

# The Law Office of Tristan M. Shaffer

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February 29, 2015

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

**RECEIVED**

MAR 03 2016

Re: Ancel Harris v. State  
2014-CP-26-1606

**S.C. SUPREME COURT**

Dear Clerk of Court,

Please file the attached Notice of Appeal, Proof of Service and Order in the above referenced case.

Thank you for your assistance in this matter.

Sincerely,



Tristan M. Shaffer

CC: Horry County Clerk of Court  
Jessica Kinard

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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RECEIVED

APPEAL FROM HORRY COUNTY  
Court of Common Pleas

MAR 03 2016

Thomas A. Russo, Circuit Court Judge

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S.C. SUPREME COURT

Case No. 2014-CP-26-1606

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Ancel Ramon Harris #357430,

Petitioner,

v.

The State of South Carolina,

Respondent.


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NOTICE OF APPEAL

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Petitioner appeals the order dismissing his post-conviction relief action filed on January 7, 2016. This order was received by Petitioner on January 28, 2016.

February 29, 2016



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Attorney for Respondent

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM HORRY COUNTY  
Court of Common Pleas

Thomas A. Russo, Circuit Court Judge

Case No. 2014-CP-26-1606

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**S.C. SUPREME COURT**

Ancel Ramon Harris #357430,

Petitioner,

v.

The State of South Carolina,

Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on The State of South Carolina by mailing a copy to the Attorney General's Office at P.O. Box 11549, SC 29211 on February 29, 2016.

February 29, 2016



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STATE OF SOUTH CAROLINA )  
COUNTY OF HORRY )

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Ancel Ramon Harris, #357430, )  
Applicant, )

Case No. 2014-CP-26-1606

v. )

**ORDER OF DISMISSAL**

State of South Carolina, )  
Respondent. )

HORRY COUNTY  
2016 JAN -7 PM 1:23  
MELANIE KINARD  
CLERK OF COURT

This matter comes before the Court by way of an Application for Post-Conviction Relief filed March 12, 2014. Respondent made a timely Return on or about July 11, 2014. The Court convened an evidentiary hearing into the matter on November 9, 2015, at the Horry County Courthouse. Applicant was present at the hearing and represented by Tristan M. Shaffer, Esquire. Jessica E. Kinard, Esquire of the South Carolina Attorney General's Office, represented Respondent.

Applicant and Applicant's plea counsel, Robert Paul Taylor, 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 January 2013, the Horry County Grand Jury indicted Applicant for attempted murder (2013-GS-26-00414), carjacking (2013-GS-26-00415), strong-arm robbery (2013-GS-26-00418), possession with intent to distribute heroin (2013-GS-26-00416), and possession with intent to distribute marijuana (2013-GS-26-00417). R. Paul Taylor, Esquire, represented Applicant. On October 15, 2013, Applicant

pled guilty to attempted murder and carjacking. In exchange for the plea, the State dismissed the remaining indictments. The Honorable Edward B. Cottingham sentenced Applicant to concurrent terms of fifteen (15) years for each charge. 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. "Sixth Amendment"
  - a. "Defense counsel did not advise defendant of all the essential elements of the formal charge under Section 16-3-29 ... Section 6.A. Article I, Chapter 3, title 16 of the amended 16-3-29."
  - b. "Defense counsel failed to fully disclose exculpatory evidence"
  - c. "Defense counsel did not disclose all the elements of plea agreement"
  - d. "Defense counsel did not provide competent representation"
  - e. "Defense counsel did not hire an investigator and promptly comply with a reasonable request for information."
  - f. "Defense counsel failed to reasonably consult with client; infrequent visits"
  - g. "Defense counsel failed to consult with defendant regarding his appeal of sentence after defendant regarded discussions for help in exercising right to appeal plea. Counsel never file appeal."
  - h. "Defense counsel failed to make any investigation into the matters of defendant competency"
2. "Fourteenth Amendment"
  - a. "Defense counsel failed to challenge the elements of the indictment"
  - b. "The S.C. Code Ann. (Amended 16-3-29) Attempted Murder is unconstitution and overly vague."

At the evidentiary hearing, Applicant began with a motion to supplement the record with the transcript of a proceeding during which the Honorable Larry B. Hyman, Jr. would not accept his guilty plea. The Court tentatively denied this motion, and then ultimately denied it, finding that it had no relevance to the case at bar. Applicant proceeded on his sixth amendment allegations, insofar that he presented evidence regarding ineffective assistance of counsel.

### **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**

Plea counsel was called first by the Applicant. Mr. Taylor testified that he met numerous times with the Applicant after being appointed, was involved with the Applicant for quite some time, reviewed all discovery with Applicant, and was prepared to take the case to trial if necessary. He recalled that Applicant had a difficult case due to the fact that the victim was alive and available to testify. Taylor testified that, though Applicant wanted to focus on the fact that the victim had not paid him for marijuana, Taylor informed Applicant that this was not a reasonable defense against the great weight of the evidence against Applicant. Taylor further testified that Applicant never indicated that he wanted to go to trial, but he would have certainly represented him. Tellingly, Taylor testified that Applicant is a "smart kid" who understood what he had done and the consequences that he was facing.

Taylor testified to negotiations regarding several plea offers, and thought that the concurrent fifteen (15) year sentences that Applicant received for the two (2) charges and dismissal of the others was as good of an offer as he could expect. He further testified that he adequately explained the elements of the crimes to which Applicant was pleading, and provided a copy of the statute to Applicant. Taylor testified that this was his practice, and he provided Applicant with statutes on all crimes for which he was charged, including those he accrued during the pendency of these charges. He also explained the consequences of pleading guilty

along with the numerous constitutional rights Applicant waived in doing so. He believed at the time and at this hearing that Applicant fully understood the consequences of his choice and was not forced, threatened, or coerced into entering his plea.

Applicant testified that he met Taylor three (3) times at the detention center and four (4) times at his office, but that each meeting was brief. His recitation of the incident differed from Taylor's, including that he did not believe he could be guilty of carjacking when the victim was no longer in the car. Applicant testified that his first plea was not taken by Judge Hyman because Applicant stated he would only take the offer if it was for "reasonable time." He further testified that Taylor told him to agree with whatever the judge said at the second plea. Applicant testified that Taylor never reviewed potential defenses, and he does not think he would have pled guilty if Taylor had taken this step. He testified at length about Taylor's statements about how much his attire cost and how he demanded money from Applicant, though Taylor was appointed to this case. Applicant further testified that Taylor said he could get forty (40) years at trial and that he should take the plea offer.

#### **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. Applicant did not probe the details of each element of his PCR allegations, though several were covered vaguely. It is easily disproven by plea counsel's testimony that Mr. Taylor failed to advise Applicant of elements of the charge; disclose exculpatory evidence; disclose all elements of plea agreement; provide competent

representation; or fail to reasonably consult or visit. Applicant failed to discuss the allegations of failure to hire an investigator, pursue an appeal, or investigate his competency. Plea counsel demonstrated he was thoroughly familiar with Applicant's case. 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. Accordingly, Applicant fails to meet his burden in demonstrating that plea counsel was ineffective.

### **C. 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**

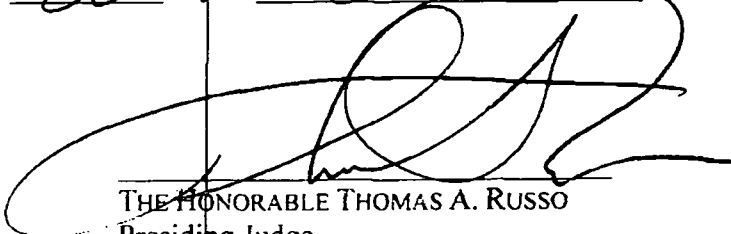
Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. This is an example of what can happen when someone does not take their oath to tell the truth before the Court seriously, because there is no point in perpetuating our judicial system if we cannot take people at their word. This Court finds a real issue with the Applicant's credibility, especially when balanced against that of plea counsel. The record shows no prejudice to the Applicant, nor does it show any action by plea counsel that would be deficient under the terms provided by Strickland. Plea counsel provided good advice regarding the fact that Applicant did not have a viable defense. 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 must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 22<sup>nd</sup> day of December 2015.

  
THE HONORABLE THOMAS A. RUSSO  
Presiding Judge

Florence, South Carolina

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