

# Lowcountry Law Office

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October 14, 2015

## RECEIVED

OCT 20 2015

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

RE: Darryl V. Grant v. State of South Carolina, Case No: 2014-CP-10-1084 **S.C. SUPREME COURT**

Dear Mr. Shearhouse:

Enclosed for filing is the Notice of Appeal (original and clocked copy) in the above Post Conviction Relief (PCR) case. Also enclosed are the following:

- (1) Proof of Service of the Notice of Appeal on the Respondent;
- (2) The Order of Dismissal &
- (3) A Request for Representation on Appeal.

The Applicant-Appellant was represented by me as an indigent pursuant to my contract with the South Carolina Commission on Indigent Defense (SCCID) to handle PCR cases. By copy of this letter, I am forwarding a duplicate set of documents to the SCCID.

The Request for Representation on Appeal and the Affidavit in Support thereof are signed by me as attorney for Applicant-Appellant. If you need anything further, do not hesitate to contact me. Thank you for your time and attention to this matter.

Sincerely,

Rodney D. Davis  
South Carolina Bar #: 12396  
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Charleston, SC 29405  
(843) 323-4353  
[Davis@LowcountryLawOffice.com](mailto:Davis@LowcountryLawOffice.com)

Enclosure(s). As stated above.  
RDD/mmt

cc: J. Rutledge Johnson, Assistant Attorney General  
Kimberly McCall, Appellate Division, SCCID

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Roger E. Henderson, Circuit Court Judge

Case No.: 2014-CP-10-1684

**RECEIVED**

OCT 20 2015

**S.C. SUPREME COURT**

Darryl V. Grant,

Appellant,

v.

State of South Carolina,

Respondent.

NOTICE OF APPEAL

Darryl V. Grant appeals the denial of his Post Conviction Relief application in this case. The Application for relief was denied, following an evidentiary hearing before the Honorable Roger E. Henderson on July 21, 2015.

October 16, 2015



Rodney D. Davis  
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Attorney for Appellant

Other Counsel of Record:  
J. Rutledge Johnson  
Assistant Attorney General  
Office of the Attorney General, State of South Carolina  
PO Box 11549  
Columbia, SC 29211-1549  
Attorney for Respondent

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Roger E. Henderson, Circuit Court Judge

Case No.: 2014-CP-10-1684

Darryl V. Grant,

Appellant,

v.

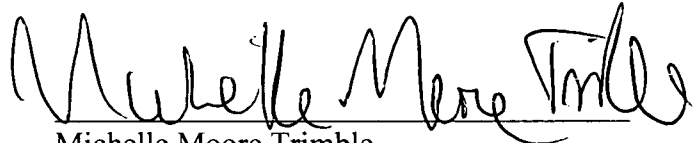
State of South Carolina,

Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the State by mailing a copy of it to the address of record, J. Rutledge Johnson, P.O. Box 11549, Columbia, South Carolina 29211-1549, on October 16, 2015.

10/16, 2015



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Attorney for Appellant

Other Counsel of Record:  
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Assistant Attorney General  
Office of the Attorney General  
State of South Carolina  
P.O. Box 11549  
Columbia, SC 29211-1549  
Attorney for Respondent

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OCT 20 2015

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Roger E. Henderson, Circuit Court Judge

Case No.: 2014-CP-10-1684

Darryl V. Grant,

Appellant,

v.

State of South Carolina,

Respondent.

FILED  
2015 OCT 16 PM 3:11  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_

NOTICE OF APPEAL

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October 16, 2015

  
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Other Counsel of Record:  
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Columbia, SC 29211-1549  
Attorney for Respondent

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Roger E. Henderson, Circuit Court Judge

Case No.: 2014-CP-10-1684

Darryl V. Grant,

Appellant,

v.

State of South Carolina,

Respondent.

BY

JULIE J. ARMSTRONG  
CLERK OF COURT

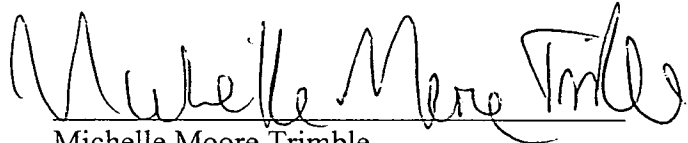
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FILED

PROOF OF SERVICE

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10/16, 2015



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Assistant Attorney General  
Office of the Attorney General  
State of South Carolina  
P.O. Box 11549  
Columbia, SC 29211-1549  
Attorney for Respondent

cc  
AG  
AT  
GS  
SOL

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )  
)  
)  
Darryl V. Grant, #314123, )  
)  
Applicant, )  
)  
v. )  
)  
State of South Carolina, )  
)  
Respondent. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT

2014-CP-10-1684

**ORDER OF DISMISSAL**

FILED  
2015 SEP 23 PM 4:23  
JULIE M. ROBERTSON  
CLERK OF COURT

This matter comes before the Court by way of an Application for Post-Conviction Relief filed March 12, 2014. Respondent made its Return on June 3, 2015. An evidentiary hearing into the matter was convened on July 21, 2015 at the Charleston County Courthouse. Rodney Davis, Esquire, represented Applicant. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

At the hearing, Applicant testified on his own behalf. Alan Toperek, Esquire also testified. This Court had before it a copy of the records of the Charleston County Clerk of Court, records from the South Carolina Department of Corrections, the application, the State's Return and the guilty plea transcript.

**PROCEDURAL HISTORY**

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Charleston County Clerk of Court's order of commitment. The Applicant was indicted at the April 2005 term of the Charleston County Grand Jury for Armed Robbery (2005-GS-10-2169). The Applicant was represented by Alan Toperek, Esquire. On March 2, 2006, the Applicant pled guilty



before the Honorable R. Markley Dennis, Jr. and was sentenced to fifteen (15) years. Based on his incarceration from December 13, 2004, until the time of sentencing, the Applicant received credit for time served in the amount of four hundred and forty nine (449) days. The Applicant then filed a timely motion of reconsideration of sentence on March 10, 2006.

Prior to the current application, the Applicant filed two previous applications for post-conviction relief (2010-CP-10-4400; -3386). The Applicant filed his first application on May 28, 2010. The state filed a Return and motion to dismiss. By order dated October 28, 2010, the Honorable Roger M. Young, Sr., dismissed the application without prejudice based on the Applicant's pending motion for reconsideration. The Applicant filed his second application on May 24, 2012. By Order dated March 27, 2013, the Honorable Roger M. Young, Sr., again dismissed the application without prejudice based on the Applicant's pending motion to reconsider. The motion to reconsider was withdrawn December 2013.

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

1. "Ineffective Assistance of Counsel"
  - a. "Applicant contends that a conflict of interest had an adverse effect on his defense"
  - b. "Applicant contends that his 5<sup>th</sup>, 6<sup>th</sup>, and 14<sup>th</sup> amendment rights were violated by an actual conflict of interest"
2. "Applicant contends that counsel was ineffective in failing to raise the issue of his fitness to stand trial"
3. Counsel's performance fell below professional norms
4. Due Process Violations



At the hearing, the Applicant proceeded on his claims of ineffective assistance of plea counsel.

### **SUMMARY OF TESTIMONY**

At the evidentiary hearing, Applicant testified that after his plea, Counsel failed a motion to reconsider on his behalf that was resolved because he requested that it be withdrawn. Applicant pled guilty in March of 2006 and corresponded with Counsel via letters.

Prior to the plea, Applicant testified he met with Counsel only twice, did not discuss a defense, did not receive the Rule 5 materials and that Counsel was not prepared for trial. Applicant also stated Counsel did not explain to him Armed Robbery or the elements. Applicant testified Counsel never discussed with him any of the evidence that witnesses or co-defendants provided to law enforcement, namely statements implicating Applicant. Applicant claimed he only met with Counsel's investigator once. Applicant admitted he and Counsel discussed his written statement Applicant gave to law enforcement, but did not discuss a possible suppression hearing. Applicant stated he was seventeen (17) years old at the time of arrest and thought he was going to court by himself.

Applicant testified he thought he was proceeding to trial as there was no discussion about a plea until March 2, 2006. Applicant stated Counsel discussed with him the potential of a thirty (30) year sentence, and he admitted there were two (2) other charges (Assault and Battery of a High and Aggravated Nature and possession of a firearm during the commission of a violent crime) dropped in exchange for his guilty plea. Applicant stated he thought he could get a lesser charge than Armed Robbery, such as strong armed robbery which he stated would be eligible for a Youthful Offender Act (YOA) sentence. Applicant testified he has no prior criminal record as he has not been through a



guilty plea or trial before. Applicant also claimed he thought he was going to be mentally evaluated, but never received the evaluation.

Applicant then testified he entered the plea as a plea was better than facing the potential of a thirty (30) year sentence, but did not know there was a mandatory minimum sentence of ten years prior to his plea. Applicant admitted he had other charges dropped and one charge reduced and was more comfortable with the plea than the 10-30 year spread. Applicant then claimed if potential defenses or the elements of the crimes had been discussed, he would have pursued a trial. Applicant also claimed had he known that his statement could have been suppressed or that his co-defendants' statements could have been suppressed, he would have pursued a trial.

Applicant testified that he learned during the plea that there was a connection between the victim and Counsel. He claimed had he known, he would not have been confident that Counsel could properly represent him, although, in Applicant's words, it may not have been a big deal.

On cross-examination, Applicant admitted he knew if PCR was granted, all of the original charges come back and he would be facing a potential much more severe sentence.

Counsel testified he has been practicing law since 1979 and that 10-15% of his current practice is criminal. Counsel testified he has handled Armed Robbery cases before and hundreds of criminal cases. Counsel stated he was appointed to Applicant's case and met several times with Applicant, Applicant's mother and Counsel's investigator. Counsel testified he filed a Rule 5 motion and communicated with the solicitor often. In February 2006, Counsel testified he received and relayed potential plea offers from the State to Applicant. Applicant's case was then placed on the trial docket.



In a memorandum from February 23, 2006, Counsel stated he spoke with Applicant about trial, to which Applicant responded he did not want to pursue a trial but did not want prison time. Counsel advised him that he was, indeed, going to prison because of the charges. With this, Counsel left Applicant a complete copy of the documents. Counsel testified he would have discussed possible defenses with Applicant as three of his co-defendants were caught immediately after the incident and gave statements to law enforcement. Counsel stated Applicant gave a 5-page statement to law enforcement, which Counsel did not feel confident he could successfully challenge. Counsel stated he discussed the potential for a YOA if the solicitor would agree to a strong armed robbery charge because Armed Robbery is not eligible for YOA; however, Counsel testified that a strong armed robbery charge was never an option. Counsel stated Applicant was also charged with two serious charges (ABHAN and possession of a firearm during the commission of a violent crime) because the victim was beaten with a flashlight and the butt of a gun. Applicant was found within a close proximity of the crime scene.

Additionally, Counsel testified that the co-defendants would testify that the armed robbery was Applicant's idea and that Applicant freely admitted his participation in the crime. On these grounds, Counsel stated he did not think he would have standing to challenge the co-defendants' statements. Counsel testified he fully explained Armed Robbery and the elements to Applicant. Counsel also stated he explained that Armed Robbery carried a minimum of ten (10) years and the possible sentencing ranges to Applicant.

Counsel testified he knew the victim, but did not realize it until the day before court. Counsel stated he barely knew the victim and that the victim did not want compassion for Applicant. Counsel also testified he felt prepared, but not confident Applicant could prevail.



Counsel lastly testified that Applicant was “on board” with the guilty plea, that he never threatened Applicant to plead guilty and that it was Applicant’s decision to plead guilty in this case.

On cross-examination, Counsel testified that in Applicant’s statement to law enforcement, Applicant went into the West Ashley Pawn Shop three times, but was hesitant. Counsel also stated when the victim realized he was being robbed, the victim pulled out a pistol. At that point, Applicant jumped over the counter and grabbed the victim.

Counsel testified there was a transport order for a mental evaluation, but it was not filed until one week after Applicant’s plea and was not completed.

#### **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 (2003).

#### **Ineffective Assistance of Counsel**

Applicant alleges he received ineffective assistance of counsel. In a PCR action, “[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCF). 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 (1984); Butler v. State, 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, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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).

This Court finds the Applicant's testimony regarding Counsel's ineffectiveness is not credible while also finding Counsel's testimony is credible.

This Court also finds Counsel provided effective assistance of counsel in this case. Counsel advised Applicant of all of the charges and the sentences the charges carried. Specifically, Counsel testified he discussed all of the elements of Armed Robbery with Applicant. Counsel testified he discussed the discovery materials with Applicant, including the Applicant's statement to law enforcement and the fact that Applicant's co-defendants were going to testify against Applicant at trial. Counsel also negotiated with the State in Applicant's best interest. Applicant also testified he pled guilty because he did not want to risk a trial and face a thirty (30) year sentence. Applicant also



acknowledges that other charges were dropped in exchange for his plea and that all of the original charges would return if successful in PCR. This Court finds Applicant made the decision to plead guilty on his own accord with the help of learned counsel. Additionally, this Court finds Applicant made this decision freely and voluntarily without any threats or promises from anyone else. Furthermore, this Court finds that it was ultimately the Applicant's decision to plead guilty.

This Court further finds there was no conflict of interest by Counsel "knowing" the victim in this case. The mere possibility of a conflict of interest is insufficient to challenge a criminal conviction. Langford v. State, 310 S.C. 357, 426 S.E.2d 793 (1993). "In order to establish a violation of the Sixth Amendment, a defendant who raised no objection at trial must demonstrate that an actual conflict of interest adversely affected his lawyer's performance." Duncan v. State, 281 S.C. 435, 438, 315 S.E.2d 809 (1984). The Applicant must show that his attorney actually owed duties to a party whose interests were adverse to the Applicant. Id; Thomas v. State, 346 S.C. 140, 551 S.E.2d 254 (2001). In this case, Counsel testified he only learned that he "knew" the victim on the day before court, did not know him well and that he was not sympathetic to Applicant's case. In fact, Counsel testified the victim wanted no compassion for Applicant. Therefore, Applicant has failed to prove that there existed an actual conflict that affected Counsel's performance in this case.

This Court finds the Applicant has failed to meet his burden of proving counsel's performance was deficient or that he was prejudiced thereby.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in his representation of the Applicant.



This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel’s performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. Therefore, these allegations are denied.

### 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 also finds as to all other allegations that Applicant failed to present evidence of such claims and thus, this Court deems them abandoned.

This Court notifies the Applicant that he 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. Applicant’s attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

#### **IT IS THEREFORE ORDERED:**

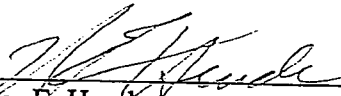
1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.



**AND IT IS SO ORDERED!**

*September 18*, 2015

*Charleston*, South Carolina

  
\_\_\_\_\_  
Roger E. Henderson  
Presiding Circuit Court Judge  
Ninth Judicial Circuit

2014-CP-10-1684

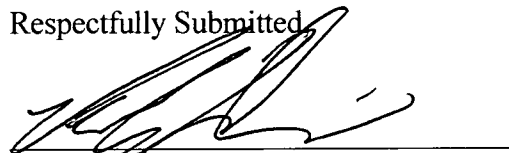
STATE OF SOUTH CAROLINA ) IN THE SUPREME COURT OF SOUTH CAROLINA  
 )  
 COUNTY OF CHARLESTON )  
 ) Case No.: 2014-CP-10-1684  
 )  
 Darryl V. Grant, )  
 Applicant. )  
 )  
 -versus- ) REQUEST FOR REPRESENTATION ON APPEAL  
 )  
 STATE OF SOUTH CAROLINA, )  
 )  
 Respondent. )

On behalf of the request of the above-named Applicant, to be represented by the South Carolina Commission of Indigent Defense, Appellate Division (SCCID), the undersigned attorney would show unto this Honorable Court that:

1. He is the attorney for the Applicant-Appellant in the above captioned case. The Applicant-Appellant was in custody during and taken into custody immediately following the Post Conviction Relief (PCR) hearing and was not available to personally sign this request;
2. The Applicant-Appellant was represented by the undersigned attorney as an indigent, pursuant to a contract with the SCCID;
3. The Applicant-Appellant has been informed that he may request assistance from the SCCID Appellate Division in perfecting his appeal;
4. A timely Notice of Intent to Appeal has been filed on the Applicant-Appellant's behalf;
5. The Applicant-Appellant has been informed that nothing requires SCCID Appellate Division to pursue this appeal unless that office's Chief Attorney is satisfied that there is arguable merit to this appeal and that he cannot afford to hire an attorney.

At this time, the Applicant-Appellant requests the aid of the SCCID Appellate Division in perfecting his appeal to the South Carolina Court of Appeals.

Respectfully Submitted,



Rodney D. Davis  
 South Carolina Bar #: 12396

October 16, 2015  
 Charleston, South Carolina.

