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**RECEIVED**

JUN 18 2015

June 16, 2015

**S.C. SUPREME COURT**

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

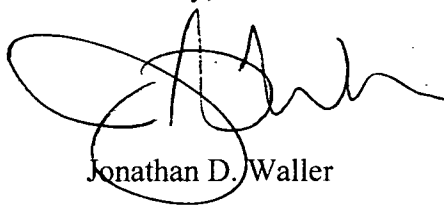
Re: Rodney D. Ivey vs. State of South Carolina  
C/A No: 2013-CP-21-02862

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. Ivey 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

2013-CP-21-02862

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JUN 18 2015

S.C. SUPREME COURT

Rodney D. Ivey, #324929,

Appellant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Rodney D. Ivey, #324929, 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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jonathanwallerlaw@gmail.com  
ATTORNEY FOR PETITIONER

This 16 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

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

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2013-CP-21-02862

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**RECEIVED**

JUN 18 2015

**S.C. SUPREME COURT**

Rodney D. Ivey, #24929,

Appellant,

v.

STATE OF SOUTH CAROLINA,

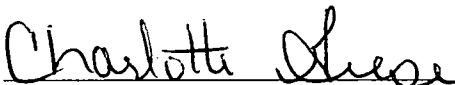
Respondent.

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CERTIFICATE OF SERVICE

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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.

  
Charlotte Giese

FILED

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

JUDGMENT IN A CIVIL CASE

15 JUN -2 AM 9:37 NO. 2013 CP-21-2862

DONNIE REEL-SHEARIN

Rodney D. Ivey #324929  
PLAINTIFF(S)

CCCP & GS  
FLORENCE COUNTY

State of South Carolina  
DEFENDANT(S)

Submitted by:

Attorney for :  Plaintiff  Defendant  
or  
 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.  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 \_\_\_\_\_

CERTIFIED: A TRUE COPY  
Donnie Reel-Shearin  
CLERK OF COURT C.P. & G.S.  
FLORENCE COUNTY, S.C.

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



STATE OF SOUTH CAROLINA  
COUNTY OF FLORENCE

) IN THE COURT OF COMMON PLEAS  
) FOR THE TWELFTH JUDICIAL CIRCUIT

Rodney D. Ivey, #324929,

) Case No. 2013-CP-21-2862  
)

Applicant,

v.

**ORDER OF DISMISSAL**

State of South Carolina,

Respondent.

FILED  
2015 JUN - 1 PM 2:25  
FLORENCE COUNTY, S.C.  
CONNIE REEL & G.S.

This matter comes before the Court by way of an Application for Post-Conviction Relief filed October 31, 2013. Respondent made a timely Return on or about April 22, 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, Scott P. Floyd, 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 January 2012, the Florence County Grand Jury indicted Applicant for murder (2012-GS-21-119). Scott P. Floyd, Esquire ("plea counsel"), represented Applicant. On June 8, 2012, Applicant pled guilty as indicted. In exchange for

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

the plea, the State dismissed all other charges pending against Applicant. The Honorable Michael G. Nettles sentenced Applicant to life imprisonment without the possibility of parole.

Applicant filed a timely notice of appeal, but the South Carolina Court of Appeals dismissed the appeal pursuant to Rule 203, SCACR, on April 4, 2013. The remittitur was returned to the circuit court on April 22, 2013.

## **II. ALLEGATIONS**

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

1. "The conditions of current plea I've taken contradicts what me & my attorney agreed upon."
  - a. "Ineffective Assistance of Counsel (x4)"
  - b. "Violation of Due Process 4<sup>th</sup> amendment 5<sup>th</sup>,"

At the evidentiary hearing, Applicant proceeded on only an allegation his guilty plea was involuntary because trial counsel mis-advised him about the sentence he would receive.

## **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 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 he met with plea counsel a couple of times. He recalled discussing the charges he faced and reviewing discovery. Applicant also recalled discussing the possible range of penalties he would face if convicted. Applicant testified he gave a confession. He recalled discussing

the confession with plea counsel and agreeing to enter a guilty plea if the confession could not be suppressed. Applicant recalled having a suppression hearing before Judge Seals. He testified he made the decision to enter the guilty plea after losing the suppression hearing. Applicant testified he thought he would get a thirty year sentence in exchange for his plea. However, he admitted he understood he was entering an "open" plea, without recommendations or negotiations as to sentence. Nevertheless, Applicant maintained he pled guilty because trial counsel led him to believe Judge Nettles would sentence him to thirty years.

Plea counsel testified he was appointed to Applicant's case in his role as the chief public defender. He testified he met with Applicant enough to be prepared to go forward with the plea. Plea counsel testified he reviewed discovery with Applicant and discussed the charges with him. Plea counsel recalled the outcome of the suppression hearing regarding Applicant's confession would be dispositive of whether Applicant would enter a guilty plea. Plea counsel recalled discussing the sentencing range with Applicant. He testified he did not promise Applicant Judge Nettles would give him a thirty year sentence. Plea counsel recalled Applicant appearing to understand the terms of the plea, and Applicant did not indicate at the plea hearing that he did not understand the sentencing range.

### **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 induced by mis-advice of plea counsel. Regarding this allegation, the Court finds plea counsel's testimony credible and gives it great weight. The Court finds Applicant's testimony he was told he would receive a thirty year sentence to be not credible. Plea counsel conducted a proper investigation, adequately conferred with Applicant, and was thoroughly competent in his representation. He advised Applicant of the possible sentencing range for his charge. He also explained to Applicant that the sentencing

judge could issues a sentence between thirty years and life. Accordingly, the Court finds plea counsel's advice was not deficient in this regard.

Furthermore, the plea colloquy reveals the sentencing judge and plea counsel informed Applicant of the range of possible sentences. (Plea Tr. p. 5, lines 5-7; p. 21, lines 21-25). Applicant also acknowledged at the plea colloquy that he understood the terms of his plea. (Plea Tr. p. 12, line 22-p. 13, line 9). Accordingly, any misconception he may have had about the possible sentence was 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)). Therefore, Applicant has failed to demonstrate his guilty plea was involuntary.

#### **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. 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), SCRCR, 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 15<sup>th</sup> day of May, 2015.



THE HONORABLE D. CRAIG BROWN  
Presiding Judge  
Twelfth Judicial Circuit

Florence, South Carolina

FILED  
2015 JUN -1 PM 2:25  
CONNIE REEL-SHEARIN  
CCLP & GS  
FLORENCE COUNTY, SC

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