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January 20, 2016

**RECEIVED**

JAN 22 2016

Daniel E. Shearouse  
Clerk of Court – SC Supreme Court  
Supreme Court  
P.O. Box 11330  
Columbia, SC 29211

**S.C. SUPREME COURT**

Re: Reggie Pinkney #259522 v. State of South Carolina  
2014-CP-26-2711

Dear Mr. Shearouse:

Enclosed please find the original Notice of Appeal in the above-entitled action and one copy. Please file and return the copy to me in the self addressed stamped envelope enclosed.

If you should have any questions or concerns, please do not hesitate to contact me.

Sincerely,

Daniel A. Selwa, II

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM HORRY COUNTY  
Court of Common Pleas

Honorable G. Thomas Cooper, Jr., Circuit Court Judge

**RECEIVED**

JAN 22 2016

Case No.: 2014-CP-26-2711

**S.C. SUPREME COURT**

Reggie Pinkney #259522,..... Petitioner,

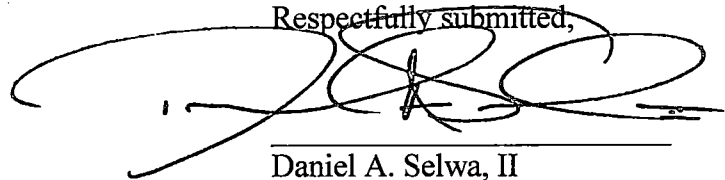
v.

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

**NOTICE OF APPEAL**

The Petitioner appeals the Honorable G. Thomas Cooper, Jr., September 18, 2015, order, denying the Applicant's Petition for post-conviction relief. Undersigned counsel received notice of entry of the order on December 22, 2015. A copy of the order on appeal is attached to this notice.

Respectfully submitted,



Daniel A. Selwa, II  
1053 London Street, Suite A  
Myrtle Beach, SC 29577  
*Attorney for the PCR Applicant*

January 20, 2016

*Other counsel of record:*

Alan Wilson, Attorney General

Joshua L. Thomas, Assistant Attorney General

Post Office Box 11549

Columbia, SC 29211-1549

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

**RECEIVED**

APPEAL FROM Horry COUNTY  
Honorable G. Thomas Cooper, Jr., Circuit Court Judge

JAN 22 2016

Case No.: 2014-CP-26-2711

**S.C. SUPREME COURT**

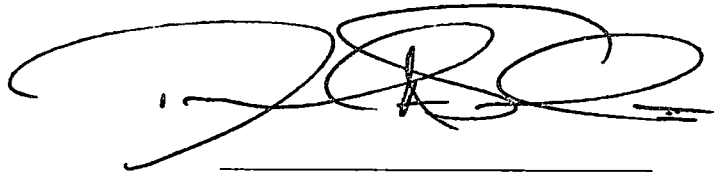
Reggie Pinkney #259522,..... Petitioner,

v.

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

**PROOF OF SERVICE**

I, Daniel A. Selwa, II, certify that I have served the within Notice of Appeal on the Respondent, the State of South Carolina, by depositing a copy of the same in the United States Mail, postage prepaid, addressed to his attorney of record, Alan Wilson, Attorney General, Post Office Box 11549, Columbia, SC 29211-1549. I further certify that all parties required by Rule to be served have been served this 20th day of January 2016.



\_\_\_\_\_  
Daniel A. Selwa, II  
1053 London Street, Suite A  
Myrtle Beach, SC 29577  
*Attorney for the PCR Applicant*

**copies mailed**

STATE OF SOUTH CAROLINA )  
COUNTY OF HORRY )

Reggie Pinkney, #259522, )

Applicant, )

v. )

State of South Carolina, )

Respondent. )

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Case No. 2014-CP-26-2711

**ORDER OF DISMISSAL**

2015 SEP 23 PM 1:13  
Horry County  
Clerk of Court

This matter comes before the Court by way of an Application for Post-Conviction Relief filed May 1, 2014. Respondent made a timely Return on or about December 17, 2014. The Court convened an evidentiary hearing into the matter on August 11, 2015, at the Horry County Courthouse. Applicant was present at the hearing and represented by Daniel A. Selwa II, 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 trial counsel, J.M. Long III, Esquire, also testified. The Court had before it a copy of the trial transcript, a copy of the mistrial transcript, the records of the Horry County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, and the pleadings. 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 Horry County Clerk of Court. In April 2005, the Horry County Grand Jury indicted Applicant for trafficking crack cocaine, 10-28 grams (2005-GS-26-1401). J.M. Long III, Esquire ("trial counsel"), represented Applicant. On October 26, 2005, Applicant

was tried *in absentia* before the Honorable R. Markley Dennis and a jury. However, Judge Dennis declared a mistrial after the jury failed to reach a verdict.

On January 11, 2005, a second trial *in absentia* proceeded before the Honorable James E. Lockemy and a jury. On January 12, 2005, the jury found Applicant guilty as indicted. Judge Lockemy issued a sealed sentence. On March 18, 2011, Applicant appeared before the Honorable Larry B. Hyman, Jr., who unsealed and imposed Judge Lockemy's fourteen year sentence. Russell B. Long represented Applicant at sentencing.

Applicant filed a timely notice of appeal, and LaNelle C. DuRant, Esquire, of the Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on October 1, 2013. State v. Pinkney, Op. No. 2013-UP-490 (S.C. Ct. App. filed December 23, 2013). The remittitur was returned to the circuit court on January 8, 2014.

## II. ALLEGATIONS

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

1. "Ineffective Assistance of counsel"
  - a. "Mr. J.M. Buddy Long III; Did not live up to agreement; Did not argue issues I addressed to him; I do not feel he investigated nor argued my case to the best of his ability; Attorney much over 90 days; Attorney caught criminal charges; We never prepared for a trial; Attorney did not preserve issues in trial for appeal correctly; Nor did Mr. Russell B. Long counsel me correctly"
2. "Tampering of evidence"
3. "Lack of evidence"
4. "Illegle (sic) Search and Seizer (sic)"
5. "Entrapment"
6. "Prejudice of the Court"
7. "Prejudicial Testimony (Marijuana)"
8. "Reconsideration of sentence"

  
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In its return, Respondent moved to dismiss allegations 2-8, as numbered above, pursuant to Rule 12(b)(6). The Court granted this motion at the outset of the evidentiary hearing, and Applicant proceeded only the allegations of ineffective assistance of counsel discussed infra.

### **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 Trial 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 trial counsel as a ground for relief, Applicant must prove trial 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." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether trial 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 trial 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 trial counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove trial counsel's performance was deficient. Id. Under this prong, Court measures trial counsel's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any 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.

The Court finds Applicant failed to meet his burden to demonstrate trial counsel ineffective in any manner. Applicant testified he only met with trial counsel two times, and only discussed a few issues. He testified trial counsel did not go over the case with him and did not discuss the elements of the crime. He testified he never received the State's response to the motion for discovery. He testified he hired trial counsel to get him a better plea offer, but the State never offered one. Applicant alleged he did not know his trial was going forward, and that trial counsel did not contact him about the trial. He claimed he could have assisted trial counsel at trial by testifying about the discrepancies in the weight of the drugs. Applicant testified trial counsel did not preserve any arguments regarding the suppression motion.

Trial counsel testified he had been practicing law for twenty-eight years. He recalled being retained by Applicant, but denied promising Applicant he could get him a better plea offer. Trial counsel recalled ten to fifteen total meetings with Applicant, with three to five "in depth" ones. Trial counsel testified he shared discovery with Applicant. Trial counsel testified he discussed the facts of the case with Applicant and Applicant shared his version of events. Trial

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counsel recalled there being a discrepancy with the weight of the drugs. However, he testified the only defense to the case was to suppress the drugs because of a bad search. He recalled making a suppression motion at the first trial. He also recalled Judge Lockemy adopting Judge Dennis' finding on the suppression motion at the second trial. Trial counsel testified he asked Judge Lockey to allow a second motion hearing, but recalled Judge Lockemy instead gave him latitude to challenge the search through cross-examination. Trial counsel recalled Judge Lockemy also independently ruled the drugs were admissible.

Trial counsel testified he started prepping for trial when the solicitor informed him it was on the trial docket. He recalled the solicitor subpoenaing Applicant for trial. He also recalled speaking to Applicant on the phone before the trial. He testified Applicant called him during the trial, but did not heed his advice to come to court. He also testified he spoke to Applicant on the phone between trials, but Applicant again did not appear at trial.

The Court finds trial counsel's testimony credible and gives it great weight. Correspondingly, the Court finds Applicant's testimony not credible. Applicant's allegation trial counsel promised him a better plea offer is without merit, and the court finds Applicant presented no credible evidence trial counsel promised Applicant a better plea offer.

Applicant's allegation trial counsel did not properly argue for suppression of the drugs is also without merit. The record indicates trial counsel made a compelling argument to suppress the drugs at the first trial, and appropriately raised the issue at the second trial. Applicant has presented no evidence of what further arguments could have been made in support of the suppression motion. Furthermore, Applicant's allegation trial counsel did not preserve the suppression issue is without merit. Initially, the Court notes the procedure used by Judge Lockemy was not improper. State v. Patton, 322 S.C. 408, 412, 472 S.E.2d 245, 248 (1996)



("The trial court afforded Appellant ample opportunity to interpose objections on constitutional grounds, and Appellant frequently availed himself of it."). The Court of Appeals clearly reviewed the record and determined Judge Lockemy did not err in admitting the drugs, and the Court agrees with that determination.

Applicants allegation trial counsel did not investigate the case is without merit. Failure to conduct an independent investigation is not *per se* ineffective assistance of counsel, especially where an investigation would not have uncovered any helpful information. See Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998). Applicant has not shown what further information could have been uncovered with a further investigation. Applicant's allegation trial counsel was not prepared for trial is likewise without merit. Applicant presented no evidence of how further preparation would have changed the outcome of his trial. See Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998) ("Respondent failed to present any evidence of what counsel could have discovered or what other defenses respondent would have requested counsel pursue had counsel more fully prepared for the trial.").

Applicant's allegation trial counsel did not meet with him and discuss the State's evidence is without merit. Trial counsel testified he met with Applicant several times, discussed the case, and reviewed the discovery response. The Court finds this testimony credible and dispositive. Regardless, Applicant presented no evidence of how further interaction with trial counsel would have affected his trial. Moody v. Polk, 408 F.3d 141, 148 (4th Cir. 2005) ("As to Moody's claim that his counsel did not meet with him frequently enough, there is no established 'minimum number of meetings between counsel and client prior to trial necessary to prepare an attorney to provide effective assistance of counsel.'" (citing United States v. Olson, 846 F.2d 1103 (7th Cir. 1988))). The Court also finds not credible Applicant's testimony he did not

review discovery. Regardless, he has again failed to demonstrate any adverse effect from not further reviewing the evidence. Hyman v. State, 397 S.C. 35, 49, 723 S.E.2d 375, 382 (2012) (applicant failed to demonstrate possibility of different outcome had he personally received discovery where he "was fully aware of the inculpatory nature of the [evidence])).

To the extent Applicant argues trial counsel failed to inform him this case was being called for trial, the Court finds this matter is not properly raised in post-conviction relief. See S.C. Code Ann. § 17-27-20(b) (post-conviction relief "is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or of direct review of the sentence or conviction."); Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1975) ("It is uniformly held that an application for post-conviction relief is not a substitute for an appeal."). The issues of whether Applicant was properly tried in his absence was raised to the trial court, and cannot be re-litigated on collateral review. Furthermore, the Court finds credible trial counsel's testimony that he informed Applicant of the trial date and Applicant simply refused to appeal.

The Court finds trial counsel conducted a proper investigation, adequately conferred with Applicant, and was thoroughly competent in his representation. Applicant presented no evidence trial counsel was deficient in any way. He also presented no evidence of how he was prejudiced by any of trial counsel's alleged deficiencies. Furthermore, the record contains overwhelming evidence of Applicant's guilt, which precludes a finding of prejudice on any of Applicant's allegations. See Harris v. State, 377 S.C. 66, 79, 659 S.E.2d 140, 147 (2008) (applicant cannot prove prejudice where there is overwhelming evidence of guilt).

#### **B. All Other Allegations**

As to any and all allegations that were raised in the application and not specifically addressed in this order, the Court finds Applicant failed to present any evidence regarding such

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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 18 day of September 2015.

  
THE HONORABLE G. THOMAS COOPER JR.  
Presiding Judge

COWUSIA, South Carolina

STATE OF SOUTH CAROLINA )

COUNTY OF HORRY )

REGGIE PINKNEY, #259522 )

vs )

STATE OF SOUTH CAROLINA, )

Respondent. )


IN THE COURT OF COMMON PLEAS  
2014-CP-26-2711

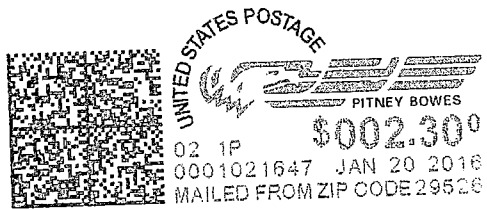
AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a filed copy of the Order of Dismissal, in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Daniel A. Selwa, II, Esquire**  
**1053 London St., Suite A**  
**Myrtle Beach, SC 29577**

DATED this 3<sup>rd</sup> day of December, 2015.

  
Norma Bigbee, Legal Assistant  
For Respondent



Daniel E. Shearouse  
Clerk of Court – SC Supreme Court  
Supreme Court  
P.O. Box 11330  
Columbia, SC 29211

