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FEB 11 2016

SC Court of Appeals

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

RE: State of South Carolina vs. Latroy Brown, Case No. 2012-CP-38-1508

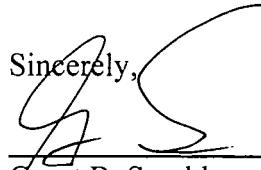
Dear Ms. Kitchings:

Enclosed for filing is a notice of appeal in the above case. Also enclosed are the following:

- (1) Proof of service of the notice of appeal on the respondent[s].
- (2) A copy of the order of dismissal, which is to be challenged on appeal.

This is a post-conviction relief case, so I have not enclosed any filing fee.

Sincerely,



Grant B. Smaldone  
1053 London St  
Myrtle Beach, South Carolina 29577  
(843)808-2100  
Attorney for Appellant

cc: J. Clayton Mitchell  
South Carolina Attorney General's Office  
Post Office Box 11549  
Columbia, South Carolina 29211  
Attorney for Respondent

(S)

NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

RECEIVED

FEB 11 2016

SC Court of Appeals

APPEAL FROM ORANGEBURG COUNTY  
Court of Common Pleas

Frank Addy, Circuit Court Judge

Case No. 2012-CP-38-1508

State of South Carolina,

Respondent,

v.

Latroy Brown,

Appellant.

NOTICE OF APPEAL

Latroy Brown appeals the order of the Honorable Frank R. Addy, Jr. dated January 8<sup>th</sup>, 2016. Appellant received written notice of entry of this order on January 15<sup>th</sup>, 2015.

February 9<sup>th</sup> 2016



Grant B. Smaldone  
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(843) 808-2100  
Attorney for Appellant

cc: J. Clayton Mitchell  
South Carolina Attorney General's Office  
Post Office Box 11549  
Columbia, South Carolina 29211  
Attorney for Respondent

**PROOF OF SERVICE OF A NOTICE OF APPEAL**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM ORANGEBURG COUNTY  
Court of Common Pleas

Frank R. Addy, Jr., Circuit Court Judge

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Case No. 2012-CP-38-1508

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South Carolina,

Respondent,

v.

Latroy Brown,

Appellant.

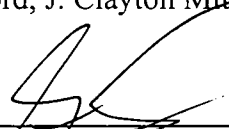
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**PROOF OF SERVICE**

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I certify that I have served the Notice of Appeal on the South Carolina Attorney General's Office by depositing a copy of it in the United States Mail, postage prepaid, on February 9<sup>th</sup>, 2016, addressed to their attorney of record, J. Clayton Mitchell, Post Office Box 11549, Columbia, South Carolina 29211.

February 9<sup>th</sup>, 2016

  
\_\_\_\_\_  
Grant B. Smaldone  
1053 London St  
Myrtle Beach, South Carolina 29577  
(843)808-2100  
Attorney for Appellant

STATE OF SOUTH CAROLINA  
COUNTY OF ORANGEBURG

Latroy Brown, #265525,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS  
FIRST JUDICIAL CIRCUIT

2012-CP-38-01508

RECEIVED  
FEB 11 2016

ORDER OF DISMISSAL  
SC Court of Appeals

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed October 30, 2012. Respondent made its Return on March 15, 2013, requesting an evidentiary hearing be convened. Kelvin D. Wright, Esquire, was initially appointed by the Orangeburg County Clerk's Office to represent Applicant. Gerald J. Davis, Esquire, was then substituted as counsel in February 2013. Thereafter, Tristan M. Shaffer, Esquire, was substituted as counsel in March 2013. In March 2015, Grant B. Smaldone, Esquire, was substituted as counsel. An evidentiary hearing was held on October 27, 2015, at the Dorchester County Courthouse. Applicant was present and represented by Counsel Smaldone. J. Clayton Mitchell, Esquire, of the South Carolina Attorney General's Office represented Respondent.

At the PCR hearing, Applicant testified on his own behalf. Also testifying was Applicant's plea counsel, John D. Stroud, Esquire. This Court had before it the Orangeburg County Clerk of Court records, Applicant's South Carolina Department of Corrections records, the PCR application, the Return, and the guilty plea transcript.

#### I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Orangeburg County Clerk of Court. Applicant waived

presentment to two counts of Carjacking (2011-GS-38-1846; -1848), Kidnapping (2011-GS-38-1847), Common Law Robbery (2011-GS-38-1926), and Purse Snatching (2012-GS-38-0584). Applicant was represented by Counsel Stroud. On May 16, 2012, Applicant pleaded guilty before the Honorable Edgar W. Dickson who sentenced Applicant to confinement for a period of eighteen (18) years on each count of Carjacking, eighteen (18) years for Kidnapping, fifteen (15) years on the Common Law Robbery, and three (3) years for Purse Snatching with the sentences to be run concurrently. Applicant did not appeal his sentence or conviction.

In this action, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Involuntary and unintelligent guilty plea in that:
  - a. Counsel failed to review the nature of the charges, penalties, and constitutional rights with Applicant; and
  - b. Applicant was under the influence of Haldol at the time of his plea.
2. Ineffective assistance of counsel in:
  - a. Failing to file a notice of appeal or motion for reconsideration; and
  - b. Failing to request a finding from the plea judge that the kidnapping was non-sexual in nature.

### III. APPLICABLE LAW

In a post-conviction relief action, Applicant bears the burden of proving the allegations in the application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, 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, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable



professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order 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. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney'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. With respect to guilty plea counsel, the Applicant must show 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, 59 (1985).

#### IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the guilty plea transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys: Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

As a matter of general impression, this Court finds Applicant's testimony and assertions to be not credible. In contrast, this Court finds counsel's testimony to be credible and persuasive



on all matters. These credibility findings have been applied to the Court's findings and conclusions set forth below.

### **Involuntary and Unintelligent Guilty Plea**

Applicant alleges he did not plead guilty knowingly and voluntarily. Specifically, Applicant argues that Counsel failed to review the charges, penalties, and his constitutional rights with him. He also alleges that he was under the influence of the drug Haldol when he pled. This Court finds Applicant's guilty plea was freely and voluntarily entered. To find a guilty plea is voluntarily and knowingly entered, the record must establish the defendant 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, 23 L.Ed.2d 274 (1969). Defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). 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, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 97 S. Ct. 1621, 52 L.Ed.2d 136 (1977)). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. United States, 519 F.2d 347 (4th Cir.1975).

Applicant claims he did not plead guilty voluntarily because he was not advised by Counsel of the charges, potential penalties, and of his constitutional rights. He further claims he



was under the influence of medications when pleading guilty. This Court finds these contentions meritless. This Court finds the record reflects Applicant was fully advised that he was pleading guilty and waived all challenges to the evidence against him. The plea court's very thorough colloquy with Applicant demonstrates that he understood the charges, penalties, and his rights. This Court finds Applicant's testimony not credible. Applicant presented no credible evidence as to why he should be able to depart from his statements at the plea hearing. This Court finds very credible Counsel's testimony regarding his preparation and advice concerning the case. Counsel's testimony that he did not have any difficulty communicating with Applicant at his plea is also persuasive. The record further reflects Applicant fully admitted his guilt to the plea court. Applicant also told Judge Dickson that he was not taking any medications and was not under the influence of any medications during the plea. (Plea Tr. p. 4, line 3 – p. 5, line 1). Counsel also adequately investigated any competency issues and proceeded appropriately in light of his investigation into this potential issue. Therefore, this Court finds the plea judge correctly found Applicant's plea was freely, voluntary, and intelligently made.

#### **Ineffective Assistance of Counsel**

Applicant also alleges Counsel was ineffective in failing to file a notice of appeal and in failing to petition Judge Dickson to make a finding that the kidnapping was not sexual in nature. The Court will address each allegation in turn.

#### **Failing to File a Notice of Appeal or Motion for Reconsideration**

This Court further finds Applicant has failed to carry his burden to prove Counsel was ineffective in failing to file a notice of appeal or motion for reconsideration. Applicant did not argue these grounds during his testimony and did not indicate that he requested Counsel to file either. Accordingly, no evidence was submitted to support these allegations, so they are



abandoned. Furthermore, upon a full review of the record, the Court finds that no grounds existed for an appeal, so any appeal would have been futile.

Sex Offender Registry is a Collateral Consequence

Finally, Applicant raises the issue of his requirement to register as a sex offender. Under S.C. Code Ann. § 23-3-430(C)(15), a person who pleads guilty to the kidnapping of a person eighteen years of age or older is placed on the South Carolina Sex Offender Registry unless the court makes a finding on the record that the offense did not include a criminal sexual offense or an attempted criminal sexual offense.

This Court finds that registration on the sexual offender registry is a collateral consequence of a sentence and therefore Counsel cannot be ineffective in failing to advise Applicant of the requirement that he register on the sex offender registry. Williams v. State, 378 S.C. 511, 516, 662 S.E.2d 615, 618 (Ct. App. 2008). “The distinction between ‘direct’ and ‘collateral’ consequences of a plea, while sometimes shaded in the relevant decisions, turns on whether the result represents a definite, immediate and largely automatic effect on the range of the defendant’s punishment.” Cuthrell v. Director, Patuxent Institution, 475 F.2d 1364, 1366 (4<sup>th</sup> Cir.), cert. denied, 414 U.S. 1005 (1973). The purpose of the sexual registry is that of community and police supervision. Registration on the sexual offender registry has no direct bearing on the range of the defendant’s punishment as delineated in Cuthrell. Id. A defendant must petition for a declaratory judgment in the Court of Common Pleas in order for that court to make a finding of whether the kidnapping included a criminal sexual offense. Hazel v. State, 377 S.C. 60, 62, 659 S.E.2d 137, 138 (2008). Applicant can seek a determination by a court that the kidnapping offense was not sexual in nature and request to be removed from any registry. This Court is

without proper jurisdiction to amend the Applicant's previous General Session sentence through post-conviction relief and therefore dismisses this allegation


#### **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 allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

#### **V. 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. Applicant failed to demonstrate counsels' performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

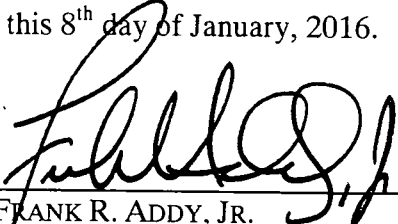
The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), 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 shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

**IT IS SO ORDERED** this 8<sup>th</sup> day of January, 2016.

  
FRANK R. ADDY, JR.  
Presiding Judge

Greenwood, South Carolina