LAW OFFICE OF TRICIA A. BLANCHETTE

RECEIVED
JUL 29 2015
S.C. Supreme Court

July 29, 2015
VIA HAND DELIVERY

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

RE: Sheldon Oakman v. State; Docket No.: 2013-CP-02-0401

Dear Sir:

Enclosed for filing is a Notice of Appeal for the above PCR case. Also enclosed are the following:

(1) Proof of service on the Respondent.

(2) A copy of the Order of Dismissal and Order denying Applicant's Rule 59, SCRCP, Motion.

By copy of this letter, I am sending the Office of Appellate Defense a copy of the Notice of Appeal, Orders, an original Affidavit of Indigency and a copy of Mr. Oakman's case documents.

Thank you for your assistance with this matter. Please contact my office with any questions.

Yours truly,

Tricia A. Blanchette
Attorney at Law

cc: Dan Gourley, Senior Assistant Attorney General
Aiken County Clerk of Court
Office of Appellate Defense
Sheldon Oakman

PO Box 12725 | Columbia SC 29211
p: 803.988.0008 | **e:** blanchettelaw@gmail.com

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED
JUL 29 2015
S.C. Supreme Court

APPEAL FROM AIKEN COUNTY
Court of Common Pleas
Post Conviction Relief
Honorable D. Craig Brown, Circuit Court Judge

Case No.: 2013-CP-02-0401

Sheldon Oakman, #334454,.....Petitioner,

vs.

State of South Carolina,.....Respondent.

NOTICE OF APPEAL

Sheldon Oakman, Petitioner, appeals the Order of Dismissal issued by the Honorable D. Craig Brown on April 13, 2015 and filed on May 8, 2015. Petitioner also appeals the Order signed by the Honorable D. Craig Brown on June 24, 2015, which was filed on July 24, 2015. Petitioner, through counsel, received written notice of the entry of the Order on July 27, 2015 from the Law Office of Tara Dawn Shurling as it was errantly sent to their office by the Aiken County Clerk of Court.

Tricia A. Blanchette
S.C. Bar No. 74904
PO Box 12725
Columbia, SC 29211
(803)988-0008

Other Counsel of Record:
Dan Gourley
Assistant Attorney General
PO Box 11549
Columbia, SC 29211

THE STATE OF SOUTH CAROLINA
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APPEAL FROM AIKEN COUNTY
Court of Common Pleas
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Case No.: 2013-CP-02-0401

Sheldon Oakman, #334454,.....Petitioner,

vs.

State of South Carolina,.....Respondent.

CERTIFICATE OF SERVICE

I, Tricia A. Blanchette, Attorney at Law, hereby certify that I placed in the mail this 29th day of July 2015, a copy of a Notice of Appeal, to Dan Gourley of the Attorney General's Office, at:

Office of the Attorney General
Att: Dan Gourley, Ast. AG
PO Box 11549
Columbia, SC 29211

Tricia A. Blanchette
PO Box 12725
Columbia, SC 29211
(803) 988-0008

July 29, 2015

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER

RECEIVED
JUL 29 2015
S.C. Supreme Court

	South Carolina State of
PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: ☐ Plaintiff ☐ Defendant ☐ 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), 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; (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
		7/24/2015

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 3/2013)

For Clerk of Court Office Use Only

This judgment was entered on 7-24-15, and a copy mailed first class or placed in the appropriate attorney's box on 7-24-15, to attorneys of record or to parties (when appearing pro se) as follows:

Tricia A. Blanchette PO Box 12725 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

Daniel Francis Gourley II P.O Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Liz Godard - Clerk of Court

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.

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 3/2013)

STATE OF SOUTH CAROLINA COUNTY OF AIKEN	)	IN THE COURT OF COMMON PLEAS FOR THE SECOND JUDICIAL CIRCUIT
Sheldon Oakman, #334454, Applicant, v. State of South Carolina, Respondent.	)	Case No. 2013-CP-02-0401 **ORDER**

FILED 7.24.15
C.C.P. & G.S.
Deputy Clerk

This matter comes before this Court by way of a post-conviction relief (PCR) application filed by Sheldon Oakman (Applicant) on February 15, 2014. The State (Respondent) made its return on June 18, 2013. An evidentiary hearing into the matter was convened on January 12, 2015, at the Aiken County Courthouse. Applicant was present at the hearing and was represented by Tricia Blanchette, Esquire. Respondent was represented by Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office. This Court issued an Order dated April 13, 2015 and filed May 8, 2015, denying the application for post-conviction relief.

Applicant filed a motion pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, in which he asked this Court to alter or amend its order dismissing his PCR application. Respondent made its return to the motion, requesting this motion be dismissed.

Based upon careful reconsideration of the evidence in this case, including Applicant's motion and supporting memorandum, this Court is not persuaded to alter or amend its judgment. This Court further finds oral argument would not aid in the reconsideration of the original judgment. The Order of Dismissal issued by this Court

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contains the required findings of fact and conclusions of law as required by section 17-27-80 of the South Carolina Code (2014) and Rule 52(a) of the South Carolina Rules of Civil Procedure.

IT IS THEREFORE ORDERED that Applicant's motion be denied and dismissed.

AND IT IS SO ORDERED this 24 day of June, 2015.

D. CRAIG BROWN
P Judge
Second Judicial Circuit

Florence, South Carolina

RECEIVED
JUL 29 2015
S.C. Supreme Court

STATE OF SOUTH CAROLINA COUNTY OF AIKEN	IN THE COURT OF COMMON PLEAS FOR THE SECOND JUDICIAL CIRCUIT
Sheldon Oakman, #334454, Applicant, v. State of South Carolina, Respondent.	Case No. 2013-CP-02-0401 **ORDER OF DISMISSAL**

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on February 15, 2013. Respondent made its return on June 18, 2013. An evidentiary hearing into the matter was convened on January 12, 2015, at the Aiken County Courthouse. Applicant was present at the hearing and was represented by Tricia Blanchette, Esquire. Respondent was represented by Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. The Applicant was true billed indicted at the July 2008 term of the Aiken County Grand Jury for kidnapping (2008-GS-02-1086). Everett K. Chandler, Esquire, represented him. On April 27, 2009, Applicant pled guilty as indicted. The Honorable Doyet A. Early, III, sentenced Applicant to thirty years imprisonment.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected by Julie M. Thames, Esquire. The South Carolina Court of Appeals affirmed the Applicant's conviction and sentence. State v. Oakman, Op. No. 2012-UP-062 (Ct. App. filed February 8, 2012). The Remittitur was issued on February 27, 2012.

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Liz Godard
C.C.C.P.&G.S.
Shannon Graham 1.15
Deputy Clerk

ALLEGATIONS

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STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Liz Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this 29 day of July 2015

Liz Godard
C.C.C.P. & G. S., Aiken County, S.C.
Shannon Graham
Deputy Clerk

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

1. Ineffective assistance of counsel that resulted in an involuntary guilty plea due to counsel arguing strongly for dismissal of the kidnapping charge at the preliminary hearing and subsequently, under the same facts, advising Applicant to enter a guilty plea.
2. Ineffective assistance of counsel that resulted in an involuntary guilty plea for failure to address and/or raise matters of jurisdictional defect or impropriety.
3. Ineffective assistance of counsel that resulted in an involuntary guilty plea for failure to conduct a reasonable investigation and fully review the discovery with Applicant prior to advising him to enter a guilty plea.
4. Ineffective assistance of counsel that resulted in an involuntary guilty plea for failure to protect the interests and rights of Applicant during a circus like or cattle call guilty plea proceeding.
5. Ineffective assistance of counsel that resulted in an involuntary guilty plea and prejudicial sentencing due to counsel's failure to attend the second day of the guilty plea proceedings and be present at the chamber's meeting by which the court assessed the levels of the defendants' culpability based upon information offered by counsel for Applicant's co-defendants and Applicant's co-defendants.
6. Ineffective assistance of counsel that resulted in an involuntary guilty plea due to counsel's failure to effectively argue on Applicant's behalf at the hearing on reconsideration and provide the court with an Order fully addressing the issues in the case.

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf and presented testimony from Johnnie Walker (Co-Defendant), Cleo Summers, and Sheldon Oakman, Sr. The State presented testimony from Everett Chandler (hereinafter "Plea Counsel"). This Court also had before it a copy of the plea transcript, the Aiken County Clerk of Court records, Applicant's South Carolina Department of Correction records, appellate records, the PCR application, and return. Both Applicant and the State introduced various exhibits during the PCR evidentiary hearing.

During the evidentiary hearing, Applicant called Co-Defendant to testify on his behalf. Co-Defendant testified that he was currently serving thirty years for kidnapping of Jeremy Lephart ("Victim"). Co-Defendant testified that he had a pending PCR filed in Aiken County. Co-Defendant

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testified that his current PCR Counsel, Andrew Marine, Esquire, was present in the courtroom. Co-Defendant testified that Mrs. Blanchette was his appellate counsel for his direct appeal.

Co-Defendant testified that he was with Darrell Williams[1] on December 24, 2007. Co-defendant stated Applicant was with him when they picked up Victim from his house. Co-Defendant testified that Victim was willing to get into the car. Co-Defendant stated that Applicant was driving the second vehicle following the lead vehicle that contained various co-defendants and Victim.[2] Co-Defendant stated that Applicant was the first person to talk to the police.

Co-defendant stated that he was "young and scared" the day of the plea. Co-defendant stated that he was assembled in front of the Honorable Doyet A. Early, III. Co-defendant stated that he did not know what he was doing when he pled guilty. Co-defendant stated some of his co-defendants were sentenced the following day. Co-defendant stated the co-defendants who pled guilty on the second day received less time.

Following Applicant's testimony, Cleo Summers ("Summers") testified on behalf of the Applicant. Summers stated that Applicant is her grandson. Summers stated that she met with Plea Counsel a couple of times, but never really saw him. Summers stated she was not present during all the meetings between Applicant and Plea Counsel. Summers stated that she offered to help Plea Counsel with the case. Summers stated Plea Counsel explained that he did not need any help with the case.

Summers stated that she felt she did not have a full understanding of what was going on during the guilty plea. She stated that she had concerns about the length of sentence. Summers stated that Plea Counsel informed them that if they proceeded to trial then Applicant would likely be convicted of both kidnapping and murder. Summers stated that she was in the courtroom during the plea. Summers stated

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[1] Darrell Williams pled guilty to kidnapping along with Johnnie Walker and Applicant on April 27-28, 2009. Darrell Williams received thirty years for his participation in the kidnapping of Jeremy Lephart.

[2] This Court notes that after Victim was beaten and tortured, Applicant along with his other co-defendants drove two separate vehicles to the location where Victim was ultimately killed. The lead car contained Victim along with four other co-defendants. Applicant and his other co-defendants followed behind the first car.

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there was media outside the courtroom. Summers recalled the plea judge stating that he needed to "feed everyone out of the same spoon." Summers stated some of the co-defendants were sentenced on the following day and they received seventeen years.

Following Summer's testimony, Sheldon Oakman, Sr., ("Oakman Sr.") was called to testify on behalf of Applicant. Oakman Sr. stated Applicant was his son. Oakman Sr. stated Applicant called law enforcement on January 19th and voluntarily went with the police. Oakman Sr. stated Applicant returned to their house following the meeting with police. Oakman Sr. stated the police came a second time and Applicant did not return. Oakman Sr. stated Applicant fully cooperated with police. Oakman Sr. stated the Victim's family was willing to talk. Oakman Sr. stated the Victim's family thanked the Oakman family because Applicant was the one who talked to the police first. Oakman Sr. stated the day of the guilty plea there were several media cameras present. Oakman Sr. stated they were hopeful for a five year cap. Oakman Sr. stated he was aware that Applicant could get life without parole for murder. Oakman Sr. stated Applicant pled guilty to avoid a life sentence. Oakman Sr. stated the following day some of the co-defendants received seventeen year sentences. Oakman Sr. stated he was not present on the second day of the guilty plea.

Following Oakman Sr.'s testimony, Applicant testified on his own behalf. Applicant stated that he was thirty years old. Applicant stated that he pled guilty to kidnapping and was indicted for murder. Applicant stated that he filed a PCR application and is asking for a new trial. Applicant stated he understood that meant setting aside his thirty year sentence and facing a possibility of life without parole for murder. Applicant recalled meeting with Plea Counsel twelve times prior to his plea. Applicant stated that he pled guilty because there was no defense planned. Applicant opined that he received no benefit for pleading guilty, despite the fact that the murder charge was dropped.

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Applicant stated Plea Counsel informed him that he was looking at a sentence under the youthful offender act. However, Applicant recalled the plea judge advising him that he was facing up to thirty years for kidnapping and life without parole for murder. Applicant stated the crimes occurred in multiple counties. Applicant stated Victim was kidnapped in Lexington county, beaten and tortured in Saluda county, murdered in Aiken County, and his body was dumped in Lexington County.

Applicant stated Plea Counsel was ineffective for failing to review discovery material with him prior to his plea. Specifically, Applicant stated that there were hundreds of pages of documents and fifteen cd's. Applicant stated that he did not review all of the material. Applicant stated that he did not have a full understanding of the information prior to his plea. Applicant stated he did not go over Kasey Blizzard's statement prior to his plea. Curiously, Applicant recalled telling the plea court under oath that he was satisfied with Plea Counsel's services and had no complaints against him.

Applicant stated that he never discussed any defenses with Plea Counsel. Applicant asserted that there was no kidnapping. Applicant admitted that he was present when Victim was beaten, burned, and tortured. Applicant readily admitted to being present when Victim was shot and killed by Frankie Gantt. Further, Applicant recalled telling the plea judge that no one was promising or threatening him in order to get him too pled guilty. Applicant recalled telling the plea judge that he wanted to plead guilty and that he was guilty of kidnapping. Applicant recalled the State's recitation of the facts and that he had no objections to them. Applicant further recalled waiving his constitutional rights during his guilty plea.

Applicant stated Victim was holding several stolen guns. Applicant stated that he did not know anything about the guns. Applicant stated that he was not aware of any phone calls made by Victim prior to his death. Applicant explained that he was in the second vehicle following the vehicle that contained Victim. Applicant stated he did not hear all of the 911 audio tapes prior to his plea. Applicant

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opined that the 911 calls were very important and only learned about them after he received his Rule 5 in Aiken.

Applicant stated that in his opinion Darrell Williams and Kasey Blizzard planned this kidnapping and murder. Applicant stated he and his other co-defendants were the fall guys. Applicant stated the kidnapping and murder of Victim was not planned. Applicant stated he never spoke to anyone about planning on kidnapping or murdering Victim.

Applicant stated Plea Counsel made a very persuasive argument during preliminary hearing that he was not guilty of kidnapping and murder. Applicant stated that Plea Counsel knew it was not a kidnapping, yet advised him to plead guilty to kidnapping. Applicant stated he along with his co-defendants picked up Victim in Lexington County, but was in the vehicle when the "plan changed."

Applicant stated that he did not plead guilty with a full understanding of the information. Specifically, Applicant pointed to the indictment that listed him as a "principal with others." Applicant stated that he was not a principal and felt that the Solicitor's office could not prosecute him as a principal. Applicant further stated that no kidnapping ever took place in Aiken County, yet he pled guilty to kidnapping in Aiken.

Applicant stated that he was charged with murder and Plea Counsel advised him that he could face life without parole. Applicant stated that he was not the shooter. Applicant stated Frankie Gantt was the shooter and Applicant opined that he should not have been charged with murder. Applicant stated Plea Counsel advised him that the hand of one is the hand of all and that he was just as guilty as Frankie Gantt. Applicant disputed that he provided the last shot to Frankie Gantt. Applicant stated that it was his co-defendant John Oakman, Jr., who provided the shotgun shell used by Frankie Gantt to shoot and kill Victim.

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Applicant stated that his co-defendants who pled on the second day received significantly lesser sentences. Applicant pointed out that he and the other co-defendants who pled on the first day received thirty years or more. However, the co-defendants who pled on the second day only received seventeen years.

Following Applicant's testimony, Plea Counsel was called to testify on behalf of the State. Plea Counsel stated that he was retained to represent Applicant. Plea Counsel stated he met with Applicant approximately twelve times prior to his plea. Plea Counsel stated he filed for and received Brady and Rule 5 material. Plea Counsel stated he reviewed the material with Applicant prior to his plea. Plea Counsel stated it is his typical practice to review all material prior to his client going to trial or pleading guilty.

Plea Counsel stated evidence against Applicant was "overwhelming." Specifically, Plea Counsel stated Applicant was one of three co-defendants who picked victim up and took him to the trailer where he was ultimately beaten, tortured, and burned. Plea Counsel stated Applicant was adamant that he did not hit Victim. Plea Counsel stated Applicant was in the second vehicle that followed his co-defendants and Victim to the location where Victim was murdered. Plea Counsel stated some of the co-defendants alleged that Applicant provided the shotgun shell used by Frankie Gantt to shoot the Victim. Plea Counsel stated Applicant participated in the moving of Victim's body. Plea Counsel further stated Applicant cooperated with the police and gave a full confession.

Plea Counsel stated he spent most of his time in mitigation due to Applicant's cooperation with the police. Plea Counsel stated he attempted to work out the best plea deal possible. Plea Counsel stated, despite the overwhelming evidence, he always looks at the evidence and attempts to create a theory of the case. Plea counsel stated he did not have an opportunity to speak to any of the other co-defendants or the Victim's family.

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Plea Counsel stated he was optimistic that Applicant would receive a light sentence due to his cooperation. Specifically, Plea Counsel stated Applicant was the first person to go to the police. Plea Counsel stated Applicant had spoken to police prior to him being retained. Plea Counsel stated that he was not present during the second day of the guilty plea. Plea Counsel stated he heard about the sentences and immediately filed a motion for reconsideration. Plea Counsel stated he drafted an outline of each co-defendant's participation and compared them to Applicant. Plea Counsel stated he attempted to use Judge Early's standard against him and argued that Applicant should receive something less than thirty years.

Plea Counsel stated he argued strongly against Applicant being charged with murder and kidnapping during the preliminary hearing. Plea Counsel stated the State simply had to meet the probable cause standard at the preliminary hearing. Plea Counsel stated that he advocated on behalf of Applicant and came up with several arguments. However, Plea Counsel stated the act was continuous from Saluda County to Aiken County to Lexington county. Plea Counsel stated Applicant had informed him that Victim was not forced to leave his residence and voluntarily got in the car with Applicant and his co-defendants. Despite his arguments at the preliminary hearing, Plea Counsel opined that the magistrate judge made the correct decision in denying the motions to dismiss both charges.

Plea Counsel stated he advised Applicant of the potential sentences if he proceeded to trial. Plea Counsel stated that he did not know if any of the co-defendants were willing to testify against Applicant if he proceeded to trial. However, he did advise the solicitor that Applicant would be willing to testify against his co-defendants if any of them proceeded to trial.

Plea Counsel stated that he had done several joint guilty pleas in the past. Plea Counsel stated that he has never once felt like any of his clients are prejudiced by participating in a joint guilty plea.

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Plea Counsel stated that he still continues to do joint guilty pleas. Plea Counsel stated Applicant's sentence was well within the plea agreement and sentencing range.[3]

Plea Counsel stated the State gave favorable information to the plea judge and reiterated a lot of his arguments to the plea judge as to why Applicant should be sentenced differently. Plea Counsel stated that he attempted to make a public policy argument that cooperating defendants should be treated differently as compared to non-cooperating defendants. Plea Counsel noted Applicant cooperated with the solicitor and law enforcement in the varying jurisdictions. Plea Counsel stated that Applicant simply did not receive the credit for his cooperation. Plea Counsel stated the victim's statement was very compelling. Plea Counsel stated that he felt he made a compelling argument at the guilty plea as to why Applicant should receive less than the other co-defendants. Plea Counsel noted that the plea judge felt compelled to state his reasons as to why Applicant was receiving thirty years.[4]

Plea Counsel stated he discussed the stolen gun aspect but did not dedicate a lot of investigation into the guns. Plea Counsel stated they chose to plead guilty in Aiken in order to get the murder charge dismissed. Plea Counsel stated Applicant pled guilty on the kidnapping because there was no mandatory minimum of years in sentencing. Plea Counsel stated Applicant never wanted to proceed to trial and only wanted to plead guilty.

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, closely pass upon their credibility and weigh their testimony accordingly. Specifically, this Court finds Plea Counsel's testimony credible while Applicant's

[3] This Court notes the State *nol proseed* the murder charge pursuant to Applicant's guilty plea.
[4] Counsel noted and the plea transcript reflects, the plea judge stated that he had feed them out of the same spoon. (App. p. 90 lines 9-13).

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testimony is not credible. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

INEFFECTIVE ASSISTANCE OF PLEA COUNSEL

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of Plea Counsel is alleged as a ground for relief, the Applicant must prove that "Plea 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, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that Plea Counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of Plea Counsel. First, the Applicant must prove that Plea Counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, Plea Counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for Plea 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 a guilty ~~Plea Counsel~~, the Applicant must show that there is a reasonable probability that, but for Plea Counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart , 474 U.S. 52, 106 S.Ct. 366 (1985).

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Ineffective assistance of Plea Counsel that resulted in an involuntary guilty plea due to Plea Counsel arguing strongly for dismissal of the kidnapping charge at the preliminary hearing and subsequently, under the same facts, advising Applicant to enter a guilty plea.

This Court finds Applicant's allegation that he received ineffective assistance of Plea Counsel when Plea Counsel advocated for the charges to be dismissed at the preliminary hearing and subsequently advised him to plead guilty to the charge of kidnapping is without merit. Plea Counsel stated that he advocated zealously at the preliminary hearing on behalf of Applicant. A review of the preliminary hearing shows Plea Counsel attempted to argue that Applicant was not an active participant in the kidnapping or murder of Victim. Despite his arguments, the magistrate court properly dismissed Plea Counsel's motion and bounded the cases over to General Sessions. Plea Counsel opined that the preliminary hearing was his best opportunity to get the charges dismissed. Following the magistrate court's ruling, Plea Counsel was able to work out a favorable plea deal which ultimately removed the possibility of life without parole for murder. This Court finds Plea Counsel's actions and advice were reasonable in the circumstances, and did not fall below professional norms of reasonableness. Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). This Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test – that plea counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Plea Counsel committed either errors or omissions to prove the second prong of Strickland – that he was prejudiced by Plea Counsel's performance. This Court notes Applicant knowingly and intelligently pled guilty to kidnapping. As part of his plea, the State dismissed the murder charge. Nothing about Plea Counsel's advice to plead guilty to kidnapping was prejudicial. As noted below, this Court further finds Applicant can show no prejudice due to overwhelming evidence of guilt. Based off of the foregoing, this Court finds Applicant's allegation is denied and dismissed with prejudice.

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Ineffective assistance of Plea Counsel that resulted in an involuntary guilty plea for failure to address and/or raise matters of jurisdictional defect or impropriety.

This Court finds Applicant's allegation that he received ineffective assistance of Plea Counsel for failing to raise matters of jurisdictional defect or impropriety is meritless. Plea Counsel stated that he was well aware that the kidnapping and murder took place in three separate jurisdictions. Plea Counsel stated he advised Applicant to waive jurisdiction and plead guilty to kidnapping in Aiken County because Aiken County was willing to dismiss the murder charge. Our courts are understandably wary of second-guessing defense Plea Counsel's trial tactics. Where Plea Counsel articulates valid reasons for employing a certain strategy, Plea Counsel's choice of tactics will not be deemed ineffective assistance. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 530 (1992). See also Dempsey v. State, 363 S.C. 365, 610 S.E.2d 812 (2005) and McLaughlin v. State, 352 S.C. 476, 575 S.E.2d 841 (2003). Plea Counsel articulated valid strategic reasons for advising Applicant to waive any jurisdictional issues and plead guilty in Aiken County. The Applicant has not shown that Plea Counsel was deficient in that choice of tactics. This Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test – that Plea Counsel failed to render reasonably effective assistance under prevailing professional norms.

Furthermore, Applicant has failed to present specific and compelling evidence that Plea Counsel committed either errors or omissions to prove the second prong of Strickland – that he was prejudiced by Plea Counsel's performance. This Court finds Applicant's assertions that he was not privy to Victim's pleas to 911 and thereby could not have known that Victim was being kidnapped not credible. Applicant readily admitted that he was present in the trailer while Victim was being beaten and burned. After torturing the Victim, Applicant along with his co-defendants loaded up into two separate vehicles. Just because Applicant happened to be in the second vehicle that did not contain Victim does not mean

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that Applicant did not actively participate in the kidnapping of Victim. To the contrary, Applicant trailed the lead vehicle, sat idly by while Victim was shot, and then participated in moving and dumping the body in a wood pile. It is clear that Applicant along with his co-defendants kidnapped Victim. As noted below, this Court further finds Applicant can show no prejudice due to overwhelming evidence of guilt. Based off of the foregoing, this Court finds Applicant's allegation is denied and dismissed with prejudice.

> *Ineffective assistance of Plea Counsel that resulted in an involuntary guilty plea for failure to conduct a reasonable investigation and fully review the discovery with Applicant prior to advising him to enter a guilty plea.*

This Court finds Applicant's allegation that he received ineffective assistance of Plea Counsel due to Plea Counsel's failure to investigate and review discovery is without merit. "[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." Walker v. State, 397 S.C. 226, 235, 723 S.E.2d 610, 615 (Ct. App. 2012). Failure to conduct an independent investigation does not constitute ineffective assistance of Plea Counsel when the allegation is supported only by mere speculation as to result. Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to Plea Counsel's judgments." Wiggins v. Smith, 539 U.S. 510, 521-22 (2003).

In the instant case, Plea Counsel stated he met with Applicant approximately twelve times. Plea Counsel stated that Applicant had cooperated with police and had already given a statement. Plea Counsel stated he filed for and reviewed the discovery material with Applicant prior to his plea. Based on the foregoing, this Court finds Plea Counsel's actions were reasonable in the circumstances, and did

DCB 1.13.19

not fall below professional norms of reasonableness. Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). This Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test – that Plea Counsel failed to render reasonably effective assistance under prevailing professional norms.

Furthermore, Applicant has failed to present specific and compelling evidence that Plea Counsel committed either errors or omissions to prove the second prong of Strickland – that he was prejudiced by Plea Counsel's performance. Applicant failed to present any documents or witnesses on his behalf to support his allegation that Plea Counsel failed to conduct a sufficient investigation. See 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). As noted below, this Court further finds Applicant can show no prejudice due to overwhelming evidence of guilt. Based off of the foregoing, this Court finds Applicant's allegation is denied and dismissed with prejudice.

> *Ineffective assistance of Plea Counsel that resulted in an involuntary guilty plea for failure to protect the interests and rights of Applicant during a circus like or cattle call guilty plea proceeding.*

This Court finds Applicant's allegation that Plea Counsel was ineffective for failing to protect Applicant's interest and rights during a joint guilty plea to be meritless. Plea Counsel stated in his opinion Applicant was in no way prejudiced by pleading guilty along with his co-defendants. To the contrary, by pleading guilty with his co-defendant's Plea Counsel was able to articulate and argue to the plea judge the reasons why Applicant should receive less time than his co-defendants. Plea Counsel properly pointed out to the plea judge that Applicant was the first to talk to police, fully cooperated with police, and essentially broke the case open for investigators. Furthermore, this Court notes that Applicant knowingly and intelligently pled guilty. Based on the foregoing, this Court finds Plea

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Counsel's actions were reasonable in the circumstances and did not fall below professional norms of reasonableness. Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). This Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test – that Plea Counsel failed to render reasonably effective assistance under prevailing professional norms.

Furthermore, Applicant has failed to present specific and compelling evidence that Plea Counsel committed either errors or omissions to prove the second prong of Strickland – that he was prejudiced by Plea Counsel's performance. This Court notes Applicant received a lawful thirty year sentence for kidnapping. As noted below, this Court further finds Applicant can show no prejudice due to overwhelming evidence of guilt. Based off of the foregoing, this Court finds Applicant's allegation should be denied and dismissed.

> *Ineffective assistance of Plea Counsel that resulted in an involuntary guilty plea and prejudicial sentencing due to Plea Counsel's failure to attend the second day of the guilty plea proceedings and be present at the chamber's meeting by which the court assessed the levels of the defendants' culpability based upon information offered by Plea Counsel for Applicant's co-defendants and Applicant's co-defendants.*

This Court finds Applicant's allegation that he received ineffective assistance of Plea Counsel due to Plea Counsel's failure to attend the second day of guilty plea is without merit. Plea Counsel stated that he did not attend the second day of the guilty plea, but heard about the sentences.[5] Plea Counsel stated he immediately filed a motion for reconsideration once he learned of the co-defendants sentences. Plea Counsel stated he created a document that depicted each of the co-defendants involvement, any mitigating factors, and their sentences. Plea Counsel stated he presented this document to the plea judge during the motion for reconsideration and attempted to argue that Applicant should receive a seventeen year sentence or less due to Applicant's lack of involvement and cooperation with the police. Based on the foregoing, this Court finds Plea Counsel's actions were reasonable in the

[5] Four of Applicant's co-defendants sentenced on the second day of the guilty plea received seventeen years.

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circumstances, and did not fall below professional norms of reasonableness. Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). This Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test – that Plea Counsel failed to render reasonably effective assistance under prevailing professional norms.

Furthermore, Applicant has failed to present specific and compelling evidence that Plea Counsel committed either errors or omissions to prove the second prong of Strickland – that he was prejudiced by Plea Counsel's performance. This Court notes Applicant received a lawful thirty year sentence for kidnapping. Additionally, Applicant failed to present sufficient evidence or testimony to show what more Plea Counsel should have done to persuade the plea judge to give a lighter sentence. As noted below, this Court further finds Applicant can show no prejudice due to overwhelming evidence of guilt. Based off of the foregoing, this Court finds Applicant's allegation should be denied and dismissed.

> *Ineffective assistance of Plea Counsel that resulted in an involuntary guilty plea due to Plea Counsel's failure to effectively argue on Applicant's behalf at the hearing on reconsideration and provide the court with an Order fully addressing the issues in the case.*

This Court finds Applicant's allegation that he received ineffective assistance of Plea Counsel for Plea Counsel's failure to effectively argue on Applicant's behalf during the motion for reconsideration is without merit. Plea Counsel stated that he did not attend the second day of the guilty plea, but heard about the sentences.[6] Plea Counsel stated he immediately filed a motion for reconsideration once he learned of the co-defendants sentences. Plea Counsel stated he created a document that depicted each of the co-defendants involvement, any mitigating factors, and their sentences. Plea Counsel stated he presented this document to the plea judge during the motion for reconsideration and attempted to argue that Applicant should receive a seventeen year sentence or less due to Applicant's lack of involvement and cooperation with the police. Based on the foregoing, this

[6] Four of Applicant's co-defendants sentenced on the second day of the guilty plea received seventeen years.

DCB 6/7/19

Court finds Plea Counsel's actions were reasonable in the circumstances, and did not fall below professional norms of reasonableness. Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). This Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test – that Plea Counsel failed to render reasonably effective assistance under prevailing professional norms.

Furthermore, Applicant has failed to present specific and compelling evidence that Plea Counsel committed either errors or omissions to prove the second prong of Strickland – that he was prejudiced by Plea Counsel's performance. This Court notes Applicant received a lawful thirty year sentence for kidnapping. Additionally, Applicant failed to present sufficient evidence or testimony to show what more Plea Counsel should have done to persuade the plea judge to give a lighter sentence. As noted below, this Court further finds Applicant can show no prejudice due to overwhelming evidence of guilt. Based off of the foregoing, this Court finds Applicant's allegation should be denied and dismissed.

OVERWHELMING EVIDENCE

In addition to its prejudice analysis in each separate allegation, this Court notes Applicant can show no prejudice as a result of Plea Counsel's alleged deficiencies as there is clear evidence of overwhelming guilt. See Franklin v. Catoe, 346 S.C. 563, 570 n. 3, 552 S.E.2d 718, 722 n. 3 (2001), cert. denied, 535 U.S. 1114, 122 S.Ct. 2332, 153 L.Ed.2d 162 (2002) (finding overwhelming evidence of guilt negated any claim that Plea Counsel's deficient performance could have reasonably affected the result of defendant's trial); Geter v. State, 305 S.C. 365, 367, 409 S.E.2d 344, 346 (1991) (concluding reasonable probability of a different result does not exist when there is overwhelming evidence of guilt); cf. Ford v. State, 314 S.C. 245, 248, 442 S.E.2d 604, 606 (1994) (holding respondent failed to prove prejudice from trial Plea Counsel's failure to request an alibi charge where there was overwhelming evidence of guilt).

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Initially, this Court notes Applicant reaffirmed his guilt during the PCR evidentiary hearing. Regardless, all seven codefendants related similar versions of the events. The co-defendants agreed that Victim was picked up by Applicant and two co-defendants. Applicant along with his two codefendants drove Victim to a trailer where he was beaten and burned. After being tortured, Victim was transported in a vehicle that contained several of Applicant's co-defendants. Applicant followed the lead vehicle containing Victim to a desolate area where a discussion over guns began. Victim attempted to flee for his life, at which point Frankie Gantt shot Victim. It was disputed whether Applicant provided the kill shot. Following the brutal murder of Victim, Applicant and his co-defendants went back to the trailer to devise a plan. Ultimately, all of the co-defendants went back to the scene of the murder, picked up the body, transported it over county lines, and dumped the Victims body in a wood pile.

Notably, Applicant fully cooperated with police and was the first of seven additional co-defendants to come forward and confess. Applicant attempted to use his cooperation with police as mitigation in an effort to receive a lesser sentence. During the evidentiary hearing, Applicant did not dispute that he along with his two co-defendants picked up Victim and took him to the trailer. Applicant did not dispute that he was inside the trailer when Victim was beaten and burned. Applicant did not dispute he was with Frankie Gantt when he shot Victim. Applicant did not dispute that he was with his co-defendants when they returned to the scene of the murder, picked up the Victim's body, and dumped it a wood pile. Based off of the foregoing, this Court finds that there is clear overwhelming evidence of guilt. As a result, Applicant can show no prejudice due to Plea Counsel's alleged deficiencies in of the above mentioned allegations.

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

DCF 1-18-19

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 that the 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.

This Court notes that that Applicant must file and serve a notice of appeal within thirty days from the receipt by Plea 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 Plea 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 Plea Counsel must serve and file a Notice of Appeal on the 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 must be denied and dismissed with prejudice; and

2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 13 day of April, 2015.

D. CRAIG BROWN
Presiding Judge
Second Judicial Circuit

Florence, South Carolina

DC 1.19.19

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER

PLAINTIFF(S)	South Carolina State of DEFENDANT(S)
Submitted by:	Attorney for: ☐ Plaintiff ☐ Defendant ☐ 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), 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; (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.**

5/8/2015

Circuit Court Judge **Judge Code** **Date**

For Clerk of Court Office Use Only

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 3/2013)

This judgment was entered on **8th day of May, 2015**, and a copy mailed first class or placed in the appropriate attorney's box on **8th day of May, 2015**, to attorneys of record or to parties (when appearing pro se) as follows:

Tricia A. Blanchette PO Box 12725 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

Daniel Francis Gourley II P.O Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Liz Godard by Shannon Gough

Liz Godard - Clerk of Court

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.

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 3/2013)

ALAN WILSON
ATTORNEY GENERAL

May 6, 2015

The Honorable Liz Godard
Clerk of Court, Aiken County
Post Office Box 583
Aiken SC 29802-0583

Re: **Sheldon Oakman, #334454 v. State of South Carolina**
2013-CP-02-0401

Dear Ms. Godard:

Enclosed please find the original **Order of Dismissal** signed by the Honorable D. Craig Brown, in the above-captioned case, for filing in your office. Please forward a **time stamped copy** back to our office for our file.

Sincerely,

Daniel Gourley
Assistant Attorney General

DG/cc
Enclosure

5.8.15
FILED
Liz Godard
C.C.P. & G.S.
Deputy Clerk

REMBERT C. DENNIS BUILDING • POST OFFICE BOX 11549 • COLUMBIA, SC 29211-1549 • TELEPHONE 803-734-3970 • FACSIMILE 803-253-6283