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RECEIVED

October 23, 2015

OCT 26 2015

S.C. SUPREME COURT

South Carolina Supreme Court
PO Box 11330
Columbia, SC 29211

RE: Andre Robinson, #319391 vs. State of South Carolina
2014-CP-45-027

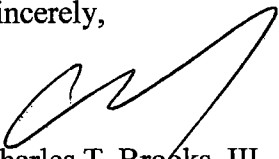
Dear Sir or Madam:

Enclosed herewith you will find the Notice of Appeal, Order of Dismissal, along with a Proof of Service in reference to the above named Applicant.

If you have any questions or concerns, please contact my office at the number stated above.

With kind regards, I am

Sincerely,



Charles T. Brooks, III
CTB/srw

Enclosed as stated

cc: Daniel Gourley, Office of Attorney's General
South Carolina Office of Appellate Defense
Andre Robinson, #319391

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM WILLIAMSBURG COUNTY

Court of Common Pleas
Honorable Steven H. John Circuit Court Judge

Case No: 2014-CP-45-027

Andre Robinson.....Appellant

S.C.D.C. 319391

v.

The State.....Respondent

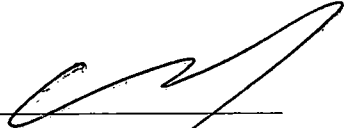
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OCT 26 2015

S.C. SUPREME COURT

NOTICE OF APPEAL

Andre Robinson, appeals his Denial for Post Conviction Relief in this case. The order of Dismissal was imposed and signed by the Honorable Steven H. John, August 4, 2015, which I, Charles T. Brooks, III, received on October 23, 2015.


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(803) 418-5708
Attorney for Appellant

Other Counsel on Record:
Daniel Gourley, Esquire
Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-3970

Dated: 10/23

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM WILLIAMSBURG COUNTY

Court of Common Pleas
Honorable Steven H. John Circuit Court Judge

Case No: 2014-CP-45-027

Andre Robinson.....Appellant

S.C.D.C. 319391

v.

The State.....Respondent

RECEIVED

OCT 26 2015

S.C. SUPREME COURT

PROOF OF SERVICE

I, the undersigned, do hereby certify that on this 23rd of October, 2015, I served the foregoing **Notice of Appeal, Order of Dismissal**, as well as **Proof of Service** in this matter by depositing a true copy of it in the United States Mail, postage prepaid, on October 23, 2015, addressed to the following as indicated below:

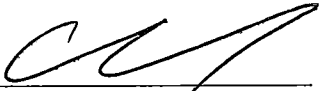
South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

South Carolina Office of Appellate Defense
1330 Lady Street, Suite 401
PO Box 11589
Columbia, SC 29211-1589

Office of Attorney's General
Attn: Daniel Gourley, Esquire
Post Office Box 11549
Columbia, South Carolina 29211-1549

Mr. Andre Robinson, 319391
Lieber Correctional Institution
PO Box 205
Ridgeville, SC 29472

Dated: October 23, 2015


Charles T. Brooks, III
Attorney for the Appellant
309 Broad Street
Sumter, South Carolina 29150
(803) 418-5708

STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

Andre Antonio Robinson, #319391,

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) FOR THE THIRD JUDICIAL CIRCUIT

) 2014-CP-45-027

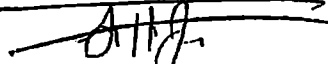
) ORDER OF DISMISSAL

2015 SEP 16 AM 10:35
CLERK OF COURT
SUMTER COUNTY, SOUTH CAROLINA

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on January 15, 2014 and amended on October 15, 2014. Respondent made its return on September 24, 2014. An evidentiary hearing into the matter was convened on July 14, 2015, at the Sumter County Courthouse. Applicant was present at the hearing and was represented by Charles Brooks, III, 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 Williamsburg County Clerk of Court. The Applicant was true bill indicted at the October 2012 term of the Williamsburg County Grand Jury for Murder (2012-GS-45-0269). Doward Harvin, Esquire, represented Applicant. On March 5, 2013, Applicant pled guilty as indicted before the Honorable Clifton Newman. Judge Newman sentenced Applicant to a thirty year term of imprisonment. Applicant did not appeal his sentence or conviction.



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. "Failure to investigate evidence on defenses"
2. Involuntary guilty plea
 - a. "was not informed"

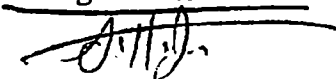
Applicant amended his application on October 15, 2014, alleging that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel
 - a. Failure to investigate and ask about defenses.
2. Involuntary guilty plea
 - a. Failure to advise of elements of murder.

SUMMARY OF TESTIMONY PRESENTED

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

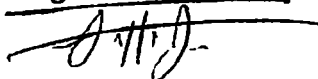
Applicant testified that he pled guilty to murder and received a thirty year sentence. Applicant stated that the victim was his cousin. Applicant said victim was basically a close family member. Applicant stated that he pled guilty because he did not want to put his family through the emotional turmoil of a trial. Applicant stated that he pled guilty to murder, but he was not informed of the elements of murder. Applicant stated that he did not understand the exact definition of malice. Applicant stated that he did not know murder was a day for day offense and he would be required to serve a full thirty years. Applicant stated that he would not have pled guilty if he had known all of this information prior to his plea.



However, Applicant recalled the plea court advising him that the unintentional killing of his cousin would amount to a defense to murder. Applicant recalled telling the plea court that he wanted to waive any defenses and plead guilty. Applicant recalled telling the plea court that he did not have any defenses to the charges. Applicant recalled the plea court advising him that murder was the intentional killing of another person with malice. Applicant recalled telling the plea court that he understood the elements of murder. Applicant recalled waiving his constitutional rights during his plea. Applicant recalled telling the plea court that no one was promising or threatening him to get him to plead guilty. Applicant recalled telling the plea court that he wanted to plead guilty. Applicant recalled telling the plea judge that he was guilty. Applicant recalled agreeing with the factual context relayed by the solicitor during his plea.

Applicant stated Plea Counsel met Applicant one time at county prison. Applicant stated Plea Counsel told Applicant to write down his version of events for their review and Plea Counsel never returned to meet with Applicant. Applicant stated that he did not feel that their one meeting was a sufficient amount of time to investigate and review his case. Applicant stated he was forty five years old at the time he pled guilty. Applicant recalled reviewing discovery with Plea Counsel. Applicant stated that this was not his first time in General Sessions court and he had a previous conviction for burglary-second degree.

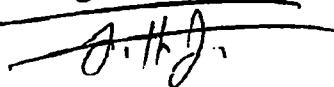
Following both direct and cross examination, this Court asked Applicant additional questions. In response to this Court's questions, Applicant stated that the plea court did advise him that murder carried a day for day sentence. Applicant further stated that the plea court advised him of the elements of murder. Applicant stated that the plea court advised him of the definition of malice.



Following Applicant's testimony, Plea Counsel was called to testify. Plea Counsel stated Applicant's case where he faced a substantial amount of time. Plea Counsel stated that the State accused Applicant of murdering his second cousin over a single beer. Plea Counsel stated the victim had multiple lacerations to his head. Plea Counsel stated that Applicant hit victim over the head with a cinder block approximately eleven times. Plea Counsel stated Applicant also stabbed victim. Plea Counsel stated Applicant then drug victim several feet behind the club where victim was killed. Plea Counsel stated Applicant left the scene, disposed of and washed his clothing. Plea Counsel stated that Applicant initially denied his involvement in the crime, but later confessed when confronted with the evidence against him. Plea Counsel stated Applicant confessed to only hitting victim in the head one time. Plea Counsel stated the evidence contradicted Applicant's version of events.

Plea Counsel stated that he met with Applicant several times. Plea Counsel stated that he represented Applicant for approximately six months prior to his plea. Plea Counsel stated that this was one of the faster murder cases he has ever had. Plea Counsel stated that the case moved quickly at Applicant's request. Specifically, Plea Counsel stated that Applicant wanted to waive his preliminary hearing and plead guilty. Plea Counsel stated the case was fast tracked at the bequest of Applicant.

Plea Counsel stated that he attempted to get a plea offer for manslaughter. However, Plea Counsel stated the Assistant Solicitor refused to offer anything less than murder due to the gruesome nature of the crime. Plea Counsel referenced the multiple lacerations to the head, the fact that the body was hidden, and the weapon was hidden. Plea Counsel stated that he begged and pleaded for an offer less than murder.

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Plea Counsel stated that he and Applicant discussed the potential for a trial. Plea Counsel stated that a trial was a bad idea, due to the overwhelming evidence against Applicant. Plea Counsel stated that the photographs of the murder scene were gruesome. Plea Counsel opined that the Assistant Solicitor would have been able to introduce at least one of the several photographs of the scene. Plea Counsel noted the physical evidence was against Applicant. Plea Counsel stated that he explained the elements of murder and the fact that murder was a non-parolable offense.

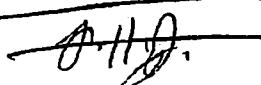
Plea Counsel stated Applicant's family was conflicted. Plea Counsel recalled that Applicant's mother had a tough time dealing with this case. Plea Counsel recalled that Applicant's father spoke on his behalf. Plea Counsel stated that he advised Applicant about the atmosphere of the plea and what questions the plea court would ask.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

INEFFECTIVE ASSISTANCE OF COUNSEL

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process



that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

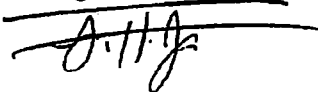
The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). 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. 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).

ALLEGATIONS

1. Ineffective assistance of counsel for failing to investigate and advise of possible defenses.

Applicant alleges that he received ineffective assistance of counsel due to plea counsel's failure to investigate and advise of potential defenses. This Court finds Applicant's allegation is



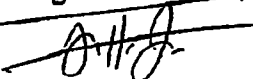
meritless. First, this Court finds credible Plea Counsel's testimony that he met with Applicant at least four separate times. Plea Counsel testified that Applicant wanted to fast track this case and pled guilty. As a result of Applicant's wishes, Plea Counsel and Applicant waived his preliminary hearing and pled guilty some six months after Applicant was originally charged. Plea Counsel further stated that he advised Applicant of the difference between murder and manslaughter. 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 can show no prejudice as he presented no credible evidence to support his allegation that Plea Counsel failed to investigate and advise of potential defenses. See Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (holding applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial). Based off of 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.

2. Involuntary guilty plea for failing to advise of the elements of murder and definition of malice.

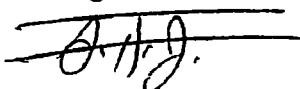
This Court notes Applicant argued his plea was involuntary due to Plea Counsel's failure to advise him of the elements of murder and the definition of malice. This Court finds Applicant's allegation is meritless.

This Court notes that in order to find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his



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

Applicant claims he did not plead guilty knowingly and voluntarily. This Court finds this contention without merit. This Court finds the record reflects Applicant was advised of the waiver of his constitutional rights by the plea court. (Pl. p. 3-4). This Court finds very credible Counsel's testimony regarding his preparation and advice concerning the case and the amount of time Applicant was facing. The record reflects Applicant admitted his guilt to the plea court. (Pl. p. 4 lines 17-18). This Court finds Applicant's intent to plead guilty was made clear to the plea judge. Applicant was fully informed of the nature and consequences of his plea by his attorney and was advised further by the plea court. (Pl. p. 3 lines 5-8). The plea court advised Applicant of the maximum possible punishment and the specifics of the murder charge. (Pl. p. 3 lines 5-8; p. 5 lines 8-23; p. 5 line 24—p. 6 line 8). The plea court also had an extensive colloquy with Applicant on whether he was satisfied with Counsel where he concluded he was fully satisfied.

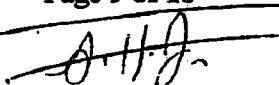


This Court also finds the plea court expressly took into consideration the competency evaluation submitted in formulating the sentence. (Pl. p. 4 line 19—p. 5 line 7). This Court finds the plea judge correctly found Applicant's plea was freely, voluntary, and intelligently made. (Pl. p. 11 line 6-7). This 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.

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CONCLUSION

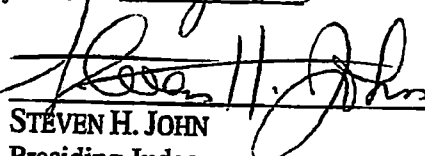
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

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.

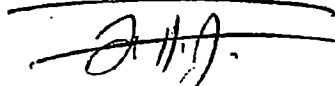
IT IS THEREFORE ORDERED:

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 4th day of August, 2015.


STEVEN H. JOHN
Presiding Judge
Third Judicial Circuit

at Chambers, South Carolina



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

ANDRE ROBINSON, #319391

Applicant,

v.

STATE OF SOUTH CAROLINA,


Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Order of Dismissal** has been served upon the applicant by mailing one (1) copy in the United States mail, postage prepaid, addressed to:

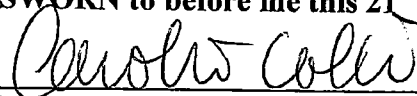
**Charles Thomas Brooks, III, Esquire
Law Office of Charles T. Brooks, III
309 Broad St.
Sumter, SC 29150**

This 21st day of October, 2015.



DANIEL GOURLEY
Attorney for Respondent

SWORN to before me this 21st day of October, 2015.



Notary Public for South Carolina,
My Commission Expires: 5/20/2025