

# AXELROD & ASSOCIATES, P.A.

Attorneys and Counselors at Law

"Success is all that matters"

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October 29, 2015

**RECEIVED**

NOV 02 2015

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

**S.C. SUPREME COURT**

**RE: Willie Morrison, #306544 v. State of South Carolina**  
**Case No.: 2014-CP-17-192**

Dear Clerk of Court:

Enclosed please find an original and one copy of a Notice of Appeal, along with the Order we are appealing in the above referenced matter. If you would, please file the Notice of Appeal and return a clocked copy to me in the envelope provided.

Please be advised that I have been court appointed to represent Mr. Morrison in this matter.

Thank you for your assistance in this matter. If you have any questions or concerns, please feel free to contact my office.

With kind regards,



Tristan M. Shaffer

TMS/kmg  
Enclosure

cc: Jessica E. Kinard, Esquire  
Appellate Defense  
Dillon County Clerk of Court  
Willie Morrison

SUPREME COURT OF SOUTH CAROLINA

APPEAL FROM DILLON COUNTY  
In The Court of Common Pleas

Honorable Thomas A. Russo  
Common Pleas Judge of the Fourth Judicial Circuit

Case No.: 2014-CP-17-192

Willie Morrison #306544,

Petitioner,

v.

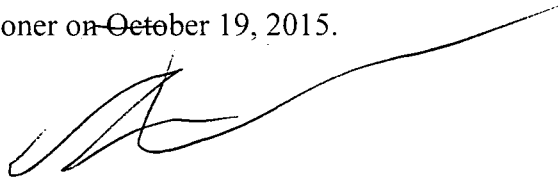
State of South Carolina,

Respondent.

NOTICE OF APPEAL

Petitioner appeals the Order of Dismissal of the Honorable Thomas A. Russo dated October 7, 2015, filed October 16, 2015 and received by Petitioner on ~~October 19, 2015~~.

October 29, 2015



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Tristan M. Shaffer, Esq.  
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*Attorney for Petitioner*

Respondent's Attorney:  
Jessica E. Kinard, Esquire  
S.C. Office of the Attorney General  
Post Office Box 11549  
Columbia, SC 29211

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**S.C. SUPREME COURT**

SUPREME COURT OF SOUTH CAROLINA

APPEAL FROM DILLON COUNTY  
In The Court of Common Pleas

**RECEIVED**

Honorable Thomas A. Russo,  
Common Pleas Judge of the Fourth Judicial Circuit

NOV 02 2015

Case No.: 2014-CP-17-192

**S.C. SUPREME COURT**

William Morrison #306544, Petitioner,

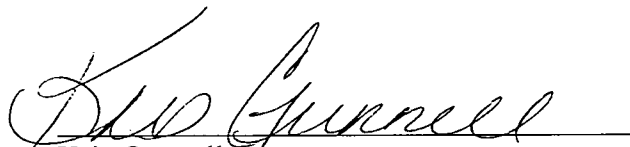
v.

State of South Carolina, Respondent.

CERTIFICATE OF SERVICE

I, Kris Gunnell, do hereby certify that I am an employee of Axelrod & Associates, P.A., in Myrtle Beach, South Carolina, and that I have this date served the Petitioner's Notice of Appeal upon the Respondent, by depositing a copy of same in the United States Mail, postage prepaid, addressed as follows:

Jessica E. Kinard, Esquire S.C. Office of the Attorney General Post Office Box 11549 Columbia, SC 29211	Willie Morrison Lieber Correctional Institution Post Office Box 205 Ridgeville, SC 29472
Dillon County Clerk of Court P.O. Box 1220 Dillon, SC 29536-1220	Appellate Defense 1330 Lady Street Columbia, SC 29201



Kris Gunnell  
Paralegal to Tristan M. Shaffer

October 29, 2015  
MYRTLE BEACH, SOUTH CAROLINA

STATE OF SOUTH CAROLINA )  
COUNTY OF DILLON )

IN THE COURT OF COMMON PLEAS  
FOR THE FOURTH JUDICIAL CIRCUIT

Willie Morrison, #300544, )  
Applicant )

Case No. 2014-CP-17-192

CLERK OF COURT )  
DILLON COUNTY )

v. )

**ORDER OF DISMISSAL**

State of South Carolina, )

Respondent. )

This matter comes before the Court by way of an Application for Post-Conviction Relief filed May 7, 2014. Respondent made a timely Return on or about November 21, 2014. The Court convened an evidentiary hearing into the matter on July 29, 2015, at the Darlington County Courthouse. Applicant was present at the hearing and represented by Tristan M. Shaffer, Esquire. Joshua L. Thomas, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's plea counsel, Nicholas I. Lewis, Esquire, also testified. The Court had before it a copy of the plea transcript, the records of the Dillon County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, and the pleadings in this matter. The Court finds as follows:

**I. PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Dillon County Clerk of Court. In May 2012, the Dillon County Grand Jury indicted Applicant for murder (2012-GS-17-368), possession of a weapon during the commission of a violent crime (2012-GS-17-370), and first degree burglary (2012-GS-17-371).

In April 2013, the grand jury indicted Applicant for second degree burglary (2012-GS-17-821). Nicholas I. Lewis, Esquire ("plea counsel"), represented Applicant. On October 9, 2013, Applicant pled guilty as indicted on all charges except the murder charge, which was reduced to voluntary manslaughter. The Honorable Paul M. Burch sentenced Applicant to concurrent terms of thirty years for manslaughter, five years for possession of a weapon during the commission of a violent crime, thirty years for first degree burglary, and ten years for second degree burglary. Applicant did not appeal his plea or sentence.

## **II. ALLEGATIONS**

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

1. "Ineffective Assistance of Trial Counsel"
  - a. "Counsel was ineffective and deficient for not objecting to defendant's sentence when it was agreed upon 15 yrs, but received 30 yrs instead."
2. "Solicitor broke contract on the plea."

At the evidentiary hearing, Applicant proceeded on the following allegations:

1. Ineffective assistance of counsel for failing to advise on the law of self-defense.
2. Ineffective assistance of counsel for advising Applicant he would receive a fifteen year sentence.

## **III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the evidentiary hearing. The Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. The Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

### **A. Ineffective Assistance of Plea Counsel**

In this post-conviction relief action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Because Applicant alleges ineffective assistance of plea counsel as a ground for relief, he must prove plea counsel's "conduct so undermined the proper functioning of the adversarial process" that the plea proceedings "cannot be relied upon as having produced a just result." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether plea counsel provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The Court strongly presumes plea counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The Court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove plea counsel's performance was deficient. Id. Under this prong, the Court measures plea counsel's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, plea counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625. Because he entered a plea, Applicant must show there is a reasonable probability that, but for plea 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, 59 (1985).

### **1. Self-Defense**

The Court finds Applicant failed to meet his burden to demonstrate plea counsel ineffective in failing to advise him on the law of self-defense. Plea counsel testified he met with Applicant several times. He recalled Applicant giving a statement to police in which he confessed to shooting the victim during a robbery attempt. Plea counsel testified he reviewed the rest of the State's evidence with Applicant and discussed Applicant's version of events. Plea counsel testified he did not believe self-defense was appropriate in this case because the evidence showed Applicant was at fault in bringing on the shooting. However, he testified he did discuss self-defense with Applicant. In contrast, Applicant testified he told police he was simply going to buy drugs from the victim when the victim opened fire on him and his co-defendant. However, he admitted he agreed with the facts put forth by the State at the guilty plea hearing. Applicant testified plea counsel told him self-defense did not apply in his case. He maintained that he would have insisted on a trial if self-defense had been a possibility at trial.

The Court finds Applicant's testimony on this issue lacks credibility. Instead, the Court finds plea counsel's testimony credible and gives it great weight. Plea counsel conducted a proper investigation, adequately conferred with Applicant, and was thoroughly competent in his representation. The Court finds credible plea counsel's testimony he discussed self-defense with Applicant. Accordingly, Applicant waived his right to assert self-defense by entering his plea. See Whetsell v. State, 276 S.C. 295, 297, 277 S.E.2d 891, 892 (1981) (knowing and voluntary plea waives non-jurisdictional defects and defenses (citations omitted)). Furthermore, the Court agrees with plea counsel's assessment that self-defense would not have been a viable defense

under the facts of this case. See, e.g., State v. Bryant, 336 S.C. 340, 345, 520 S.E.2d 319, 322 (1999) (self-defense not applicable where defendant brought on the initial difficulty by attempting a carjacking). Because this defense would not have been successful, plea counsel would not be deficient even if he did not discuss it with Applicant. See Arnette v. State, 306 S.C. 556, 557, 413 S.E.2d 803, 804 (1992) (counsel not ineffective for failing to advise of potential defense where no evidence exists to support the defense). Furthermore, Applicant cannot show he was prejudiced by plea counsel's advice because the defense would not have been successful at trial. Hill, 474 U.S. at 59 ("[W]here the alleged error of counsel is a failure to advise the defendant of a potential affirmative defense to the crime charged, the resolution of the 'prejudice' inquiry will depend largely on whether the affirmative defense likely would have succeeded at trial." (citations omitted)). Therefore, the Court finds Applicant was not ineffective in this regard.

## **2. Sentencing Advice**

The Court finds Applicant failed to meet his burden to show trial counsel provided incorrect sentencing advice. Plea counsel testified the State's initial plea offer was for a sentence of thirty years. He testified he explained the nature of the recommended sentence to Applicant. Plea counsel testified he informed Applicant they may be able to convince the judge to issue a sentence in the twenty year range. However, he maintained he did not promise Applicant a sentence lower than thirty years. On the other hand, Applicant testified he thought he would get a sentence of zero to twenty years. However, he admitted he recalled the plea judge telling him he was facing up to thirty years.

The Court finds plea counsel's testimony on this issue credible and dispositive; Applicant's testimony is not credible. Plea counsel advised Applicant of the possible sentencing

range for his charge. He also explained to Applicant the nature of a recommended plea. Accordingly, the Court finds plea counsel's advice was not deficient in this regard. Furthermore, the plea colloquy reveals the sentencing judge and plea counsel informed Applicant of the range of possible sentences. Accordingly, any misconception Applicant may have had about the possible sentence was cured by the plea colloquy. Holden v. State, 393 S.C. 565, 575, 713 S.E.2d 611, 616 (2011) (citations omitted). Therefore, Applicant has likewise not demonstrated he was prejudiced by plea counsel's sentencing advice. Plea counsel was not ineffective in this regard.

#### **B. 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, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

#### **IV. CONCLUSION**

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Applicant's allegations are refuted by the credible testimony of plea counsel and by the transcript of the plea hearing. See Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) ("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. 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." (citations omitted)); Kolle v. State, 386 S.C. 578, 597 n.7, 690

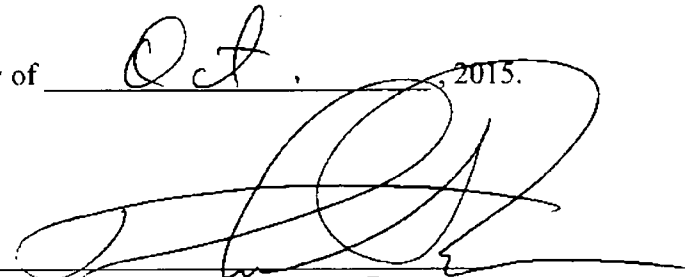
S.E.2d 73, 83 n.7 (2010) (Kittredge, J., dissenting) (an inmate should not be able to collaterally attack a plea where counsel's alleged deficiency was known at the time of the plea and the inmate lied about counsel's performance at the plea). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt 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, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED THAT:**

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 7<sup>th</sup> day of Oct., 2015.

  
THE HONORABLE THOMAS A. RUSSO  
Presiding Judge

Florence, South Carolina

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS

COUNTY OF DILLON )

Willie Morrison, 306544  
 Plaintiff )

CASE NO.  
2014-CP-17-0192

v. )

MOTION AND ORDER INFORMATION  
FORM AND COVER SHEET

State Of South Carolina  
 Defendant. )

<b>Plaintiff's Attorney:</b> Tristan M. Shaffer, Bar No. 77565 Address: 4701 Oleander Drive Myrtle Beach SC 29577 phone: (843) 916-9300 fax: e-mail: tristan@gotaxelrod.com other:	<b>Defendant's Attorney:</b> Joshua L. Thomas, Bar No. 100777 Address: Post Office Box 11549 Columbia SC 29211-1549 phone: (803) 734-3737 fax: (803) 734-4113 e-mail: JThomas@scag.gov other:
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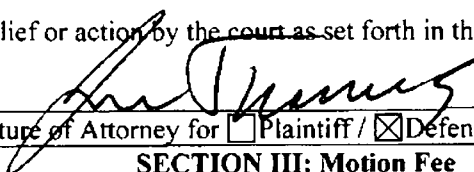
**MOTION HEARING REQUESTED** (attach written motion and complete SECTIONS I and III)  
 **FORM MOTION, NO HEARING REQUESTED** (complete SECTIONS II and III)  
 **PROPOSED ORDER/CONSENT ORDER** (complete SECTIONS II and III)

**SECTION I: Hearing Information**

Nature of Motion: \_\_\_\_\_  
 Estimated Time Needed: \_\_\_\_\_ Court Reporter Needed:  YES /  NO

**SECTION II: Motion/Order Type**

Written motion attached  
 Form Motion/Order  
 I hereby move for relief or action by the court as set forth in the attached proposed order.

  
 Signature of Attorney for  Plaintiff /  Defendant

October 6, 2015  
 Date submitted

FILED  
 GVENT. IN PART  
 2015 OCT 16 AM 11:46  
 CLERK OF COURT  
 DILLON COUNTY

**SECTION III: Motion Fee**

PAID - AMOUNT: \_\_\_\_\_  
 EXEMPT:

- Rule to Show Cause in Child or Spousal Support
- (check reason)  Domestic Abuse or Abuse and Neglect
- Indigent Status  State Agency v. Indigent Party
- Sexually Violent Predator Act  Post-Conviction Relief
- Motion for Stay in Bankruptcy
- Motion for Publication  Motion for Execution (Rule 69, SCRPC)
- Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: \_\_\_\_\_  
 Other: \_\_\_\_\_

**JUDGE'S SECTION**

Motion Fee to be paid upon filing of the attached order.  
 Other: \_\_\_\_\_

JUDGE: \_\_\_\_\_  
 CODE: \_\_\_\_\_ Date: \_\_\_\_\_

**CLERK'S VERIFICATION**

Date Filed: \_\_\_\_\_

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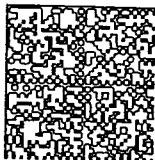
MOTION FEE COLLECTED: \_\_\_\_\_  
 CONTESTED - AMOUNT DUE: \_\_\_\_\_

# AXELROD

& ASSOCIATES  
ATTORNEYS AT LAW

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Supreme Court of South Carolina  
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