

# AXELROD & ASSOCIATES, P.A.

Attorneys and Counselors at Law

"Success is all that matters"

Stuart Mark Axelrod†  
W. Christopher Castro\*  
Tristan M. Shaffer  
Caitlin M. Epley  
J. Leon Parrott\*

†Certified Family Court Mediator  
\*Currently on Active Military Leave  
\*Licensed in South Carolina and Virginia

4701 Oleander Drive  
Myrtle Beach, SC 29577  
Phone: (843) 916-9300  
Fax: (843) 916-9311

**FROM THE DESK OF:**  
**Kris Gunnell, Senior Paralegal**  
Direct Phone: (843) 848-6718  
Direct Fax: (843) 848-6719  
Kris@gotaxelrod.com

November 25, 2015

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

RECEIVED  
NOV 30 2015

**RE: Eddie A. Huggins, #130099 v. State of South Carolina S.C. Supreme Court**  
**Case No.: 2011-CP-16-0994**

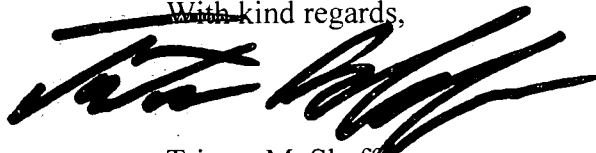
Dear Clerk of Court:

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. <sup>Huggins</sup>Malachi 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  
Attorney at Law

TMS/kmg  
Enclosures

cc: Jessica E. Kinard, Esquire  
Marlboro County Clerk of Court  
Appellate Defense  
Vondell Malachi



SUPREME COURT OF SOUTH CAROLINA

APPEAL FROM DARLINGTON COUNTY  
In The Court of Common Pleas

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

Case No.: 2011-CP-16-0994

**RECEIVED**

NOV 30 2015

**S.C. Supreme Court**

Eddie A. Huggins, #130099, 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	Eddie A. Huggins, #130099 Lee Correctional Institution 990 Wisacky Highway Bishopville, SC 29010
Darlington County Clerk of Court 1 Public Sq. Rm B4 Darlington, SC 29532-3213	Appellate Defense 1330 Lady Street Columbia, SC 29201



Kris Gunnell  
Paralegal to Tristan M. Shaffer

November 25, 2015  
MYRTLE BEACH, SOUTH CAROLINA

STATE OF SOUTH CAROLINA )  
COUNTY OF DARLINGTON )

IN THE COURT OF COMMON PLEAS  
FOR THE FOURTH JUDICIAL CIRCUIT

Eddie A. Huggins, #130099, )

Case No. 2011-CP-16-0994

Applicant, )

v. )

State of South Carolina, )

Respondent. )

**ORDER OF DISMISSAL**

TRUE CERTIFIED COPY,

*Scott B. Suggs*

CLERK OF COURT/RMC  
DARLINGTON COUNTY, SC

This matter comes before the Court by way of an Application for Post-Conviction Relief filed December 28, 2011. Respondent made a timely<sup>1</sup> Return on or about November 19, 2014. The Court convened an evidentiary hearing into the matter on July 28, 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.

Testifying at the hearing were: Applicant; Applicant's plea counsel, S. Boyd Young, Esquire, and Henry M. Anderson Jr., Esquire; and Deputy Solicitor Kernard E. Redmond. The Court had before it a copy of the plea transcript, the records of the Darlington County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the pleadings, and the exhibits introduced at the hearing. 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 Darlington County Clerk of Court. In November 2008, the Darlington County Grand Jury indicted Applicant for murder (2008-GS-16-1507) and armed

SCOTT B. SUGGS  
CLERK OF COURT/RMC  
DARLINGTON COUNTY, SC  
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<sup>1</sup> Respondent averred it did not receive a copy of the application from the Darlington County Clerk of Court until March 5, 2014.

robbery (2008-GS-16-1506). The State served Applicant with notice of its intent to seek the death penalty for the murder charge. S. Boyd Young, Esquire, and Henry M. Anderson Jr., Esquire, (collectively, "plea counsel") represented Applicant. On December 22, 2010, Applicant pled guilty to murder. As part of a negotiated plea, the State dismissed the armed robbery indictment and withdrew its death penalty notice. The Honorable Michael G. Nettles accepted the negotiations and sentenced Applicant to life imprisonment without parole. 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 assistant of counsel"
  - a. "Wasn't given a mental evaluation"
  - b. "Was coerce into a guilty plea"

At the evidentiary hearing, Applicant proceeded on allegations that (1) plea counsel was ineffective for failing to have Applicant evaluated pursuant to Atkins v. Virginia, 536 U.S. 304 (2002), and (2) his guilty plea was involuntary.

## **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.

### **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)). Where the application alleges ineffective

assistance of plea counsel as a ground for relief, Applicant 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 Applicant pled guilty, he 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).

The Court finds Applicant failed to meet his burden of proof to demonstrate plea counsel ineffective in failing to have Applicant undergo an Atkins evaluation. Mr. Young testified he met with Applicant forty to fifty times. He testified Applicant never appeared to have any difficulty understanding their conversations. Young testified the evidence of Applicant's guilt

was strong, so he focused on the mitigation aspect of the death penalty case. He recalled employing a fact investigator as well as a social worker. Young testified he had no questions about Applicant's competency. He recalled Applicant's juvenile justice records demonstrated Applicant's IQ was in the range that an Atkins evaluation could have gone either way. However, Young testified they never got around to having an Atkins evaluation done because Applicant chose to accept the State's offer to plead to life imprisonment. Young also testified he believed a life sentence was possible at trial regardless of the result of an Atkins evaluation because Applicant had a prior armed robbery conviction in Virginia.

The Court finds Applicant failed to demonstrate plea counsel deficient for failing to have an Atkins evaluation conducted. The Court finds very credible Young's testimony that he had no reason to question Applicant's competency. See Jeter v. State, 308 S.C. 230, 233, 417 S.E.2d 594, 596 (1992) (attorney not deficient where he discussed the applicant's case on several occasions, was familiar with the applicant, relied on his own perceptions, and was never informed about a potential capacity issue). The Court also finds persuasive and credible Young's testimony they would have requested an Atkins evaluation if Applicant had chosen to proceed with a trial. However, because Applicant accepted the State's plea offer, he cannot now allege trial counsel should have further pursued this avenue to avoid the death penalty. 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)).

The Court further finds Applicant failed to demonstrate he was prejudiced by plea counsel's decision not to pursue an Atkins evaluation. First, Applicant presented no evidence of what such an evaluation would have found regarding his competency. Jeter, 308 S.C. at 234, 417 S.E.2d at 596 (citations omitted); see also Dempsey v. State, 363 S.C. 365, 369, 610 S.E.2d 812, 814 (2005) (an applicant must present allegedly favorable evidence at the evidentiary hearing (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995))). Second, even

assuming such an evaluation had determined he was not competent to be executed, Applicant could still be sentenced to life imprisonment. Because Applicant entered a plea in exchange for the State withdrawing the death penalty notice, he received the same benefit he would have received had an Atkins evaluation been successfully pursued. Therefore, Applicant has not demonstrated an Atkins evaluation would have changed the result of his proceedings.

### **B. Involuntary Guilty Plea**

The Court further finds Applicant failed to meet his burden of proof regarding his allegation his plea was rendered involuntary by the State's threats to prosecute his co-defendants. "To knowingly and voluntarily enter a plea of guilty, all that is required is that a defendant have a full understanding of the consequences of his plea and of the charges against him." Simpson v. State, 317 S.C. 506, 508, 455 S.E.2d 175, 176 (1995) (citing Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991)). Specifically, a defendant must only be informed of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers. Roddy v. State, 339 S.C. 29, 33, 528 S.E.2d 418, 421 (2000) (citing Boykin v. Alabama, 395 U.S. 238 (1969)). Furthermore, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant. Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Admissions "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." Id. at 137-38, 654 S.E.2d at 874 (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)).

Applicant testified he only pled guilty because he was informed his family would be prosecuted to the fullest extent of the law if he did not. He testified the solicitor told him the charges against his family would be dropped if he entered a plea. Applicant admitted those charges were dropped or reduced, and he received what he wanted by accepting the plea.

Young recalled discussing a reduction in the co-defendant's charges as part of the plea negotiations. He testified he believed the co-defendant's charges were reduced or dismissed when Applicant pled. Mr. Anderson testified he met with the solicitor and discussed Applicant wanting the co-defendant's charges reduced as part of the plea. Anderson testified the ultimate disposition of those charges appears to be that they were dismissed or reduced to misdemeanors and handled in magistrate's court. He believed that resolution comported with the plea negotiations.

Mr. Redmond ("the solicitor") testified he handled the prosecution of Applicant and his co-defendants. He testified the co-defendants assisted Applicant in leaving town after he committed the murder. The solicitor testified those co-defendants were charged with either accessory after the fact to a felony or misprision of a felony. He testified two co-defendants were allowed to plead to reduced charges in magistrate court and one co-defendant's charges were dismissed.

The Court finds Applicant failed to demonstrate his guilty plea was coerced by threats of prosecution of his co-defendants. Regarding this allegation, the Court finds credible the testimony of plea counsel and the solicitor that Applicant sought to assistance for his family as part of his plea. The Court also finds credible the testimony of plea counsel and the solicitor that the result of the co-defendant's cases comported with everyone's understanding of the plea terms. Furthermore, the Court notes there is "no intrinsic constitutional infirmity in broadening plea negotiations so as to permit third party beneficiaries." Harman v. Mohn, 683 F.2d 834, 837 (4th Cir. 1982). Here, the charges against the co-defendants were brought well before plea bargaining began in Applicant's case. The limited record before this Court indicates the State did not act in bad faith in seeking charges against the co-defendants based on their involvement in Applicant evading capture. Furthermore, plea counsel did not represent any of the co-defendants. Nothing in this record indicates Applicant's plea was coerced by the State's

agreement to reduce or dismiss the charges against the co-defendants. See Id. at 837-38 (dismissal of charges against defendant's wife's as part of plea bargain acceptable where wife was indicted separately and represented by different counsel).

Furthermore, Applicant raised no objections to the terms of his agreement at his plea hearing. In fact, the record before this Court demonstrates Applicant received the benefit of his bargain, as the charges against the co-defendants were reduced or dismissed. See United States v. Morrow, 914 F.2d 608, 613 (4th Cir. 1990) (linked plea not involuntary where defendant admitted the only reason he entered plea was to help third-party). To the extent Applicant now claims his plea was coerced by threats the State would prosecute his family, the Court finds that testimony not credible and refuted by the record. Accordingly, the Court finds Applicant's plea was knowingly, intelligently, freely, and voluntarily entered with a full understanding of the consequences thereof.

### **C. 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. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

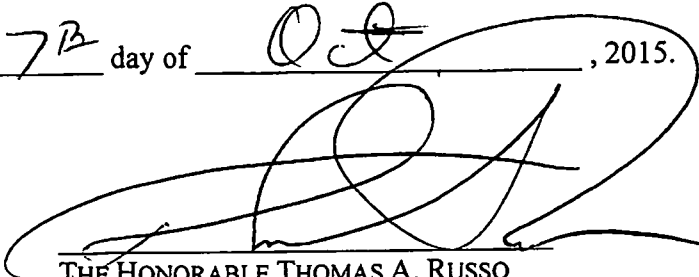
The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d

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), SCRCR, 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 October, 2015.

  
THE HONORABLE THOMAS A. RUSSO  
Presiding Judge

Flame, South Carolina

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

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NOV 30 2015

EDDIE A. HUGGINS, 130099

Applicant, **S.C. Supreme Court**

v.

STATE OF SOUTH CAROLINA,

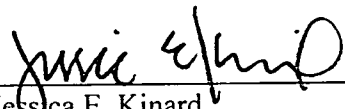
Respondent.

CERTIFICATE OF SERVICE

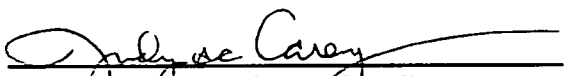
The undersigned hereby certifies that a true copy of the **Order of Dismissal** has been served upon the applicant by mailing one (1) copy in the United States mail, postage prepaid, addressed to:

**Tristan M. Shaffer, Esquire**  
**Axelrod & Associates, PA**  
**4701 Oleander Drive**  
**Myrtle Beach SC 29577**

This 6th day of November, 2015.

  
\_\_\_\_\_  
Jessica E. Kinard  
Assistant Attorney General  
Attorney for Respondent

SWORN to before me this 6th day of November, 2015.

  
\_\_\_\_\_  
Notary Public for South Carolina.  
My Commission Expires: May 14, 2024

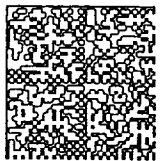
# AXELROD

& ASSOCIATES  
ATTORNEYS AT LAW

4701 Oleander Drive ♦ Myrtle Beach, SC 29577

KMG

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



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PITNEY BOWES  
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