

In The form of petitioner Terrence Bradshaw #320361  
Case Docket NO: 2015-CP-45-279 / The Applicant contends to  
give the court, The proper material necessary to convey the  
Burden of proof of SCRCP Rules of 60-A & B, / To Newly Discovered  
Evidence.

By The preponderance of the evidence, The Applicant Raises-A,  
Claim for A violation, to his 6<sup>th</sup> Amendment Right to Ineffective  
Assistance of Counsel. And A 14<sup>th</sup> Amendment Right to equal protection  
and Due process violation.

Base on newly Discover facts from petitioners Burden of proof.  
The Petitioner now Brings forth the following material in Regards to,  
The Judges order to A final order of Dismissel Case file 2008-CP-45-008 / If it may please this Court, The facts And Conclusions  
are provided with in the Applicant original PCR Application to the  
PCR Judges Ruling. This Ruling was misrepresented By not Being  
in Compliance with specific finding of law to 17-27-80, By Dismissing  
the ISSUES to petitioners claim to Ineffective Assistance of  
Counsel part (B) And part (C) in A Catch All phrase In Regards  
to Page (2) of the here By Sign order.

The petitioner now introduces the Case file 2015-CP-45-279, / In  
Responses to A procedure Defect violation to the 14<sup>th</sup> Amendment  
Due process & equal protection of law, where the PCR Judges order  
was not in compliance to 17-27-80. ON page #7, In The Condi-  
tional order of Dismissel Case file 2015-CP-45-279, The Respondent  
Describes that unless the petitioner Shows that it is Based on  
the grounds of which he could not have Knowledge By the  
exercise of reasonable diligence before the Circumstances  
Prejudicial to the State occurred.

Pg #1 / please Read next page

**LEGAL**

The petitioner contends that this motion should not be  
come final by way of the Applicant not having a full  
adjudication on the merits of the original petition or to the  
one full bite of the apple. Austin vs State 409 S. 2d 395  
396 SC (1991) Odom vs State 523 S. 2d 753 (1999) Hope vs  
State 328 SC 78 492 SC 2d 76 (1997) Gamble vs State 379  
S. 2d 118-119 (1989) Case vs State 289 S. 2d 413 (1982) Carter  
vs State 362 S. 2d 20 (1987)

If it pleases this court, this is where the petitioner,  
introduce his newly discovered evidence under SCRCp  
Rules 60-A, B, / ~~6~~ By providing documentation of legal  
materials to the substantial elements in relation to the  
judge's procedure defect.

STATE OF SOUTH CAROLINA )  
COUNTY OF WILLIAMSBURG )

IN THE COURT OF COMMON PLEAS

2008-CP-45-0008

Terrance Bradshaw, #320361,

Applicant,

v.

State of South Carolina,

Respondent.

A CERTIFIED TRUE COPY  
ORDER OF DISMISSAL  
CAROLYN F. WILLIAMS  
CLERK OF COURT  
WILLIAMSBURG COUNTY

CAROLYN F. WILLIAMS  
CLERK OF COURT  
KINGSTREE, S.C.

09 JUN -2 AM 10: 25

FILED

This matter comes before the Court by way of an Application for Post-Conviction Relief filed January 11, 2008. The Respondent made its Return on July 2, 2008. An evidentiary hearing into the matter was convened on April 1, 2009, at the Sumter County Courthouse. The Applicant was present at the hearing and was represented by Charles T. Brooks, III, Esquire. The Respondent was represented by Mary S. Williams of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. Also testifying was Debra Jackson, Esquire. This Court had before it the records of the Williamsburg County Clerk of Court,<sup>1</sup> the guilty plea transcript, and the Applicant's records from the South Carolina Department of Corrections.

### 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 the Williamsburg County Clerk of Court. Applicant was indicted for (1) Murder, (2) Assault and Battery with Intent to Kill ("ABWIK"), (3) Possession of a Firearm During a Violent Crime, (4) Armed Robbery, (5) Criminal Conspiracy, and

<sup>1</sup> Clerk's records included the indictment, sentencing sheet, warrants, docket sheets, orders of appointment of counsel, orders for mental evaluations, and a DMH report of mental evaluation.

(7) Possession of a Firearm by a Person Under the Age of 21 (2005-GS-45-0181).<sup>2</sup> Debra Jackson, Esquire, represented him. On February 5, 2007, Applicant pled guilty to Armed Robbery before the Honorable Clifton Newman. Applicant received the negotiated sentence of twenty-two (22) years imprisonment, and the remaining charges were *not prossed*. Applicant did not appeal his conviction and sentence.

In his application for post-conviction relief (PCR), Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
  - a. "...failure to investigate the case and prepare a trial defense for Applicant."
  - b. "...failure to advise Applicant that his statement to law enforcement authorities was involuntary and therefore inadmissible against Applicant at trial."
  - c. "...failure to advise Applicant of the relevant law as it applied to the particular facts and defenses of Applicant's case."
2. Involuntary guilty plea.
  - a. "...during adversarial process counsel was ineffective and Applicant was prejudiced by that ineffectiveness. Applicant did not have the requisite level of knowledge of the facts and the law and how the law applied to some of the facts of his case to make a knowing, voluntary, and intelligent decision on how best to proceed. Furthermore, Applicant was not advised, prior to entering the guilty plea, of all the constitutional rights he would be waiving by entering a guilty plea to the charge against him."

#### 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.

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<sup>2</sup>Applicant was charged along with his co-defendants in a seven count indictment. Count Six, Possession of a Firearm by a Convicted Felon, was charged only as to co-defendant Glen Wilson.

### Ineffective Assistance of Counsel/Involuntary Guilty Plea

The 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), SCRCP). 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, 80 L.Ed.2d 674, 692 (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, supra). 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. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland). 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, 88 L.Ed. 2d 203 (1985).

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant 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 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

An Applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for trial counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial, Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993). Given Applicant's burden of proof and the analysis to be applied to this claim, the Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it will be treated as such.

#### *Ineffective Assistance of Counsel*

Applicant submits that counsel was ineffective in failing to perform a thorough investigation. Applicant specifically alleges that counsel failed to investigate and present mitigating evidence and facts of the case. Applicant testified that counsel failed to investigate his social history, his borderline IQ, and that he was on medications like Risperdal. Applicant argues that these should have been presented in mitigation during his plea. The records before this court show that counsel obtained an

Order for Competency to Stand Trial Evaluation pursuant to State v. Blair and an Order for Criminal Responsibility and Capacity to Conform Evaluation (M'Naughten). Counsel testified that Applicant's history, school records, and medications were "red flags" to her that he should be evaluated. The basis for the Blair order included specific concerns arising from family history of mental illness and school records. Therefore, it appears that counsel had reviewed Applicant's social history issues. Counsel testified that she was present at Applicant's DMH evaluation. She also considered securing additional doctors, but over the course of her representation ultimately did not feel an additional opinion would be necessary. I find that counsel's efforts to investigate her client's mental health and social history issues were reasonable under professional norms. As for using these facts in mitigation, counsel offered a statement on her client's behalf, and Applicant had an opportunity to speak in mitigation. (Trans. p.p. 27-28.)

I further find that Applicant has failed to demonstrate prejudice in this regard. There is no evidence that Applicant was incompetent either at the time of the plea or at the time of the crimes and no evidence to contradict the DMH findings. See Jeter v. State, 308 S.C. 230, 417 S.E.2d 594 (1992). I further find no evidence of prejudice in terms of presentation of Applicant's social and mental issues in mitigation. The DMH report, which contains the information about Applicant's IQ and family history, was presented to the court during the plea, and Applicant was found to be competent. (Trans. pp. 11-13.) Furthermore, Applicant pled to a negotiated sentence, so it is unclear what further benefit in terms of sentence could be had. Counsel testified that the solicitor had considered the case for the death penalty, and she had used Applicant's background in her discussions with the solicitor about a plea offer. For all of these reasons, I find that counsel was not ineffective with regard to her investigation of Applicant's mental abilities and her presentation of

*[Handwritten signature]* 5

mitigating evidence on Applicant's behalf.

Applicant further alleges ineffective assistance for failure to investigate certain evidence in the case and prepare a defense. Counsel testified that she had reviewed the evidence in the case with Applicant. She had concerns because one victim who had been left for dead had survived and was able to testify. Applicant's co-defendant was also prepared to testify at trial. Counsel was preparing for trial and had met with Applicant several times the week before trial was to be called on Monday. She had prepared requests for jury charges. Counsel attempted to speak with the victim who would testify, but he refused to speak with her. Counsel stated that she would have argued that Applicant's statement was involuntary had he proceeded with trial. Counsel did not feel she needed to retain an investigator because her own investigations had not panned out or developed any leads to pursue. I find that counsel's investigation was well within reasonable professional norms. I further find that Applicant has failed to demonstrate any prejudice in this regard. Applicant has presented no evidence which could or should have been found nor any additional preparation which counsel could have undertaken. See for example Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998) (no prejudice where allegation of failure to investigate is only supported by mere speculation as to the result).

*Involuntary Guilty Plea*

Applicant alleges that his plea was involuntarily made because counsel knew his medication and still advised him to plead. As discussed above, Applicant was found competent at the time of his plea, and no evidence has been presented to the contrary. Counsel reviewed the evidence with Applicant. Counsel had a "plea checklist" to make sure that she reviewed important points with Applicant. Counsel testified that they discussed Applicant's right to a trial; the hand of one, hand of

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all; the elements of the offense in detail using examples to help him understand; and the maximum sentence of thirty years he faced. Applicant was also informed of the sentence he was facing by the plea judge. (Trans. p. 4.) The plea judge also reviewed the rights Applicant was giving up as a result of his plea, and Applicant indicated that he understood. (Trans. pp.6-8.) During the plea counsel also thought Applicant understood these rights. (Trans. p. 11.) Applicant told the plea judge that he understood the nature of the charges and the consequences of a guilty plea. (Trans. p. 11.) Applicant admitted his guilt at the plea hearing. Applicant stated that he *wanted* the sentence being offered at the time of the plea. I find no credible evidence that Applicant was coerced to plead guilty and there has been no evidence which would contradict the finding that Applicant was competent to enter his plea. For these reasons, I find that Applicant's plea was not involuntary.

#### **Other Allegations**

No other allegations were raised at the PCR hearing. Therefore, any additional allegations are deemed waived because no evidence was presented.

#### **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.

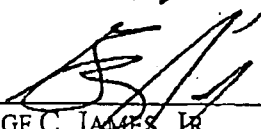
This Court advises Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order to secure the appropriate appellate review. His attention is also directed to South Carolina Appellate Court Rule 227 for appropriate procedures after notice has been timely filed.



**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 15 day of May, 2009.

  
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GEORGE C. JAMES, JR.  
Presiding Judge  
Third Judicial Circuit

South, South Carolina.

