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April 28, 2015

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

The Honorable Rhonda Dale McElveen
Clerk, Barnwell County
PO Box 723
Barnwell, SC 29812-0723

RE: Antwon Byars, #351482, v. State of South Carolina
2013-CP-06-121

Dear Mr. Shearouse and Ms. McEleveen:

Enclosed for filing is a Notice of Appeal in the above-referenced case. Also enclosed are the following:

(1) Proof of Service of the Notice of Appeal;
(2) A copy of the Order which is to be challenged on appeal; and
(3) Prior Order of Appointment of Counsel.

As I was appointed to represent Mr. Byars in his PCR proceeding, I anticipate that the Office of Appellate Defense will represent Mr. Byars in this appeal.

Yours very truly,

Lance S. Boozer

cc: Daniel Gourley, AAG
Office of Appellate Defense
Antwon Byars, #351482

RECEIVED
APR 30 2015
S.C. Supreme Court

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM BARNWELL COUNTY
Court of Common Pleas

The Honorable D. Craig Brown, Circuit Court Judge

Case No. 2013-CP-06-121

Antwon Byars, #351482,.....Petitioner,

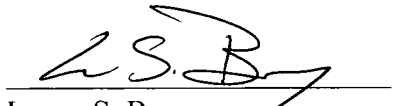
v.

State of South Carolina,.....Respondent.

NOTICE OF APPEAL

The Petitioner appeals the Honorable D. Craig Brown's Order dated March 23, 2015, denying post-conviction relief to the Petitioner. Undersigned counsel received notice of entry of the Order on April 3, 2015. A copy of the Order on appeal is attached to this notice.

Respectfully submitted,



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v.

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PROOF OF SERVICE

I, Lance S. Boozer, attorney for Petitioner, certify that I have today served within Notice of Appeal upon the Respondent by depositing a copy of it in the United States Mail, postage prepaid, addressed to Assistant Attorney General Daniel Gourley, P.O. Box 11549, Columbia, SC 29211. I further certify that all parties required by Rule to be served have been served this 28th day of April, 2015.

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STATE OF SOUTH CAROLINA COUNTY OF BARNWELL	IN THE COURT OF COMMON PLEAS FOR THE SECOND JUDICIAL CIRCUIT
Antwon Byars, #351482, Applicant, v. State of South Carolina, Respondent.	Case No. 2013-CP-06-121 **ORDER OF DISMISSAL**

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on April 10, 2013. Respondent made its return on February 20, 2014. An evidentiary hearing into the matter was convened on January 16, 2015, at the Aiken County Courthouse. Applicant was present at the hearing and was represented by Lance Boozer, Esquire. Respondent was represented by Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Barnwell County Clerk of Court. The Applicant was true bill indicted at the January 2011 term of the Barnwell County Grand Jury for Assault and Battery with Intent to Kill (2011-GS-06-0014). Michael Chesser, Esquire, represented the Applicant. On July 9, 2012, Applicant pled guilty as indicted before the Honorable Doyet A. Early, III. Judge Early sentenced Applicant to ten years imprisonment for Assault and Battery with Intent to Kill.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected by David Alexander, Esquire. The South Carolina Court of Appeals affirmed the Applicant's

conviction and sentence. State v. Antwon Byars, Op. No. 2013- UP- 439 (Ct. App. filed November 27, 2013). The Remittitur was issued on December 23, 2013.

ALLEGATIONS

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

1. Ineffective Assistance of Counsel
    a. "Violation of Rule 6 of South Carolina Rules of Criminal Procedure"
    b. "Brady Rule was violated/avoided (Rule 6 SCRP)"
    c. "Misguided and erroneous advice"
    d. "No type of investigatory actions"
    e. "Avoided Procedural Rules of Due Process Clause 'Brady Rule'"

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. The State presented testimony from Michael Chesser (hereinafter "Plea Counsel"). This Court also had before it a copy of the plea transcript, the Aiken County Clerk of Court records, Applicant's South Carolina Department of Correction records, the PCR application, and return.

During the evidentiary hearing, Applicant testified he pled guilty to assault and battery with intent to kill. Applicant stated that he will be maxing out in 2021. Applicant stated that he still wanted to proceed with his post-conviction relief hearing. Applicant stated Michael Chesser was his attorney. Applicant stated that got out on bond in 2011. Applicant stated that he met with Plea Counsel four or five times. Applicant stated they have approximately five to twenty phone conversations.

Applicant stated that he called Plea Counsel and they met at Hardees restaurant. Applicant stated that Plea Counsel presented a fifteen year plea offer, however Applicant did not accept the offer because he did not want to plead guilty. Applicant stated that he could not plead to fifteen years.

PCR 1. 2019

Applicant stated the only evidence was various statements. Applicant stated that a couple of witnesses were prepared to testify had Applicant proceeded to trial. However, Applicant stated that he never reviewed or received discovery from Plea Counsel. Applicant stated that had he proceeded to trial he would have argued a self defense claim. Applicant stated Plea Counsel was not prepared to present an adequate self-defense claim at trial because he was pushing Applicant to plead guilty.

Applicant stated that he knew he needed to be present at all roll calls. Applicant stated he had ineffective assistance of counsel because Plea Counsel failed to investigate. Specifically, Applicant stated Plea Counsel failed to speak to various witnesses on his behalf. Applicant stated Plea Counsel maybe spoke to one witness. Applicant stated that he was prepared to go to trial. Applicant stated the day of trial, he realized Plea Counsel had no confidence in himself and therefore Applicant was forced to plead guilty.

Following Applicant's testimony, Plea Counsel was called to testify. Plea Counsel stated that he has been practicing law for twenty five years and was retained to represent Applicant. Plea Counsel stated that he filed for all Discovery and Rule 5 material. Plea Counsel stated he met with Applicant five or six times prior to his plea. Plea Counsel stated those meetings lasted a while. Plea Counsel stated they met at Hardees at least one time.

Plea Counsel stated the version of events never really changed. Plea Counsel stated the victim was older than Applicant, approximately forty three years of age. Plea Counsel stated Victim had a reputation of being a tough individual and had previously pled guilty to involuntary manslaughter. Plea Counsel stated victim and Applicant were at the club and got into an argument. Plea Counsel stated Applicant felt threatened and left the club. However, Plea Counsel stated Applicant met up with Charles Chandler, got a gun, and went back to the club.

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Plea Counsel stated Applicant shot victim and fled the scene with Charles Chandler. Plea Counsel stated Applicant and Charles Chandler were stopped approximately five minutes later. Plea Counsel stated the gun was found underneath the seat and Applicant claimed he was the owner of the gun. Plea Counsel stated Charles Chandler was a bad actor as well. Plea Counsel stated Charles Chandler gave a statement at the time. Plea Counsel stated Charles Chandler was an eye witness to it all. Specifically, Plea Counsel stated Charles Chandler heard the shot and saw Applicant standing over victim. Plea Counsel stated Applicant took the rap and told the officers where the gun was located. Plea Counsel stated there were three live rounds and one empty cartridge.

Plea Counsel stated Marion Dickson was prepared to testify against Applicant. Plea Counsel stated that Marion Dickson had seen everything take place. Plea Counsel stated that he did interview Marion Dickson prior to Applicant's plea. Plea Counsel stated that he went out to the scene of the crime. Plea Counsel stated that he rode in front of the club. Plea Counsel recalled that there was a ten to fifteen foot wire fence. Plea Counsel stated that he wanted to see the scene and get a better understanding of what took place. Plea Counsel stated he familiarized himself with the State's case. Plea Counsel stated that he never interviewed Charles Chandler, but his statement was consistent with the evidence. Plea Counsel stated it would be a good idea to interview all witnesses if possible.

Plea Counsel stated that law enforcement did not want the solicitor to make a plea offer. However, Plea Counsel stated Susanna Ringler made the decision to make an offer. Plea Counsel speculated that it was due to the lack of cooperation with the victim. Plea Counsel stated the offer was for a cap of fifteen years. Plea Counsel stated that he told Applicant he

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would be going to prison. Plea Counsel stated that it is his opinion that "if someone is going to prison you need to tell them" that they are going to prison.

Plea Counsel stated Applicant had no self-defense claim because he left the club and returned with a gun. Plea Counsel explained this to Applicant and Applicant understood. Plea Counsel stated had Applicant wanted to proceed to trial he would have been prepared to try the case. However, Plea Counsel stated it was ultimately Applicant's decision to plead guilty.

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. Specifically, this Court finds Counsel's testimony credible while Applicant's testimony is not credible. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

INEFFECTIVE ASSISTANCE OF COUNSEL

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). 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, (1984); Butler, 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

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professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). Applicant must overcome this presumption 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. 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). 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. 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 (1985).

Plea Counsel failed to investigate.

This Court finds Applicant's allegation that Plea Counsel failed to investigate during his case to be without merit. "[C]riminal 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." Walker v. State, 397 S.C. 226, 235, 723 S.E.2d 610, 615 (Ct. App. 2012). Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result. Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." Wiggins v. Smith, 539 U.S. 510, 521-22 (2003).

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In the instant case, Plea Counsel stated that he met with Applicant five or six times. Plea Counsel further stated that interviewed Marion Dickson, a key eye witness in Applicant's case. Plea Counsel stated that he went out the scene of the crime and viewed the area. Plea Counsel stated that he familiarized himself with the State's case. Based on the foregoing, this Court finds Plea Counsel's actions were reasonable in the circumstances, and did not fall below professional norms of reasonableness. Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland).

Additionally, this Court finds Applicant failed to present sufficient evidence as to what additional investigation would have revealed. Applicant failed to present any documents or witnesses on his behalf to support his allegation that Plea Counsel failed to conduct a sufficient investigation. See Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (holding applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial).

Furthermore, this Court finds Applicant can show no prejudice as a result of overwhelming guilt. See Franklin v. Catoe, 346 S.C. 563, 570 n. 3, 552 S.E.2d 718, 722 n. 3 (2001), cert. denied, 535 U.S. 1114, 122 S.Ct. 2332, 153 L.Ed.2d 162 (2002) (finding overwhelming evidence of guilt negated any claim that counsel's deficient performance could have reasonably affected the result of defendant's trial); Geter v. State, 305 S.C. 365, 367, 409 S.E.2d 344, 346 (1991) (concluding reasonable probability of a different result does not exist when there is overwhelming evidence of guilt); cf. Ford v. State, 314 S.C. 245, 248, 442 S.E.2d 604, 606 (1994) (holding respondent failed to prove prejudice from trial counsel's failure to request an alibi charge where there was overwhelming evidence of guilt).

The evidence presented reveals that the Applicant was identified as standing over the victim with a gun. Several eye witnesses were prepared to testify on the State's behalf.

DCB
1-719

Additionally, Applicant does not dispute his guilt, but merely asserts that he has a viable self defense claim. To the contrary, Applicant left the scene after getting into a heated argument, returned with a gun, and shot the victim. Nothing about this factual context leads to a viable self defense claim. As a result, this Court finds Applicant can show no prejudice as a result of Plea Counsel's alleged deficiencies.

BRADY VIOLATIONS

Brady rules were violated.[1]

This Court finds Applicant's allegation that there were various Brady violations to be meritless. Applicant failed to present any documentation or evidence to support his claim that there was information that was not turned over. See Palacio v. State, 333 S.C. 506, 513, 511 S.E.2d 62, 66 (1999) (holding that, since the contents of challenged documents were not presented at the PCR hearing, the Applicant could not demonstrate how the failure of counsel to obtain these documents prejudiced the defense). As a result, this Court finds Applicant's allegation that there were various Brady violations committed to be meritless.

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, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

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

[1] This Court notes allegations a, b, and e were of similar nature and therefore are addressed as one claim.

application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that that Applicant must file and serve a notice of appeal within thirty 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), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant 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 23 day of March, 2015.

D. Craig Brown
Presiding Judge
Second Judicial Circuit

Florence, South Carolina

DCB 9/1/9

STATE OF SOUTH CAROLINA COUNTY OF BARNWELL Antwon Lamar Byars, Plaintiff(s), -vs- South Carolina State of, Defendant(s).	)))))))	IN THE COURT OF COMMON PLEAS SECOND JUDICIAL CIRCUIT CASE NO.: 2013CP0600121 APPOINTMENT OF COUNSEL OR GAL (*Select one.*) ☒ ORDER ☐ AMENDED ORDER

TYPE OF CASE/PROCEEDING: (*Check one.*)

☐ Post-Conviction Relief (PCR)/habeas case	☐ Adoption	☐ Juvenile
☐ SVP case	☐ Custody and/or Visitation	☐ Abuse and Neglect
☐ Minor Name Change	☒ Other: Post Convict Rel 500	

It appears Antwon Lamar Byars, who is a litigant in this case, is entitled to court-appointed counsel or a guardian ad litem.

It further appears that: (*Select only one.*)

☐ counsel/guardian ad litem has not yet been appointed by the court; therefore, an appointment for counsel/guardian ad litem is necessary.

☐ counsel or a guardian ad litem was previously appointed by the court but has indicated either a possible conflict of interest, an entitlement to exemption, or other good cause warranting the appointment of new counsel or guardian ad litem based on:

☐ counsel was previously appointed by the court but has not indicated that the litigant has retained private counsel and is no longer entitled to appointed counsel.

☒ court appointed counsel has obtained, Lance S. Boozer, Esquire as substitute counsel pursuant to Rule 608(h)(2); provided, however, only the member who originally received the appointment and who sought substitute counsel shall receive credit.

☐ Other: .

FILED
2014 FEB -7 PM 4:16
RICHARD D. MCKELVEY
CLERK OF COURT
BARNWELL, S.C.

Therefore, it is ordered that Lance S. Boozer hereby is appointed as (*Select one.*)

☒ counsel ☐ lead counsel (*if capital PCR case*) ☐ guardian ad litem

for the above-named person. Any counsel or GAL previously appointed is/are hereby relieved.

☐ (*If Death Penalty PCR Case*) It is further ordered that , Esquire, is hereby appointed as second counsel in this capital PCR case.

The clerk of court is directed to forward a copy of this order to all persons entitled to notice.

IT IS SO ORDERED
February 7, 2014

Constance B. Mansfield
☐ Circuit Judge ☒ Clerk of Court Deputy for Rhonda S. McElveen

Plaintiff Attorney:	
Lance S. Boozer	
1331 Park Street	
Columbia, SC 29201	

Defendant Attorney:	
Daniel Gourley	
PO Box 11549	
Columbia, SC 29211-1549	

NOTICE: SC Supreme Court Order of September 29, 2006, requires appointed counsel entitled to payment from the Office of Indigent Defense (OID) to register the case online with OID within fifteen (15) days of this appointment at www.sccid.sc.gov, and further directs that reimbursement vouchers be submitted directly to SCCID and not to the trial judge or clerk of court. See SCCID website for further details.

CP20 (08/08)
SCCA/267 (03/07)

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