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June 18, 2015

RECEIVED

JUN 22 2015

South Carolina Supreme Court  
Daniel E. Shearouse  
Clerk of Court  
PO Box 11330  
Columbia, South Carolina 29211

S.C. SUPREME COURT

Re: **Shane Kelly Young v State of South Carolina**  
**Case No.: 2015-CP-23-3381**

Dear Sir:

You will find enclosed the following:

1. Notice of Appeal;
2. Proof of Service;
3. Order of Dismissal from PCR Hearing; and
4. A self-addressed stamped envelope for filed documents.

Should you have any questions or concerns about any of the enclosed documents, please feel free to call us at the office.

Thank you for your attention to this matter.

Sincerely,



Sharon Johnson  
Paralegal

/enclosures  
Cc: Karen Ratigan

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas  
HONORABLE Edward W. Miller

RECEIVED

Case No.: 2014CP233381

JUN 22 2015

S.C. SUPREME COURT

SHANE KELLY YOUNG )  
S.C.D.C. No. 357849, )  
 )  
PETITIONER, )  
 )  
vs. )  
 )  
STATE OF SOUTH CAROLINA )  
 )  
RESPONDENT. )

NOTICE OF APPEAL

The Petitioner, Shane Kelly Young, hereby appeals the Honorable Edward W. Miller's June 8<sup>th</sup>, 2014 Order denying post-conviction relief to the Petitioner. A copy of the order on appeal is attached to this notice.

Respectfully submitted,



L. Whitney Thwaites, Esq.  
SC Bar # 78757  
601 University Ridge  
Greenville, SC 29601  
(p): 864 232-8722 (f): 864-232-9977  
Attorney for Petitioner

Date: June 18, 2015  
Other counsel of record: Karen Ratigan  
P.O. Box 11549/Columbia, SC 29211

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas  
HONORABLE Edward W. Miller

RECEIVED

Case No.: 2014CP233381

JUN 22 2015

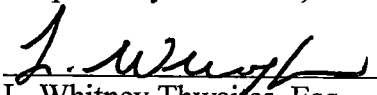
S.C. SUPREME COURT

SHANE KELLY YOUNG, )  
)  
PETITIONER, )  
)  
vs. )  
)  
STATE OF SOUTH CAROLINA )  
)  
RESPONDENT. )  
\_\_\_\_\_ )

PROOF OF SERVICE

I, L. Whitney Thwaites, Esq., certify that I have today served the within notice of appeal upon the Respondent by depositing a copy in the United States Mail, postage prepaid, addressed to the attorney of record, Karen Ratigan, at P.O. Box 11549 Columbia, SC 29211.

Respectfully submitted,

  
L. Whitney Thwaites, Esq.  
SC Bar # 78757  
601 University Ridge  
Greenville, SC 29601  
(p): 864 232-8722 (f): 864-232-9977  
Attorney for Petitioner

Greenville, SC  
June 18<sup>th</sup>, 2015

STATE OF SOUTH CAROLINA )  
COUNTY OF GREENVILLE )

Shane Kelly Young,  
S.C.D.C. No. 357849,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS  
C.A. No. 2014-CP-23-3381

ORDER OF DISMISSAL

ENTERED COMPUTER

FILED-CLERK OF COURT  
GREENVILLE CO. S.C.  
PAUL B. WICKENSIMMER  
2015 JUN 8 PM 2 15

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed June 17, 2014. The Respondent made its return on October 30, 2014. An evidentiary hearing was held on April 23, 2015 at the Greenville County Courthouse. The Applicant was present 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 were the Applicant's plea attorneys: Joseph B. Maxwell, Esquire and John I. Mauldin, Esquire. The Court had before it the transcript of the guilty plea hearing, the Greenville County Clerk of Court records, the South Carolina Department of Corrections records, the PCR application, and the return.

#### PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted at the July 2013 term of the Greenville County Grand Jury for 8 counts of attempted murder (2013-GS-23-6411, -6413, -6414, -6416, -6420, -6423, -6425, -6426), first-degree burglary.

(2013-GS-23-6419), murder (2013-GS-23-6424, count 1), and possession of a weapon during commission of a violent crime (2013-GS-23-6424, count 2). He was represented by Joseph B. Maxwell, Esquire and John I. Mauldin, Esquire.

On November 19, 2013, the Applicant pled guilty – pursuant to a negotiated plea agreement – to 8 counts of attempted murder, first-degree burglary, and murder. The Honorable Letitia H. Verdin sentenced the Applicant to consecutive sentences of 30 years for each count of attempted murder, life imprisonment for first-degree burglary, and life imprisonment for murder. The Applicant did not appeal.

### **ALLEGATIONS**

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

1. Ineffective assistance of counsel:
  - a. Failed to file a notice of appeal as requested.

At the beginning of the PCR hearing, counsel for the Applicant stated they were proceeding upon only two grounds: (1) that the Applicant did not waive his right to an appeal and (2) the Applicant's guilty plea was involuntary because he had prior "head-related injuries." This Court finds the Applicant has abandoned any and all other issues.

### **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 (2003).

### Involuntary Guilty Plea

The Applicant alleges his guilty plea was involuntary. 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).

~~To find a guilty plea is voluntarily and knowingly entered into, the record must establish~~ the applicant had a full understanding of the consequences of his plea and the charges against him. See Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969). In Boykin, the United States Supreme Court held that before a court can accept a guilty plea, a criminal defendant must be advised of the constitutional rights he is waiving. Id. at 243, 89 S. Ct. at 1712. Specifically, the accused must be aware of the privilege against self-incrimination, the right to a jury trial, and the right to confront one’s accusers. Id. Moreover, a criminal defendant entering a guilty plea “must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived.” Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citation omitted). A criminal defendant’s knowing and voluntary waiver of statutory or constitutional rights in a guilty plea “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) (citation omitted). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)).

The Applicant stated he did not review all of the discovery materials with plea counsel.

The Applicant admitted plea counsel gave him a packet of discovery materials to read and that they reviewed some of this. The Applicant stated he never saw the handwritten victim/witness statements or sketches before the plea hearing. The Applicant stated these documents had inconsistencies and would have been a factor in deciding whether to go to trial. The Applicant ~~acknowledged attorney Mauldin mentioned his prior head injury during the plea hearing but that~~ a doctor should have spoken at the plea. The Applicant stated he pled guilty for his family's sake but admitted he did not say this at the plea hearing.

Attorney Mauldin testified this case was primarily handled by Attorney Maxwell. Mauldin testified they engaged in serious negotiations with the State to prevent the service of a notice of intent to seek the death penalty. Mauldin testified he received the discovery materials and reviewed them with Maxwell and that Maxwell reviewed them with the Applicant. Mauldin testified he never had the impression the Applicant wanted to go to trial. Mauldin testified the Applicant was evaluated for competency. Mauldin testified two mental health professionals (a psychologist and a psychiatrist) spoke with the Applicant, so he was aware of the Applicant's prior head injuries. Mauldin testified that having doctors testify at the plea hearing would not have changed the outcome because it was a negotiated plea.

Attorney Maxwell confirmed he was the primary contact person in this case and met with the Applicant at the jail at least thirty times. Maxwell testified the discovery materials in this case were voluminous and that he would make a packet of documents and give it to the Applicant to review. Maxwell testified he would later return to discuss the information in that packet and also give a new packet of discovery to the Applicant. Maxwell testified he reviewed the initial, handwritten victim/witness statements and the subsequent typed statements. Maxwell

testified any differences between the two would not have affected the case. Maxwell testified the Applicant knew he was receiving a negotiated life sentence.

This Court finds the Applicant entered a knowing and voluntary guilty plea. See Boykin v. Alabama, 395 U.S. at 243-44, 89 S. Ct. at 1712. The Applicant admitted to the plea judge that the facts recited by the solicitor were true. (Plea transcript, p.15). The Applicant also told the plea judge that he understood the trial rights he was waiving in pleading guilty, was satisfied with counsel, and had not been coerced in any way. (Plea transcript, pp.5-6; p.8). This Court finds there is no evidence in the guilty plea transcript to support the Applicant's assertion that he was pressured into entering a guilty plea; therefore the transcript has refuted this allegation. See Stalk v. State, 375 S.C. 289, 300, 652 S.E.2d 402, 407 (Ct. App. 2007); see also Rayford v. State, 314 S.C. 46, 48-49, 443 S.E.2d 805, 806 (1994) (where transcript of guilty plea proceeding refuted applicant's claim that he did not understand the terms of a plea bargain, grant of PCR was inappropriate notwithstanding applicant's claim lawyer misadvised him).<sup>1</sup>

This Court finds the Applicant failed to meet his burden of proving an expert should have testified at his guilty plea hearing about his prior head injuries. Mauldin testified he was aware of the prior injuries through the two mental health experts he retained to examine the Applicant. Mauldin also testified such testimony at the plea would not have changed the outcome because it was a negotiated guilty plea. This Court agrees. This Court also notes Mauldin mentioned the

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<sup>1</sup> This Court finds the Applicant's allegation that he did not view the initial victim/witness statements before the plea is not credible and – regardless – did not affect the voluntariness of his pleas. This Court finds credible Maxwell's testimony both that he reviewed discovery with the Applicant and that any discrepancies in the statements would not have impacted the case. The Applicant failed to articulate how these statements would have changed the outcome of his case. Cf. 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).

Applicant's prior head injuries during his mitigation argument at the plea hearing. (Plea transcript, p.22). The Applicant failed to demonstrate that expert testimony at the guilty plea hearing would have changed the outcome of this negotiated guilty plea. See Lorenzen v. State, 376 S.C. 521, 530, 657 S.E.2d 771, 777 (2008) (finding that, as the applicant failed to present any expert testimony at the PCR hearing, "it is merely speculative that these allegedly favorable expert witnesses would have aided in his defense").

Accordingly, this Court finds the Applicant has failed to meet his burden of proving his guilty pleas were not entered knowingly and voluntarily. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

#### **Right to Appeal**

The Applicant acknowledged the plea judge advised him that he could file an appeal within ten days. The Applicant stated he asked Maxwell about this and Maxwell stated he would come to see him the next day but he did not do so. The Applicant stated he was "not sure" why he wanted an appeal – and did not articulate any errors made by the plea judge – but stated he wanted "to go back."

Mauldin indicated the Applicant wanted to plead guilty and never wanted to go to trial. Maxwell confirmed he told the Applicant after the plea hearing that he would go see him the following day but explained the Applicant had already been transported out of the jail. Maxwell testified the Applicant never asked him to file an appeal. Maxwell testified there were no appealable issues from the guilty plea hearing and he would have stated as much to the South Carolina Court of Appeals if he had filed a notice of appeal.

This Court finds the Applicant has failed to meet his burden of proving he is entitled to

an appeal of his direct appeal issues from his guilty plea hearing. This Court finds credible Maxwell's testimony that the Applicant never asked him to file an appeal. This Court finds it is not believable the Applicant – or any reasonable defendant – would have wanted to file an appeal from a negotiated guilty plea on these charges. This Court further finds the Applicant has failed to articulate what legal errors or omissions should have been appealed.

#### 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

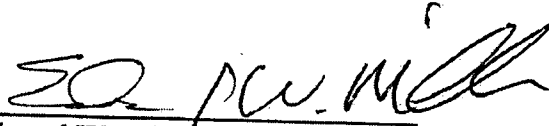
Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner and the Applicant was not prejudiced by counsel's representation. Furthermore, the Applicant's guilty plea was entered knowingly and voluntarily within the mandates of Boykin. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

**IT IS THEREFORE ORDERED:**

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

**AND IT IS SO ORDERED** this 4 day of June, 2015.

  
\_\_\_\_\_  
Edward W. Miller  
Presiding Judge  
Thirteenth Judicial Circuit

Gille South Carolina.

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

JUDGMENT IN A CIVIL CASE

CASE NO: 2014CP2303381

FILED - CLERK OF COURT  
GREENVILLE CO. S.C.  
PAUL B. WICKENSIMER  
2015 JUN 8 PM 2:15

Shane K Young vs. South Carolina State Of

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), SCRCP;  Rule 41(a), SCRCP (Vol. Nonsuit);  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 .

Court Reporter:

\_\_\_\_\_  
PRESIDING JUDGE - Edward W Miller

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 North Church Street  
Greenville, SC 29601

\_\_\_\_\_  
Karen Christine Ratigan PO Box 11549 Columbia,  
SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

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



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