

## A. J. Z. Law Firm, LLC

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Mailing Address  
P.O. Box 11961  
Columbia, SC 29211

Phone: (803) 400-1918  
Toll Free: (844)-501-1661  
Fax: (803) 403-8005

Physical Address  
2003 Lincoln Street  
Columbia, South Carolina 29201

**Aimee J. Zmroczek, Attorney**  
[aimee@ajzlawfirm.com](mailto:aimee@ajzlawfirm.com)

Christina Metze, paralegal  
[christina@ajzlawfirm.com](mailto:christina@ajzlawfirm.com)

**Bridget Brown, Attorney**  
[bridget@ajzlawfirm.com](mailto:bridget@ajzlawfirm.com)

August 11, 2015

**RECEIVED**

AUG 13 2015

The Supreme Court of South Carolina  
ATTN: Daniel Shearouse, Clerk of Court  
PO Box 11330  
Columbia, SC 29211

**S.C. SUPREME COURT**

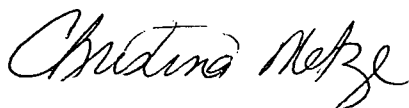
RE : Matthew Atkinson v. State of SC  
2014CP0600224

Dear Mr. Shearouse:

Enclosed please find a Notice of Appeal along with a Certificate of Service and a copy of the Order being appealed. Also enclosed is a copy which I request you stamp as "filed" and return to me in the enclosed stamped envelope.

Thank you for your assistance in this matter.

Yours very truly,



Christina Metze  
Paralegal

cc: Daniel F. Gourley, II  
Rhonda McElveen, Barnwell County Clerk of Court  
Matthew Atkinson

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM BARNWELL COUNTY  
Court of Common Pleas

Tanya Gee, Circuit Court Judge

Case No.: 2014CP0600224

RECEIVED

AUG 13 2015

S.C. SUPREME COURT

State of South Carolina,

Respondent,

v.

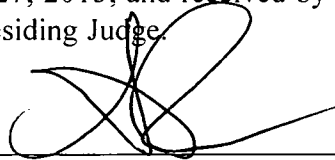
Matthew Atkinson,

Appellant.

NOTICE OF APPEAL

Matthew Atkinson, #350329, appeals the Order of Dismissal denying his Application for Post-Conviction Relief filed July 2, 2015, and received by counsel on July 9, 2015, and the Order Denying Rule 59(E) Motion filed July 27, 2015, and received by counsel on July 30, 2015, issued by the Honorable Tanya Gee, presiding Judge.

August 11, 2015



Aimee J. Zmroczek, Esq.  
P.O. Box 11961  
Columbia, South Carolina 29211  
Telephone: 803-400-1918  
Fax: 803-403-8005  
ajzlawfirm@gmail.com  
Attorney for Appellant

Other Counsel of Record:  
Daniel G. Gourley, II  
PO Box 11549  
Columbia, SC 29211  
Counsel for Respondent

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

**RECEIVED**

APPEAL FROM BARNWELL COUNTY  
Court of Common Pleas

AUG 13 2015

Tanya Gee, Circuit Court Judge

**S.C. SUPREME COURT**

Case No.: 2014CP0600224

State of South Carolina,

Respondent,

v.

Matthew Atkinson,


Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Daniel Gourley by depositing a copy of it in the United States Mail, postage prepaid, on August 11, 2015, addressed to his office at:

PO Box 11549  
Columbia, SC 29211

August 11, 2015

  
Aimée J. Zmroczek, Esq.  
P.O. Box 11961  
Columbia, South Carolina 29211  
Telephone: 803-400-1918  
Fax: 803-403-8005  
ajzlawfirm@gmail.com  
Attorney for Appellant

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

JUDGMENT IN A CIVIL CASE  
CASE NO: 2014CP0600224

Matthew Atkinson vs. South Carolina State of

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.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j) SCRPC;  Bankruptcy:  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other: \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other: \_\_\_\_\_

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order;  Statement of Judgment by the Court:

**Order of Dismissal**

Dated at Barnwell, South Carolina, this 25th day of June, 2015.

Court Reporter:

S//Tanya Gee

PRESIDING JUDGE - Tanya Gee

This judgment was entered on the 2nd day of July, 2015, and a copy mailed first class this 2nd day of July, 2015, to attorneys of record or to parties (when appearing pro se) as follows:

Aimee Jendrzewski Zmroczek A.J.Z. Law Firm,  
LLC PO Box 11961 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)

Constance B. Mansfield

Constance B. Mansfield – Deputy Clerk of Court

STATE OF SOUTH CAROLINA )  
 COUNTY OF BARNWELL )  
 Matthew Atkinson, # 350329, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 FOR THE SECOND JUDICIAL CIRCUIT

2014-CP-06-224

FILED FOR RECORD  
 2015 JUL -2 PM 2:23  
 HONORABLE D. MCELVEEN  
 CLERK OF COURT  
 BARNWELL COUNTY, S.C.

**ORDER OF DISMISSAL**

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on June 9, 2014. Respondent made its return on September 25, 2014. An evidentiary hearing into the matter was convened on May 20, 2015, at the Aiken County Courthouse. Applicant was present at the hearing and was represented by Aimee Zmroczek, 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 Barnwell County Clerk of Court. The Applicant was true bill indicted at the April 2012 term of the Barnwell County Grand Jury for resisting arrest (2012-GS-06-00107). Additionally, the Applicant has waived presentment of his indictment for assault and battery of a high and aggravated nature (2012-GS-06-00106). Laura McCann, Esquire represented Applicant. On April 3, 2012, Applicant pled guilty before the Honorable Doyet A. Early, III. Judge Early sentenced Applicant pursuant to a recommendation by the State to twelve years imprisonment for assault and battery

FILED 6.29.15  
 File Stamp  
 CANCELLED  
 CLERK OF COURT  
 Date 6/29/15  
 Deputy Clerk

of a high and aggravated nature and a ten-year term of imprisonment for resisting arrest; all sentences were to run concurrently. The Applicant did not appeal his guilty plea or sentence.

### **ALLEGATIONS**

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

1. Ineffective assistance of counsel
  - a. No request was made for a preliminary hearing
  - b. Counsel advice was not within the range of competence demanded of attorneys as case was pled 94 days after client was arrested when client was under belief that he was appearing in court for a bond reduction.
  - c. Plea was not entered with full understanding of consequences, charges had not been explained to Applicant and Applicant did not understand the charges pending against him.
  - d. Defendant's guilty plea was not knowingly and voluntarily made.
  - e. Counsel's failure to investigate viable defenses and veracity of victim and witnesses deprived defendant of insisting on his right to a jury trial. Counsel failed to pursue claims by applicant that victim received injuries prior to this alleged assault.
  - f. Counsel's failure to establish competency to enter a plea or stand trial.

### **SUMMARY OF TESTIMONY PRESENTED**

At the evidentiary hearing, Applicant testified on his own behalf. Additionally, Applicant presented testimony from Carol Atkinson (hereinafter "Mother") and Laura McCann, Esquire (hereinafter "Plea Counsel"). This Court also had before it a copy of the plea transcript, the Barnwell County Clerk of Court records, Applicant's South Carolina Department of Correction records, the PCR application, and return.

During the evidentiary hearing, Applicant testified that he met with Plea Counsel approximately two to three times prior to his guilty plea. Applicant recalled reviewing some photographs with Plea Counsel prior to his plea. Applicant did not recall giving Plea Counsel

any leads or witnesses to investigate on his behalf. Applicant recalled waiving his constitutional rights during his plea. Applicant recalled telling the plea judge that no one was promising or threatening him in order to get him to plead guilty. Applicant recalled telling the plea court that he wanted to plead guilty and he was doing so freely and voluntarily. However, Applicant claimed that Plea Counsel made him sign the plea sheet. Applicant admitted that he lied to the plea judge when he stated that he did not feel threatened. Applicant further claimed that he responded "yes" to all questions. Applicant claimed that he wanted to proceed to trial, but Plea Counsel never advised him of his right to proceed to trial. Applicant stated that he never asked Plea Counsel any questions. Applicant could not recall whether he asked Plea Counsel for a preliminary hearing.

Applicant stated he met with doctors in Barnwell County Jail and was prescribed medications for sleeping and nerves. Applicant stated that he had to quit taking his medications in order for the South Carolina Department of Corrections to transport him. Applicant stated he only began taking medication once he was arrested.

Applicant admitted to slapping victim, but claimed victim already had two black eyes. Applicant explained that victim was beat up by family members located in Tennessee. Applicant stated victim's aunt jumped on victim when victim tried to retrieve her son from aunt's residence in Tennessee. However, Applicant recalled that a witness to the assault called 911.

Applicant stated Plea Counsel initially told him he would only receive three years, but at following meeting, Plea Counsel told him he would receive twenty years. At the final meeting, Plea Counsel told him he was going to receive the maximum sentence. Applicant stated that he was under the impression that he was going to court for a bond reduction, but ended up pleading guilty. Applicant stated he pled guilty because he was going to be the first person up on the trial

docket for the following week. According to the Applicant, he was fearful of the maximum sentence and pled guilty to avoid a harsher punishment.

Following Applicant's testimony, Mother was called to testify. Mother stated that Applicant was her son. Mother stated that Applicant lived with her most his life. Mother explained that Applicant was not able to live on his own. Mother stated Applicant has been taking medication for A.D.D. and A.D.H.D since he was a teenager. However, Applicant would not take his medication.

Mother stated she never told Plea Counsel about Applicant's mental conditions. Mother stated Plea Counsel never asked and she assumed that Plea Counsel would know about Applicant's mental condition. Mother stated that her mental state during this process was "pretty bad."

Mother stated she saw victim on Christmas day. Mother stated victim had two black. Mother stated victim drinks, does drugs, and is abusive to Applicant. Mother stated she did not tell Plea Counsel about victim's violent history because she assumed Counsel knew about it. Mother stated that she was not aware of Applicant's violent history. Specifically, Mother stated that she did not know Applicant had two prior assault and battery charges in 1990 and 2000. Mother agreed that assault and battery is a violent offense.

Mother stated she was not present for every meeting between Plea Counsel and Applicant. Mother stated she was only present during their last meeting moments before Applicant pled guilty. Mother stated she did not want Applicant to plead guilty and begged him not to do so. Mother admitted that during the guilty plea, she yelled out in the courtroom that Applicant did not understand what he was doing.

Following Mother's testimony, Plea Counsel was called to testify. Plea Counsel stated she was appointed to represent Applicant on January 10, 2012. Plea Counsel stated she filed for and reviewed all Brady and Rule 5 material with Applicant. Plea Counsel stated she reviewed the elements of the charges with Applicant prior to his plea. Plea Counsel stated she had multiple discussions with Applicant, reviewed discovery, and Applicant never denied any of the discovery material. Plea Counsel stated that she reviewed Applicant's constitutional rights with him. Plea Counsel stated she met with Solicitor's office to try to work out plea deals. Plea Counsel stated Mother was in a different frame of mind and did not want Applicant to plead guilty.

Plea Counsel acknowledged that Applicant pled guilty ninety-four days after she was appointed to represent him. Plea Counsel stated that she did not need additional time. Plea Counsel stated that Applicant never denied anything that was found in discovery nor did he dispute the charges. Plea Counsel stated she had previously represented Applicant on two other, unrelated domestic violent charges. Plea Counsel stated she would have been prepared to try the case had Applicant wanted a jury trial.

Plea Counsel stated assault and battery charges typically revolve around credibility of the either victim or defendant. Plea Counsel stated she knew she could attack the credibility of the victim, but there was an additional witness. Furthermore, Applicant had an additional charge of assaulting a police officer, which Applicant did not dispute. Plea Counsel stated this was a small town and everyone knew everyone. Plea Counsel stated the officers would have been aware of Applicant's prior history. Plea Counsel stated that she offered to play the officer's chest cam video, but Applicant did not want to see it.

Plea Counsel stated that she had no concerns about Applicant's mental health. Plea Counsel stated Applicant only suffered from alcohol and drug abuse. Plea Counsel stated that she had many talks with Mother and none of Applicant's prior mental history was ever brought up. Plea Counsel stated Applicant used drugs excessively for ten years. Plea Counsel stated during her representation, Applicant had no problem communicating and keeping his voice up. Plea Counsel stated that when Applicant pled guilty he went to Lieber Correctional institution because he was struggling with his anger and suffering from depression. Plea Counsel stated she was not surprised by this chain of events as Applicant was now incarcerated.

Plea Counsel stated Applicant grew up in a troubled home. Specifically, Plea Counsel stated Applicant's parents would drink and fight. Plea Counsel stated Applicant's father would beat Applicant's mother whenever he drank alcohol.

#### **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 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 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 Plea Counsel for failing to request a preliminary hearing.*

This Court finds Applicant's allegation that he received ineffective assistance of counsel for Plea Counsel's failure to request a preliminary hearing to be meritless. This Court notes there is no constitutional right to a preliminary hearing. State v. Keenan, 278 S.C. 361, 296 S.E.2d 676 (1982). Furthermore, this Court finds Petitioner has failed to present any credible evidence that he was entitled to a preliminary hearing under state law, that he requested such a hearing, or that

he was prejudiced because he did not receive such a hearing. Additionally, this Court would note that Petitioner's statements at his guilty plea proceedings are inconsistent with the continued assertion of his right to a preliminary hearing. See Bonnette v. State, 277 S.C. 17, 18– 19, 282 S.E.2d 597, 598 (1981) ("We find appellant's plea negotiations and silence before the trial court concerning his desire for a preliminary hearing constitute evidence of waiver." )

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 assault and battery of a high and aggravated nature and resisting arrest. Accordingly, this Court finds Applicant's allegation is denied and dismissed with prejudice.

*Ineffective assistance of counsel for allowing Applicant to plead guilty having only represented him for ninety-four days.*

This Court finds Applicant's allegation that he received ineffective assistance of counsel due to Plea Counsel allowing Applicant to plead guilty after having represented him for ninety four days to be meritless. The brevity of time spent in consultation with a defendant alone is not indicative of inadequate trial preparation. Harris v. State, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008). This Court notes Plea Counsel acknowledged that Applicant pled guilty ninety four days after her appointment. Plea Counsel stated that she did not need additional time. Plea Counsel stated that Applicant never denied anything that was found in discovery nor did he dispute the charges. Plea Counsel stated she had previously represented Applicant on two other unrelated domestic violence charges. Plea Counsel stated she would have been prepared to try the case

had Applicant wanted a jury trial. 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.

Additionally, this Court notes Applicant did not offer any evidence of how additional preparation or communication would have resulted in a different outcome. See Jackson v. State, 329 S.C. 345, 353–54, 495 S.E.2d 768, 772 (1998) (where PCR applicant failed to present any evidence of what counsel could have discovered or what other defenses he would have requested counsel pursue had counsel more fully prepared for the trial, applicant failed to show his counsel's lack of preparation prejudiced him); Skeen v. State, 325 S.C. 210, 214–15, 481 S.E.2d 129, 132 (1997) (finding applicant was not entitled to post-conviction relief where there was no evidence presented at the PCR hearing to show how additional preparation would have had any possible effect on the result of the trial). 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 notes Applicant knowingly and intelligently pled guilty to assault and battery of a high and aggravated nature and resisting arrest. Accordingly, this Court finds Applicant's allegation is denied and dismissed with prejudice.

*Ineffective assistance of counsel for failing to review the consequences of his plea.*

This Court finds Applicant's allegation that he received ineffective assistance of counsel for Plea Counsel's failure to review the consequences of his plea to be meritless. Entering a guilty plea results in a waiver of several constitutional rights; therefore, the Due Process Clause requires that guilty pleas be entered into voluntarily, knowingly, and intelligently by defendants. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). In order for a guilty

plea to be knowing and voluntary, a defendant must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived. Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991); State v. Hazel, 275 S.C. 392, 271 S.E.2d 602 (1980). When determining issues relating to guilty pleas, the court can consider the entire record, including the transcript of the guilty plea, and the evidence presented at the PCR hearing. Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

In the instant case, the guilty plea record alone reveals that Applicant was well aware of the charges he faced, the crucial elements of the offenses, the maximum and mandatory minimum penalty and, the nature of his constitutional rights being waived. The record also reflects a factual basis for the plea. This Court notes Plea Counsel credibly testified that she reviewed the elements of the charges, the Applicant's constitutional rights, and discovery material with Applicant prior to his plea.

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 assault and battery of a high and aggravated nature and resisting arrest. Accordingly, this Court finds Applicant's allegation is denied and dismissed with prejudice.

*Ineffective assistance of counsel for failing to investigate defenses.*

This Court finds meritless Applicant's allegation that he received ineffective assistance of counsel due to Plea Counsel's failure to investigate defenses. This Court finds Plea Counsel

credibly testified that she was fully prepared to try the case had Applicant wanted to proceed to trial. Plea Counsel met with Applicant prior to his plea and reviewed the discovery material. At no point in time did Applicant dispute the discovery material nor did he deny committing the crimes. 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, this Court notes Applicant's bare assertion that Plea Counsel failed to investigate possible defenses - without more - is insufficient to meet his burden of proof. See Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998) ("failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result."). In the instant case, 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 assault and battery of a high and aggravated nature and resisting arrest. Based off of the foregoing, this Court finds Applicant's allegation is denied and dismissed with prejudice.

*Ineffective assistance of counsel for failing to request a Blair hearing regarding Applicant's competency to plead guilty.*

This Court finds Applicant's allegation that he received ineffective assistance of counsel due to Plea Counsel's failure to request a Blair hearing prior to his plea to be meritless. 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. This Court

finds Plea Counsel credibly testified that Applicant was able to communicate and participate in his defense. Plea Counsel stated Applicant was vocal and alert during their meetings. Plea Counsel stated she was aware of Applicant's history of both drug and alcohol abuse, but she did not have any concerns about Applicant's mental competency. Notably, Applicant himself stated that he suffered from no competency issues during his plea. (Pl. tr. p. 15 line 11—p. 16 line 14). 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, this Court finds Applicant has failed to present any credible testimony or evidence in support of his allegation that he was mentally incompetent at the time of his plea. During the PCR hearing Applicant himself stated he only suffered from lack of sleep and depression. Additionally, Mother stated that Applicant suffered from A.D.D. and A.D.H.D as a child. Notably, Mother testified that she did not express any of her concerns about Applicant's competency to Plea Counsel during their meetings or prior to his plea. This Court notes Applicant's exhibit # 1 does not reveal any kind of findings that Applicant suffered from mental illness. To the contrary, Applicant's exhibit #1 is merely a compilation of medical records from Applicant's health history from 1991 to 2011. The list of injuries noted in the medical records involving various ailments including wrist sprains and a sprained shoulder. 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 notes Applicant knowingly and intelligently pled guilty to assault and battery of a high and aggravated nature and resisting arrest. Accordingly, this Court finds Applicant's allegation is denied and dismissed with prejudice.

### **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.

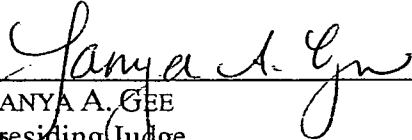
This Court notes that that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right 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. 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 25<sup>th</sup> day of June, 2015.

Columbia, South Carolina

  
TANYA A. GEE  
Presiding Judge  
Second Judicial Circuit

STATE OF SOUTH CAROLINA  
COUNTY OF BARNWELL  
IN THE COURT OF COMMON PLEAS  
Matthew Atkinson, #350329

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2014-CP-06-00224  
State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: \_\_\_\_\_

Attorney for :  Plaintiff  Defendant or  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.
- ACTION DISMISSED (CHECK REASON):  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other Dismissed without prejudice \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):  Rule 40(j), SCRPC;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):  Affirmed;  Reversed;  Remanded;  Other \_\_\_\_\_

FILED FOR RECORD  
2015 JUL 27 PM 3:54  
CLERK OF COURT  
BARNWELL COUNTY, S.C.

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 : Applicant's Motion for Reconsideration is Denied.

INFORMATION FOR THE PUBLIC 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
		\$
		\$
		\$

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 *James A. G...* Judge Code 2756 Date 7/21/2015

For Clerk of Court Office Use Only

This judgment was entered on the 27<sup>th</sup> day of July, 20 15 and a copy mailed first class or placed in the appropriate attorney's box on this 28<sup>th</sup> day of July, 20 15 to attorneys of record or to parties (when appearing pro se) as follows:

Aimee J. Zmroczek  
PO Box 11961, Columbia, SC 29211

Daniel F. Gourley, II  
PO Box 11549  
Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter \_\_\_\_\_

Clerk of Court Constance B. Mansfield  
Deputy

*(Handwritten initials)*

A. J. Z. Law Firm, LLC  
P.O. Box 11961  
Columbia, SC 29211

The Supreme Court of South Carolina  
ATTN: Daniel Shearouse, Clerk of Court  
PO Box 11330  
Columbia, SC 29211

