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ATTORNEY AT LAW

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**RECEIVED**

November 06, 2015

NOV 12 2015

**S.C. SUPREME COURT**

**Via US Mail**

Daniel Shearouse  
Clerk of Court  
South Carolina Supreme Court  
Post Office Box 11330  
Columbia, South Carolina 29211

**Re: Notice of Intent to Appeal from Brian K. Sekerchak vs. State of South Carolina  
C.A. No.: 2014-CP-23-5049**

Dear Mr. Shearouse:

I was Court Appointed in the above referenced matter, and I expect that appellate defense will handle the appeal and petition for certiorari. On behalf of my client, enclosed for filing please find the Notice of Appeal and proof of service. I've enclosed a copy of the Honorable 's Order of Dismissal to be challenged on appeal. I must inform the Supreme Court that as an officer of this Court, I am unable to identify any issue which can be reviewed on appeal. By copy of this letter, I am instructing Appellant that if he must notify this Court, in writing, no later than twenty (20) days from the date of this letter, of any arguable basis for an appeal from his guilty plea as required by Rules 203(d)(1)(B) of the South Carolina Appellate Court Rules. By copy of this letter, I am also serving my client, counsel for the State of South Carolina, the South Carolina Commission of Indigent Defense - Appellate Defense Division and the Greenville County Clerk's Office.

Thank you for your assistance in this matter and if you have any questions, please feel free to contact me.

Sincerely,  
LAW OFFICE OF R. MILLS ARIAIL, JR.  
Attorney at Law

  
R. Mills Ariail, Jr.

RMAjr/dl  
Enclosures (as stated)

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

**RECEIVED**

NOV 12 2015

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

**S.C. SUPREME COURT**

Perry H. Gravely, Circuit Court Judge

Case No. 2014-CP-23-05049

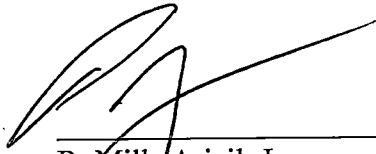
Brian Sekerchak,..... Appellant,

v.

State of South Carolina ..... Respondent.

**NOTICE OF APPEAL**

Appellant appeals the Honorable Perry H. Gravely's Order of Dismissal dismissing Appellant's application for post-conviction relief. On October 22, 2015, the Honorable Perry H. Gravely signed an order dismissing Appellant's application for post-conviction relief with prejudice. Appellant, through counsel, received written notice of entry of this order on October 29, 2015. A copy of the Honorable Perry H. Gravely's Order of Dismissal is attached.



R. Mills Ariail, Jr.  
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Attorney for Brian Sekerchak #174115

Greenville, South Carolina  
November 06, 2015

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge

Case No.2014-CP-23-05049

Brian Sekerchak,..... Appellant,

v.

State of South Carolina ..... Respondent.

**CERTIFICATE OF SERVICE**

I, Denise Tanner LaBeck, paralegal to R. Mills Ariail, Jr., do hereby certify that on this November 06, 2015, I served upon the below named Respondents copies of the **NOTICE OF APPEAL** by depositing copies of the same via U.S. Mail, postage prepaid, Registered Mail in an envelope addressed as set forth herein below:

**Karen C. Ratigan, Esq.**  
**Assistant Attorney General**  
**PO Box 11549**  
**Columbia, SC 29211**  
**Attorney for the State of South Carolina**

**Greenville County Clerk's Office**  
**Greenville County Courthouse**  
**305 East North Street**  
**Greenville, SC 29601**

**Brian Sekerchak #174115 SCDC# 174115**  
**Tyger River Correctional Institution**  
**200 Prison Road**  
**Enoree, South Carolina 29335-9308**

**SC Commission of Indigent Defense**  
**Division of Appellate Defense**  
**PO Box 11433**  
**Columbia, SC 29211-1433**

*Denise Tanner LaBeck*  
Denise Tanner LaBeck

November 06, 2015

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

JUDGMENT IN A CIVIL CASE  
CASE NO: 2014CP2305049

Brian Keith Sekerchak 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;  
Dated at Greenville, South Carolina, this .

Court Reporter:

PRESIDING JUDGE - Perry H. Gravely

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

R. Mills Ariail Jr. 11 North Irvine Street, Suite 11  
Greenville, SC 29601

LaRone Kashod Washington PO Box 11549  
Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court  
- Clerk of Court

FILED-CLERK OF COURT  
GREENVILLE CO. S.C.  
PAUL B. WICKENSIMER  
2015 OCT 23 PM 2:44

STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE

BRIAN K. SEKERCHAK, 174115

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

2014-CP-23-~~243~~ 8049

FILED-CLERK OF COURT  
GREENVILLE CO. S.C.  
PAUL B. WICKENSIMMER  
2015 OCT 23 PM 3 44

ORDER OF DISMISSAL

This matter comes before this Court by way of an application for post-conviction relief (PCR) filed by Brian Sekerchak (Applicant) on September 12, 2014. The State (Respondent) made its return on February 12, 2015, requesting the application be summarily dismissed.

This Court convened a hearing on the State's motion to dismiss on October 21, 2015, at the Greenville County Courthouse. Applicant and his counsel, R. Mills Ariail, Jr., Esquire, were present at the hearing. LaRone K. Washington, of the South Carolina Attorney General's Office, represented Respondent. This Court had before it the State Grand Jury Clerk of Court's records regarding the subject convictions, South Carolina Department of Corrections records, the pleadings in this case, the plea agreement, and the notice of motion and motion for discovery and Brady and Kyle materials.

This Court grants Respondent's motion to dismiss this PCR application and issues the following findings:

## I. PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the State Grand Jury Clerk of Court. The Applicant was indicted at the December 2011 term of the State Grand Jury for one (1) count of Conspiracy to Traffic Methamphetamine, five (5) counts of Distribution of Methamphetamine, and one (1) count of Possession with Intent to Distribute Methamphetamine. Applicant was represented by Michael Johnson, Esquire.

On April 20, 2012, the Applicant pleaded guilty to one (1) count of Conspiracy to Traffic Methamphetamine Second Offense and five (5) counts of Distribution of Methamphetamine Second Offense. Applicant was sentenced by the Honorable Letitia Verdin to confinement for a period of fifteen (15) years. The Applicant did not appeal his convictions or sentences.

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

1. Ineffective assistance of counsel.
  - a. "I have never seen my Motion of Discovery. Only my lawyer says he's has it."
  - b. "My lawyer Michael F Johnson wasn't prepared enough for a case as big as this was dealing with SLED the state Grand Jury."

## II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court reviewed the record in its entirety and heard arguments presented at the hearing. Set forth below are the relevant findings of fact and conclusions of law as required by section 17-27-80 of the South Carolina Code (2014).

### A.

This Court finds Applicant's claims that he "never seen my Motion of Discovery. Only my lawyer says he's has it" and his "lawyer Michael F Johnson wasn't prepared enough for a

case as big as this was dealing with SLED the state Grand Jury" were waived. Applicant and his lawyer signed a plea agreement with the State of South Carolina recommending Applicant receive a fifteen year sentence. In this plea agreement, Applicant waived his right to post-conviction relief and appeal. Applicant claimed he did not remember signing the plea agreement nor did he review sections of the agreement. However, a competent person generally is presumed to have knowledge and understanding of a document he or she signs *In re King's Will*, 132 S.C. 63, 128 S.E. 850 (1925). Applicant's claim of ineffective assistance of counsel was waived by Applicant and must be dismissed with prejudice and State's motion to dismiss is granted.

This Court finds this application must be summarily dismissed.

### III. CONCLUSION


Based on the foregoing, this Court concludes Applicant has not established any constitutional violations or deprivations requiring this Court to further entertain this application. Therefore, this Court dismisses this PCR application with prejudice.

This Court notes Applicant must file and serve a notice of appeal within thirty days from receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203(b)(1), SCACR. Pursuant to *Austin v. State*, Applicant has a right to the assistance of appellate counsel if he seeks review of the denial of this order denying PCR. If Applicant wishes to seek appellate review, counsel must serve and file a notice of appeal on Applicant's behalf. Rule 71.1(g), SCRCP. Applicant is directed to South Carolina Appellate Court Rule 243 for appellate procedures.

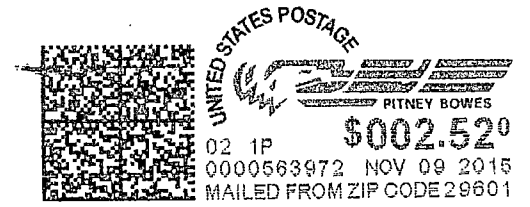
**IT IS THEREFORE ORDERED THAT:**

1. Applicant's PCR application is denied and dismissed with prejudice;
2. State's motion to dismiss is granted; and
3. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 22<sup>nd</sup> day of Oct, 2015.

  
\_\_\_\_\_  
PERRY H. GRAVELY  
Presiding Judge

Greenville, South Carolina



R. MILLS ARIAIL, JR.  
ATTORNEY AT LAW



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