

# THE BOOZER LAW FIRM, LLC

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Lance S. Boozer, Esq.\*

\*Also admitted in Florida

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August 7, 2015

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

**RECEIVED**

AUG 10 2015

The Honorable James C. Campbell  
Clerk, Sumter County  
215 N. Harvin Street  
Sumter, SC 29150

**S.C. SUPREME COURT**

**RE: Maurice Glover, #302711, v. State of South Carolina  
2014-CP-43-2204**

Dear Mr. Shearouse and Mr. Campbell:

Enclosed for filing is a Notice of Appeal in which Applicant was granted a belated *White* 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. Glover in his PCR proceeding, I anticipate that the Office of Appellate Defense will represent Mr. Glover in this appeal.

Yours very truly,



Lance S. Boozer

Enclosure

cc: Daniel Gourley, AAG  
Loriene French, OAD  
Maurice Glover, #302711

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM SUMTER COUNTY  
Court of Common Pleas

**RECEIVED**

AUG 10 2015

The Honorable George C. James, Jr., Circuit Court Judge

**S.C. SUPREME COURT**

Case No. 14-CP-43-2204

Maurice Glover, #302711,.....Petitioner,

v.

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

**NOTICE OF APPEAL**

Now comes the Petitioner, by and through his undersigned and appointed Attorney, stating Petitioner's Notice of Appeal should be heard pursuant to the Final Order of the Honorable George C. James, Jr., which granted a *White* appeal of the Applicant's guilty plea entered on July 21, 2014, before the Honorable R. Ferrell Cothran, Jr. The Final Order denied Applicant's remaining PCR allegations. Undersigned counsel for Petitioner received written notice of the Final Order granting a *White* appeal on July 14, 2015. A copy of the Final Order is attached herewith.

Respectfully submitted,



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807 Gervais Street, Suite 203  
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Tele: 803-608-5543

Columbia, South Carolina  
August 7, 2015

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM SUMTER COUNTY  
Court of Common Pleas

**RECEIVED**

The Honorable George C. James, Jr., Circuit Court Judge

AUG 10 2015

Case No. 14-CP-43-2204

**S.C. SUPREME COURT**

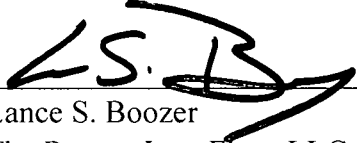
Maurice Glover, #302711, .....Petitioner,

v.

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

**PROOF OF SERVICE**

I, Lance S. Boozer, 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 7th day of August, 2015.

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

STATE OF SOUTH CAROLINA )  
COUNTY OF SUMTER )  
Maurice Glover, #302711, )  
Applicant, )  
v. )  
State of South Carolina, )  
Respondent. )

IN THE COURT OF COMMON PLEAS  
FOR THE THIRD JUDICIAL CIRCUIT

2014-CP-43-2204

**ORDER OF DISMISSAL**  
CERTIFIED TRUE COPY  
OF ORIGINAL FILED  
*[Signature]*  
DEPUTY CLERK OF COURT  
SUMTER COUNTY  
SOUTH CAROLINA

JAMES C. CARPPELL  
CLERK OF COURT  
SUMTER COUNTY, S.C.

2015 JUL -9 PM 1:21

RECORDED

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on October 14, 2014. Respondent made its return on January 6, 2015. An evidentiary hearing into the matter was convened on April 13, 2015, at the Sumter 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 the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. The Applicant was true bill indicted at the April 2013 term of the Sumter County Grand Jury for forgery less than \$10,000. Harry Devoe, Esquire represented Applicant. On July 21, 2014, Applicant pled guilty as indicted before the Honorable R. Ferrell Cothran, Jr. Judge Cothran sentenced Applicant to a ten year term of imprisonment. Applicant did not appeal his guilty plea or sentence.

*[Handwritten signature]*

## ALLEGATIONS

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

1. Subject Matter Jurisdiction
  - a. "The court lack subject matter jurisdiction to sentence. The indictment failed to identify a bonified (sic) victim of forgery and violated the confrontation clause of the six amendment."
2. Ineffective Assistance of Counsel
3. Sixth Amendment violation under the confrontation clause

During the evidentiary hearing, Applicant stated that he no longer wanted to pursue his allegations of lack of subject matter jurisdiction and 6<sup>th</sup> amendment violation allegations.

### SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. The State presented testimony from Harry Devoe, Esquire (hereinafter "Plea Counsel"). This Court also had before it a copy of the plea transcript, the Sumter County Clerk of Court records, Applicant's South Carolina Department of Correction records, the PCR application, and return.

Prior to the start of the evidentiary hearing, PCR Counsel, Lance Boozer, was advised of the fact that Applicant filed a grievance against this Court arising from a bond hearing over which this Court had previously presided. The grievance was dismissed by the Office of Disciplinary Counsel. PCR Counsel stated that he had discussed this issue with Applicant prior to the start of the evidentiary hearing. PCR Counsel stated that Applicant had no objection to this Court presiding over his PCR evidentiary hearing.

During the evidentiary hearing, Applicant testified that he never met with Plea Counsel prior to his guilty plea. Applicant stated that he never reviewed any discovery material, discussed any possible defense, nor did he give Plea Counsel any leads or witnesses to

investigate on his behalf. Applicant stated Plea Counsel had no faith in the case. However, Applicant recalled telling the plea judge that he was satisfied with Plea Counsel's services.

Applicant stated that he originally was appointed Deborah Butcher, Esquire. Applicant stated he had some type of issue with Deborah Butcher and then obtained Plea Counsel to represent him for a bond hearing. Applicant stated that the Honorable R. Ferrell Cothran, Jr. denied his bond.

Applicant stated that prior to his bond hearing, the State offered a ten year plea offer. Applicant stated that the State offered a plea deal of zero to ten years with a cap of ten years after his bond was denied. Applicant stated that he accepted the plea offer of zero to ten years with a cap of ten years. Applicant stated that the zero to ten year offer gives the plea judge some discretion in sentencing. However, Applicant recalled the plea judge advising him that the State was recommending a ten year sentence. Applicant further stated that he received a ten year sentence.

Following Applicant's testimony, Plea Counsel was called to testify. Plea Counsel stated that Deborah Butcher met with him and asked that he represent Applicant at his bond hearing. Plea Counsel stated his representation evolved due to Applicant's dissatisfaction with Deborah Butcher. Plea Counsel stated that he had approximately six meetings with Applicant. Plea Counsel stated that the solicitor met with him and offered a plea of ten years. Plea Counsel stated that it was a straight ten year offer.

Plea Counsel stated that he met with Applicant the Sunday before the plea for approximately three hours. Plea Counsel stated that they discussed the plea offer during their meeting. Plea Counsel stated Applicant wanted to accept the plea offer. Plea Counsel stated that he advised Applicant that Judge Cothran would most likely follow the recommendation and

sentence him to ten years. Plea Counsel stated the plea judge could have given Applicant less than ten years. However, Applicant was already receiving a benefit due to the State dropping twelve forgery charges. Plea Counsel noted that Applicant was originally indicted for twenty five forgery charges. Plea Counsel stated that a zero to ten year plea offer was never on the table. Plea Counsel stated the plea judge could have given Applicant less than ten years.

Plea Counsel stated Applicant wanted to receive something less than ten years, but Applicant was not appreciating the gravity of the charges against him. Plea Counsel stated that he filed a motion for reconsideration. Plea Counsel stated that he did not file an appeal because there were no appealable issues. Plea Counsel stated the plea judge followed the State's recommendation and sentenced Applicant to ten years. Plea Counsel stated that Applicant requested him to file an appeal. Plea Counsel stated there was nothing to gain by filing an appeal and he did not file an appeal. Plea Counsel stated that he was prepared for trial had Applicant wanted to proceed to trial. Plea Counsel stated it would have been his trial strategy to argue that Applicant did not commit the crimes and that they were committed by other people.

#### **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, as to the offer made by the State, this Court finds Plea Counsel's testimony credible while Applicant's 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 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).

*Ineffective Assistance of Counsel for advising him that the State was offering a zero to ten year plea offer.*

This Court finds Applicant's allegation that he received ineffective assistance of counsel because Plea Counsel allegedly advised him that the State was offering a zero to ten year plea offer is meritless. A defendant who pleads guilty on the advice of counsel may collaterally attack the voluntariness of his plea only by showing that (1) counsel was ineffective and that (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty. Wolfe v. State, 326 S.C. 158, 485 S.E.2d 367 (1997). When considering an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether information conveyed by the plea judge cured any possible error made by counsel. Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998).

In the instant case, Applicant testified that prior trial/plea counsel, Deborah Butcher, told him the State's offer was ten years, but that Plea Counsel told him the new offer was zero to ten years. This Court finds Applicant's testimony that he was under the impression that the State was offering a zero to ten year plea deal not credible. This Court finds Plea Counsel credibly testified that the plea offer received from the State and relayed to the Applicant was a ten year recommendation. Plea Counsel stated that there was never a zero to ten year plea offer, and the Court believes Plea Counsel. This Court further finds credible Plea Counsel's testimony that Applicant told Plea Counsel he thought Judge Cothran would give him less than ten years, but that Plea Counsel told Applicant that it was his opinion that Judge Cothran would give Applicant ten years. 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.



This Court notes the colloquy between the plea judge and Applicant reveals the plea judge advising Applicant of the maximum penalties for each of his crimes and that he does not have to follow the State's recommendation of ten years. (Pl. p. 6 line 23—p. 7 line 2). Based on the foregoing, 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. This Court finds Applicant's allegation should be denied and dismissed with prejudice.

*Ineffective assistance of counsel for failure to file an appeal from his guilty plea.*

After hearing the testimony of both the Applicant and Plea Counsel, this Court finds the Applicant is entitled to a direct appeal pursuant to White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974). This Court notes, Plea Counsel admitted that Applicant told him that he wanted to appeal his guilty plea. However, Plea Counsel stated that he did not file a notice of appeal because he did not believe there were any meritorious grounds for an appeal. Plea Counsel opined that there was nothing to gain from an appeal as Applicant received the recommended sentence and twelve additional charges were *nol prossed* pursuant to the plea.

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 (2000). When a criminal defendant requests an appeal, but counsel fails to file an appeal, counsel is deemed deficient. Flemming v. State, 309 S.C 380, 381, 731 S.E.2d 889 (2012). In such a case, the defendant is entitled to a belated appeal without showing the appeal would likely have had merit. Id.

In White v. State, 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.

Based on the forgoing, this Court finds that Applicant did not knowingly and voluntarily waive his right to appeal. This Court concludes the Applicant is entitled to a belated review of his plea pursuant to White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974).

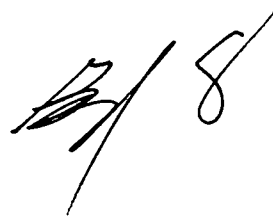
#### **ALL OTHER ALLEGATIONS**

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 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-


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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 Applicant is granted an appeal pursuant to White v. State. Within thirty (30) days of receipt of this Order, counsel for the Applicant must file a Notice of Appeal to secure the appropriate review of the Applicant's convictions;
2. All other claims raised in the application for Post-Conviction Relief must be denied and dismissed with prejudice; and
3. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 23 day of June, 2015.

  
\_\_\_\_\_  
GEORGE C. JAMES, JR.  
Presiding Judge  
Third Judicial Circuit

  
\_\_\_\_\_, South Carolina



STATE OF SOUTH CAROLINA  
COUNTY OF

RECORDED

2014 DEC - 1

PM 1:56

IN THE COURT OF (Select one.)  
COMMON PLEAS  FAMILY COURT

Maurice Glover

JAMES C. CAMPBELL  
CLERK OF COURT  
SUMTER COUNTY

JUDICIAL CIRCUIT

CASE NO.: 2014-CP-43-2204

Plaintiff(s),

-vs-

APPOINTMENT OF COUNSEL OR GAL

(Select one.)

State of South Carolina

ORDER

Defendant(s).

AMENDED ORDER

CERTIFIED TRUE COPY  
OF ORIGINAL FILE

DEPUTY CLERK OF COURT  
SOUTH CAROLINA

TYPE OF CASE/PROCEEDING: (Check one.)

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

It appears that <sup>Maurice</sup> Glover, 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: Lance Brozer  
1331 Park St.  
Columbia, SC 29201

- counsel
- lead counsel (if capital PCR case)
- guardian ad litem

Therefore, it is ordered that Brozer, hereby is appointed as (Select one.)  
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 THIS 1<sup>st</sup> DAY OF Dec, 2014.