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JUN 22 2015

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

S.C. Supreme Court

APPEAL FROM YORK COUNTY  
Court of Common Pleas

ALLISON RENEE LEE, Circuit Court Judge

Civil Action Number: 2014-CP-46-0411

EDWARD MARTIN  
CLARKSON #237856,

Petitioner,

v.

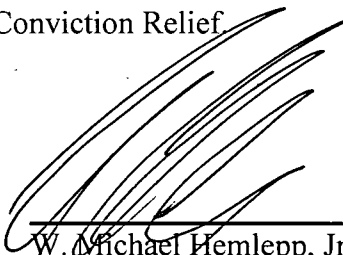
STATE OF SOUTH  
CAROLINA,

Respondent.

NOTICE OF APPEAL

The Petitioner above appeals the order of the Honorable Allison Renee Lee dated May 27, 2015 denying his application for Post-Conviction Relief.

May 22, 2015



W. Michael Hemlepp, Jr.  
Post Office Box 667  
Columbia, South Carolina 29202  
803-718-0956  
[legal@p-3-solutions.com](mailto:legal@p-3-solutions.com)  
Attorney for Appellant

Other Counsel of Record:  
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1000 Assembly Street, Suite 518  
Columbia, South Carolina 29201  
803-734-1867

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM YORK COUNTY  
Court of Common Pleas

Allison Renee Lee, Circuit Court Judge

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Civil Action Number: 2014-CP-46-0411

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Edward M Clarkson,

Petitioner,

v.

State of South Carolina,

Respondent.

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PROOF OF SERVICE

I certify that I have served the Notice of Appeal in the above captioned case on the following individuals by depositing a copy of it in the United States Mail, postage prepaid, on June 22, 2015, addressed to:

David Hamilton, Clerk of Court  
York County Court of Common Pleas  
Post Office Box 649  
York, South Carolina 29745

Rutledge Johnson, Esq.  
Office of the Attorney General  
1000 Assembly Street, Suite 518  
Columbia, South Carolina 29201

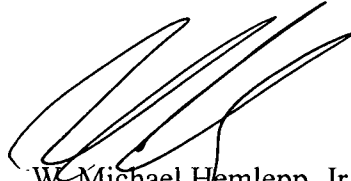
Edward M. Clarkson #237856  
4848 Goldmine Highway  
Kershaw, South Carolina 29067

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S.C. Supreme Court

June 22, 2015

A handwritten signature in black ink, consisting of several overlapping, fluid loops and strokes, positioned above the printed contact information.

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Attorney for Appellant

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JUN 22 2015

STATE OF SOUTH CAROLINA )  
 COUNTY OF YORK )  
 Edward Martin Clarkson, #237856, )  
 Applicant, )  
 v. )  
 State of South Carolina, )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 SIXTEENTH JUDICIAL CIRCUIT

Case No. 2014-CP-46-0041

ORDER OF DISMISSAL

FILED-RECEIVED  
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 C. C. CLERK  
 YORK COUNTY, SC

This matter comes before the Court by way of an application for post-conviction relief filed February 11, 2014. The State made its Return on June 5, 2014 requesting an evidentiary hearing. A hearing was convened November 17, 2014 at the York County Courthouse. Applicant was present at the hearing and was represented by counsel, W. Michael Hemlepp, Jr., Esquire. Respondent was represented by Assistant Attorney General J. Rutledge Johnson. After reviewing all testimony and evidence presented at the hearing, along with a review of all records provided to the Court, this Court finds that there are no constitutional deprivations or other grounds on which to grant relief and denies and dismisses this application with prejudice.

**PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. Applicant was indicted during the July 2011 term of the York County Grand Jury for Lew Act upon a Child (2011-GS-46-02127). Melissa Inzerillo, Esquire, represented Applicant on this charge. On January 12, 2012, Applicant proceeded to a jury trial before the Honorable John C. Hayes III. Applicant was found guilty and sentenced to confinement for fifteen years. A notice of appeal was filed on Applicant's behalf, and an appeal was perfected pursuant to *Anders v. California*, 386 U.S. 738 (1967). The South Carolina Court of Appeals affirmed Appellant's conviction and sentence. *See State v. Clarkson*, 2013-UP-390 (filed October 16, 2013).

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully based on allegations of ineffective assistance of counsel for Inzerillo's failure to appeal denial of his motion to recuse the judge and for Inzerillo allowing the State to reopen its case.

ad #1

## SUMMARY OF TESTIMONY PRESENTED AT EVIDENTIARY HEARING

At the evidentiary hearing, Applicant testified on his own behalf. Applicant also presented testimony from trial counsel, Melissa Inzerillo. This Court had before it Applicant's trial plea transcript, the records from the York County Clerk of Court regarding the subject conviction, and Applicant's records from the South Carolina Department of Corrections.

Applicant testified first on his own behalf. Phil Smith, Esquire, was appointed to represent him on his charges two to three months after his arrest, but he was excused because of a conflict. Thereafter, Inzerillo was appointed as his public defender, and she contacted him two to three months later. Applicant and Inzerillo met about once a month, and he considered them to have a good working relationship. Smith had presented Applicant an offer of eight years, but Applicant rejected it, so Inzerillo prepared for trial.

Applicant testified that at his trial, he chose not to testify. When the State rested, Inzerillo moved for a directed verdict, which was denied. The Court then broke for lunch. After lunch, Inzerillo again moved for a directed verdict, stating specifically that the State had not proven the elements of the offense of lewd act upon a child because no evidence was presented regarding the Applicant's age. In response, the State moved to reopen the case. The Court allowed the State to reopen the case, and testimony was presented about Applicant's age. The jury found Applicant guilty. Applicant testified that the victim's mother asked for leniency in sentencing, but the Court stated it would not be lenient because of Applicant's prior record.

Inzerillo testified that she is currently employed as an assistant public defender in York County. She was asked to take over Applicant's case by Applicant's previous counsel, Smith. Inzerillo first met with Applicant on September 22, 2011. Applicant rejected the eight year offer that had been made and stated he wished to go to trial because he adamantly denied the allegations. Inzerillo stated that she discussed potential witnesses on behalf of Applicant, but elected to not call any. She testified she twice moved for a directed verdict: first, as a general motion; then, she renewed the motion because the State had not proven a required element of the charge. Before she renewed the motion on the record, she spoke with the Court in chambers to ensure the motion would be timely if she made it. The Court informed Inzerillo in chambers that the motion would be timely, but if she made it, he would allow the State to reopen the case to establish the element. Inzerillo then made the renewed motion on the record. Inzerillo testified that she made the renewed directed verdict motion to preserve Applicant's appellate rights.

## 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, 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.

Applicant submits Inzerillo rendered ineffective assistance of counsel. 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, 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, 104 S.Ct. 2052, 2064 (1984). Claims of ineffective assistance of counsel are evaluated under a two-prong test. See *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 (1989). First, the applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." *Id.* at 117, 386 S.E.2d at 625. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Butler, supra*. The Applicant must overcome this presumption to receive relief. *Cherry, supra*. 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." *Id.* at 117-18, 386 S.E.2d at 625.

This Court finds that Inzerillo's decision to move for a directed verdict to preserve the issue for appeal was not unreasonable. While it was a judgement call whether or not to move for the directed verdict or to wait and possibly just move for a new trial, this Court does not find that Applicant has overcome the presumption that Inzerillo exercised reasonable professional judgment. Additionally, even if Inzerillo's conduct was unreasonable, as she knew that the Court would allow the State to reopen its case if she moved for a directed verdict, this Court does not find that her performance prejudiced Applicant such that the result of the proceeding would have been different. First, while the State failed to introduce into the record Applicant's exact age, evidence was presented that Applicant had a guest at his home who was in his twenties and

was “younger than the [Applicant].” See Transcript of Record at 87 (Jan. 11-12, 2012). This information, along with the fact that Applicant drove the victim to his house, and the general appearance of Applicant in the courtroom, would support a finding that the State’s error in failing to introduce Applicant’s exact age was harmless, and given the overwhelming evidence of guilt in the record, would unlikely be a sufficient basis for the trial judge to grant a new trial. See generally *State v. Odom*, Appellate Case No. 2012-206186, 2015 WL 1814018 (S.C. Sup. Ct. Apr. 22, 2015) (discussing the issue of whether the State failing to prove the element of age in a sexually based offense is a harmless error); see also *State v. Prince*, 316 S.C. 57, 63, 447 S.E.2d 177, 181 (1993) (“[W]here there is competent evidence to sustain the jury’s verdict, the judge may not substitute his judgement for that of the jury [in a motion for a new trial].”). Therefore, this Court denies this application on the basis that Counsel’s performance did not fall below the standard required. Applicant did not raise the issue regarding recusal of the trial judge at the post-conviction relief hearing; therefore, this Court considers that issue abandoned and will not consider it.

#### CONCLUSION

Based on all the foregoing, this Court finds 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 is denied and dismissed with prejudice.


This Court notes 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 an 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 shall be denied and dismissed with prejudice; and
2. The Applicant shall remain remanded to the custody of the State.

**AND IT IS SO ORDERED.**

  
ALISON RENEE LEE  
Presiding Judge

May 20, 2015  
Columbia, South Carolina

af  
#5

State of South Carolina  
The Circuit Court of the Fifth Judicial Circuit

ALISON RENEE LEE  
JUDGE

1701 MAIN ST., ROOM 324  
POST OFFICE BOX 192  
COLUMBIA, SOUTH CAROLINA 29202-0192  
TELEPHONE: (803) 576-1765  
FAX: (803) 576-1768

May 20, 2015

David Hamilton  
York County Clerk of Court  
P.O. Box 649  
York, South Carolina 29745

Re: Case Nos. 2014-CP-46-00411

Dear Mr. Hamilton:

Please clock and file the enclosed Order and provide copies to counsel.

Sincerely,



Kathryn Mansfield  
Law Clerk to the Honorable Alison Renee Lee

FILED-RECEIVED  
2015 MAY 27 3:19 PM  
DAVID HAMILTON  
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YORK COUNTY, SC