

**Tommy A. Thomas**

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**IRMO, SC 29063**

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**(803) 781-4226**

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**(803) 732-6542**

February 29, 2016

**RECEIVED**

MAR 02 2016

**S.C. SUPREME COURT**

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

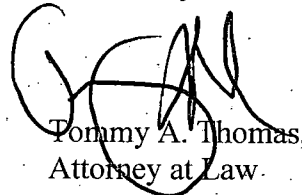
RE: Michael T. Sanders #290266 v. State

Dear Sir or Madam:

Enclosed please find for filing, an original and a copy of Notice of Appeal and Certificate of Service regarding the above matter.

Kindly return a clocked copy to me in the enclosed envelope. Thank you for your assistance in this matter.

Yours truly,

  
Tommy A. Thomas,  
Attorney at Law.

TAT/jem  
cc: J. Clayton Mitchell, Esq.  
Michael T. Sanders #290266

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM DORCHESTER COUNTY  
Court of Common Pleas  
Post Conviction Relief

Frank R. Addy, Jr., Circuit Court Judge

Case No.: 2012-CP-18-1511

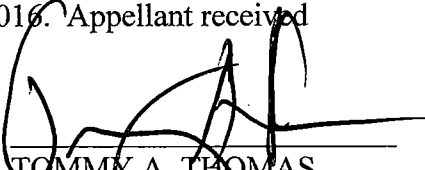
Michael Todd Sanders #290266,..... Appellant,

vs.

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

NOTICE OF APPEAL

Michael Todd Sanders #290266, appeals the order of the Honorable Frank R. Addy, Jr. dated January 8, 2016, and filed on January 15, 2016. Appellant received written notice of entry of this order on February 4, 2016.

  
TOMMY A. THOMAS  
Attorney for Appellant  
P.O. Box 88  
Irmo, SC 29063  
(803) 732-5507

Other Counsel of Record:

J. Clayton Mitchell, Esq.  
Assistant Attorney General  
P.O. Box 11549  
Columbia, SC 29211  
Attorney for Respondent

Irmo, South Carolina  
February 29, 2016

**RECEIVED**

MAR 02 2016

**S.C. SUPREME COURT**

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM DORCHESTER COUNTY  
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Michael Todd Sanders #290266,..... Appellant,

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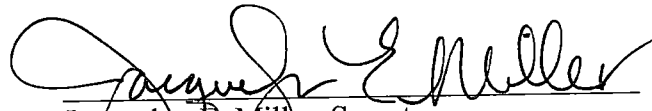
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CERTIFICATE OF SERVICE

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I, Jacquelyn E. Miller, secretary to Tommy A. Thomas, Attorney for the Appellant,  
hereby certify that I placed in the United States Mail, a copy of a Notice of Appeal with postage  
prepaid and the return address clearly shown on said envelope to:

Office of the Attorney General  
Attention: J. Clayton Mitchell, Esq.  
P.O. Box 11549  
Columbia, SC 29211-1549



Jacquelyn E. Miller, Secretary  
Tommy A. Thomas, Attorney for Applicant  
P.O. Box 88  
Irmo, SC 29063  
(803) 732-5507

Irmo, South Carolina  
February 29, 2016

FORM 4

STATE OF SOUTH CAROLINA  
COUNTY OF DORCHESTER  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE  
CASE NUMBER 2012CP1801511

FILED-RECORDED

Michael Todd Sanders

2016 JAN 15 PM 4:09

South Carolina State Of

CHERYL GRAHAM  
CLERK OF COURT  
DORCHESTER COUNTY

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for:  Plaintiff  Defendant  
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  
 Rule 43(k), SCRPC (Settled);  Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j) SCRPC;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other: \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order; (formal order to follow)  Statement of Judgment by the Court:

ORDER INFORMATION

This order  ends  does not end the case.  
Additional Information for the Clerk: \_\_\_\_\_

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Thomas L. Hughston  
Circuit Court Judge

2008

Judge Code

Date

1-8-2016

For Clerk of Court Office Use Only

This judgment was entered on 1-15-2016, and a copy mailed first class or placed in the appropriate attorney's box on 1-15-2016, to attorneys of record or to parties (when appearing pro se) as follows:

Michael Todd Sanders Kirkland Correctional b2-56  
#292066 4344 Broad River Rd Columbia, SC 29210  
Tommy Arthur Thomas PO Box 88 Irmo, SC 29063

James Clayton Mitchell III PO Box 11549 Columbia, SC  
29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

  
Cheryl Graham - Clerk of Court

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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STATE OF SOUTH CAROLINA  
COUNTY OF DORCHESTER

Michael T. Sanders, #290266,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS  
FIRST JUDICIAL CIRCUIT

2012-CP-18-1511

ORDER OF DISMISSAL

FILED-RECORDED  
2016 JAN 15 PM 4:09  
CLERK OF COURT  
DORCHESTER COUNTY

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed June 15, 2012. Respondent made its Return on October 22, 2012, requesting an evidentiary hearing be convened. Tommy A. Thomas, Esquire, was retained by Applicant. An evidentiary hearing was held on October 26, 2015, at the Dorchester County Courthouse. Applicant was present and represented by Counsel Thomas. 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, Christopher J. Murphy, Esquire, and Applicant's wife, Trisha Sanders. This Court had before it the Dorchester 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 Dorchester County Clerk of Court.<sup>1</sup> Applicant was indicted during the September 2011 term of the Dorchester Grand Jury for two counts of Burglary – First

<sup>1</sup> Applicant is also serving a concurrent twenty year sentence from Colleton County (2011-GS-15-0567) for Burglary – First Degree.

Degree (2011-GS-18-0687, -0688). Additionally, he waived presentment to the Orangeburg County Grand Jury for Grand Larceny, More than \$2,000.00 but less than \$10,000.00 (2011-GS-38-0609). Counsel Murphy represented the Applicant. On January 9, 2012, the Applicant entered a guilty plea to all Dorchester County charges as indicted. The Honorable Diane S. Goodstein sentenced Applicant to confinement for a period of twenty (20) years imprisonment for each Burglary charge. All sentences to run concurrent. The remaining Orangeburg charge was nolle prossed. Applicant did not appeal his conviction or sentence.

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

1. Involuntary and unintelligent guilty plea
2. Ineffective assistance of counsel in:
  - a. Failing to investigate an alibi defense,
  - b. Failing to interview Applicant's codefendant,
  - c. Failing to challenge the waiver of presentment,
  - d. Failure to request a preliminary hearing, and
  - e. Failure to object to Judge Goodstein's comments.

### 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. Applicant argues he was coerced by Counsel to plead guilty and that he was intoxicated from medications during the plea hearing. This Court finds Applicant's guilty plea was freely and voluntarily entered. 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. 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 coerced to plead by Counsel and because he was under the influence of medications. This Court finds this contention 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 consequences of pleading guilty. 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 Goodstein that he was not taking any medications and was not under the influence of any medications during the plea. (Plea Tr. p. 5, lines 17-19). Therefore, this Court finds the plea judge correctly found Applicant's plea was freely, voluntary, and intelligently made.

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

Applicant also makes a number of allegations of ineffective assistance of counsel. The Court will discuss each in turn.

#### ***Failing to Investigate Alibi Defense***

Applicant claims that Counsel was ineffective for failing to investigate an alleged alibi defense. Applicant testified he was in Savannah, Georgia when the crimes were committed and that he could not have been the perpetrator. Applicant's wife testified that she showed receipts from a hotel located in Savannah dated the day the robberies took place to Counsel. She testified that Counsel did not pursue this information any further. Applicant testified that he was in Savannah on March 18, 19, and 20<sup>th</sup> for a Saint Patrick's Day celebration and referenced the receipts for those days. He testified Murphy did not give him a reason for not using the hotel receipts to establish an alibi defense. Counsel testified that one of the first things he did was

check into Applicant's hotel stay. Counsel noted that he obtained the hotel receipts after he subpoenaed the records. He emphasized that the robberies took place the early morning hours of March 18<sup>th</sup> and that it was very possible for Applicant to have driven to Savannah later that day. He testified he advised Applicant that the receipts and hotel stay would not be enough to prove a legitimate alibi.

This Court finds Applicant failed to meet his burden. "Criminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." Edwards v. State, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011) (internal citations omitted). This Court finds persuasive Counsel's testimony on the issue. Applicant's testimony that he had a valid alibi is not credible. Applicant's wife's testimony is also not credible. Counsel properly investigated this claim but verified that the receipts could only prove that he checked into the hotel in the afternoon on March 18<sup>th</sup>. Applicant would have had ample time to travel to Savannah after committing the robberies. Applicant also cannot prove that he would have gone to trial but for Counsel's alleged deficiency because Counsel did properly investigate Applicant's claims.

*Failure to Interview Applicant's Codefendant*

Next, Applicant alleges Counsel was ineffective for failing to interview and speak to Applicant's codefendant, Travis Braddock. Applicant's wife testified that she was able to obtain an affidavit and letter from Braddock stating that Applicant was not involved in the crimes. Counsel testified that Braddock was going to be testifying for the State if the case were to go to trial. Counsel testified that all codefendants were planning to testify against Applicant.

This Court finds Applicant has not proven Counsel was ineffective. Braddock was charged as Applicant's codefendant. Braddock was facing several charges in different jurisdictions and was represented by his own counsel. It was certainly reasonable for Counsel not to further investigate Applicant's codefendant because he was going to testify for the State and was not going to be helpful to Applicant's case. Applicant has also failed to prove that he was prejudiced. Even if Counsel did call Braddock as a witness it is very likely that he would have been advised to assert his 5<sup>th</sup> Amendment rights. This allegation is denied and dismissed.

*Failing to Challenge the Waiver of Presentment*

Applicant alleges Counsel was ineffective for failing to challenge Applicant's waiver of presentment to the grand jury on the Orangeburg grand larceny charge. This allegation is without evidentiary support. This Court finds that the grand larceny indictment at issue was nolle prossed after Applicant pleaded to the charges at issue. Regardless, Counsel told Judge Goodstein that Applicant was aware of and agreed to waive presentment to the Orangeburg County Grand Jury. Applicant was then questioned by Judge Goodstein to ensure he understood he was waiving his right to have the charges brought before the Orangeburg Grand Jury. (Plea Tr. p. 4, lines 1-9; p. 6, line 23 – p. 7, line 17). The record fully supports Judge Goodstein's finding that Applicant "freely and voluntarily, knowingly and intelligently waiv[ed] his right of presentment . . ." (Plea Tr. p. 7, lines 14-17). Applicant, therefore, cannot show any resulting prejudice.

*Failure to Request a Preliminary Hearing*

Applicant further alleges Counsel was ineffective in failing to request that a preliminary hearing be held. Every criminal defendant is entitled to notice of his right to a preliminary hearing "to determine whether sufficient evidence exists to warrant [his] detention and trial." Rule 2(a), SCRCrimP. If a defendant makes a timely request for a hearing, one should be held

within ten days. Rule 2(a)-(b), SCRCrimP. However, the hearing "shall not be held. . . if the defendant is indicted by a grand jury . . . before the preliminary hearing is held." Rule 2(b), SCRCrimP; see also State v. Hawkins, 310 S.C. 50, 54-55, 425 S.E.2d 50, 53 (Ct. App. 1992) (holding trial court did not err in refusing to quash defendant's indictments because he did not receive a requested preliminary hearing because he was indicted before a preliminary hearing was held). Furthermore, a defendant has no constitutional right to a preliminary hearing. State v. Keenan, 278 S.C. 361, 365, 296 S.E.2d 676, 678 (1982). Thus, although Applicant could have timely requested a preliminary hearing, his right to have the hearing ended with the grand jury's indictment.

This Court finds that Counsel's performance was reasonable according to professional standards. It is clear there was probable cause to support the charges. Furthermore, this Court finds that Applicant cannot establish any resulting prejudice, as a preliminary hearing would not have resulted in dismissal of the charges, and therefore, there is no likelihood that the result of the proceeding would have been different. This Court finds that this allegation must be denied and dismissed with prejudice.

*Failure to Object to Judge Goodstein's Comments*

Finally, Applicant alleges Counsel was ineffective for failing to object to Judge Goodstein stating that she was not going to let Applicant get hurt. (Plea Tr. p. 27, line 25 – p. 28, line 7; p. 28, lines 16-21; p. 29, lines 13-17). Judge Goodstein was merely telling Applicant that he need not worry about getting a sentence in excess of the negotiated twenty (20) years' on the Orangeburg grand larceny charge. This Court finds these comments are not improper and were not objectionable. Judge Goodstein was ensuring Applicant that his rights would be protected. This allegation is denied and dismissed with prejudice.

### 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

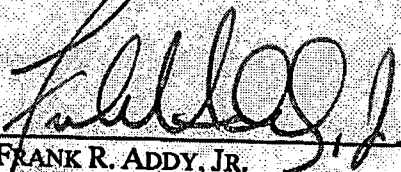
Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Applicant failed to demonstrate counsels' performance was unreasonable under prevailing professional norms. Cherry, 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.

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

  
FRANK R. ADDY, JR.  
Presiding Judge

Greenwood, South Carolina

Tommy A. Thomas, P.C.  
ATTORNEY AND COUNSELOR AT LAW  
HARRINGTON BUILDING  
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