

THE BOOZER LAW FIRM, LLC

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January 16, 2016

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

RECEIVED

JAN 21 2016

S.C. SUPREME COURT

The Honorable Mary Brown
Clerk, Berkeley County
300 California Dr.
Moncks Corner, SC 29461

**RE: Steven Rogers, #353340, v. State of South Carolina
2013-CP-08-2677/2012-GS-08-884**

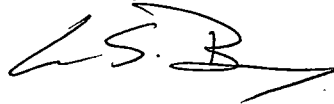
Dear Mr. Shearouse and Ms. Brown:

Enclosed for filing is a Notice of Appeal pursuant to *White v. State* in the above-referenced case. Also enclosed are the following:

- (1) Proof of Service of the Notice of Appeal;
- (2) A copy of the Order which is to be challenged on appeal; and
- (3) Prior Order of Appointment of Counsel.

As I was appointed to represent Mr. Rogers in his PCR proceeding, I anticipate that the Office of Appellate Defense will represent Mr. Rogers in this appeal.

Yours very truly,



Lance S. Boozer

cc: Rutledge Johnson, AAG
Loriene French, OAD

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

RECEIVED

The Honorable Larry B. Hyman, Jr., Circuit Court Judge JAN 21 2016

Case No. 13-CP-08-2677

S.C. SUPREME COURT

Steven Rogers, #353340.....Petitioner,

v.

State of South Carolina,.....Respondent.

NOTICE OF APPEAL

Now comes the Petitioner, by and through his undersigned and appointed Attorney, stating Petitioner's Notice of Appeal should be heard pursuant to the Final Order of the Honorable Larry B. Hyman, Jr., which granted a *White* review of the Petitioner's guilty plea dated November 29, 2012 (2012-GS-08-884). The Final Order denied Petitioner's remaining allegations. The Petitioner received written notice of the Final Order granting a *White* review and denying Petitioner's remaining allegations on January 5, 2016 . A copy of the Final Order is attached herewith.

Respectfully submitted,



Lance S. Boozer
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Tele: 803-608-5543

Columbia, South Carolina
January 16, 2016

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

JAN 21 2016

The Honorable Larry B. Hyman, Jr., Circuit Court Judge

S.C. SUPREME COURT

Case No. 13-CP-08-2677


Steven Rogers, #353340.....Petitioner,

v.

State of South Carolina,.....Respondent.

PROOF OF SERVICE

I, Lance S. Boozer, attorney for Petitioner, certify that I have today served within Notice of Appeal upon the Respondent by depositing a copy of it in the United States Mail, postage prepaid, addressed to Assistant Attorney General Rutledge Johnson, P.O. Box 11549, Columbia, SC 29211. I further certify that all parties required by Rule to be served have been served this 16th day of January, 2016.


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STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

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

Steven Rogers, #353340,

) 2013-CP-08-2677

) Applicant,

) v.

) **FINAL ORDER**

) State of South Carolina,

) Respondent.

FILED
15 DEC 21 PM 4:50
CLERK OF COURT
BERKELEY COUNTY, S.C.

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on December 3, 2013. Respondent made its return on March 26, 2015. An evidentiary hearing into the matter was convened on September 10, 2015, at the Charleston County Courthouse. Applicant was present at the hearing and was represented by Lance S. Boozer, Esquire. Respondent was represented by Assistant Attorney General Rutledge Johnson 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 Berkeley County Clerk of Court. The Applicant was indicted at the May 2012 term of the Berkeley County Grand Jury for Burglary, First Degree. Deborah Littlejohn, Esquire represented Applicant. On November 29, 2012, Applicant pled guilty as indicted before the Honorable R. Markley Dennis, Jr. Judge Dennis sentenced Applicant to a fifteen year term of imprisonment. Applicant did not appeal his guilty plea or sentence.

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. Counsel coerced, tricked, and manipulated me into accepting the guilty plea.
 - b. Requested an appeal and was told by attorney that she no longer represented me.
2. Involuntary Guilty Plea.
 - a. I did not knowingly and intelligently take the guilty plea.
 - b. I did not commit burglary, first degree.

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

INEFFECTIVE ASSISTANCE OF PLEA COUNSEL AND INVOLUNTARY GUILTY PLEA

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 ad-

equate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). 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).

This Court finds Applicant's allegation that he received ineffective assistance of counsel because plea counsel allegedly coerced, tricked and manipulated him into accepting the plea is meritless. Additionally, the Court finds Applicant's allegation his guilty plea was involuntary because he did not knowingly and intelligently plead guilty and that he did not commit Burglary, First Degree are also without merit. A defendant who pleads guilty on the advice of counsel may collaterally attack the voluntariness of his plea only by showing that (1) counsel was ineffective and that (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty. Wolfe v. State, 326 S.C. 158, 485 S.E.2d 367 (1997).

In the instant case, Applicant testified that he initially rejected multiple plea offers, including an offer to plead to Burglary, First Degree, in exchange for a fifteen (15) year sentence.

Applicant further testified he felt pressured by plea counsel to accept a plea and that she indicated if he did not plead guilty, he would get thirty (30) years to life. Applicant testified that he initially attempted to enter a plea, however, the plea court would not accept the plea due to Applicant's hesitation. Applicant further testified he then met with his plea counsel during a recess and that his wife was also present. Applicant stated that he felt his plea counsel was attempting to pressure him into pleading guilty during the recess.¹ Applicant indicated he finally felt he had no other option than to plead guilty following the pressure from his plea counsel. Applicant also testified he did not feel he committed Burglary, First Degree because his crime did not occur at night. Applicant indicated plea counsel told him if he did not plead guilty, he would be facing other charges. Applicant further testified he asked plea counsel to file an appeal following his plea, however, she indicated she was no longer his attorney.

Plea counsel testified she reviewed the evidence and elements of the charge with the Applicant prior to the plea. Additionally, plea counsel testified she reviewed the possible sentences with the Applicant and felt that the fifteen (15) year plea was in his best interest. She further testified it was the Applicant's decision to plead guilty. Plea counsel indicated she did convey to the Applicant that the State told her they were considering a separate charge because they believed the Applicant entered the structure multiple times. Plea counsel testified she could not recall whether Applicant requested an appeal.

This Court finds Applicant's testimony that he was coerced, tricked and manipulated into pleading guilty not credible. This Court further finds Applicant's testimony that his plea was rendered involuntary due to an unknowing and unintelligent plea and that he did not commit

¹ During the PCR hearing, this Court accepted a proffer of the proposed testimony of Applicant's wife, Kristen Rogers, from Mr. Boozer. The proffered testimony of Ms. Rogers indicated she met with the Applicant during the recess at the plea and plea counsel indicated to her if he did not accept the plea, he would receive thirty (30) years to life.

Burglary, First Degree also not credible. This Court finds plea counsel credibly testified that she properly advised Applicant of the elements of the charge he faced and the penalties. This Court further finds credible plea counsel's testimony that it was the Applicant's decision to plead guilty credible. 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 or any prejudice. Additionally, this Court finds Applicant's plea was entered knowingly and voluntarily and the plea colloquy confirms this finding.

However, this Court finds credible Applicant's testimony that he requested an appeal and plea counsel failed to perfect the appeal. An Applicant who meets the burden of showing that the Applicant did not knowingly and voluntarily waive his right to a direct appeal of his trial conviction is entitled to a belated appeal. White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974). This Court finds Applicant requested a direct appeal from his plea and counsel failed to perfect the appeal. Accordingly, Applicant is granted a belated direct appeal.

ALL OTHER ALLEGATIONS AND RIGHT TO APPEAL

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.

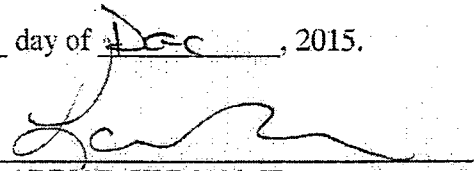
This Court notes that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Ap-

plicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRPC, 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 regarding his claims of ineffective assistance of counsel and involuntary guilty plea;
2. That the Applicant is granted a belated direct appeal review of his guilty plea; and
3. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 7 day of Dec, 2015.


LARRY B. HYMAN, JR.
Presiding Judge
Ninth Judicial Circuit

Douglas, South Carolina

STATE OF SOUTH CAROLINA)
 COUNTY OF BERKELEY)
 Steven Rogers,)
 Plaintiff(s),)
 -vs-)
 State of South Carolina,)
 Defendant(s).)

IN THE COURT OF COMMON PLEAS
 NINTH JUDICIAL CIRCUIT
 CASE NO.: 2013CP0802677
 APPOINTMENT OF COUNSEL OR GAL
 (Select one.)

ORDER
 AMENDED ORDER

TYPE OF CASE/PROCEEDING: (Check one.)

- Post-Conviction Relief (PCR)/habeas case Adoption Juvenile
 SVP case Custody and/or Visitation Abuse and Neglect
 Minor Name Change Other: Post Convict Rel 500

It appears Steven Rogers, who is a litigant in this case, is entitled to court-appointed counsel or a guardian ad litem.

It further appears that: (Select only one.)

- counsel/guardian ad litem has not yet been appointed by the court; therefore, an appointment for counsel/guardian ad litem is necessary.
 counsel or a guardian ad litem was previously appointed by the court but has indicated either a possible conflict of interest, an entitlement to exemption, or other good cause warranting the appointment of new counsel or guardian ad litem based on:
 counsel was previously appointed by the court but has not indicated that the litigant has retained private counsel and is no longer entitled to appointed counsel.
 court appointed counsel has obtained , Esquire as substitute counsel pursuant to Rule 608(h)(2); provided, however, only the member who originally received the appointment and who sought substitute counsel shall receive credit.
 Other: .

Therefore, it is ordered that Lance Boozer hereby is appointed as (Select one.)

- counsel lead counsel (if capital PCR case) guardian ad litem
 for the above-named person. Any counsel or GAL previously appointed is/are hereby relieved.

(If Death Penalty PCR Case) It is further ordered that , Esquire, is hereby appointed as second counsel in this capital PCR case.

The clerk of court is directed to forward a copy of this order to all persons entitled to notice.

IT IS SO ORDERED
 February 21, 2014

Mary P. Brown
 Circuit Judge Clerk of Court

FILED
 2014 FEB 21 PM 4:48
 MARY P. BROWN
 CLERK OF COURT
 BERKELEY COUNTY, SC

Plaintiff Attorney:

Lance Boozer	
1331 Park Street	
Columbia, SC 29201	

Defendant Attorney:

Ashleigh Rayanna Wilson	
PO Box 11549	
Columbia, SC 29211	

NOTICE: SC Supreme Court Order of September 29, 2006, requires appointed counsel entitled to payment from the Office of Indigent Defense (OID) to register the case online with OID within fifteen (15) days of this appointment at www.sccid.sc.gov, and further directs that reimbursement vouchers be submitted directly to SCCID and not to the trial judge or clerk of court. See SCCID website for further details.

THE BOOZER LAW FIRM, LLC

807 Gervais Street, Suite 203
Columbia, SC 29201

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

