

# THE BOOZER LAW FIRM, LLC

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**Lance S. Boozer, Esq.\***

\*Also admitted in Florida

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July 30, 2015

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

RECEIVED

AUG 03 2015

The Honorable Liz Godard  
Clerk of Court  
P.O. Box 583  
Aiken, SC 29802-0583

S.C. SUPREME COURT

**RE: James Alston, #345846, v. State of South Carolina  
2012-CP-02-373**

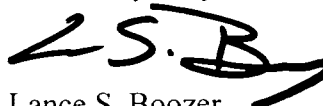
Dear Mr. Shearouse and Ms. Godard:

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. Alston in his PCR proceeding, I anticipate that the Office of Appellate Defense will represent Mr. Alston in this appeal.

Yours very truly,



Lance S. Boozer

cc: Daniel Gourley, AAG  
Office of Appellate Defense  
James Alston, #345846

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

**RECEIVED**

APPEAL FROM AIKEN COUNTY  
Court of Common Pleas

AUG 03 2015

The Honorable Tanya A. Gee, Circuit Court Judge **S.C. SUPREME COURT**

Case No. 2012-CP-02-373

James Alston, #345846 .....Petitioner,

v.

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

**NOTICE OF APPEAL**

The Petitioner appeals the Honorable Tanya A. Gee's Order dated June 30, 2015, denying post-conviction relief to the Petitioner. The Order was received by undersigned counsel on July 10, 2015. A copy of the Order on appeal is attached to this notice.

Respectfully submitted,



Lance S. Boozer  
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Tele: 803-608-5543

July 30, 2015

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

**RECEIVED**

APPEAL FROM AIKEN COUNTY  
Court of Common Pleas

AUG 03 2015

The Honorable Tanya A. Gee, Circuit Court Judge **S.C. SUPREME COURT**

Case No. 2012-CP-02-373

James Alston, #345846, .....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 Daniel Gourley, P.O. Box 11549, Columbia, SC 29211. I further certify that all parties required by Rule to be served have been served this 30<sup>th</sup> day of July, 2015.



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STATE OF SOUTH CAROLINA  
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS  
FOR THE SECOND JUDICIAL CIRCUIT

James Alston, # 345846,

2012-CP-02-0373

Applicant,

**ORDER OF DISMISSAL**

v.

State of South Carolina,

Respondent.

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on February 13, 2012. Respondent filed a return on June 14, 2012. An evidentiary hearing was convened on May 18, 2015, at the Aiken County Courthouse. Applicant was present at the hearing and was represented by Lance Boozer, 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 indicted at the June 2009 term of the Aiken County Grand Jury for murder, burglary in the first degree, armed robbery, and grand larceny. Additionally the Applicant was true bill indicted during the December 2010 term of the Aiken County Grand Jury for arson - second degree. He was represented by DeGrant Gibbons, Esquire. On April 21, 2011, the Applicant pled guilty as indicted before the Honorable Doyet A. Early, III. Judge Early sentenced Applicant to concurrent sentences of thirty-five years' imprisonment for murder, thirty-five years' imprisonment for burglary-first degree, thirty years' imprisonment for armed

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

10 day of July, 2015  
*Liz Godard*  
C.C.P. & O.B., Aiken County, S.C.  
*Deputy Clerk*

FILED *10 July 2015*  
*Liz Godard*  
C.C.P. & G.S.  
*Deputy Clerk*  
12:20PM

robbery, twenty-five years' imprisonment for arson-second degree, and ten years' imprisonment for grand larceny. All sentences were pursuant to negotiations and were run concurrently.

### **ALLEGATIONS**

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

1. Ineffective Assistance of Counsel;
  - a. Failing to File an appeal
  - b. Failing to investigate Alibi defense
2. Brady Violation
  - a. Statement of Defendant's girlfriend would help prove defendant was not present at the crime scene.

Applicant filed an amended application on December 9, 2013, alleging an additional claim of involuntary guilty plea. At the start of the evidentiary hearing, Applicant raised allegations of ineffective assistance of counsel, Brady violation, involuntary guilty plea, coercion by plea counsel, failure to request a Blair hearing, Due Process violation, conflict of interest, and Rule 5 violation. At the hearing, Applicant failed to present any arguments or testimony on the purported Rule 5 violation. Therefore, Applicant has abandoned the allegation of a Rule 5 violation.

### **SUMMARY OF TESTIMONY PRESENTED**

At the evidentiary hearing, Applicant testified on his own behalf. The State presented testimony from DeGrant Gibbons, Esquire (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, the PCR applications, and return.

During the evidentiary hearing, Applicant testified that he met with Plea Counsel approximately three to four times prior to his guilty plea, but he claims they did not review any evidence prior to his plea. Applicant stated that he told Plea Counsel to investigate Susan

Frame's two voluntary statements and that he gave Plea Counsel various witnesses to investigate. Applicant stated Plea Counsel never investigated these witnesses.

Applicant did not recall that his plea was negotiated. According to Applicant, he would not have pled guilty had he known that he was going to get a thirty-five year sentence. Applicant stated that he was not aware of the sentencing ranges prior to the plea and that he was confused during the plea. Applicant stated that he pled guilty to avoid the possibility of the death penalty and that he said "yes" to the plea judge's questions to get it over with it.

Applicant stated Plea Counsel failed to investigate potential alibi witnesses. Applicant stated that he told Plea Counsel about his two neighbors who could have testified to his whereabouts. Applicant stated that Plea Counsel went to his neighbors Megan and Mason's house but was told that they had moved away. Applicant further stated Ciara, his girlfriend, gave a statement that would show he was in Anderson at the time of the incident. Applicant stated Ciara was working at Pet Smart at the time.

Applicant stated the State had violated Brady/Rule 5 by failing to disclose Travonte Williams' statements, which implicated him. Applicant further stated he only heard the statement of his co-defendant, Keith Fitzgerald. Applicant stated that Plea Counsel failed to investigate into Susan Frame and Wesley Boland. Furthermore, Applicant stated that he would like to hear all recorded statements, including jail recordings.

Applicant alleged that his plea was involuntary. Applicant stated that he wanted a trial, but he talked to his sister who said she spoke with Plea Counsel. Applicant stated that his sister told him it was her understanding that Applicant would be facing the death penalty if he went to trial. Applicant stated that his sister asked him to plead guilty. Applicant further claimed that Plea Counsel's investigator told him that he would get the death penalty if he went to trial.

Applicant stated that investigator took him over to the sheriff's office and brought him McDonalds, but once the investigator learned Applicant was not going to give a statement, he took the food away.

Applicant stated that he knew that a co-defendant was also represented by a public defender who worked in the same office as Applicant's attorney. Applicant stated that he felt Plea Counsel did not do what he asked because of this purported conflict of interest. Applicant stated that Plea Counsel's representation dwindled over time. Applicant stated that he is upset that his codefendants got a preliminary hearing and he did not get a preliminary hearing.

Applicant admitted that he did not tell his attorney that he wanted to appeal. Applicant stated that he only found out about the appeal process when he returned to jail because Plea Counsel never told him that he could file an appeal.

Applicant stated that his attorney asked about his mental health. Applicant stated that he did not advise the plea judge about his mental health status because he wanted to get the plea done. Applicant stated that Plea Counsel never requested a Blair hearing. Applicant stated that he has a longstanding mental health history with PTSD. Applicant stated that he had a suicide attempt in jail. Applicant stated that he was not claiming that he was mentally incompetent but that his health history should have been researched.

Applicant stated that his Due Process rights were violated. Specifically, Applicant stated that evidence was given to his co-defendants and never turned over to him. Applicant stated he wanted the various statements from the witnesses and that he also wanted a copy of his own statement.

Following Applicant's testimony, Plea Counsel was called to testify. Plea Counsel stated that he met with Applicant approximately ten times. In addition to their meetings, Plea Counsel

stated that he wrote to Applicant and had multiple telephone conversations with him. Plea Counsel stated that he filed for and reviewed with Applicant all Brady and Rule 5 material. Plea Counsel stated Applicant saw all the evidence. According to Plea Counsel, the jail recordings were mostly personal conversations.

Plea Counsel stated that Applicant claimed that there was a witness at a park that could corroborate his alibi defense. However, Applicant could give no name or address to find this witness. Plea Counsel stated that he investigated into various other witnesses suggested by Applicant. Plea Counsel stated most of Applicant's witnesses were character witnesses that would either make things worse for Applicant or had nothing to add. Plea Counsel stated that his investigator talked to Applicant's neighbors. The neighbors told the investigator that they saw Applicant at his house with the co-defendant, which was not helpful. Plea Counsel stated that Applicant's girlfriend, Ciara, was a character witness and never stated that she was with Applicant.

Plea Counsel stated that he prepared for trial, but no favorable facts turned up for Applicant. Plea Counsel stated Applicant's co-defendant, Keith Fitzgerald, pled first and gave a detailed statement implicating Applicant. Plea Counsel stated that he told Applicant that he would probably receive a similar sentence if he pled guilty. Plea Counsel stated Applicant received the same thirty-five year sentence as his co-defendant. Plea Counsel stated that Applicant was never noticed for the death penalty and that he and Applicant discussed the possible sentence range months after the death penalty was taken off the table.

Plea Counsel stated that Applicant never requested him to file an appeal. Counsel further stated that he would have filed a notice of appeal had Applicant requested him to file one. Plea Counsel stated Applicant simply wanted to plead guilty and move on.

With regard to the alleged conflict of interest, Plea Counsel referred to Rule 1.10, SCRCF, which allows a Public Defenders office to represent multiple co-defendants so long as the teams representing the defendants are isolated. Plea Counsel stated that his office has three separate teams and that each team has separate support staffs. Plea Counsel stated that the teams are completely separate of each other.

Plea Counsel stated that he never had a problem with Applicant during his representation and that Applicant seemed to understand their conversations. Plea Counsel stated Applicant appeared to understand the information about his case and the judicial process. Plea Counsel stated Applicant seemed nervous during the plea.

Plea Counsel explained that he tells every client to be truthful and to answer the judge's questions honestly. Plea Counsel stated that he advises his clients that they should apologize to the victims if the judge asks if they would like to speak. Plea Counsel stated that he never told Applicant that his only choice was to plead guilty.

Plea Counsel stated that at one point, Applicant wanted to cooperate and that is why he was brought to the sheriff's office to give a statement. Plea Counsel stated his investigator most likely would have been present for the meeting. Plea Counsel stated it is not atypical to bring the client lunch. Plea Counsel stated Applicant did not cooperate and refused to give a statement.

Plea Counsel stated Applicant did request a preliminary hearing. Plea Counsel stated he attended co-defendant, Keith Fitzgerald's preliminary hearing. Plea Counsel stated it was their strategy not to follow up with the preliminary hearing because Applicant's case was highly publicized and the solicitor was still deciding on whether to pursue the death penalty. Plea Counsel stated that they did not want to "stir up" everything again by following through with the preliminary hearing when there was nothing to gain by pursuing it.

## 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. 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 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 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that 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 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." Cherry, 300 S.C. at 117, 385 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, 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).

*Plea Counsel was not ineffective for failing to file an appeal.*

Applicant first argues that plea counsel should have filed a notice of appeal his behalf. I disagree.

The United States Supreme Court has rejected a "bright-line rule that counsel must always consult with the defendant regarding an appeal." Roe v. Flores-Ortega, 528 U.S. 470, 480, 120 S. Ct. 1029, 1036, 145 L. Ed. 2d 985 (2000). Rather "counsel has a constitutionally imposed duty to consult with the defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing." Id. "[A]lthough 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.

Here, Applicant pled guilty, had a negotiated sentence, and never requested Plea Counsel to file an appeal. Although Applicant stated that he did not know he had a right to appeal, the record also reflects that the Applicant was advised of his right to appeal by the plea judge. (T. 16). Thus, there is no reason to think that a rational defendant would want to appeal or that the Applicant indicated he wanted to appeal.

*Investigation of alibi witness*

Applicant next argues that Plea Counsel should have done more to investigate into purported alibi witnesses. I disagree.

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.

Here, Plea Counsel credibly testified that the only purported alibi witness identified by Applicant was a person in the park. Plea Counsel stated that Applicant could not give a name or address for this person and counsel had no way to find that person. Plea Counsel credibly testified that other witnesses named by Applicant were merely character witnesses who were not beneficial to Applicant. Specifically, Plea Counsel stated Applicant's neighbors placed Applicant with his co-defendant. Additionally, Plea Counsel stated he investigated Ciara and she did not provide an alibi. 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 failed to present any of the purported alibi witnesses during his PCR evidentiary hearing. Accordingly, 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.

*Due Process/Brady Violation<sup>1</sup>*

Applicant next argues that he did not receive Due Process. This is because his attorney failed to show him all the Brady material. I disagree. Plea Counsel’s credibly testified that he reviewed all evidence with Applicant and that Applicant had complete access to everything Plea Counsel had in his file. Thus, 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 failed to present sufficient evidence to prove prejudice. See Palacio v. State, 333 S.C. 506, 513, 511 S.E.2d 62, 66 (1999) (holding that, since the contents of challenged documents were not presented at the PCR hearing, the Applicant could not demonstrate how the failure of counsel to obtain these documents prejudiced the defense); 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). Accordingly, this Court finds 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's Plea was voluntarily made.*

Applicant next argues that his plea was involuntary. I disagree. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama,

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<sup>1</sup> Applicant's claim of Due Process is more appropriately characterized as a Brady violation.

395 U.S. 238, 89 S. Ct. 1709, 23 L.Ed.2d 274 (1969). Defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 97 S. Ct. 1621, 52 L.Ed.2d 136 (1977)). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. United States, 519 F.2d 347 (4th Cir. 1975).

Applicant alleges that he felt pressured to plead guilty after speaking with his sister and investigator. However, the record reflects Applicant swore to the plea court that he was pleading guilty freely and voluntarily. Furthermore, Plea Counsel testified credibly regarding his preparation and advice concerning the case and the amount of time Applicant was facing. Applicant admitted his guilt to the plea court and apologized to the victim's family. Applicant was fully informed of the nature and consequences of his plea by his attorney and was advised further by the plea court. The plea court advised Applicant of the negotiations, the maximum possible punishment, and the specifics of each individual charge. The plea court also had an extensive colloquy with Applicant on whether he was satisfied with Plea Counsel. This Court finds the plea judge correctly found Applicant's plea was freely, voluntary, and intelligently made. To the extent that Applicant alleged his plea was involuntary due to the threat of the death penalty, our Supreme Court has found that pleading guilty to avoid a possibly greater sentence,

without more, does not render a guilty plea involuntary. Wicker v. State, 310 S.C. 8, 12, 425 S.E.2d 25, 27 (1992). Accordingly, I find that this allegation should be denied and dismissed with prejudice.

*Conflict of Interest.*

Applicant next argues that his Plea Counsel had a conflict of interest because another public defender represented Applicant's co-defendant. I disagree.

"An actual conflict of interest occurs where an attorney owes a duty to a party whose interests are adverse to the defendant's." Staggs v. State, 372 S.C. 549, 551, 643 S.E.2d 690, 692 (2007). The South Carolina Supreme Court has further stated that a conflict of interest occurs when "a defense attorney places himself in a situation inherently conducive to divided loyalties." Lomax v. State, 379 S.C. 93, 101, 665 S.E.2d 164, 168 (2008). Until a defendant shows that his counsel actively represented conflicting interests, he has not established the constitutional predicate for a claim of ineffective assistance of counsel arising from multiple representation. Langford v. State, 310 S.C. 357, 359, 426 S.E.2d 793, 795 (1993) (citing Cuyler v. Sullivan, 446 U.S. 335, 350 (1980)). "The mere possibility defense counsel may have a conflict of interest is insufficient to impugn a criminal conviction." State v. Gregory, 364 S.C. 150, 152-53, 612 S.E.2d 449, 450 (2005). "A defendant need not demonstrate prejudice if there is an actual conflict of interest." Id., 364 S.C. at 153, 612 S.E.2d at 450.

Here, Plea Counsel stated that the Aiken County Public Defender's office has separate teams of attorneys, paralegals, and support staff. Plea Counsel stated each co-defendant was assigned to a separate team, each team is separated from each other, and information is not shared between the two teams.

I find that no actual conflict of interest occurred by the dual representation of co-defendants by the Aiken County Public Defender's office. See Rule 407, SCACR, Rule 1.10, SCRPC. The mere possibility of a conflict is insufficient to impugn a criminal conviction. Gregory, 364 S.C at 152-53, 612 S.E.2d at 450 (2009). Applicant failed to present any credible evidence that an actual conflict of interest occurred.

#### Blair Hearing

Finally, Applicant argues that Plea Counsel should have requested a Blair hearing. I disagree.

In determining if counsel is ineffective for failing to request a competency hearing, an applicant must show that a reasonable probability exists that he would be found incompetent at the time of his trial or plea. Jeter v. State, 308 S.C. 230, 417 S.E.2d 594 (1992). Counsel may reasonably rely on his own perceptions in deciding if a client is competent to stand trial. Id. Here, Plea Counsel credibly testified that Applicant was able to communicate and participate in his defense. Moreover, Applicant himself stated that he suffered from no competency issues both and during the evidentiary hearing. Thus, 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.

#### **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 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.

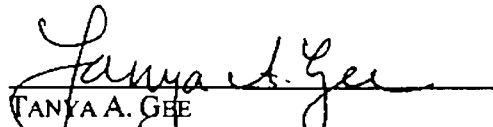
This Court notes that that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

### IT IS THEREFORE ORDERED:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. The Applicant is remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 30<sup>th</sup> day of June, 2015.

Columbia, South Carolina

  
TANYA A. GEE  
Presiding Judge  
Second Judicial Circuit

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
 COUNTY OF AIKEN ) Second JUDICIAL CIRCUIT  
 James Levon Alston, )  
 Plaintiff(s), ) CASE NO.: 2012CP0200373  
 -vs- ) APPOINTMENT OF COUNSEL OR GAL  
 South Carolina State Of, ) (Select one.)  
 Defendant(s). )  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 James Levon Alston, 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 Lance Boozer, 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 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  
 March 11, 2013

*Liz Stoklandby*  
 Circuit Judge     Clerk of Court

3-11-2013  
*Liz Stoklandby*  
 J.C.P. & O.S.  
*Amrita Kneepfle*  
 Deputy Clerk

Plaintiff Attorney:

Lance Boozer	James Levon Alston
1331 Park Street	Lee Ci Ker 2245
Columbia, SC 29201	990 Wisacky Hwy
	Bishopville, SC 29010

Defendant Attorney:

Mary Shannon Williams	
PO Box 11549	
Post-Conviction Relief Section	
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](http://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.

CP20 (08/08)  
 SCCA/267 (03/07)