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COLUMBIA, SC 29201

W. BARNEY GIESE

KEITH GIESE

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JUSTIN M. KATA

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RECEIVED

JUN 18 2015

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June 10, 2015

S.C. SUPREME COURT

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

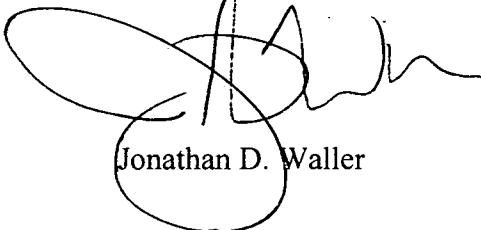
Re: Montez M. Barker vs. State of South Carolina
C/A No: 2014-CP-21-00436

Dear Mr. Shearouse:

Please find enclosed one (1) original and one (1) copy each of Applicant's Notice of Appeal and Certificate of Service in the above referenced case. I would appreciate you filing the original and returning the clocked copies in the enclosed envelope.

I was appointed to represent Mr. Barker in this matter and am also enclosing a copy of the Order of Dismissal. If you have any questions, please do not hesitate to ask. My telephone number is 803-708-6767.

Sincerely,



Jonathan D. Waller

Cc: Joshua L. Thomas, South Carolina Office of Attorney General

Enclosures

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM FLORENCE COUNTY
D. Craig Brown, Circuit Court Judge

2014-CP-21-00436

RECEIVED

JUN 18 2015

S.C. SUPREME COURT

Montez M. Barker, #277819,

Appellant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Montez M. Barker, #277819, appeals the Order of Dismissal denying his Application for Post-Conviction Relief filed June 2, 2015, issued by the Honorable D. Craig Brown, Presiding Judge, Twelfth Judicial Circuit.



Jonathan D. Waller

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Columbia, SC 29201
803-708-6767 (phone)
803-708-6769 (fax)
jonathanwallerlaw@gmail.com
ATTORNEY FOR PETITIONER

This 10 day of June, 2015.

Other Counsel of Record:

Joshua L. Thomas, Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3319

STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

APPEAL FROM FLORENCE COUNTY
D. Craig Brown, Circuit Court Judge

JUN 16 2015

2014-CP-21-00436

S.C. SUPREME COURT

Montez M. Barker, #277819,

Appellant,

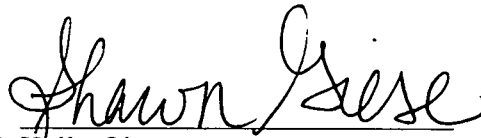
v.

STATE OF SOUTH CAROLINA,

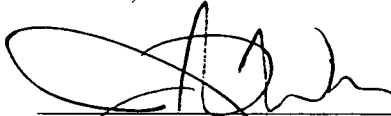
Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the Appellant's Notice of Appeal in the above-entitled case has been served upon opposing counsel, Joshua L. Thomas, Assistant Attorney General, by mailing in an envelope properly addressed with postage prepaid on this 16 day of June 2015.


Kelly Giese

SWORN TO BEFORE me this 16 day
of June, 2015.


Notary Public for South Carolina
My Commission Expires: 3/25/23

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2014 CP-21-436

Montez M. Barker

State of South Carolina

#277819

PLAINTIFF(S)

DEFENDANT(S)

Attorney for : Plaintiff Defendant

or

Self-Represented Litigant

Submitted by:

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. See Page 2 for additional information.
- 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

Judge Code

Date

FILED
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 ONE E FEE SHEARMAN
 & ST
 FLORENCE COUNTY, SC
 CLERK OF COURT C.P. & G.S.
 FLORENCE COUNTY, S.C.
 Certified: A TRUE COPY
 [Signature]

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE) FOR THE TWELFTH JUDICIAL CIRCUIT

Montez M. Barker, #277819,) Case No. 2014-CP-21-436

Applicant,)

v.)

State of South Carolina,)

Respondent.)

ORDER OF DISMISSAL

This matter comes before the Court by way of an Application for Post-Conviction Relief filed February 21, 2014. Respondent made a timely Return on or about June 24, 2014. The Court convened an evidentiary hearing into the matter on April 15, 2015, at the Florence County Courthouse. Applicant was present at the hearing and represented by Jonathan D. Waller, Esquire. Joshua L. Thomas, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's plea counsel, William V. Meetze, Esquire, also testified. The Court had before it a copy of the plea transcript, the records of the Florence County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, and the pleadings in this matter. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. In July 2012, the Florence County Grand Jury indicted Applicant for conspiracy, grand larceny, third degree arson, and two (2) counts of murder (2012-GS-21-896). Jack W. Lawson, Jr., Esquire, William V. Meetze,

CERTIFIED: A TRUE COPY
Connie Reel Sheehan
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

Esquire (“plea counsel”), and Marshall S. Weaver, Esquire, represented Applicant. On September 20, 2010, the State served Applicant and his attorneys with a notice of intent to seek the death penalty. On May 8, 2013, Applicant entered an Alford¹ plea to all charges as indicted. In exchange for the plea, the State withdrew its notice of intent to seek the death penalty. The Honorable Thomas A. Russo sentenced Applicant to consecutive terms of life without the possibility of parole on each count of murder, five years for conspiracy, ten years for grand larceny, and ten years for third degree arson.

Applicant filed a timely appeal from his plea, but the South Carolina Court of Appeals dismissed the order pursuant to Rule 203, SCACR, on September 5, 2013. The Court of Appeals returned the remittitur to the circuit court on October 4, 2013.

II. ALLEGATIONS

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

1. “Ineffective assistance of counsel”
2. “Involuntarily and unintelligently plea”

At the evidentiary hearing, Applicant proceeded on only allegations his guilty plea was involuntary for the following reasons:

1. Plea counsel failed to advise him of the nature of an Alford plea.
2. Plea counsel failed to review GPS tracking evidence with him.
3. Plea counsel was not qualified to handle a death penalty case.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the evidentiary hearing. The Court has further had the opportunity to

¹ North Carolina v. Alford, 400 U.S. 25 (1970).

observe each witness who testified at the hearing, and to closely pass upon their credibility. The 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).

A. Summary of Testimony

Applicant testified Mr. Lawson was his initial attorney. Applicant testified he did not understand the severity of his charges until served with the death penalty notice because Lawson told him he could only get thirty years. Applicant recalled meeting with plea counsel six or seven times prior to the plea. He recalled discussing the State's evidence with plea counsel at these meetings. Nevertheless, Applicant testified he did not have any knowledge of the GPS tracking data that showed him at the location of the murder and the arson. He testified when he asked about it, Mr. Weaver told him that data would only further implicate him in the crimes. Applicant also testified he explained to plea counsel that his co-defendant's statement was not accurate. He recalled explaining to plea counsel exactly what happened the day of the murders. Applicant testified he believed plea counsel was not qualified to handle a death penalty case. However, he recalled meeting with an investigator and a mitigation specialist to discuss his childhood and background. Applicant recalled discussing the nature of an Alford plea to the extent he understood it did not require an admission of guilt. However, Applicant maintained he would not have entered his plea if plea counsel had further explained the nature of an Alford plea.

Plea counsel testified he has been a practicing attorney since 1999, and had been a public defender for nine years at the time he was appointed to Applicant's case. He testified he became certified to handle death penalty cases in 2007, although no death penalty trials had occurred during his time as a public defender. Plea counsel recalled being appointed after Lawson's

health left him unable to practice law. He recalled meeting with Applicant and explaining the State's evidence to him. Plea counsel testified he discussed the GPS data and the co-defendant's statements with Applicant. He recalled explaining to Applicant he could still be guilty under the "hand of one" theory even if the co-defendant was the shooter. Plea counsel recalled devoting significant time to preparation for this case because it was noticed as a death penalty case. He testified he attended death penalty seminars, retained an investigator, and retained a mitigation expert. He also recalled having Applicant evaluated. Plea counsel recalled Applicant initially wanted a trial on these charges, but changed his mind when the State offered to allow him to enter a plea in exchange for withdrawing the death penalty notice. Plea counsel testified Applicant was initially planning to enter a guilty plea, but Judge Russo indicated the morning of the plea that he would accept an Alford plea. Plea counsel recalled explaining the nature of an Alford plea to Applicant. He also recalled Judge Russo giving Applicant the same explanation. Plea counsel testified Applicant never indicated he was uncomfortable with the Alford plea. Plea counsel testified Applicant completed a plea affidavit prior to the plea and the affidavit was entered as a court's exhibit at the plea.

B. Involuntary Guilty Plea

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). In post-conviction relief cases, an applicant asserting his guilty plea was involuntary must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citing Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993); Hyman v. State, 278 S.C. 501, 299 S.E.2d 330 (1983); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993)). An applicant

who pleads guilty on the advice of counsel may collaterally attack the plea only by showing (1) counsel's advice was deficient and (2) there is a reasonable probability that, but for counsel's deficient advice, the applicant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citing Hill v. Lockhart, 474 U.S. 52 (1985); Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000); Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000); Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994)). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill, 474 U.S. at 56 (quoting McMann v. Richardson, 397 U.S. 759 (1970)). However, the Court strongly presumes plea counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland v. Washington, 466 U.S. 668 (1984)).

Furthermore, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant. Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Admissions "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." Id. at 137-38, 654 S.E.2d at 874 (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)).

The Court finds Applicant failed to meet his burden to show his guilty plea was rendered involuntary by plea counsel's performance. Applicant's allegation he was not advised of the nature of an Alford plea is without merit. Regarding this allegation, the Court finds plea counsel's testimony credible and gives it great weight. Correspondingly, the Court finds

Applicant's testimony not credible. An Alford plea is virtually indistinguishable from a guilty plea. See, e.g., State v. Herndon, 403 S.C. 84, 95, 742 S.E.2d 375, 381 (2013) (“[A]n Alford plea is merely a guilty plea with the gloss of judicial grace allowing a defendant to enter a plea in her best interests. Moreover, the defendant entering an Alford plea is still treated as guilty for the purposes of punishment, and simply put, is not owed anything merely because the State and the court have agreed to deviate from the standard guilty plea.”). Plea counsel fully advised Applicant that his Alford plea would be treated as a guilty plea for all intents and purposes. Accordingly, Applicant has failed to demonstrate plea counsel's advice was deficient in any way. Furthermore, Judge Russo fully explained the nature of an Alford plea to Applicant, and Applicant voiced no mis-understanding at that stage. (Plea Tr. p. 11, line 9-p. 12, line 13). Thus, any misconceptions he may have had about the consequences of his plea were cured by the plea colloquy. Holden v. State, 393 S.C. 565, 575, 713 S.E.2d 611, 616 (2011) (citing Bennett v. State, 371 S.C. 198, 638 S.E.2d 673 (2006); Burnett v. State, 352 S.C. 589, 576 S.E.2d 144 (2003); Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998); Wolfe v. State, 326 S.C. 158, 485 S.E.2d 367 (1997)).

Applicant's allegation he did not review the GPS tracking evidence before his plea is likewise without merit. Regarding this allegation, the Court again finds plea counsel's testimony credible and Applicant's not credible. Plea counsel discussed all of the State's evidence with Applicant, including the GPS data and the co-defendant's statements. Thus, Applicant had a full understanding and awareness of the fact the GPS tracking data indicated he was at the scene of the murder and the arson. See Hyman v. State, 397 S.C. 35, 46-49, 723 S.E.2d 375, 381-82 (2012) (court unwilling to “assume that the Constitution requires disclosure of Brady evidence to

a criminal defendant personally” especially where he “was fully aware of the inculpatory nature of the [evidence]”).

Applicant’s allegation plea counsel was not qualified to handle a death penalty case is also without merit. The Court finds plea counsel’s testimony on this issue credible. The Court finds Applicant’s testimony neither credible nor supported by the record. Lead counsel in a death penalty case must have five years experience as an attorney and three years experience trying felony cases. Rule 421, SCACR. Plea counsel was clearly qualified under the rule. Furthermore, plea counsel’s testimony demonstrates he conducted a proper investigation, adequately conferred with Applicant, and was thoroughly competent in his representation. Therefore, Applicant has failed to demonstrate how plea counsel was deficient in his representation, especially in light of the overwhelming evidence of Applicant’s guilt. See Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009) (applicant must show “something that would have affected counsel's advice to [the applicant] to accept the plea bargain offered or that would have caused [the applicant] to decline to accept it”).

C. 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.

IV. 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. The record before the Court demonstrates Applicant’s guilty plea was freely, knowingly,


voluntarily, and intelligently entered. 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 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, 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 must be remanded to the custody of the Department of Corrections to complete service of his sentence.

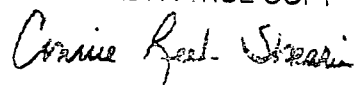
AND IT IS SO ORDERED this 1st day of June, 2015.


THE HONORABLE D. CRAIG BROWN
Presiding Judge
Twelfth Judicial Circuit

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CONNIE REEL-SHEARIN
CCCP & BS
FLORENCE COUNTY, SC

FILED

Florence, South Carolina

CERTIFIED: A TRUE COPY

CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

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