

THE BOOZER LAW FIRM, LLC

Lance S. Boozer, Esq.*

*Also admitted in Florida

807 Gervais Street, Suite 203
Columbia, SC 29201

Telephone: 803-608-5543
Fax: 803-926-3463

Email: lsb@boozerlawfirm.com
Website: www.boozerlawfirm.com

July 31, 2015

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

RECEIVED

AUG 03 2015

S.C. SUPREME COURT

The Honorable Mary Brown
Clerk, Berkeley County
300 California Dr.
Moncks Corner, SC 29461

**RE: Tommie Weathers, Jr., #354256, v. State of South Carolina
2013-CP-08-2209**

Dear Mr. Shearouse and Ms. Brown:

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

- (1) Proof of Service of the Notice of Appeal;
- (2) A copy of the Order which is to be challenged on appeal; and
- (3) Prior Order of Appointment of Counsel.

As I was appointed to represent Mr. Weathers in his PCR proceeding, I anticipate that the Office of Appellate Defense will represent Mr. Weathers in this appeal.

Yours very truly,



Lance S. Boozer

cc: Rutledge Johnson, AAG
Office of Appellate Defense
Tommie Weathers, Jr., #354256

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

AUG 03 2015

The Honorable Eugene C. Griffith, Jr. Circuit Court Judge **SC SUPREME COURT**

Case No. 2013-CP-08-2209

Tommie Weathers, Jr., #354256.....Petitioner,

v.

State of South Carolina.....Respondent.

NOTICE OF APPEAL

The Petitioner appeals the Honorable Eugene C. Griffith, Jr.'s Order dated June 3, 2015, denying post-conviction relief to the Petitioner. Petitioner's Motion to Reconsider was Denied by Order dated July 10, 2015. Undersigned counsel received notice of entry of the Order on July 10, 2015. A copy of the Order on appeal is attached to this notice.

Respectfully submitted,



Lance S. Boozer
The Boozer Law Firm, LLC
807 Gervais Street, Suite 203
Columbia, SC 29201
Tele: 803-608-5543

July 31, 2015

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

AUG 03 2015

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

S.C. SUPREME COURT

The Honorable Eugene C. Griffith, Jr. Circuit Court Judge

Case No. 2013-CP-08-2209

Tommie Weathers, Jr., #354256.....Petitioner,

v.

State of South Carolina.....Respondent.

PROOF OF SERVICE

I, Lance S. Boozer, appointed attorney for Petitioner, certify that I have today served within Notice of Appeal upon the Respondent by depositing a copy of it in the United States Mail, postage prepaid, addressed to Assistant Attorney General Rutledge Johnson, P.O. Box 11549, Columbia, SC 29211. I further certify that all parties required by Rule to be served have been served this 31st day of July, 2015.



Lance S. Boozer
The Boozer Law Firm, LLC
807 Gervais Street, Suite 203
Columbia, SC 29201
Tele: 803-608-5543

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Berkeley County. The Applicant was indicted at the March 2011 and November 2011 terms of the Berkeley County Grand Jury for armed robbery (2011-GS-08-0400), assault and battery- first degree (2011-GS-08-1678), and kidnapping (2011-GS-08-1677). Steve C. Davis, Esquire, represented the Applicant. On January 14, 2013, the Applicant pled guilty to the lesser included offense of strong arm robbery, assault and battery- first degree, and kidnapping. On February 11, 2013, the Honorable Kristi L. Harrington sentenced the Applicant to confinement for ten years concurrent on all charges. The Applicant did not appeal his convictions or sentences.

ALLEGATIONS

The Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
2. "Due Process Rights"
3. "Illegal Search"

At the hearing, the Applicant proceeded on the following grounds:

1. Ineffective assistance of counsel.
 - a. Advising the Applicant he would receive a YOA sentence if he pled guilty.
 - b. Failure to challenge the indictment.
 - c. Failure to discuss the nature of the charges and the consequences of pleading guilty.
 - d. Failure to investigate alibi witnesses.
 - e. Failure to object to the recitation of the facts by the State during the guilty plea.
 - f. Failure to file an appeal.
2. Involuntary guilty plea.
 - a. Applicant was coerced to plead guilty.

This Court finds all claims other than those raised at the hearing and addressed in this order are hereby deemed denied. This Court finds the Applicant failed to present any evidence, testimony, or argument regarding such issues at the evidentiary hearing.

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 and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon his or her credibility. This 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).

Summary of the Testimony

The Applicant was present and testified at the evidentiary hearing. He testified his indictment was defective and improperly presented. The Applicant testified counsel failed to raise the issue of his defective indictment to the Court. He testified counsel was only appointed after his family had contact with plea counsel. He testified he did not want to go forward on the indictments because of this.

The Applicant testified he met with counsel four or five times prior to his guilty plea. He testified he also corresponded with counsel via mail. The Applicant testified counsel never told him the elements of the charges he was facing or potential defenses. He testified they never discussed his charges as being most serious, 85%, or requiring community supervision.

The Applicant testified he had two alibi witnesses and counsel failed to investigate either alibi witness. He testified Daniel Gerald and Johnny Thompson were his two alibi witnesses. The Applicant testified that at the time of the crime he was at Folly Beach with Thompson and

Gerald. He testified he recently learned that Johnny Thompson has passed away. The Applicant also recalled confessing his involvement in the crime and telling the plea court he was indeed guilty. The Applicant testified he was not being truthful at his guilty plea.

The Applicant testified counsel also failed to advise him of his co-defendant's statement. He testified the solicitor at the guilty plea said his co-defendant mentioned something about him burning his clothing. The Applicant testified trial counsel should have objected to this statement by the solicitor because he never knew anything about the statement. The Applicant testified trial counsel also should have objected to the solicitor's comments regarding his relationship with the victim and their living arrangements. The Applicant also recalled telling the Court that he agreed with the facts presented by the State during his guilty plea.

The Applicant testified trial counsel told him he could get a potential Youthful Offender Act (YOA) sentence. He testified trial counsel told him that if he signed the guilty plea he could get a YOA sentence. He testified his kidnapping charge is not eligible for a YOA sentence. The Applicant testified without trial counsel's advice regarding him receiving a YOA sentence, he would not have pled guilty. The Applicant recalls the plea court telling him not to assume anything about his sentence and that no one knew what the sentence of the Court would be. He testified he also recalls telling the Court that he was made no promises to plead guilty.

The Applicant testified he was coerced by plea counsel to sign the guilty plea because counsel was not confident about their outcome if he went to trial. The Applicant testified he initially wanted to go to trial, but he did not think counsel was ready for trial. He testified trial counsel should have objected to the pre-sentencing report presented to the Court because information in the report was inaccurate.

The Applicant testified after he received a sentence greater than his co-defendants he told

counsel he wanted to appeal his guilty plea. He testified he was under the impression he would get a YOA sentence and instead received ten years. He testified he told counsel to appeal his sentence in person during his sentencing hearing. The Applicant recalls the trial court advising him of his right to appeal during his guilty plea.

Also present and testifying was Steve C. Davis, Esquire. Counsel testified he has been practicing law since 1982. He testified he has extensive experience in criminal matters. He testified he was appointed to represent the Applicant in August 2012 due to a conflict in the public defenders' office. Counsel testified he met with the Applicant multiple times. He testified he could tell from the start he needed to document everything when dealing with the Applicant. He testified that he met with the Applicant more than normal.

Counsel testified he filed Brady and Rule 5 motions on the Applicant's behalf. He testified he reviewed the discovery material he received with the Applicant and gave a copy of the materials to the Applicant to review. Counsel testified the materials included the Applicant's statement to police along with his co-defendants' statements. Counsel testified they discussed the elementary elements of the charges the Applicant was facing and what the State was required to prove to convict the Applicant. Counsel testified he reviewed the Applicant's indictment and did not see any deficiencies to raise to the Court.

Counsel testified the Applicant told him his version of the facts and they discussed possible defenses. He testified he was surprised to hear about the Applicant's alleged alibi witness "Johnny Thompson". Counsel testified he has never heard of "Johnny Thompson". He testified he did initially submit an alibi notice for Daniel Gerald, however, after further investigation he determined alibi was not a viable defense for the Applicant. Counsel testified he refused to present a fraudulent alibi to the Court.

⁵
JED. 5/16

Counsel testified the Applicant and his co-defendant's used a female to lure the victim out so they could ambush the victim. He testified the victim and the Applicant's co-defendants put him at the scene of the robbery and kidnapping. Counsel testified the Applicant did not give him any other leads or witnesses to investigate. Counsel testified his investigation of the Applicant's case included reviewing the discovery and looking for forensic evidence which tied the Applicant to the crime. Counsel testified there is not much to investigate since the Applicant's co-defendants put him at the scene and the alibi witness the Applicant provided was not concrete.

Counsel testified he had several discussions with the solicitor about a plea offer. He testified his goal was to put the Applicant in a favorable position after the removal of the armed robbery. Counsel testified ultimately the State offered the Applicant a plea to the lesser included offense of strong armed robbery and the State would *nolle prosequere* the possession of a weapon during the commission of a violent crime charge. He testified he communicated the plea offer to the Applicant and informed him of the constitutional rights he would waive if by pleading guilty.

Counsel testified his strategy for the Applicant's sentencing was to try to get a time served sentence for the kidnapping so that the Applicant would be eligible for a Youthful Offender Act on the remaining two charges. He testified he felt this sentencing option was feasible and hoped the pre-sentencing report requested by the Court would have been more favorable. Counsel testified he discussed sentencing options with the court prior to the Applicant's plea.

Counsel testified he told the Applicant that there was no guarantee that he would receive a YOA sentence and his notes reflect he also advised the Applicant of the potential sentences he was facing on the charges. Counsel testified the Applicant knew that he would ask for a YOA,

6
SEM 6/16

but that it was possible he would get active time on all the charges. Counsel testified he was confident the Applicant was fully aware that he would not get time served on the kidnapping charge and a Youthful Offender Act sentence on the remaining charges unless they were first able to convince the plea judge it was appropriate.

Counsel testified he did not coerce the Applicant to plead guilty. He testified that prior to the guilty plea he reviewed everything with the Applicant including the Court's plea colloquy. Counsel testified he reviewed the pre-sentencing report requested by the Court and overall the report was accurate. Counsel testified the solicitor's overall statement of the facts was accurate and not objectionable. Lastly, counsel testified he did not recall the Applicant asking for an appeal at the end of his guilty plea. He testified had the Applicant requested an appeal it was his general practice to file a notice of appeal on the Applicant's behalf.

Ineffective Assistance of Counsel

The Applicant alleges that he received ineffective assistance of counsel. In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; 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 (1984); Butler, 286 S.C. 441, 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).

Courts use a two-pronged test to evaluate allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Id. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. 668). 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. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243-44 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)). When a defendant pleads guilty on the advice of counsel, the plea may only be attacked through a claim of ineffective assistance of counsel. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2002) (citations omitted).

This Court finds that counsel is a criminal practitioner who has extensive experience in

the trial of serious offenses. Counsel conferred with the Applicant on numerous occasions. During conferences with the Applicant, counsel discussed the pending charges, the elements of the charges and what the State was required to prove, Applicant's constitutional rights, Applicant's version of the facts, and possible defenses or lack thereof. The record reflects that Applicant's plea was entered freely, voluntarily, knowingly, and intelligently. Applicant acknowledged that he was guilty of these offenses. Applicant told the plea court that he was satisfied with his attorney and that no one had threatened him or promised him anything to plead guilty. This Court finds the Applicant's claim that he was coerced to plead guilty is wholly without merit.

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds that Applicant's attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, 466 U.S. at 668; Butler, 286 S.C. 441, 334 S.E.2d 813. This Court further finds counsel adequately conferred with the Applicant, conducted a proper investigation, and provided thorough representation. This Court finds that counsel's representation did not fall below an objective standard of reasonableness.

As an initial matter this Court finds plea counsel's testimony at the evidentiary hearing to be credible. In light of the Applicant's own self-serving testimony that he lied to the Court during his guilty plea, this Court finds the Applicant's testimony at the evidentiary hearing was not credible.

The Applicant alleges counsel was ineffective for advising the Applicant that he would receive a Youthful Offender Act sentence if he pled guilty. This Court finds the Applicant has

failed to carry his burden of proving counsel's advice to Applicant regarding the possibility of receiving a Youthful Offender Act sentence resulted in ineffective assistance of counsel. This Court finds counsel's advice to the Applicant regarding sentencing was not deficient. The Applicant claims counsel told him that if he pled guilty he could possibly receive a YOA sentence. Counsel provide credible testimony that he did not promise the Applicant a YOA sentence, but that his strategy for sentencing was to try to obtain a time served sentence for the kidnapping charge so that the Applicant would be eligible for a YOA sentence on the remaining two charges. Counsel also recalled discussing sentencing options with the Court prior to the Applicant's plea

This Court finds counsel's advice to the Applicant was not improper. While the Applicant's kidnapping offense was not eligible for a Youthful Offender Act sentence, the Applicant's remaining two offenses were eligible for YOA sentences.¹ This Court finds the sentencing strategy outlined by trial counsel was a feasible sentencing scheme and nothing precluded the Court from exercising its discretion and sentencing the Applicant to time served for the kidnapping offense and a YOA sentence on the remaining two offenses. See Creel v. State, 262 S.C. 558, 206 S.E.2d 825 (1974) (The trial judge has complete discretion to determine which subsection of the Youthful Offender Act is applicable to a youthful offender.).

This Court also finds the Applicant has failed to show prejudice resulted and that but for counsel's advice he would have proceeded to trial. This Court finds the Applicant was advised by both counsel and the Court of the potential sentencing range for each of the offenses he pled

¹ A "Youthful Offender" under S.C. Code Ann. § 24-19-10 is defined as a person who is "seventeen but less than twenty-five years of age at the time of conviction for an offense that is not a violent crime, as defined in Section 16-1-60, and that is a misdemeanor, a Class D, Class E, or Class F felony, or a felony which provides for a maximum term of imprisonment of fifteen years or less". Kidnapping is defined as a violent crime in S.C. Code Ann. § 16-1-60 making it ineligible for a Youthful Offender Act Sentence. Assault and battery- first degree and strong arm robbery are not classified as violent crimes.

guilty to. (Plea Tran. 5, 8). The record also reflects the Court explained to the Applicant that no one knew what the sentence of the Court would be and that he should assume he was facing the maximum sentence on all the charges. (Plea Tran. 9-10). This Court finds counsel made no promises or guarantees to the Applicant about receiving a YOA sentence. This Court finds further the Applicant was fully aware of the potential sentences he faced before pleading guilty. This claim is merely a reflection of the Applicant's wishful thinking regarding what sentence he hoped to receive after pleading guilty. See Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 371 (1997) ("Wishful thinking regarding sentencing does not equal a misapprehension concerning the possible range of sentences, especially where one acknowledges on the record that one knows the range of sentences and that no promises have been made."). This Court finds this claim is without merit and the Applicant has failed to show counsel was ineffective in this regard.

The Applicant claims counsel was ineffective for failing to challenge his indictment. This Court finds this allegation is wholly without merit. This Court finds the Applicant has failed to specify the basis for any objection by counsel to his indictments. This Court finds counsel provided credible testimony that he reviewed the Applicant's indictments and found no deficiencies to raise to the Court. This Court finds the Applicant's indictments effectively put the Applicant on notice of the offenses he was being charged with and contained no challengeable deficiencies. This Court finds the Applicant has failed to carry his burden of proving counsel provided ineffective assistance of counsel by failing to challenge his indictments.

The Applicant claims counsel failed to discuss with him the nature of the charges and the consequences of pleading guilty. This Court finds this claim is wholly without merit. The record reflects counsel provided credible testimony that he advised the Applicant of the elements of the

charges he was facing and what the State was required to prove in order to convict the Applicant. Counsel testified that prior to the Applicant's guilty plea he also reviewed with the Applicant the contents of the Court's plea colloquy. This Court finds counsel was not deficient in his advice to the Applicant regarding the nature of the charges he was facing and the consequences of pleading guilty.

This Court also finds any alleged deficiency by counsel with regard to his advice to the Applicant prior to his guilty plea was cured by the Court's plea colloquy with the Applicant. The record reflects the Court thoroughly advised the Applicant of his constitutional rights (Plea Tr. 11), the potential sentences he was facing (Plea Tr. 5, 8), his parole eligibility (Plea Tr. 7-8), and that his guilty plea was without negotiation or recommendation other than the reduction of his armed robbery charge to strong arm robbery (Plea Tr. 8). The record also reflects that in response to the Court's questions, the Applicant told the Court that he had not been promised anything, coerced, or threatened to get him to plead guilty. (Plea Tr. 13). This Court finds the Applicant was well aware of the nature of the charges he was facing and the consequences of pleading guilty. The Applicant's guilty plea was entered freely and voluntarily. This Court finds the Applicant has failed to carry his burden of proving counsel was ineffective for failing to discuss with him the nature of the charges and the consequences of pleading guilty.

The Applicant claims counsel failed to investigate his alibi witnesses. This Court finds this claim is wholly without merit. The Applicant claims he wanted counsel to call as alibi witnesses both Daniel Gerald and Johnny Thompson. This Court finds counsel was not ineffective for failing to investigate the Applicant's alleged alibi witnesses. To qualify as an alibi, a witness's testimony must account for the defendant's whereabouts during the time of the crime such that it would have been physically impossible for the defendant to commit the crime.

Walker v. State, 397 S.C. 226, 237, 723 S.E.2d 610, 616 (Ct. App. 2012). In order to support a claim that trial counsel was ineffective for failing to interview or call potential alibi witnesses, a PCR applicant must produce the witnesses at the PCR hearing or otherwise introduce the witnesses' testimony in a manner consistent with the rules of evidence. Glover v. State, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). The applicant's mere speculation about what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice. Id.

This Court finds counsel provided credible testimony that he had never heard of Johnny Thompson as an alibi witness for the Applicant. Counsel testified further that he spoke with Daniel Gerald, filed an alibi notice for Gerald, and ultimately decided after investigating Gerald that the Applicant did not have a viable alibi defense. This Court finds counsel adequately investigated the Applicant's alleged alibi witness and made a strategic decision not to pursue an alibi defense based on his assessment of the viability of the claim. This Court find counsel's performance was not deficient in this regard.

This Court finds further the Applicant has failed to carry his burden of proving the alleged alibi witnesses' testimony would have qualified as an alibi. The Applicant failed to produce the witnesses at the PCR hearing or otherwise introduce their testimony to the Court in a manner consistent with the rules of evidence. This Court declines to accept the Applicant's rendition of what the witnesses' testimony might have been. This Court finds the Applicant has failed to carry his burden of proving counsel was ineffective for failing to investigate his alibi witnesses.

The Applicant claims counsel was ineffective for failing to object to the recitation of the facts by the State during the guilty plea. This Court finds this claim is wholly without merit. This

Court finds the Applicant has failed to identify any portion of the State's summation of the facts during his guilty plea that was objectionable. (Plea Tran. 14-19). This Court also finds telling the fact that the Applicant told the Court he agreed with the recitation of the facts by the State during his guilty plea. (Plea Tran. 19-20). This Court finds the Applicant has failed to carry his burden of proving counsel was ineffective for failing to object to the recitation of facts by the State during the guilty plea.

Lastly, the Applicant claims counsel failed to file an appeal of his guilty plea. This Court finds this claim is wholly without merit. Counsel has a constitutionally-imposed duty to consult with defendant about appeal when there is reason to think either (1) that rational defendant would want to appeal, or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores-Ortega, 528 U.S. 470, 120 S. Ct. 1029, 145 L. Ed. 2d 985 (2000). Although not determinative, a highly relevant factor in this inquiry will be whether the conviction follows a trial or a guilty plea, both because a guilty plea reduces the scope of potentially appealable issues and because such a plea may indicate that the defendant seeks an end to judicial proceedings. Id. 528 U.S. at 480, 120 S. Ct. at 1036. To show prejudice in these circumstances, a defendant must demonstrate that there is a reasonable probability that, but for counsel's deficient failure to consult with him about an appeal, he would have timely appealed. Id. 528 U.S. at 484, 120 S. Ct. at 1038.

In White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974), the South Carolina Supreme Court held that even if the post-conviction relief court finds that the Applicant never voluntarily and intelligently abandoned his appeal, the court has no jurisdiction to grant a belated appeal. Therefore, where an accused establishes in a post-conviction relief hearing that he was unconstitutionally deprived of his statutory right to a direct appeal, the South Carolina Supreme

Court, upon an appeal of the post-conviction relief decision, will review the trial record and pass upon all issues properly raised and argued as if the direct appeal has been perfected.

The record reflects the Applicant was fully advised by the Court during his guilty plea of his right to appeal. The Court told the Applicant “[y]ou have the right to appeal the plea and sentence that I impose, but you or your attorney must do so within ten days”. (Plea Tran. 13). This Court finds credible counsel’s testimony that the Applicant never indicated to him a desire to appeal his guilty plea. This Court finds the Applicant has failed to show that he actually demonstrated an interest in appealing to plea counsel. This Court finds the Applicant has failed to carry his burden of proving he is entitled to appeal of his guilty plea pursuant to White v. State.

Accordingly, this Court finds the Applicant has failed to prove the Strickland test, specifically that counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that counsel committed either errors or omissions while representing the Applicant. The Applicant failed to show that counsel’s performance was deficient. Therefore, this Court finds the Applicant’s complaints concerning counsel’s performance are without merit and are denied and dismissed.

All Other Allegations

As to any and all allegations that were raised in the application and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence, testimony, or argument regarding such allegations. Accordingly, this Court finds the Applicant abandoned such allegations. Therefore, they are dismissed.

CONCLUSION


Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner, nor was the Applicant prejudiced by counsel's representation. Therefore, this application for PCR must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of written notice of entry of this Order to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely served and filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 3rd day of June, 2015



The Honorable Eugene C. Griffith
Presiding Judge
9th Judicial Circuit

Newberry, South Carolina.

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS)

COUNTY OF BERKLEY)

FOR THE NINTH JUDICIAL CIRCUIT)

Tommie Weathers, Jr. #354256)

C.A. No.: 2013-CP-08-02209)

Applicant,)

**ORDER DENYING APPLICANT'S)
MOTION TO ALTER OR AMEND)**


vs.)

State of South Carolina)

Respondent.)

This matter came before the Court upon Applicant's motion under Rule 59 SCRPC to reconsider its order dated June 3, 2015. After reviewing and considering the Applicant's Motion, I hereby **DENY** the Applicant's Motion to Alter or Amend and confirm the previous Order of this Court. Pursuant to Rule 59(e), this matter was decided upon brief without oral arguments as any additional hearing would be redundant and unnecessary.

IT IS SO ORDERED.



Eugene C. Griffith, Jr
Circuit Court Judge

Newberry, South Carolina

July 10th, 2015

MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

2015 JUL 13 AM 9:04

FILED

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)
Tommie Weathers Jr.,)
Plaintiff(s),)
-vs-)
State of South Carolina,)
Defendant(s).)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.: 2013CP0802209
APPOINTMENT OF COUNSEL OR GAL
(Select one.)

ORDER
 AMENDED ORDER

TYPE OF CASE/PROCEEDING: (Check one.)

- Post-Conviction Relief (PCR)/habeas case Adoption Juvenile
 SVP case Custody and/or Visitation Abuse and Neglect
 Minor Name Change Other: Post Convict Rel 500

It appears Tommie Weathers Jr., who is a litigant in this case, is entitled to court-appointed counsel or a guardian ad litem.

It further appears that: (Select only one.)

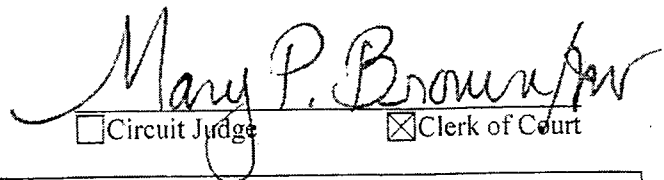
- counsel/guardian ad litem has not yet been appointed by the court; therefore, an appointment for counsel/guardian ad litem is necessary.
 counsel or a guardian ad litem was previously appointed by the court but has indicated either a possible conflict of interest, an entitlement to exemption, or other good cause warranting the appointment of new counsel or guardian ad litem based on:
 counsel was previously appointed by the court but has not indicated that the litigant has retained private counsel and is no longer entitled to appointed counsel.
 court appointed counsel has obtained . Esquire as substitute counsel pursuant to Rule 608(h)(2); provided, however, only the member who originally received the appointment and who sought substitute counsel shall receive credit.
 Other: .

Therefore, it is ordered that Lance Boozer hereby is appointed as (Select one.)

- counsel lead counsel (if capital PCR case) guardian ad litem
for the above-named person. Any counsel or GAL previously appointed is/are hereby relieved.
 (If Death Penalty PCR Case) It is further ordered that , Esquire, is hereby appointed as second counsel in this capital PCR case.

The clerk of court is directed to forward a copy of this order to all persons entitled to notice.

IT IS SO ORDERED
November 5, 2013


 Circuit Judge Clerk of Court

Plaintiff Attorney:

Lance Boozer	
1331 Park Street	
Columbia, SC 29201	

Defendant Attorney:

Ashleigh Rayanna Wilson	
PO Box 11549	
Columbia, SC 29211	

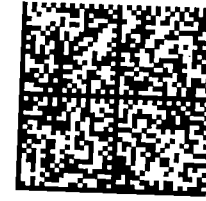
NOTICE: SC Supreme Court Order of September 29, 2006, requires appointed counsel entitled to payment from the Office of Indigent Defense (OID) to register the case online with OID within fifteen (15) days of this appointment at www.sccid.sc.gov, and further directs that reimbursement vouchers be submitted directly to SCCID and not to the trial judge or clerk of court. See SCCID website for further details.

CPU U.S. POSTAGE

PB 1P 000
3661375
FCMF

\$ 1.86⁰

MAILED JUL 31 2015
29169



THE BOOZER LAW FIRM, LLC

807 Gervais Street, Suite 203
Columbia, SC 29201

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