

**Laura M. Saunders  
Attorney At Law**

P.O. Box 731  
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lmsaunderslaw@gmail.com

July 21, 2015

Via U.S. Mail

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

RECEIVED

JUL 27 2015

S.C. Supreme Court

*Re: Michael Gray #313935 vs. State of South Carolina  
C/A No. 2013-CP-44-0035  
Petition for Writ of Certiorari*

Dear Mr. Shearouse:

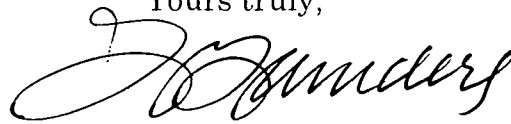
Enclosed for filing please find a Petition for Writ of Certiorari which is being filed on behalf of the Appellant, Michael T. Gray, #313935. Also enclosed are the following documents: (1) Proof of Service of Petition for Writ of Certiorari and (2) a copy of a letter I received on July 20, 2015 from the Assistant Attorney General enclosing the order denying Mr. Gray's Application for PCR. It is my understanding that a filing fee is not included because this petition arises out of a post-conviction relief matter pursuant to Rule 203(d) SCACR.

I have been unable to identify any valid issues that could be reviewed on petition for writ of certiorari. Therefore, I cannot in good faith provide this Court with a proper explanation of the issues to be reviewed on appeal pursuant to Rules 243 (c), 243(e) and 243(f) SCACR. I have advised Mr. Gray so that he may write the Court in the coming days or make contact with Appellate Defense in order to obtain representation, and that communication is attached.

Please file the original and return a clocked-in copy to me in the enclosed self-addressed stamped envelope. By copy of this letter, I am hereby serving the Attorney General with a copy of the same. I have also filed an original with the Clerk of Court in Laurens County. Should you have any questions, please do not hesitate to contact me. Thank you for your assistance.

With Kind Regards, I am

Yours truly,

A handwritten signature in black ink, appearing to read "L. Saunders", written in a cursive style.

Laura M. Saunders

*LMS/ File 4.901*

cc: *Justin J. Hunter, Assistant Attorney General*  
*Michael T. Gray, #348951*

RECEIVED

JUL 27 2015

S.C. Supreme Court

THE STATE OF SOUTH CAROLINA  
In the Court of Common Pleas

APPEAL FROM UNION COUNTY  
Court of Common Pleas

John C. Hayes, III, Presiding Circuit Judge – Union County

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Case Nos. 2012-GS-44-0022; - 0025; -0724  
PCR C/A Number: 2013-CP-44-00035

State of South Carolina,

Respondent,

v.

Michael Tim Gray,

Appellant.

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**PETITION FOR WRIT OF CERTIORARI IN  
POST CONVICTION RELIEF ACTION**

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Michael Tim Gray, #313935 appeals the denial of his Post-Conviction Relief action dated December 10<sup>th</sup>, 2013. The undersigned counsel hereby files this notice on Appellant's behalf after receiving formal notice of the lower Court's denial of Appellant's PCR action on July 20, 2015.

July 21, 2015



Laura M. Saunders, Esquire  
The Law Offices of Laura M. Saunders, LLC  
102 Church Street  
Post Office Box 731  
Laurens, South Carolina 29360  
Phone: (864) 681-4444  
PCR Counsel for Michael Gray

**Other Counsel of Record:**  
Rutledge Johnson, Esquire  
SC Attorney General's Office  
Post Office Box 11549  
Columbia, SC 29211-1549  
(803) 734-3963

RECEIVED

JUL 27 2015

THE STATE OF SOUTH CAROLINA  
In the Court of Common Pleas

APPEAL FROM UNION COUNTY  
Court of Common Pleas

S.C. Supreme Court

John C. Hayes, III, Presiding Circuit Judge – Union County

Case Nos. 2012-GS-44-0022; - 0025; -0724  
PCR C/A Number: 2013-CP-44-00035

State of South Carolina,

Respondent,

v.

Michael Tim Gray,

Appellant.

**PROOF OF SERVICE**

I certify that I have served the Petition for Writ of Certiorari on the Respondent, State of South Carolina., by depositing a copy of it in the United States Mail, postage prepaid, on July 21, 2015 addressed to its attorney of record, Justin J. Hunter, Assistant Attorney General, PO Box 11549, Columbia, South Carolina 29211.

July 21, 2015



Laura M. Saunders, Esquire  
The Law Offices of Laura M. Saunders, LLC  
102 Church Street  
Post Office Box 731  
Laurens, South Carolina 29360  
Phone: (864) 681-4444  
Attorney for Michael Gray

Rec'd 7/20/15



ALAN WILSON  
ATTORNEY GENERAL

July 16, 2015

Laura McCall Saunders, Esquire  
PO Box 731  
Laurens, SC 29360

**RE: Michael Gray v. State of South Carolina  
2013-CP-44-0035**

Dear Ms. Saunders:

Enclosed please find a copy of an Order on the above case matter.

Sincerely,

Justin J. Hunter  
Assistant Attorney General

JJH:cey  
Enclosure



STATE OF SOUTH CAROLINA  
COUNTY OF UNION

JUDGMENT IN A CIVIL CASE  
CASE NUMBER 2013CP4400035

IN THE COURT OF COMMON PLEAS

Michael Tim Gray

State of South Carolina

FILED  
DEC 17 2013  
1:05 PM  
WILLIAM F. GAULT, C.C.C.P. & G.S.

The  
JUDGMENT ROLL NO. 2013CP4400035

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant
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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.

3/ John C. Hayes III  
Circuit Court Judge

2049  
Judge Code

12/10/13  
Date

**For Clerk of Court Office Use Only**

This judgment was entered on 17th day of December, 2013, and a copy mailed first class or placed in the appropriate attorney's box on 17th day of December, 2013, to attorneys of record or to parties (when appearing pro se) as follows:

Laura McCall Saunders PO Box 731 102 Church Street  
Laurens, SC 29360

J. Rutledge Johnson, Office of the Attorney General,  
PO Box 11549, Columbia, SC 29211-1549

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

*William F. Gault / ilw*

William F. Gault - Clerk of Court

Court Reporter

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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STATE OF SOUTH CAROLINA )  
COUNTY OF UNION )  
  
Michael Gray, #313935 )  
  
Applicant, )  
  
v. )  
  
State of South Carolina, )  
  
Respondent. )

IN THE COURT OF COMMON PLEAS  
SIXTEENTH JUDICIAL CIRCUIT

C.A. No.: 2013-CP-44-0035

ORDER

FILED FOR RECORD  
2013 DEC 17 PM 1 05  
WILLIAM F. GIBSON  
CLERK OF COURT  
UNION CO. SC

This is a post-conviction relief application filed February 4, 2013. The case was heard by the Honorable John C. Hayes III on December 10, 2013. Applicant was represented by Laura McCall Saunders, Esq., the State by J. Rutledge Johnson, Esq.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Union County Clerk of Court's orders of commitment. The applicant was indicted by the January 2012 term of the Union County Grand Jury for two counts of Petit Larceny (2012-GS-44-0022, -0025). He was also indicted at the May 2012 term of the Union County Grand Jury for Burglary, 1<sup>st</sup> degree. The Applicant was represented by Melinda Butler, Esquire. On August 15, 2012, the Applicant pled guilty before the Honorable Michael G. Nettles to both counts of Petit Larceny, 3<sup>rd</sup> or subsequent offense as indicated, as well as Burglary, 2<sup>nd</sup> degree, as a lesser included offense. Judge Nettles sentenced the Applicant, pursuant to negotiations, to confinement for ten (10) years for one count of Petit Larceny, 3<sup>rd</sup> or subsequent offense, ten (10) years, consecutive, for Burglary, 2<sup>nd</sup> degree, and fifty-six (56) days, credit for time served, for the other Petit Larceny charge. The Applicant did not appeal his convictions or sentences.

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

1. "Counsel was ineffective for not objecting to the illegal (consecutive) sentences"
  - i. "South Carolina Law prohibits the imposition of both an illegal consecutive sentence (B) imposition of a sentence in violation of Double Jeopardy."
2. "Counsel failed to investigate to ensure the accuracy of the State's case."
  - i. "Counsel failed to file the Notice of Appeal"

At the evidentiary hearing that took place on December 10, 2013, Applicant failed to mention or raise any issues concerning his counsel's alleged failure to file a notice of appeal. As a result, the Court finds that the applicant has abandoned such argument. The Court now directs its focus to Applicant's remaining argument which is essentially a claim of ineffective counsel based on the failure of counsel to object to what Applicant alleges was an illegal sentence.

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 the application alleges ineffective assistance of counsel 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, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. 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." Cherry, 300 S.C. at 117, 386 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, she would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985).

Applicant testified that he is currently incarcerated at Evans Correctional Institution in Bennettsville, South Carolina. Applicant testified that he recalls his plea and being represented by Melinda Butler, Esq. Applicant testifies that he believes he should receive post-conviction relief because he feels that consecutive sentences should not be allowed for crimes committed on the same day at the same residence within the same time span. Applicant did not present any law supporting his assertion and testified that he does not know what the law says in regards to consecutive sentences but does not feel that he should have received consecutive sentences for crimes he committed on the same day within the same time period at the same residence.

Applicant's testimony was that he did not know that the Burglary 2<sup>nd</sup> degree non-violent charge he pled to was a lesser offense on an indictment for Burglary in the 1<sup>st</sup> degree. His testimony was substantially that one set of Burglary charges were dropped in exchange for his plea and the charge left extant was factually fatal as it did not charge him with Burglary in the 1<sup>st</sup>

*Jc 11/3*

degree. This assertion is on its face incorrect. The indictment to which he pled clearly contained factual allegations which would support a Burglary in the 1<sup>st</sup> degree charge.

Applicant contends that he had never seen an indictment for Burglary in the 1<sup>st</sup> degree, but this is belied by the fact that Applicant himself actually signed the indictment for Burglary in the 1<sup>st</sup> degree. Applicant testified that the signature on the indictment for Burglary in the 1<sup>st</sup> degree was his signature but he could not recall ever signing the indictment. While there appears to have been a scrivener's error in regards to the statute listed on the sentencing sheet<sup>1</sup>, the sentencing sheet clearly states that his plea was to "BURGLARY IN THE SECOND DEGREE (NON-VIOLENT)." Additionally, the sentencing sheet contains the correct CDR Code for Burglary in the 2<sup>nd</sup> degree non-violent, 0079.

Applicant's attorney, Melinda Butler, testified that she believes the plea offer was fair after considering all of the circumstances surrounding the case. Ms. Butler testified that she exchanged a series of offers and counteroffers with the State regarding the Applicant's charges prior to the Applicant entering into the final plea deal. Ms. Butler testified that the State agreed to dismiss two out of the five charges applicant was facing as part of the plea deal. Ms. Butler testified that she believes Applicant actively, knowingly, and intelligently agreed to the plea deal. Ms. Butler testified that the Applicant knew what he was facing and understood the terms of the plea deal.

The Applicant also testified that his counsel never informed him of a plea offer of 8 years from the State. However, the Applicant's attorney, Ms. Butler, testified that the Applicant was "on the run" and "did not want to be found" for a period of time and she had difficulty getting in touch with the Applicant to inform him of the offer. Ms. Butler testified that she did not have a phone number at which to reach the Applicant and used an email address he provided to her to

<sup>1</sup> The Code Section §16-11-311 is the Code Section addressing Burglary in the 1<sup>st</sup> Degree

*DeHAY*

forward the offer from the State to him. Applicant testified that he cannot recall if he ever called Ms. Butler or followed up with her but was not ever informed of the eight year plea offer from the State.

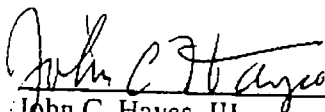
Based on the record and the testimony at the Post-Conviction Relief hearing, I find Applicant has failed to carry his burden of proof and failed to prove that, when the appropriate standards set forth hereinabove are applied, trial counsel's representation of him was ineffective to any degree.

Wherefore, Applicant's application for Post-Conviction Relief is denied and dismissed with prejudice.


This Court hereby advises Applicant that she must file and serve a Petition for Writ of Certiorari within thirty (30) days of the service of this Order to secure appellate review. See Rule 203 and 243, South Carolina Appellate Court Rules (SCACR). The Applicant's attention is directed to Rule 243, SCACR, for the procedures following the filing and service of the Petition.

IT IS SO ORDERED.

December 10<sup>th</sup>, 2013  
York, South Carolina

  
\_\_\_\_\_  
John C. Hayes, III  
Presiding Judge #6

JUDGEMENT SIGNED AND  
ENTERED UP 12-17-13

  
CLERK OF COURT



POST OFFICE BOX 11549  
COLUMBIA, SOUTH CAROLINA 29211-1549

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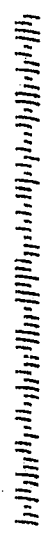


*Rec'd*

*7/20/15*

Laura McCall Saunders, Esquire  
PO Box 731  
Laurens, SC 29360

29360073131



Law Offices of Laura M. Saunders  
P.O. Box 731  
Laurens, SC 29360

**Via U.S. Mail**  
The Honorable Daniel E. Shearouse  
Clerk, South Carolina Supreme Court  
P.O. Box 11330  
Columbia, SC 29211

