

THE LAW OFFICE OF NATHAN J. SHELDON,  
LLC  
*Working on your behalf*

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**RECEIVED**

MAR 29 2016

March 24, 2016

**S.C. SUPREME COURT**

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

Re.: Lexie Turner v. State of South Carolina  
2015-CP-46-01593

Dear Clerk of Court:

Please find enclosed the original Notice of Appeal and Proof of Service on the above referenced case along with a copy of the Order being appealed. I have also enclosed copies of the Notice of Appeal and Proof of Service. Please clock those and mail back to me in the also enclosed self-addressed stamped envelope. I have forwarded all documents to the Office of Appellate Defense. Thank you and please contact me with any additional questions or concerns.

Sincerely Yours,

Nathan Sheldon  
The Law Office of Nathan J. Sheldon

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM YORK COUNTY  
Court of Common Pleas

Brooks P. Goldsmith, Circuit Court Judge

Case No. 2015-CP-46-01593

State of South Carolina,

Respondent,

v.

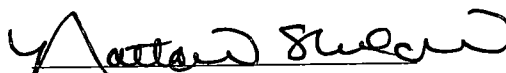
Lexie James Turner #249878,

Appellant.

NOTICE OF APPEAL

Lexie James Turner appeals the order of the Honorable Brooks P. Goldsmith dated December 12, 2015 denying the relief sought in his application for Post-Conviction Relief. Appellant received written notice of entry of this order on March 14, 2016.

March 24, 2016



Nathan J. Sheldon  
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331 E. Main St., Suite 200  
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(803) 909-9343  
Attorney for Appellant

Other Counsel of Record:  
Justin J. Hunter, Esquire  
Assistant Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211-1549  
Attorney for Respondent  
(803) 734-3970

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**S.C. SUPREME COURT**

THE STATE OF SOUTH CAROLINA  
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State of South Carolina,

Respondent,

v.

Lexie James Turner #249878,

Appellant.

**RECEIVED**


MAR 29 2016

**S.C. SUPREME COURT**

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Justin J. Hunter with the Attorney General's Office by depositing a copy of it in the United States Mail, postage prepaid, on March 24, 2016 mailed to Post Office Box 11549, Columbia, South Carolina 29211-1549.

March 24, 2016



Nathan Sheldon  
SC Bar #0074943  
331 E. Main St., Suite 200  
Rock Hill, SC 29730  
803-909-9343  
Attorney for Appellant

FORM 4

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

JUDGMENT IN A CIVIL CASE  
CASE NUMBER 2015CP4601593

16  
JK

Lexie James Turner	South Carolina State Of
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PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant
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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: ORDER OF DISMISSAL

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.

s/ Brooks P. Goldsmith

Brooks P. Goldsmith  
Circuit Court Judge

2139

Judge Code

Date

12/12/2015

RECEIVED  
 12/12/2015  
 CLERK OF COURT  
 YORK COUNTY  
 SOUTH CAROLINA

**For Clerk of Court Office Use Only**

This judgment was entered on **March 10, 2016**, and a copy mailed first class or placed in the appropriate attorney's box on **March 10, 2016**, to attorneys of record or to parties (when appearing pro se) as follows:

Nathan James Sheldon PO Box 36682 Rock Hill, SC 29732

Justin James Hunter PO Box 11549 Columbia, SC 29211-1549

**ATTORNEY(S) FOR THE PLAINTIFF(S)**

**ATTORNEY(S) FOR THE DEFENDANT(S)**

David Hamilton

**Court Reporter**

**David Hamilton - 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 YORK )  
 )  
 Lexie James Turner, )  
 S.C.D.C. No. 249878, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 OF THE SIXTEENTH JUDICIAL CIRCUIT  
 2015-CP-46-1593

**ORDER OF DISMISSAL**

FILED-RECEIVED  
 2016 MAR 10 PM 12:17  
 DAVID HAMILTON  
 C.C.P. & GS-SC  
 YORK COUNTY, SC

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed May 28, 2015. Respondent made its Return on or about October 26, 2015. An evidentiary hearing into the matter was convened on November 3, 2015, at the Moss Justice Center in York, South Carolina. Applicant was present at the hearing and represented by Nathan Sheldon, Esquire. Justin Hunter, Esquire, of the South Carolina Attorney General's Office represented Respondent. At the hearing, Applicant testified on his own behalf. Applicant's trial counsel, Melissa Inzerillo, Esquire, testified. Travis Moore also testified. This Court had before it a copy of Applicant's records from the York County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's PCR Application, and Respondent's Return.

**I. PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. Applicant was indicted for Possession With Intent to Distribute Crack Cocaine (2012-GS-46-2872) and Distribution of Cocaine Base (2012-GS-46-4278). Applicant was represented by Melissa Inzerillo, Esquire

(hereinafter referred to as "Counsel"). On February 26, 2013, Applicant proceeded to a jury trial before the Honorable Steven H. John, after which he was found guilty of Possession With Intent to Distribute Cocaine Base and not guilty of Distribution of Cocaine Base. Judge John sentenced Applicant to eleven years imprisonment.

Applicant timely filed a notice of appeal and an appeal was perfected by Christopher Leonard, Esquire, and Chief Appellate Defender Robert M. Pachak. The South Carolina Court of Appeals affirmed the conviction and sentence on April 1, 2015. State v. Turner, Op. No. 2015-UP-168 (Ct. App. filed April 1, 2015). The Remittitur was issued April 17, 2015.

In this action, Applicant alleges he is being held in custody unlawfully due to ineffective assistance of counsel, alleging specifically that Counsel should have employed an expert to testify at trial on Applicant's behalf and to counter the State's expert.

## II. SUMMARY OF THE TESTIMONY

### Counsel's Testimony

Counsel testified that she discussed all plea offers with Applicant. Specifically, she testified that she received an offer from the State on October 23, 2012 for ten years incarceration for a third offense plea, an offer on December 6, 2012 for fifteen years incarceration for a second offense plea, and an offer on January 14, 2013 for ten years incarceration for a second offense plea. She testified that Applicant rejected all of the plea offers and wanted a seven to ten year offer for a non-violent offense. She testified that she does not recall if she knew prior to trial that Commander Marvin Brown would be qualified and testify as an expert in the packaging, price, dose, habits, and sale of crack cocaine. Counsel testified that she has never used an expert to counter the State's drug expert before and that she did not believe it was necessary in this case



because she believed the better argument would be to argue that there was no indicia of drug distribution found in the car.

Counsel testified that she spoke to Applicant about the statement he gave officers and about interviewing Travis Moore (the driver of the vehicle), however Applicant did not want Mr. Moore to be involved in his case. She testified that a Jackson v. Denno hearing took place prior to trial. She also testified that she argued in camera during the trial regarding the suppression of the crack cocaine found. She testified that there was no need for a suppression hearing because the crack cocaine was found via a search incident to arrest. She testified that Applicant did not want her to argue for a simple possession but rather argue for a not guilty verdict on both charges. Counsel testified that she argued that there was no paraphernalia or other indicia of distribution. She further testified that Applicant did not give her any leads or defenses to act on.

#### **Applicant's Testimony**

Applicant testified that he decided to go to trial because he thought ten years incarceration was too high a sentence for him to agree to plead guilty. He testified that Mr. Moore did not give consent to search the car, contrary to what officers testified to at the trial. He testified that he could not remember discussions with Counsel regarding the difference between simple possession and possession with intent to distribute. Applicant further testified that he would have been willing to plead to simple possession. Applicant also testified that he wanted to proceed to a trial over pleading guilty and wanted Counsel to argue that he was not guilty of either charge. Applicant testified that he believes that expert testimony would have changed the outcome of his case. He further testified that he does not have a particular expert to testify at the PCR hearing, nor does he have knowledge of what an expert would testify to had one been retained at trial.

### Travis Moore's Testimony

Mr. Moore testified that officers did not ask for his permission to search the vehicle and that he did not give consent to the officers to search his car. He further testified that he never contacted Applicant or Counsel prior to trial about providing testimony.

### III. APPLICABLE LAW

In a post-conviction relief action, the applicant bears the burden of proving the allegations in their 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, the 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, the 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 the 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.

#### 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 trial 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.

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

This Court finds that Applicant failed to meet his burden of proving that his trial counsel was ineffective. This Court finds that Counsel's decision not to call an expert to counter the State's expert was a valid strategic decision. Counsel testified that she has never retained an expert to counter a State's drug expert and that she did not believe it was necessary in this case because she believed the better argument would be to argue that there was no indicia of drug distribution found in the car.

Furthermore, this Court finds that Applicant has failed to show that he suffered prejudice by Counsel's failure to call an expert witness. The South Carolina Supreme Court has held that "a PCR applicant *must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence* at the PCR hearing in order to establish



prejudice from the witness' failure to testify at trial." Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (emphasis in original). The Court further held that "[t]he applicant's mere speculation what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice." Id. As Applicant has failed to present an expert witness at the PCR hearing, this Court can only speculate as to what the expert would have testified to at trial. Accordingly, Applicant has failed to meet his burden of showing that the result of his trial would have been different.

#### V. CONCLUSION

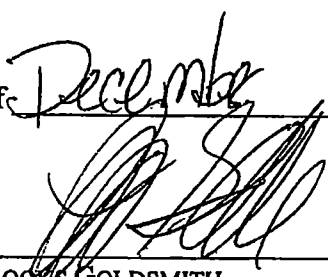
Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Applicant failed to demonstrate counsels' performances were unreasonable under prevailing professional norms. Cherry, 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 12 day of December, 2015.

  
\_\_\_\_\_  
BROOKS GOLDSMITH  
Presiding Judge  
Sixteenth Judicial Circuit

  
\_\_\_\_\_, South Carolina

Law Office of Nathan J. Sheldon  
331 E. Main St., Suite 200  
Rock Hill, SC 29730

Hon. Daniel E. Shearouse  
Clerk, Supreme Court of South Carolina  
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