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April 12, 2016

**RECEIVED**

SENT VIA U.S. MAIL ONLY

Daniel E. Shearhouse  
CLERK OF COURT

SUPREME COURT OF SOUTH CAROLINA  
P.O. Box 11330  
Columbia, SC 29211

APR 15 2016

S.C. SUPREME COURT

**IN THE MATTER OF:**     *Rudis Arnold Ventura vs. State of South Carolina*  
Case No. 2013-CP-42-4095

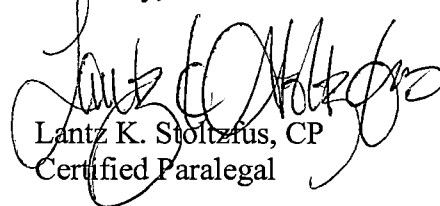
Dear Clerk of Court:

Enclosed please find a NOTICE OF APPEAL along with our PROOF OF SERVICE upon the parties in this matter and upon the Spartanburg County Clerk of Court on behalf of Mr. Rudis Arnold Ventura in the above-referenced matter. Also, enclosed please find two copies for filing and a check of \$100.00 for the filing fee. Please return the two filed copies to our office in the envelope provided herein, postage fully paid thereon.

If you have any questions regarding this correspondence, or need anything further from me at this time, please do not hesitate to contact me.

Thank you in advance for your kind assistance in this matter.

Sincerely,

  
Lantz K. Stoltzfus, CP  
Certified Paralegal

**Encl.**

cc: Alicia Olive, Esq.  
Rudis Ventura

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THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APR 15 2016

APPEAL FROM SPARTANBURG COUNTY  
Court of Common Pleas

**S.C. SUPREME COURT** Larry B. Hyman, Jr., Circuit Court Judge

Case No. 2013-CP-42-4095

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


v.

Rudis Arnold Ventura, #351029, ..... Appellant.

**NOTICE OF APPEAL**

Rudis Arnold Ventura hereby appeals the order of the Honorable Larry B. Hyman, Jr., dated March 14, 2016, dismissing his civil application for post-conviction relief in the Circuit Court. Appellant received written notice of the entry of this order on March 15, 2016.

April 12, 2016  
Greenville, South Carolina

  
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Columbia, SC 29211  
Telephone No. (803) 734-4127

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM SPARTANBURG COUNTY  
Court of Common Pleas

Larry B. Hyman, Jr., Circuit Court Judge

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Case No. 2013-CP-42-4095

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

v.

Rudis Arnold Ventura, #351029, ..... Appellant.

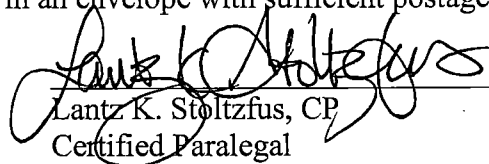
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**PROOF OF SERVICE**

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I certify that, on April 12, 2016, I served a copy of the NOTICE OF APPEAL in this action, dated April 12, 2016, on counsel of record by mailing the NOTICE to them to their address as so stated below, and mailed to the Spartanburg County Clerk of Court, P.O. Box 3483, Spartanburg, SC 29304, and by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed.

April 12, 2016  
Greenville, South Carolina



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Assistant Attorney General  
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STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF SPARTANBURG )  
 )  
 Rudis Arnold Ventura, #351029, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 FOR THE SEVENTH JUDICIAL CIRCUIT

Case No.: 2013-CP-42-4095

**ORDER OF DISMISSAL**

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on September 19, 2013. An evidentiary hearing into the matter was convened on November 10, 2015, at the Spartanburg County Courthouse before the undersigned. Applicant was present at the hearing and was represented by J. Bradley Bennett, Esquire. Alicia Olive, Esquire, of the South Carolina Attorney General's Office represented Respondent.

At the evidentiary hearing, Applicant testified on his own behalf. The State presented testimony from R. Scott Davis, Esquire. Applicant's PCR counsel also engaged the use of a Spanish translator for Applicant at the hearing.

This Court also had before it the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the plea transcript, the sentencing transcript, and the pleadings.

**I. PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. Applicant was indicted at the May 2009 term of the Spartanburg County Grand Jury for two counts of murder (2009-GS-42-2370, count 1); (2009-GS-42-2371, count 1). He was then indicted at the May 2010 term of

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the Spartanburg County Grand Jury for burglary, first degree (2010-GS-42-3025). Both charges arose from the same set of circumstances. Applicant was represented by R. Scott Davis, Esquire ("Counsel"). On February 3, 2011, pursuant to negotiations with the State, the Applicant appeared before the Honorable J. Derham Cole and pleaded guilty to burglary, first degree, as indicted, and to two counts of accessory after the fact to murder (2009-GS-42-2370, count 2); (2009-GS-42-2371, count 2), after waiving presentment to the Grand Jury on those charges. He also agreed to testify truthfully against his codefendants. As a result, the State dismissed the charges for murder and Applicant's sentencing was deferred.

On May 23, 2012, the Honorable J. Mark Hayes II sentenced the Applicant to concurrent sentences of life for burglary, first degree, and fifteen years for each account of accessory after the fact to murder. Through his attorney, Applicant filed a Motion to Reconsider the terms of his sentence on May 24, 2012. In an Order issued on January 28, 2013, Judge Hayes reduced Applicant's sentence for burglary, first degree, from life to 40 years of incarceration, to be served concurrently. Applicant did not appeal his conviction or sentence.

#### **A. Allegations**

Applicant alleges that he is being held in custody unlawfully for the following reasons:

- a. Ineffective assistance of counsel, in that;
  - a. Counsel failed to investigate,
  - b. Counsel failed to function as an advocate,
  - c. Counsel intentionally misled the Applicant,
  - d. Counsel failed to object to prosecutorial misconduct,
  - e. Counsel failed to file notice of appeal;
- b. Involuntary guilty plea.

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#### **B. Guilty Plea Hearing**

According to the facts as presented at Applicant's plea, Applicant's charges arose out of a scheme in which an individual organized a group of people to go to the victims' home and take

back some items that the victims had supposedly stolen from that person. The group broke into the home and found the two victims there. At first, Applicant was outside acting as a look out. Then, the others called him into the house and told him to go upstairs to look around. While upstairs, he heard gunshots go off downstairs. The victims died as a result of several gunshot wounds.

In total, eight individuals were charged with the killings. At the time of Applicant's plea, two other individuals had already pleaded guilty. One of those individuals pleaded to accessory after the fact, burglary first, and two counts of murder. The other individual pleaded guilty to the same charges that Applicant faced.

Prior to the plea, Applicant gave oral statements regarding the murders and the burglary. Applicant agreed to assist in the investigation and prosecution of the other individuals. He also attempted to help the authorities locate two individuals who had absconded. Applicant's plea was contingent upon his cooperation with the State's investigation into the killings.

At Applicant's sentencing, Counsel informed the court that Applicant was the first to cooperate with the investigation, that he expressed remorse over the incident, and that the first two individuals to plead guilty did so because he made statements implicating them. Counsel asked the sentencing judge to sentence him to a minimum sentence.

## II. SUMMARY OF TESTIMONY PRESENTED

Applicant testified he is a natural-born U.S. citizen and that he was born and raised in California. Applicant further testified he attended college in Georgia for a period of time.

Applicant testified that he cooperated with law enforcement by meeting with the solicitor and several investigators and that he told them what he knew. Applicant testified he was taken to the sheriff's office and was given a polygraph test without his lawyer present. Counsel testified

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he did not recall whether he was present when the polygraph was taken. Applicant testified that as a result of the polygraph he was charged with burglary. Applicant testified that Counsel told him that the murder charges would be dropped and that the burglary charge would "run together." Applicant testified Counsel assured him he "would go home."

Applicant agreed he was initially charged with two counts of murder. Applicant agreed that the State dismissed those charges in exchange for his agreement to plead guilty to accessory after the fact of murder and to cooperate with their investigation. Applicant testified he told authorities the truth about the events. Applicant testified he had already been charged with two counts of murder when he decided to cooperate with law enforcement.

Counsel testified that he was retained to represent Applicant. Counsel testified he expected Applicant's co-defendants to testify against him if he had gone to trial. Counsel testified that he made a motion to reconsider the sentence and that Applicant's sentence for burglary was changed from life to 40 years. Counsel testified he never promised Applicant he would get to go home; rather, Counsel testified he told him he would get credit toward his sentence for the time he had been in jail. Counsel testified that Applicant's other co-defendants had also been talking to the authorities. Counsel testified that Applicant first denied being inside the home, but that another co-defendant's statement placed him inside. Thereafter, in another meeting with the solicitor, Applicant "told them the whole story" and admitted that he had been in the home.

Counsel testified that if Applicant had gone to trial, the State could have convicted Applicant of both counts of murder based on the theory of "hand-of-one, hand-of-all." He testified he explained this concept to Applicant. He testified it was Applicant's decision to plead guilty. He testified that he would not have advised Applicant differently even if he had known he

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would be charged with burglary. Counsel testified he was focused on getting the murder charges dropped because they were more serious.

### III. 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).

As a matter of general impression, this Court finds Counsel's testimony to be more credible than Applicant's testimony.

#### A. Ineffective Assistance of Counsel

In a PCR action, Applicant bears the burden of proving the allegations in his 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 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). The applicant “must first demonstrate that counsel was deficient and then must also show the deficiency resulted in prejudice.” Walker v. State, 407 S.C. 400, 404-05, 756 S.E.2d 144, 146 (2014). “The two-part test adopted in Strickland also applies to challenges

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to guilty pleas based on ineffective assistance of counsel.” Holden v. State, 393 S.C. 565, 572, 713 S.E.2d 611, 615 (2011).

First, the applicant must show that counsel’s performance “fell below an objective standard of reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, he would not have [pleaded] guilty, but would have insisted on going to trial.” Thompson v. State, 340 S.C. 112, 116, 531 S.E.2d 294, 297 (2000).

### 1. Failure to investigate

Applicant alleges Counsel was ineffective because he failed to investigate evidence and potential defenses. This Court finds Applicant’s allegation that he received ineffective assistance of counsel for failure to investigate is meritless. This Court finds that Counsel was not ineffective for failing to adequately investigate. Applicant has produced no evidence, through testimony or otherwise, that Counsel failed to adequately investigate the case.

“[C]riminal 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.” Walker v. State, 397 S.C. 226, 235, 723 S.E.2d 610.

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615 (Ct. App. 2012). Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result. Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). "In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." Wiggins v. Smith, 539 U.S. 510, 521-22 (2003).

Counsel testified he filed for discovery, received full discovery, and reviewed all discovery with Applicant both before and after Applicant began cooperating with law enforcement. Counsel testified he discussed with Applicant the charges he was faced with, including the elements of each charge and the potential punishments. Counsel also testified Applicant gave him his version of events and that they discussed potential defenses. Counsel testified that Applicant did not tell him about any witnesses that might be able to testify in his defense.

This Court finds that Applicant's attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation that is expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977). See also Strickland, 466 U.S. at 688 ("The proper measure of attorney performance remains simply reasonableness under prevailing professional norms."). This Court finds Applicant has failed to produce any testimony or evidence to show what additional investigation Counsel could have done or what facts such investigation would have revealed. This Court finds Applicant has failed to show any deficient performance or resulting prejudice with respect to this allegation. Accordingly, this allegation is denied and dismissed.

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**2. Counsel ineffective for advising Applicant to cooperate with law enforcement**

Applicant argues that Counsel was ineffective for advising him to cooperate with law enforcement because he should have protected Applicant from disclosing self-incriminating information. In other words, Applicant argues that Counsel should have anticipated Applicant would be charged with first degree burglary.

Counsel testified he reviewed all discovery material with Applicant both before and after Applicant began cooperating with law enforcement. Counsel testified he discussed with Applicant the charges he was faced with, including the elements of each charge and the potential punishments. Counsel testified the only potential defense he thought Applicant might have to murder was mere presence. However, Counsel testified that based on his review of the discovery in Applicant's case, if Applicant had gone to trial on the murder charges, the State would have had a strong case against him. Counsel also testified that before Applicant decided to cooperate with authorities, other co-defendants had placed Applicant at the scene and inside the house. Counsel further testified that Applicant's co-defendants would have testified against him.

Applicant was first indicted for two counts of murder. Counsel testified he was trying to help Applicant get rid of the murder charges. Due to Applicant's cooperation in prosecuting his co-defendants, his charges were reduced to accessory after the fact and first degree burglary. Though Applicant was initially sentenced to life for first degree burglary, Counsel made a motion to reconsider, which was successful, and Applicant is now only serving a 40 year sentence as opposed to life. Counsel effectively advocated for Applicant at the sentencing hearing and impressed upon the judge the extent of Applicant's cooperation with the investigation and prosecution of his co-defendants.

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This Court finds that Applicant's allegation that Counsel was ineffective is without merit and Applicant has failed to satisfy his burden of proving the first prong of the Strickland test—that Counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions while representing the Applicant. This Court further finds counsel adequately conferred with the Applicant, conducted a proper investigation, and provided thorough representation. This Court further finds that Counsel's decision to encourage Applicant to cooperate with authorities was reasonable. Therefore, Applicant has failed to satisfy his burden of proving the first prong of Strickland.

Likewise, this Court finds that Applicant failed to show there is a reasonable probability that but for Counsel's alleged deficient performance, he would not have pleaded guilty but would have insisted on going to trial. Accordingly, Applicant's allegations of ineffective assistance of counsel are without merit and are denied and dismissed with prejudice.

### **B. Involuntary Guilty Plea**

In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citing Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993); Hyman v. State, 278 S.C. 501, 299 S.E.2d 330 (1983); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993)). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing (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, 20, 546 S.E.2d 417, 419 (2001) (citing Hill v. Lockhart, 474 U.S. 52; Jackson v. State, 342 S.C. 95, 535 S.E.2d 86 (2000)).

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Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000); Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994)).

Courts use a two-pronged test to evaluate 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 v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (citing Strickland, 466 U.S. 668)). 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." Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)).

An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. at 56. Furthermore, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant. Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Admissions "made during a guilty plea should be considered conclusive unless [an applicant]

STATE OF ALABAMA  
CLERK OF THE SUPREME COURT  
MONTGOMERY, ALABAMA  
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presents valid reasons why he should be allowed to depart from the truth of his statements.” Id. at 137-38, 654 S.E.2d at 874 (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)).

This Court finds that the record fully supports the knowing and voluntary nature of Applicant's guilty plea. Applicant has presented no evidence or valid reasons why he should be allowed to depart from his statements made at the guilty plea hearing.

This Court notes that during the PCR hearing, though Applicant employed the use of a translator, he often answered questions without the use of a translator and did not appear to have problems communicating in or understanding English. Furthermore, Counsel testified that during his representation of Applicant he and Applicant communicated in English and he never had problems communicating with Applicant. He further testified that during the course of his representation of Applicant, he never felt Applicant did not understand his advice due to a language barrier. Counsel testified Applicant never requested an interpreter.

This Court found above that Applicant failed to show either that Counsel rendered deficient performance or that he was prejudiced by any alleged deficient performance. Accordingly, this Court hereby denies and dismisses Applicant's allegation that his guilty plea was involuntary.

### 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, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

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**IV. 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.

This Court notes that Applicant must file and serve a notice of appeal within thirty 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 post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant 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 8 day of MARCH, 2016.

  
LARRY B. HYMAN, JR.  
Presiding Judge  
Seventh Judicial Circuit

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STATE BAR OF SOUTH CAROLINA  
M. HOPE BLACKLEY

Conway, South Carolina

# Spartanburg County

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Spartanburg, SC 29304-3483

Phone (864) 596-2591  
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**M. Hope Blackley**  
Clerk of Court

*March 14, 2016*

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

7<sup>TH</sup> JUDICIAL CIRCUIT

*Rudis Rudis Kothua*  
Applicant # *351029*

CASE # *2013042-4095*

VS  
*Steele*  
Respondent

CERTIFICATE OF SERVICE

I certify that, on this date, I served a copy of the *Order of Dismissal*  
In this action dated *March 8, 2016* on *March 14, 2016*

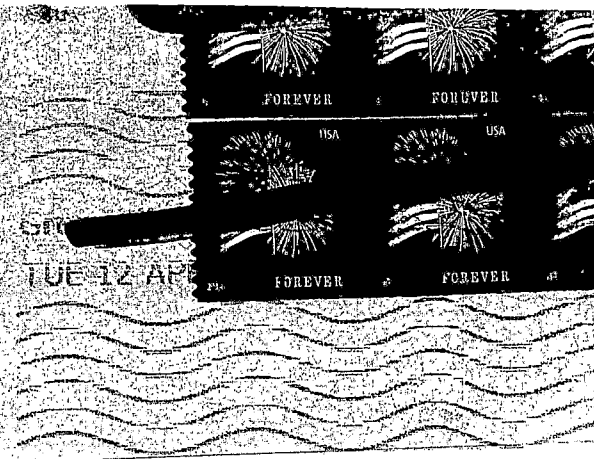
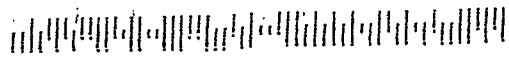
By mailing to him/her, at his/her last known address, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

*Adley H. Smith*

*Joseph Bennett*

*March 14, 2016*  
(Date)

*Conie Saly*  
(Signature)



**Salvini & Bennett, LLC**  
Attorneys at Law

101 W. Park Avenue Greenville, SC 29601

**Daniel E. Shearhouse**  
CLERK OF COURT  
SUPREME COURT OF SOUTH CAROLINA  
P.O. Box 11330  
Columbia, SC 29211