUMMARY OF TESTIMONY

During direct examination, Applicant testified as follows:

1. He pled guilty to Burglary, 1st degree.
2. He was represented by Counsel at his guilty plea.
3. He learned for the first time that his case was on the May 2012 term jury trial roster when Counsel visited him in jail on the Sunday (which was May 13, 2012) before he pled guilty.
4. Prior to this, his case had not been placed on the jury trial roster.
5. Prior to pleading guilty, his only plea offer from the solicitor was to plead guilty

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to Burglary, 2nd degree for a fifteen (15) year sentence.

6. The Burglary, 2nd degree offer was communicated to him by Counsel during the April 2012 term.

7. He did not accept or reject the offer because he thought Counsel could get a lower offer from the solicitor.

8. He asked Counsel to ask the solicitor for five (5) years, and Counsel told him that she might be able to get a lower offer but that the solicitor was not going to offer five (5) years.

9. Counsel did not communicate the solicitor's response to Applicant's counteroffer to Applicant after Counsel talked with the solicitor.

10. He did not know his case was going to be on the May 2012 term jury trial docket.

11. He thought he had until the May 2012 term to decide whether to accept the solicitor's initial Burglary, 2nd degree offer.

12. He did not know the solicitor's initial offer would expire.

13. He had no other choice but to plead guilty.

14. He did not see the State's discovery responses or discuss them with Counsel before pleading guilty.

15. It was only after he pled guilty that he saw and received copies of the discovery responses from Counsel, which included an incident report that included both a favorable statement and an unfavorable statement from the same witness who would have testified at Applicant's trial.

16. There were conflicting statements in the incident report from the same witness.

17. He would not have pled guilty if he had known about the favorable statement

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from the witness.

18. Counsel said this witness would have testified against, and not for, Applicant at trial.

19. Judge Maddox refused to allow Applicant to withdraw his guilty plea on May 16, 2012.

20. His main PCR claim is ineffective assistance of counsel for Counsel's failure to share the evidence, including potential exculpatory evidence, with him prior to the guilty plea.

On cross-examination, Applicant testified as follows:

1. He was facing fifteen (15) years to life in prison without possibility of parole on the Burglary, 1st degree charge.

2. During the guilty plea, he waived his constitutional rights, including the right to challenge any witness statements.

3. Nobody threatened him or promised him anything to plead guilty.

4. He agreed with the facts as presented by the solicitor at the guilty plea hearing.

5. He admitted he was guilty of the charge at the guilty plea hearing.

During re-direct examination, Applicant testified as follows:

1. He would not have pled guilty had he known about the "favorable witness."

During direct examination, Counsel testified as follows:

1. She was appointed to Applicant's case and filed a Motion for Discovery and Rule 5/Brady material.

2. She received the incident report, Applicant's criminal history, the DNA report from SLED (South Carolina Law Enforcement Division), and photographs of the clothing taken



from Applicant.

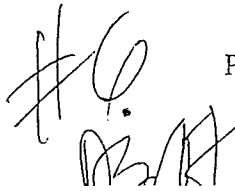
3. She reviewed the witness statements and found no inconsistent statements.
4. She reviewed all of the discovery responses with Applicant, and it is her typical practice to review statements made by witnesses with defendants.
5. Concerning the plea offer, Counsel said she discussed a plea offer with the solicitor in February 2012, and the solicitor offered to allow Applicant to plead guilty to Burglary, 2nd degree for fifteen (15) years.
6. Applicant wanted a five (5) year plea offer, but the solicitor would not negotiate that low of a sentence. Applicant was not satisfied with this.
7. She anticipated this case proceeding to trial.
8. She would have relayed the solicitor's response to Applicant's counteroffer to Applicant and that it was Applicant's decision to reject the plea offer.
9. She would have communicated with Applicant about when his case was on the jury trial docket.
10. When the case was scheduled for trial, she attempted to negotiate with the solicitor for the prior Burglary, 2nd degree offer, but the solicitor would not extend this offer again.
11. There was a political atmosphere surrounding this case because it was an election year and Applicant had sued the jail during his incarceration.
12. Judge Maddox denied her continuance request.
13. She negotiated with the solicitor for a fifteen (15) year sentence to the Burglary, 1st degree charge as indicted.

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14. Applicant's choices were to accept the Burglary, 1st degree plea offer or proceed to trial.

On cross-examination, Counsel testified as follows:

1. She discussed a fifteen (15) year plea offer to Burglary, 2nd degree with the solicitor in February 2012.
2. She relayed the solicitor's offer to Applicant at that time.
3. She has no notes in her file indicating that this communication occurred in February 2012, and not in April 2012 as testified to by Applicant.
4. She did not remember receiving a written plea offer from the solicitor regarding the Burglary, 2nd degree offer, but only an oral offer.
5. She told Applicant about the solicitor's fifteen (15) year offer, Applicant knew Counsel countered with a five (5) year offer, and Applicant knew the solicitor responded that a five (5) year offer was too few years.
6. She did not remember if there was a time limit during which Applicant had to accept the Burglary, 2nd degree offer, but she would have told Applicant about any time limit.
7. There were no further plea negotiations between the time the solicitor withdrew the Burglary, 2nd degree offer and the case was placed on the May 2012 jury trial roster.
8. She went to the jail and discussed the State's discovery responses with Applicant, including witness statements.
9. Counsel provided Applicant with a written copy of the statements only after he had pled guilty. Counsel previously had read the statements to Applicant.
10. Counsel did not have in her notes that she first told Applicant the Sunday before

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the May 2012 term that his case was scheduled for trial during the May 2012 term.

11. Applicant's two (2) prior burglary convictions were elements of Applicant's Burglary, 1st degree charge.

12. A SLED DNA test was conducted on the gloves found on the fence outside the victim's house, and Applicant could not be excluded as a contributor.

13. Applicant was caught up in the political atmosphere surrounding the on-going solicitor's primary race, and Applicant was in a "tight spot" because the solicitor could not be seen as being soft on crime.

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 (2003).

Ineffective Assistance of Counsel

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), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

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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. Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, 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. Second, counsel's deficient performance must have prejudiced 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. With respect to guilty plea counsel, 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).

Reviewing Discovery Responses

Applicant alleges Counsel failed to review all of the State's discovery responses with him. Applicant testified that had Counsel reviewed all of the discovery responses with him, specifically the witnesses statements, he would not have pled guilty, but instead pursued a trial.

Counsel testified that she did, in fact, review all of the discovery responses with Applicant including the witness statements, and she found no inconsistencies in the statements. Counsel also testified it was Applicant's decision to plead guilty.

This Court finds Counsel's testimony more credible than Applicant's. This Court finds

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Counsel reviewed all of the discovery with Applicant and that Applicant was fully aware of all of the evidence before he made the decision to plead guilty. This Court further finds Counsel rendered effective assistance of counsel in this case as she was able to negotiate the minimum sentence for Applicant's Burglary, 1st degree charge.

Involuntary Guilty Plea

To be knowing and voluntary, a guilty plea must be entered with a full understanding of the charges and the consequences of the plea. 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).

Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621 (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. U.S., 519 F.2d 317 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

A defendant who enters a guilty plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360,

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426 S.E.2d 795 (1993).

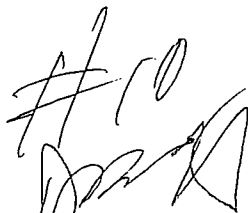
Applicant alleged his guilty plea was not voluntarily entered because Counsel did not fully discuss the State's discovery responses with him, and Counsel did not provide Applicant with copies of the discovery responses before Applicant's plea. As discussed above, Counsel testified she discussed all of the discovery responses with Applicant prior to the guilty plea. Once again, this Court finds Counsel's testimony more credible. Further, this Court finds the guilty plea transcript, Counsel's testimony, and Applicant's answers during cross-examination at the PCR hearing directly refute his claims. This Court also finds Applicant pled guilty freely, voluntarily, and without any coercion, threats, or promises. Therefore, this allegation is denied.

Accordingly, this Court finds Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in her representation of Applicant.

This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. This Court concludes Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. Therefore, these allegations are denied.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that 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.


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This Court notifies 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 (1991), Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCR, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

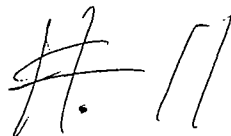
1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED!



~~Hon.~~ Donald B. Hocker
Presiding Circuit Court Judge
Eighth Judicial Circuit

3-27, 2015
Cameron, South Carolina



The Henderson Law Firm, P.C.
109-B Oak Avenue
Greenwood, S.C. 29646

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