



# SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense  
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Robert M. Dudek, Chief Appellate Defender  
Wanda H. Carter, Deputy Chief Appellate Defender

March 28, 2012

Ms. Desiree R. Allen  
Court Services Manager  
1015 Sumter Street  
Columbia, SC 29201

Dear Ms. Allen:

**RECEIVED**

MAR 28 2012

**S.C. Supreme Court**

Please provide us with the following transcript:

Kiki Jamarcus Thomas v. State of South Carolina Case #: 10-CP-31-00111

County: Lee Date of Trial: October 25, 2011 (Rutledge)

Presiding Judge: R. Ferrell Cothran, Jr.

To ensure prompt payment, please sign and complete the enclosed CID FORM 3500 and include the original criminal case number (Indictment number) where the space is provided.

Please number the lines on the paper from 1-25, and include any and all recorded motions, pre and post-trial. Additionally, please transcribe the jury selection, and the State and defense counsel's opening and closing arguments.

If you are aware of any co-defendants or if the Attorney General's Office has already requested a transcript, please let us know.

Sincerely,

Sharon A. Graham  
Administrative Coordinator

cc: S.C. Supreme Court  
Attorney General's Office

PCR

# The Brooks Law Offices, LLC

**Charles T. Brooks, III**  
**Attorney**

309 Broad Street  
Sumter, South Carolina 29150  
Post Office Box 3512, Sumter, SC 29151  
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**Irma R. Brooks**  
**Attorney**

OFFICE: (803) 418-5708  
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Email: [cbrooks@ctbrooks.com](mailto:cbrooks@ctbrooks.com)

February 17, 2012

South Carolina Supreme Court  
PO Box 11330  
Columbia, SC 29211

RE: Kiki Jamarcus Thomas v State of South Carolina  
Case No. 2010-CP-31-0111

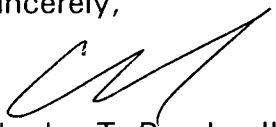
Dear Sir or Madam:

Enclosed herewith you will find the **Notice of Appeal, Order of Dismissal**, along with a **Proof of Service** in reference to the above named Applicant.

If you have any questions or concerns, please contact my office at the number stated above.

With kind regards, I am

Sincerely,



Charles T. Brooks, III  
CTB/jlb

**RECEIVED**

FEB 24 2012

**S.C. SUPREME COURT**

Enclosed as stated

Cc: Robert Corney, Office of Attorney's General  
South Carolina Office of Appellate Defense  
Kiki Jamarcus Thomas, 285391

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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APPEAL FROM LEE COUNTY  
Court of Common Pleas  
Honorable R, Ferrell Cothran, Jr. Circuit Court Judge

---

Case No: 2010-CP-31-0111

Kiki Jamarcus Thomas,..... Appellant  
S.C.D.C. No.: 285391

v.


The State..... Respondent

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NOTICE OF APPEAL

Kiki Jamarcus Thomas appeals his Denial for Post Conviction Relief in this case. The Order of Dismissal was imposed and signed by the Honorable R. Ferrell Cothran, Jr., on February 3, 2012, which I, Charles T. Brooks, III, received on February 17, 2012

February 17, 2012



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Charles T. Brooks, III  
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Sumter, South Carolina 29151  
(803) 418-5708  
Attorney for Appellant

Other Counsel on Record:  
Robert Corney, Esquire  
Assistant Attorney General  
Post Office Box 11549  
Columbia, SC 29211-1549  
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**RECEIVED**

FEB 24 2012

**S.C. SUPREME COURT**

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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APPEAL FROM LEE COUNTY  
Court of Common Pleas  
Honorable R. Ferrell Cothran, Jr., Circuit Court Judge

---

Case No: 2010-CP-31-0111

Kiki Jamarcus Thomas.....Appellant  
S.C.D.C. No.: 285391

v.  
The State.....Respondent

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PROOF OF SERVICE

I, the undersigned, do hereby certify that on this 17<sup>th</sup> day of February 2012, I served the foregoing Notice of Appeal, Order of Dismissal, as well as Proof of Service in this matter by depositing a true copy of it in the United States Mail, postage prepaid, on February 17, 2012 addressed to the following as indicated below:

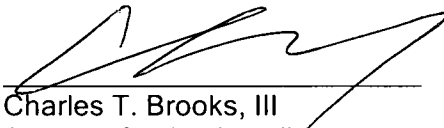
South Carolina Supreme Court  
Post Office Box 11330  
Columbia, South Carolina 29211

South Carolina Office of Appellate Defense  
1330 Lady Street, Suite 401  
PO Box 11589  
Columbia, SC 29211-1589

Office of Attorney's General  
Attn: Robert Corney, Esquire  
Post Office Box 11549  
Columbia, South Carolina 29211-1549

Kiki Jamarcus Thomas, 285391  
Kershaw Correctional Institution  
4848 Goldmine Highway  
Kershaw, South Carolina, 29067

Dated: February 17, 2012



---

Charles T. Brooks, III  
Attorney for the Appellant  
309 Broad Street  
Sumter, South Carolina 29150  
(803) 418-5708

STATE OF SOUTH CAROLINA  
COUNTY OF LEE

IN THE COURT OF COMMON PLEAS  
FOR THE THIRD JUDICIAL CIRCUIT

Kiki Jamarcus Thomas, # 285391,

2010-CP-31-0111

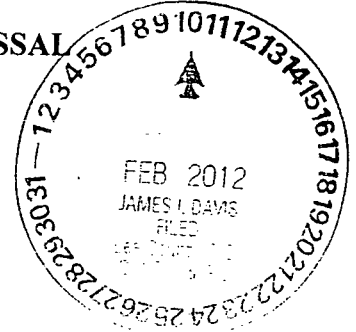
Applicant,

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.



**PROCEDURAL HISTORY**

This matter comes before the Court by way of an Application for Post-Conviction Relief filed June 9, 2010. The Respondent made its Return on February 16, 2011. An evidentiary hearing into the matter was convened on Tuesday, October 25, 2011, at the Sumter County Courthouse. The Applicant was present at the hearing and was represented by Charles T. Brooks, III, Esquire. The Respondent was represented by Robert D. Corney of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. Also testifying was Applicant's plea counsel, Willie Brunson, Esquire ("counsel"). This Court also had before it a copy of the transcript of the proceedings against the Applicant, the records of the Lee County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections.

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lee County Clerk of Court. The Applicant was indicted for (1) Murder, (2) Conspiracy, and (3) Assault and Battery with Intent to Kill ("ABWIK") (2008-GS-31-0070). Willie Brunson, Esquire,

represented him. On June 17, 2009, the Applicant pled guilty to the lesser offense of Voluntary Manslaughter before the Honorable Thomas W. Cooper. Applicant was sentenced to fifteen (15) years imprisonment. Applicant did not appeal his conviction and sentence.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
2. "Trial counsel's performance fell below an objective standard of reasonableness."
3. "Trial counsel's failure to investigate and interview some potential alibis."

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged 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, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel

rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption 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. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's 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." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

With respect to guilty plea counsel, the Applicant must show that 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, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985). In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the

charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4<sup>th</sup> Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4<sup>th</sup> Cir. 1976).

*Ineffective Assistance of Counsel*

Applicant alleges that counsel was ineffective in her representation and, but for his deficiencies, he would not have pled guilty but rather would have proceeded to jury trial. At the hearing, PCR counsel started by placing on the record that he had previously represented one of Applicant's co-defendants in an unrelated matter, which Applicant waived any potential conflict arising there from. Applicant started by testifying that he and his PCR counsel had discussed the consequences of going forward with this action and having relief granted, including the potential of facing serious charges that had been *nolle prossed* as part of his original plea, but stated that he wanted to go forward with this application regardless. Applicant went on to say that he was under the impression that the state had the murder weapon in its possession at the time of the trial and, had he known that they in fact did not, he would have insisted on proceeding to trial. Applicant finished by stating that he believed counsel was "a good lawyer" on the charges.

Counsel testified that he reviewed the charges, indictments, elements of the crimes, Applicant's constitutional rights, entirety of the discovery file, and Applicant's version of the facts giving rise to the charges with Applicant in preparation for Applicant's case. Counsel stated there were several eye witnesses that the state planned on calling at trial who were going to testify that they saw the entire incident including Applicant firing shorts. Counsel also stated Applicant never mentioned a potential alibi witness to him as Applicant admitted to counsel that he was at the scene at the time of the shooting. Counsel testified that he explained to Applicant

that he could potentially be found liable for the victim's death even if he did not fire the fatal shot, and said there was no dispute that Applicant had not been found in possession of the gun that fired the fatal shots, as the murder weapon was a .38. However, counsel went on to say, there were shell casings at the crime scene from several different types of handguns, including a .22, which was the type of gun Applicant was in possession of at the time of his arrest. Counsel articulated that he and Applicant discussed the possibility of proceeding to trial in depth and that he was prepared to go to trial if Applicant wished to do so. However, counsel said that in the end it was Applicant's voluntary decision to enter a guilty plea, a decision which Applicant made with the full knowledge that the murder weapon had not yet been found by police.

This Court finds Counsel's testimony to be credible. Conversely, I find Applicant's testimony to not be credible. Counsel advised Applicant of all relevant issues regarding the charges he was facing, including the facts giving rise to the charges, the elements of the charges, the indictments, the potential sentences he was facing, the state's evidence against him, the consequences of rejecting this plea to proceed to trial and the absence of a murder weapon from the State's evidence against Applicant. Additionally, counsel gave Applicant all the information and advice to make an intelligent and voluntary decision on whether to enter this plea.

Based on the facts above, I find that Applicant did not prove by a preponderance of the evidence that counsel was ineffective in her representation, as neither deficiency nor resulting prejudice were proven. Further, I find that Applicant's guilty plea was entered knowingly and voluntarily after being fully and adequately advised by competent counsel acting within the range of competence demanded of attorneys in criminal cases.

As discussed above, the Applicant has failed to carry his burden in this action. Therefore, this Court finds that the application must be denied and dismissed in its entirety.

## CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

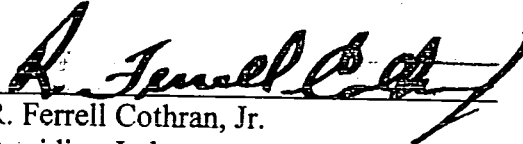
Except as discussed above, this Court finds that the Applicant failed to raise any other allegations cognizable in PCR at the hearing and has, thereby, waived them. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issue at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

This Court advises Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel 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 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCPP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED:**

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

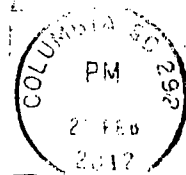
AND IT IS SO ORDERED this 3 day of Feb., 2012

  
R. Ferrell Cothran, Jr.  
Presiding Judge  
Third Judicial Circuit

Manning, South Carolina.

CHARLES T. BROOKS, III  
THE BROOKS LAW OFFICE, LLC  
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SUMTER, S. C., 29151

*Kiki  
Tanarcus  
Thomas*



South Carolina Supreme Court  
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