February 10, 2016

The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

RE: The State of South Carolina, Office of the Attorney General, Respondent, v. Lavard D. Lind-Baez, Appellant, Case No. 2013-CP-26-6936

Dear Mr. Shearouse:

Enclosed for filing is a notice of appeal in the above case. Also enclosed is proof of service of the notice of appeal on the respondent and a copy of the order which is to be challenged on appeal.

Sincerely,

Robert B. Bryan
671 Jamestown Dr. Suite. 202G
Garden City, SC 29576
(843)318-2366
Attorney for Appellant

Other Counsel of Record:
Alan Wilson
Office of the Attorney General,
Attention: Jessica Kinard
Post Office Box 11549,
Columbia, SC 29211-1549
Attorney for Respondent

Enclosures:
Notice of Appeal
Copy of Final Order Being Appealed
Proof of Service

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Thomas A. Russo, Circuit Court Judge

RECEIVED

FEB 16 2016

S.C. SUPREME COURT

Case No. 2013-CP-26-6936

State of South Carolina,
Office of the Attorney
General, Respondent,

v.

Lavard D. Lind-Baez, Appellant.

NOTICE OF APPEAL

Lavard D. Lind-Baez, appeals the order and ruling of the Honorable Thomas A. Russo dated December 22, 2015 denying his Motion for Post-Conviction Relief. Appellant received written notice of the entry of this order on January 22, 2016.

February 10, 2016

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Attorney for Appellant

Other Counsel of Record:
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Post Office Box 11549,
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v.

Lavard D. Lind-Baez, Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on opposing counsel, Respondent Alan Wilson, Office of the Attorney General for The State of South Carolina by depositing a copy of it in the United States Mail, postage prepaid, on February 10, 2016, addressed to : Alan Wilson, Office of the Attorney General, Post Office Box 11549, Columbia, SC 29211-1549.

February 10, 2016

Robert B. Bryan

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671 Jamestown Dr. Ste. 202G
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(843)318-2366
Attorney for Appellant

STATE OF SOUTH CAROLINA COUNTY OF HORRY	)	IN THE COURT OF COMMON PLEAS FOR THE FIFTEENTH JUDICIAL CIRCUIT
Lavard D. Lind-Baez, #322170, Applicant, v. State of South Carolina, Respondent.	)	Case No. 2013-CP-26-6936 **ORDER OF DISMISSAL**

This matter comes before the Court by way of an Application for Post-Conviction Relief filed October 18, 2013. Respondent made a timely Return on or about January 16, 2015, which included a motion for a more definite statement of Applicant's allegations pursuant to Rule 12(e), SCRCP. The Court convened a motion hearing on August 10, 2015 in Horry County, at which time the Honorable G. Thomas Cooper, Jr. granted the motion and ordered that the Applicant obtain a copy of plea counsel's file and submit an amended application, with appropriate time for Respondent to reply. A more definite statement was submitted to the court on October 30, 2015, and Respondent did not amend its return. The Court convened an evidentiary hearing into the merits of the case on November 13, 2015, at the Horry County Courthouse. Applicant was present at the hearing and represented by Robert B. Bryan, Esquire. Jessica E. Kinard, Esquire of the South Carolina Attorney General's Office, represented Respondent.

Applicant and Applicant's plea counsel, Edward M. Brown, Esquire, testified at the hearing. The Court had before it a copy of the plea 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 July 2012, the Horry County Grand Jury indicted Applicant for trafficking cocaine, 28-100 Grams (2012-GS-26-2928). Edward M. Brown, Esquire, represented Applicant. On July 22, 2013, Applicant pled guilty to as indicted pursuant to North Carolina v. Alford[1]. The Honorable Larry B. Hyman Jr. sentenced Applicant to seven (7) years imprisonment. 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. "6th Amendment Violation"
   a. "Ineffective Assistance of Counsel"

In his more definite statement, Applicant added the following allegations:

1. Ineffective Assistance of Counsel
   a. "Trial Counsel never meaningfully discussed the facts of the case, the States potential evidence against Applicant, or reviewed any discovery, case summary, witness statements, audio or video with Applicant."
   b. "Trial Counsel failed to Investigate Applicants claims that would support his Defense"
      i. Did not interview witnesses
      ii. Did not request documents, including school transcripts and phone records
      iii. Did not obtain audio recording, listen to it himself, or listen to it with client.
   c. "Ineffective for facilitating Applicant's plea under N.C. vs. Alford without ever discussing the nature of an Alford Plea with his client prior to the plea or adequately explaining the meaning and nature of an Alford plea during the actual plea.
      i. Facts do not support the conclusion that the State had sufficient evidence based on the complete lack of any evidence implicating Applicant other than the fact that he was there when co-defendant was in possession of cocaine.
   d. "Trial Counsel's singular focus was on being paid the balance on his fee."
   e. "Trial Counsel was not available to meet with Applicant prior to date of plea."

1 400 U.S. 25, 91 S. Ct. 160 (1970).

f. "Trial Counsel consistently missed roll-calls to the point that Assistant Solicitor expressed frustration to Applicant about his counsel's repeated absence."
g. "Trial Counsel failed to adequately advise Applicant of his constitutional rights relative to a guilty-plea or trial rendering his plea involuntary."

2. Involuntary guilty plea
   a. Applicant was never allowed to review State's evidence against him.
   b. "Trial counsel failed to adequately advise Applicant of his constitutional rights relative to a guilty-plea or trial rendering his plea involuntary."
3. After-discovered evidence
   a. Co-Defendant recanted his statement and provided affidavit to this effect.

At the evidentiary hearing, Applicant proceeded on all of the above allegations.

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. Summary of Testimony

i. Lavard Lind-Baez

Applicant was called first by his attorney, and began his testimony with a review of the facts regarding the date of the underlying incident. He went on to testify that he retained Mr. Brown as his trial counsel shortly after the incident. He testified that Brown was not at several preliminary court appearances, such as roll calls and bond returnable hearings, and further testified that Brown had two (2) conflicts at potential times of trial that prevented the case from going forward. Applicant testified that he was contacted by Brown in July of 2013 on a Friday and told to be at the courthouse on Monday, but was not told why. He used the internet to find

out that he was scheduled for a guilty plea, though he had maintained his innocence the entire time, and was unable to reach Mr. Brown by phone the rest of the weekend.

Applicant testified that when he reached court on Monday, the previously negotiated offer of five (5) years was off of the table and had become an offer of seven (7) years, non-violent. He testified that Brown advised him to take the plea offer because it was highly likely that his prior record would come out during a trial. He further testified that Brown told him he would not represent Applicant at trial the next day if the plea was not taken.[2] During the plea, Applicant testified, Brown whispered appropriate answers to the colloquy questions into Applicant's ear. When the possibility of a plea pursuant to North Carolina vs. Alford was presented, Applicant felt that Brown was ineffective for not taking him from the courtroom to explain the process and consequences. Applicant testified that, ultimately, he felt pressured to plead because he faced the possibility of trial without counsel the next day.

On cross-examination, Applicant admitted that he testified at the plea to everything in Judge Hyman's colloquy, including that his plea was voluntary and that he understood the rights that he was waiving. He testified that the Alford plea was explained to him at the plea, and that he understood that it had the same effect as a guilty plea, but he felt as if his back was against the wall and he was trapped into the plea. Regarding the possibility of relieving Brown, Applicant stated that he trusted Brown, though they did not get along very well. He further testified that he understood retention of an attorney was a business transaction and that Brown deserved to be paid for his services, which did not make any discussion regarding fees unreasonable.

ii. Shawn Simmons

[2] Brown had previously filed a motion to be relieved citing lack of payment and difficulties with the client. This was withdrawn well before the plea was entered.

Mr. Simmons, Applicant's cousin, testified that he was present at the time of the plea and witnessed a conversation between Applicant and Brown. During this conversation, Brown stated that if Applicant did not take the plea, he would most likely get thirty (30) years at trial. He also informed Applicant that Ernest Bryant, Applicant's co-defendant, would stand trial, which he did not.[3] Simmons further testified that Brown stated he would not represent Applicant at trial.

Simmons testified that he was in Applicant's PCR counsel's office on October 13, 2015, along with Ernest Bryant at the time Bryant executed an affidavit. Though the State's objections prevented the affidavit from being entered into evidence pursuant to hearsay, Simmons testified that he understood from conversations that day that the affidavit was meant to show that Bryant had recanted his earlier statement implicated Applicant. Respondent did not cross-examine this witness.

iii. Jadai Jackson

Ms. Jackson, Applicant's fiancée, testified to the same courthouse conversation that Simmons witnessed, including that Applicant was likely to receive thirty (30) years if he went to trial and that Brown would not represent him at trial. She also testified that no one, including Applicant, was aware of why they needed to be in court that day. She was unaware of whether Applicant ever reviewed any discovery materials. Respondent did not cross examine this witness.

iv. Margaret Wigfall

Ms. Wigfall, Applicant's mother, testified that she spoke with Brown after Applicant entered his plea. She was unaware of the court proceedings, and arrived after the plea hearing had taken place. She spoke to Brown in the parking lot afterward, and testified that she did not get satisfactory answers as to why her son pled guilty. She further testified that she and her daughter

[3] Mr. Bryant received a negotiated sentence of probation despite having approximately fifty (50) grams of cocaine in

went to Brown's office in Charleston the next day to speak to him further, and was told again that Brown felt the risk of opening up Applicant's history of drug convictions outweighed pleading to something he believed he did not do. Respondent did not cross-examine this witness.

v. Tiesha Lind-Baez

Ms. Lind-Baez, Applicant's sister, testified that, like her mother, she was not at the plea hearing, but went to Charleston to speak with Brown the next day. She testified that she had seen the Applicant on the date of his arrest, but was never called or subpoenaed by Brown. She further testified similarly to Wigfall regarding Brown's reasoning for advising Applicant to plead. She also stated that Brown told her he would not represent the Applicant at trial. Respondent did not cross-examine this witness.

vi. Edward M. Brown, Esq.

Respondent called Mr. Brown, who was retained as plea/trial counsel for Applicant. He testified that he has practiced for thirty-eight (38) years, all of it has been in criminal law, and that he prepared for this case like he does any other. He stated that he received discovery and reviewed it with the Applicant over four (4) or five (5) in-person meetings. He could not speak to Bryant, the co-defendant, due to his being represented by an attorney; similarly, he could not get in touch with the confidential informant that set up the underlying incident. He testified that Applicant never informed him of any other witnesses that would be of any help regarding that incident, and stated that the witnesses who testified at this hearing were not, in his opinion, valuable to Applicant's defense. He felt that the Defendant always knew what was going on, based on his statements and his acts.

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his pocket at the time of arrest.

Brown reiterated that he conducted this case as he would others by describing the strategy he discussed with the Applicant. For example, because roll calls are only to make sure that defendants are still in the area, Brown has never made it a practice to attend, though he informed his clients of each one. Similarly, he explained that he and the Applicant had to weigh the options available: if they went to trial, Applicant would not have to testify, but Brown's experience led him to believe that juries want to hear from defendants, and his testimony would allow information regarding his prior record to be admitted. Because of this, along with the fact that Applicant was facing up to thirty (30) years, Brown advised Applicant to accept the negotiated offer and plead guilty, regardless of the fact that he was not actually guilty of this offense. Brown testified that he attempted to change the nature of the offense, including pleading guilty to failure to stop for a blue light, but that seven (7) years ended up being the best offer, especially because Applicant would not take the earlier offer of five (5) years. Brown testified that, prior to the plea, he explained to Applicant all of the elements and waivers involved with a plea, including those involved with an Alford plea, as he does with all clients.

On cross-examination, Brown testified that he never told Applicant that he would not represent him at trial, plus he knew the Court would not allow him to be relieved at that stage in the case. He further testified that the choice to plea was always the Applicant's, but he believed Applicant understood the strong possibility that he could be convicted at trial due to the idea of constructive possession: he had dominion and control of drugs, rather than just mere presence. Brown testified that his strategy at trial would have been to show inconsistencies in the investigation and the controlled buy, as well as to discredit the co-defendant's testimony as much as possible. He further testified to the idea that flight can be seen as indicative of guilt, and Applicant did run from a blue light, which did not serve in his favor.

B. Ineffective Assistance of Plea Counsel

In a 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. In the context of a guilty plea, Applicant 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 to show plea counsel rendered ineffective assistance of counsel. Regarding Applicant's allegations, the Court finds plea counsel's testimony credible, and Applicant's not credible. Accordingly, the Court finds plea counsel conducted a proper investigation, adequately conferred with Applicant, and was thoroughly competent in his representation.

Applicant's allegations are without merit. It is easily disproven by plea counsel's testimony that Brown failed to review discovery materials with Applicant; facilitate his plea under Alford; appear at court hearings; interview witnesses; advise Applicant of details and waivers involved with pleas; provide competent representation; or reasonably consult or visit. He was familiar with all of the evidence and the circumstances surrounding Applicant's arrest. The Court finds credible plea counsel's testimony he would have been prepared for a trial if Applicant had requested one. Though other attorneys may have prepared this case differently, it does not mean that Brown was ineffective in his methods. Accordingly, Applicant fails to meet his burden in demonstrating that plea counsel was ineffective.

Failure to Investigate

This Court finds Applicant has failed to meet his burden to show counsel's investigation and preparation of his case violated his 6th Amendment right to effective assistance of counsel. As stated previously, counsel's performance under the first prong of the Strickland test is judged under the standard of "reasonableness under prevailing professional norms." 466 U.S. at 688, 104 S.Ct. 2052. Accordingly, the controlling standard for counsel's duty to investigate is *reasonableness*. Edwards v. State, 392 S.C. 449, 457, 710 S.E.2d 60, 64 (2011). So long as a

defendant's attorney conducts a reasonable investigation, including interviewing potential witnesses when it is reasonable to do so, his performance will not be deficient. Id. at 457, 710 S.E.2d at 65.

This Court finds counsel's investigation of Applicant's case was clearly not deficient. Counsel testified credibly to the effect that he received discovery in this case and reviewed it with Applicant. It is apparent that Counsel had a firm grasp of the strength of the State's case against Applicant and strategically focused his efforts on trying to secure a favorable plea deal. This Court finds such a focus was reasonable in light of the circumstances in this particular case.

Moreover, Applicant has failed to show any prejudice resulting from counsel's purported failure to investigate or prepare a defense. In order to show prejudice, Applicant must present some evidence that but for counsel's purported failure to properly investigate he would have refused to plead guilty and instead exercised his right to trial. See, e.g., Porter v. State, 368 S.C. 378, 386, 629 S.E.2d 353, 358 (2006) (no prejudice where Applicant failed to produce evidence at the PCR hearing that further investigation would have led to a different result); Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998) ("Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result."). Applicant failed to produce any such evidence, and this Court is not persuaded that any further investigation or preparation would have changed the outcome. Accordingly, this Court finds Applicant has failed to meet his burden with regard to this allegation. As a result, it is denied and dismissed.

C. Involuntary Guilty Plea

This Court also finds Applicant's allegation that his guilty plea was involuntary is without merit. A defendant who enters a plea on the advice of counsel may only attack the voluntary and

intelligent character of a plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Holden v. State, 393 S.C. 565, 572, 713 S.E.2d 611, 615 (2011) (*citing* Rolen v. State, 3841 S.C. 409, 413, 683 S.E.2d 471, 474 (2009)).

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Roddy v. State, 339 S.C. 29, 33, 528 S.E.2d 418, 421 (2000). A defendant's knowing and voluntary waiver of the constitutional rights which accompany a guilty plea may be accomplished by colloquy between the Court and the defendant, between the Court and defendant's counsel, or both. Holden at 573, 713 S.E.2d at 615 (*citing* Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 625 (1999)). The longstanding test for determining the validity of a guilty plea is "whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant. Id.

In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Suber v. State, 371 S.C. 554, 558, 640 S.E.2d 84, 886 (2007). Specifically, the voluntariness of a guilty plea is not determined by an examination of a specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the guilty plea, and also from the record of the PCR hearing. Roddy, 339 S.C. at 33, 528 S.E.2d at 420.

"[I]n South Carolina, a guilty plea constitutes a waiver of nonjurisdictional defects and claims of violations of constitutional rights." State v. Rice, 401 S.C. 330, 331-32, 737 S.E.2d 485, 485-86 (2013) (*citing* Hyman v. State, 397 S.C. 35, 44, 723 S.E.2d 375, 379 (2012)). "A

guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed." Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (2007). Further, "a defendant is not entitled to withdraw his plea merely because he discovers long after the plea has been accepted that his calculus misapprehended the quality of the State's case or the likely penalties attached to alternative courses of action." Brady v. U.S., 397 U.S. 742, 757 (1970).

Based on the guilty plea transcript as well as evidence at the PCR hearing, this Court is firmly convinced that Applicant's guilty plea was entered into voluntarily and knowingly. Applicant acknowledged during his guilty plea hearing that he had been given sufficient time to confer with counsel, and that he had discussed and understood his constitutional rights prior to pleading. This Court is further convinced that Applicant's decision to plead guilty to murder was not the result of coercion, but rather a well-reasoned choice – in light of his poor trial prospects and overwhelming evidence of guilt – designed to mitigate the risk of spending the rest of his natural life in prison. This is reinforced by Applicant's statements during his guilty plea hearing, when he admitted to the presiding judge that he was guilty and wanted to plead. This Court also places great weight on counsel's credible testimony that he consulted with Applicant both prior to and during the hearing regarding the consequences of both guilty and Alford pleas.

Applicant has failed to present any probative or credible evidence that he was coerced into pleading guilty to murder. As a result, he has failed to meet his burden, and this allegation is denied and dismissed.

D. Newly-Discovered Evidence

Concerning Applicant's claim of after-discovered evidence, this Court finds Applicant has not presented any evidence that would lead it to believe he is entitled to relief. Under S.C.

Code § 17-27-45(c), a newly-discovered evidence claim can be timely raised within one (1) year of actual discovery or within one (1) year of when, by the exercise of due diligence, such evidence could have been ascertained. When an applicant seeks relief on the basis of newly-discovered evidence following a guilty plea, relief is appropriate only when the applicant presents evidence showing that (1) the newly-discovered evidence was discovered after the entry of the plea and, in the exercise of reasonable diligence, could not have been discovered prior to the entry of the plea, and (2) the newly-discovered evidence is of such weight and quality that, under the facts and circumstances of that particular case, the "interest of justice" requires the applicant's guilty plea be vacated. Jamison v. State, 410 S.C. 456, 470, 765 S.E.2d 123, 130 (2014).

In Jamison, the South Carolina Supreme Court noted it would be a "rare case" where the interests of justice require the vacation of a knowing and voluntary guilty plea involving an admission of guilt and a waiver of trial. Id. Applicant has not shown that the purported new evidence meets *any* of the requirements for after-discovered evidence. Most importantly, this new evidence, in the form of an allegedly exculpatory affidavit from Applicant's co-defendant, was not technically admitted at the PCR hearing. The mere allusion to it through testimony is not satisfactory for the Court to pass judgment upon its validity. As a result, this Court finds Applicant has failed to meet his burden, and that this allegation must be denied and dismissed.

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. The evidence presented at this hearing could have been viewed and prepared differently by any attorney that viewed it, and it is easy to say in hindsight that Brown's approach was not the best. Regardless, this does not mean that his representation of the Applicant was deficient in any way. Particularly, Brown advised his client about the potential of an Alford plea. This Court does not find it the fact that this plea started out as a classic guilty plea to be fatal. The potential for the plea arose and was handled by Brown in a case that is a classic example of the necessity for the existence of Alford pleas. There was overwhelming evidence to justify the need for that kind of plea, particularly due to Applicant's existing record and, by necessity, familiarity with the judicial process. Even if the Applicant did not understand the effects of a plea or an Alford plea in particular, it was explained thoroughly under oath by Judge Hyman. The standard under Strickland simply has not been met: there was a detailed colloquy, to which Applicant provided appropriate answers and asked intelligent questions. This Court does not find credible any testimony that stated Brown refused further representation past that date, as someone with his experience is surely aware that it is rarely possible to be relieved on the eve of trial. For all of the above reasons, 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), SCRCP, 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 22nd day of December, 2015.

The Honorable Thomas A. Russo
Presiding Judge

Florence, South Carolina

Bryan Law Firm PA
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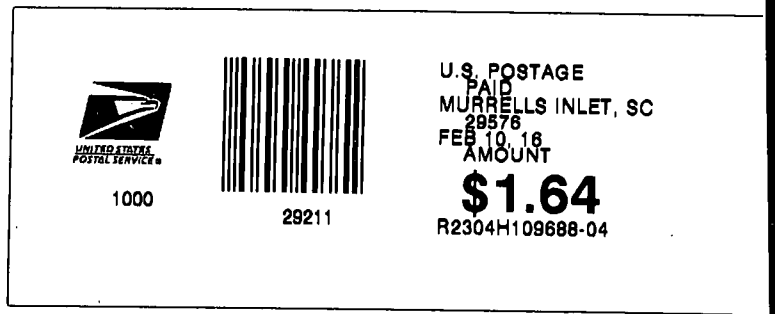
Garden City, SC 29576



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