5th RC

FORM 4

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

JUDGM f IN A CIVIL CASE

CASE NUMBER: 2011CP4004443

Starcado #342817 Grissett

PLAINTIFF(S)

State of South Carolina

DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

RICHLAND COUNTY FILED
2013 FEB 6 AM 10:40
JEANETTE W. McBRIDE C.C.P. & G.S.

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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other _____

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

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

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.
Additional Information for the Clerk : _____

INFORMATION FOR THE 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
		$
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

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

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20 _____ and a copy mailed first class or placed in the appropriate attorney's box on this 6 February 2013 to attorneys of record or to parties (when appearing pro se) as follows:

Starcado #342817 Grissett
David Edward Belding

Calhoun Reb Thomas III

Brian T. Petrano

Starcado #342817 Grissett
ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court Jeanette W. McBride

SCRCP Form 4C (10/2011)

SCANNED

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT
Stacardo Grissett, #342817, Applicant, v. State of South Carolina, Respondent.	)	**2011-CP-40-04443** **ORDER OF DISMISSAL**

PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed July 8, 2011. An evidentiary hearing into the matter was convened on Monday, September 10, 2012, at the Richland County Courthouse. The Applicant was present at the hearing with counsel, David E. Belding, Esquire. The Respondent was represented by Robert D. Corney of the South Carolina Attorney General's Office.

At the hearing, Applicant testified on his own behalf. Also testifying was Applicant's former plea counsel, Tynika Claxton, Esquire ("counsel"). This Court also had before it a copy of the transcript of the proceedings against Applicant, the records of the Richland County Clerk of Court, and Applicant's records from the South Carolina Department of Corrections.

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 Richland County Clerk of Court. Applicant was true bill indicted at the August 2009 term of the Richland County Grand Jury for Unlawful Carrying of a Pistol, Lynching – Second Degree, Kidnapping and Strong Arm Robbery (2009-GS-40- 1493/1494/1495). Tynika Claxton, Esquire, represented Applicant on the charge. On August 23, 2010, Applicant appeared before The Honorable L.

Casey Manning where he pled guilty as indicted to the Unlawful Pistol and Lynching charges, as well as pursuant to North Carolina v. Alford to the Kidnapping charge. The State *nolle prossed* several charges as part of the plea including a Possession With Intent to Distribute Crack Cocaine, an unrelated Unlawful Possession of a Pistol, a Carjacking and a Criminal Conspiracy. Sentencing was deferred at that time. Applicant came back before Judge Manning on September 16, 2010, with counsel, at which time he was sentenced to ten (10) years imprisonment each for Lynching and Strong Arm Robbery, eight (8) years imprisonment for Kidnapping and one (1) year imprisonment for Unlawful Possession of a Pistol, all to run concurrently. Applicant did not appeal the pleas or sentences.

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

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
   (a) my lawyer never helped me with my case I wrote in letters over and over
   (b) about my motion she said she would give it to me and to this day haven't with in
   (c) facts stick if she would of helped me I would of proven to not have done the crime
10. State concisely and in the same order the facts which support each of the grounds set out in (9):
   (a) ineffective assistance of counsel
   (b) _____
   (c) _____

Question #10
(1 more Reason's
of why are on
The note Book page
for more Room please
Read also for more understanding.)

*also I mixed # 9 answer that's meant for # 10 please don't let that be a down fall!!! *

I was Denied Effective assistance of Counsel in violation of The Sixth Amendment to the united state Constitution and Article 1 section 14 of The South Carolina Constitution.

I was provided with "Deficient" Represented By my attorney in That Conduct of my attorney was objectively un Reasonable under The Circumstances. Strickland / Washington - 466 US At 631 (1984) The outcome of my case, Sibling's and Sentencing was prejudic also my Trial proceedings itself was prejudic and if she would have did The Things To show The Truth The outcome would have Been Diffrent again had The Trial Counsels performance been Diffrent and "Tryed" To Help in Show Facts I should Be here To Day This for The Rights To Show my Trial Counsels "lawyer" was ineffective on Following Below,

My attorney "Failed" To Conscientiously Discharge her professional Responsibilities while she was handing my Case

my lawyer Clearly "Failed" To effectively Challenge The arrest and Seizure of my case

my lawyer Failed To give me her loyalty in which people out side my case found out Things only she knew and I never told it. my lawyer Failed To Serve my Cause in good Faith By always Ensuring my outcome

She did not have Best interest in mind while she was Supposed To investigate and preparing my Case she never sat once my Case with me

My lawyer Neglected To Speak on Facts That would of showed I aint Do The Crime and if she did The out come would Be Diffrent. She Did not Both Conscientiously gather any information To Protect my Rights

My lawyer Didn't Try To have my Case settled in a matter That could have Been To my Best advantage, But Used saying she wanted it So To had a Cap on Expenses Then when I got 10 85% She said oh you only got 6 years To go, That wasn't The Best at all!

my lawyer used the fact I "was" blind to the law and said things to get me to plea when it wasn't true also to my family. She never asked if I knew properly comprehended all the issues involved in my case. my lawyer never informed me of what was going on in my case I was always cool and when I ask questions she said I wouldn understand! my lawyer "Clearly" misled me in to pleading and left out major elements of my plea. I never was told about the kidnapping Rule sec. said in the plea Deal the kidnapping would only be a Strike against me I plead because she said Health Care Vs. VC is that I'm pleading in a Deal not. Because I did it. She lied. They gave me 8 years 5 yrs for it my lawyer never gave us a motion of Discovery as we'll over it with me and I wrote her in every letter. She asking for it to this. Dat I cant see my motion

the facts I have just spoken of I have full and clear views to show that my Counsel was ineffective in my case if I can have a Chance to show this I can and will Daddy my family also can Back on this. I was never told the out come of my plea she told me I'll get a Cap on 5 years and said my DA and guys all liked it so I plead after it was over she just walked off saying I only got 6 with. She said she told my appeal But never did. she never went over my case with me She always said it's to much saying I did it. Dude it But I know from the guy in the Tape who did it but he wears a size 7½ to 8 I wears 10½ it's the way where you see it in the Tape he got on them Shoes she never said it When I Did my Best to get her to she said it's to small along with the major things she should of said That would of cleared me, she misled me into pleading and it was wrong I want to fight this all I want is the 6 years she promised me and my family if not my life Back Thanks for your Help and understand of my help and plea for my side To be heard To show her poor actions lead To the Truth Being hiden! her job She aint Do a ball

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the arguments presented by both parties at the evidentiary hearing. 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).

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, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (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). The 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.

Involuntary Guilty Plea

At the PCR hearing, Applicant alleged his guilty plea was entered involuntarily as counsel pressured him to enter the plea, and counsel failed to fully review and discuss the case with him to allow him to make an informed decision whether the plead.

Applicant testified he is currently serving a ten (10) year sentence with parole eligibility after serving sixty-five percent (65%) of the sentence for Strong Arm Robbery and Lynching. He stated he was initially appointed Jennifer Davis, Esquire, from the Public Defender's office as his attorney on the charges, but ended up with counsel as his attorney after Davis conflicted out of the representation due to a "past issue on a juvenile case" with the assistant solicitor that was prosecuting Applicant's case, Eden Hendrick, Esquire (hereafter "Hendrick"). Applicant alleged Hendrick was previously involved in prosecuting him in a juvenile matter. Applicant said he was arrested in February of 2009 and was incarcerated roughly nineteen (19) months until his plea date in August of 2010. During that time, Applicant said, Applicant met with him three (3) times at the jail where she mainly discussed Applicant's health concerns. He explained he was confined to a wheel chair after being in fight in SCDC which pushed a bullet fragment lodged in his back from a 2008 shooting into his vertebrae.

Applicant conceded he was involved in the incident from which the charges came, but alleged that contrary to the State's contention, it had been a drug deal in which his co-defendant, Perry Gilmore, tried to pass counterfeit money to the victim/dealer. Applicant said the state was alleging there was a surveillance videotape of the incident, which he remembered counsel bringing to the jail to view with him, but said he never got the opportunity to watch the tape.

Applicant said he spoke with counsel on August 23, 2009, prior to the plea, at which time she advised him it was in his best interest to enter the plea as it would be an Alford plea under which he would receive a six (6) year sentence. He went on to say counsel advised him there was enough evidence to convict him of the charges at trial, but he did not want to plead and believed he "could beat" the charges at trial. Applicant finished by saying he was involved in the incident, but not with the things that the State charged him with.

On cross-examination, Applicant conceded he had told the plea judge he was entering the plea freely and voluntarily, but said he only did so because he was coached by counsel to give those answers. Applicant denied his guilt of the charges and said he had lied to the plea judge under oath when he previously conceded his guilt at the plea hearing.

Counsel testified at the PCR hearing that she has been licensed and practiced exclusively in criminal defense for eight (8) years in both state and federal courts. She said after taking over representation of Applicant, she met with him four (4) or five (5) times, as well as met with his stepmother an additional four (4) or five (5) times to discuss the case. She noted she had reviewed Applicant's health concerns with him during their last meeting or two, as the solicitor seemed to think Applicant "was faking it". Counsel testified she reviewed the entirety of the discovery file with Applicant during their meetings, including the surveillance videotape which Applicant had also viewed with Davis prior to counsel's representation. Counsel noted that the surveillance video was "pretty good quality" and, although it was hard to see his face, Applicant and Applicant's stepmother both agreed it was clear to tell the suspect in the video was in fact Applicant. Counsel said Applicant admitted his guilt to her during their meetings, but said he believed he was incorrectly charged based on the facts of the case.

Counsel went on to say the only plea offer ever extended to Applicant was for a recommendation of concurrent time, but that there was *never* a plea offer for a six (6) year sentence, nor did she ever tell Applicant he should expect to get a six year sentence. Rather, because of Applicant's age, counsel said, she told him she would request the court impose a six year sentence as that was proportionate to the Youthful Offender Act's sentence. These were all issues counsel discussed with Applicant both during the meetings at the jail as well as at the courthouse in the holding cell on the day of the plea prior to his entering the courtroom. When asked about Hendrick's previous prosecution of Applicant on juvenile charges and whether Hendrick had made a promise to Applicant, counsel said she never requested another solicitor on the case as Hendrick never spoke with Applicant during the pendency of the charges and she had no indication that Hendrick's involvement would affect the outcome of the case. Counsel finished by stating she believed she had given Applicant all the advice and information necessary to make an informed and voluntary decision whether to plead guilty or proceed to trial, either of which she would have been happy to do based on Applicant's decision.

After a thorough review of the record before this Court and the testimony presented at the hearing, this Court finds Applicant's plea was freely and voluntarily entered with the assistance of effective counsel acting within the range of objective reasonableness required of criminal defense attorneys. As a preliminary matter, this Court finds counsel's testimony to be credible while conversely finding Applicant's testimony to **not** be credible. 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, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318

S.E.2d 360 (1984). A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993).

Counsel in this instance acted well above the baseline standard of "objectively reasonable" in her representation of Applicant on the charges and her advice to him on whether to plead guilty or proceed to jury trial. Counsel reviewed with Applicant the indictments outlining the charges, the potential sentences he was facing, his constitutional rights, his version of the facts, the discovery file including the State's evidence to be introduced against him at trial, potential defenses to be used at trial and the strengths/weaknesses of his case if brought to trial. Based on these in-depth discussions, Applicant made the voluntary and informed decision to enter a guilty plea under which he would obtain the benefit of several outstanding charges being *nolle prossed* by the State. Accordingly, this Court finds Counsel's performance was objectively reasonable under prevailing professional norms, and his plea was entered intelligently and voluntarily.

Further, Applicant has failed to prove resulting prejudice as he has failed to convince this court that, but for counsel's alleged deficient performance, he would not have pled but rather proceeded to trial to face the three charges as indicted, plus potentially the three charges *nolle prossed* by the State as a result of the plea. The evidence in the record and testimony presented at the PCR hearing firmly convince this Court Applicant acted in his own best interest in pleading guilty and would have done so regardless of the alleged deficiencies he now complains of.

Applicant's Mental Health

At the hearing, Applicant also raised a vague issue regarding his mental health and ability to appreciate the nature of the proceedings at the time he entered the plea, alleging this added to the involuntary nature of his plea. Specifically, Applicant stated he wasn't sure whether the plea judge asked him about his mental health at the plea, but said he did have a history of mental illness and drug abuse. He went on to say he has previously been diagnosed "with a mental illness", but didn't "know what it is".

Counsel testified she had discussed Applicant's mental health history with his stepmother during the course of their meetings, and was told Applicant suffered from Attention Deficit Hyperactivity Disorder ("ADHD") when he was younger and had some issues with depression, but was never told of any other mental health issues that raised concerns. She also noted she never had any concerns with Applicant's competence or ability to comprehend and participate in their discussions about his case, and said Applicant was an active participant in his defense.

Based on the testimony and the record of the plea hearing, this Court finds this allegation to be without merit. Again, this Court finds counsel's testimony in this regard to be credible while finding Applicant's testimony to be incredible. At the plea hearing, the judge specifically inquired as to Applicant's competence and ability to understand the proceedings, including his mental health history and use of prescription drugs for treatment, during which Applicant stated he knew what he was doing. The plea record thereafter reflects that, while Applicant showed some hesitation due to the gravity of the situation, he was fully able to give clear, concise and appropriate answers to the plea judge. Roughly a month later, Applicant came back before the Court for sentencing where he was able to give a lengthy, articulate plea for mercy to the Court, but never asked to withdraw the plea previously entered. Therefore, this Court finds the

allegation to be without merit as Applicant was fully aware of what he was doing and the consequences thereof at the time he pled guilty. Further, Applicant failed to produce any mental health records, evaluations, reports or other indication as to what mental health issues he alleges he is suffering from that would interfere with his ability to understand the proceedings. Accordingly, this allegation must be denied and dismissed.

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.

Except as discussed above, this Court finds that the Applicant failed to raise all additional allegations raised in his application at the hearing and has, thereby, waived them. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

This Court notes Applicant must file and serve a notice of appeal within thirty (30) 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 PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention 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 1 day of Feb, 2012.

J. ERNEST KINARD, JR.
Presiding Judge
Fifth Judicial Circuit

Camden, South Carolina.