

THE BOOZER LAW FIRM, LLC

Lance S. Boozer, Esq.*
*Also admitted in Florida

807 Gervais Street, Suite 203
Columbia, SC 29201

Telephone: 803-608-5543
Fax: 803-926-3463

Email: lsb@boozerlawfirm.com
Website: www.boozerlawfirm.com

April 14, 2016

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

RECEIVED

APR 18 2016

S.C. SUPREME COURT

The Honorable Rhonda Dale McElveen
Clerk, Barnwell County
PO Box 723
Barnwell, SC 29812-0723

RE: Samuel Johnican, #340693, v. State of South Carolina
2010-CP-06-179

Dear Mr. Shearouse and Ms. McEleveen:

Enclosed for filing is a Notice of Appeal in the above-referenced case. Also enclosed are the following:

- (1) Proof of Service of the Notice of Appeal;
- (2) A copy of the Order which is to be challenged on appeal; and
- (3) Prior Order of Appointment of Counsel.

As I was appointed to represent Mr. Johnican in his PCR proceeding, I anticipate that the Office of Appellate Defense will represent Mr. Johnican in this appeal.

Yours very truly,



Lance S. Boozer

cc: Daniel Gourley, AAG
Office of Appellate Defense
Samual Johnican, #340693

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM BARNWELL COUNTY
Court of Common Pleas

RECEIVED

The Honorable Diane S. Goodstein, Circuit Court Judge

MAR 18 2016

Case No. 2010-CP-06-179

S.C. SUPREME COURT

Samual Johnican, #340693,.....Petitioner,

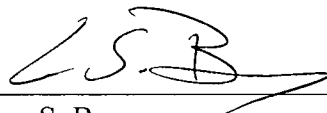
v.

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

NOTICE OF APPEAL

The Petitioner appeals the Honorable Diane S. Goodstein's Order dated March 7, 2016, denying post-conviction relief to the Petitioner. Undersigned counsel received notice of entry of the Order on April 6, 2016. A copy of the Order on appeal is attached to this notice.

Respectfully submitted,



Lance S. Boozer
The Boozer Law Firm, LLC
807 Gervais Street, Suite 203
Columbia, SC 29201
Tele: 803-608-5543

April 14, 2016

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

APPEAL FROM BARNWELL COUNTY
Court of Common Pleas

APR 18 2016

The Honorable Diane S. Goodstein, Circuit Court Judge

S.C. SUPREME COURT

Case No. 2010-CP-06-179

Samual Johnican, #340693,.....Petitioner,

v.

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

PROOF OF SERVICE

I, Lance S. Boozer, attorney for Petitioner, certify that I have today served within Notice of Appeal upon the Respondent by depositing a copy of it in the United States Mail, postage prepaid, addressed to Assistant Attorney General Daniel Gourley, P.O. Box 11549, Columbia, SC 29211. I further certify that all parties required by Rule to be served have been served this 14th day of April, 2016.



Lance S. Boozer
The Boozer Law Firm, LLC
807 Gervais Street, Suite 203
Columbia, SC 29201
Tele: 803-608-5543

STATE OF SOUTH CAROLINA)
 COUNTY OF BARNWELL)
)
 Samuel Johnican, #340693,)
)
 Applicant,)
))
 v.)
))
 State of South Carolina,)
))
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 FOR THE SECOND JUDICIAL CIRCUIT

2010-CP-06-0179

ORDER OF DISMISSAL

FILED
 2015 MAR 18 PM 3:01

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on August 2, 2010. An evidentiary hearing into the matter was convened on January 20, 2015, at the Aiken County Courthouse. Applicant was present at the hearing and was represented by Lance S. Boozer, Esquire. Respondent was represented by Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

The records before this Court indicate Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Barnwell County Clerk of Court. The Applicant was indicted for Murder (2010-GS-06-0105). He was represented by DeGrant Gibbons, Esquire. On May 11, 2010, the Applicant pled guilty to before the Honorable Doyet A. Early, III. He was sentenced to life imprisonment. The Applicant did not appeal his guilty plea or sentence.

ALLEGATIONS

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

1. Ineffective Assistance of Counsel.

2. Involuntary Guilty Plea
3. Due Process violation, equal protection of law.

Applicant filed various amendments dated January 13, 2014, February 10, 2014, February 21, 2014, November 11, 2014, November 25, 2014, and April 29, 2015,

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. The State presented testimony from DeGrant Gibbons, Esquire (hereinafter "Plea Counsel"). This Court also had before it a copy of the Barnwell County Clerk of Court records, Applicant's South Carolina Department of Correction records, guilty plea transcript, and the PCR application.

Applicant stated that he filed a PCR application raising various allegations of ineffective assistance of counsel. Applicant informed this Court that he was requesting an opportunity to vacate his guilty plea and proceed to trial. Applicant stated that he pled guilty and received life without parole for murder. Applicant stated Plea Counsel was appointed to represent him. Applicant stated that he met with Plea Counsel approximately 3-4 times prior to his guilty plea. Applicant could not recall the context of the meetings. Applicant stated that he was very emotional and overwhelmed by the circumstances. Applicant stated that he did not recall what was going on during the plea. Applicant recalled the plea judge asking a number of questions. Applicant stated that although he told the plea judge that he was not on medication during the plea, he was actually taking three or four medications. Applicant claimed that his guilty plea was not intelligently entered into because he was nervous and emotional. Applicant recalled waiving his constitutional rights during his plea. Applicant further recalled telling the plea judge that he was satisfied with Plea Counsel's services. Applicant recalled telling the plea judge that there was nothing else he wished Plea Counsel to do on his behalf.

Applicant stated that Plea Counsel filed a motion for reconsideration, but never filed an appeal. Applicant stated that Plea Counsel never reviewed his rights to file an appeal. Applicant alleged Plea Counsel was ineffective for failing to negotiate or secure a plea deal on his behalf. Applicant claimed Plea Counsel was ineffective for failing to conduct an investigation. Applicant stated Plea Counsel's investigator met with him on May 7th and asked if Applicant wanted a trial or plea. Applicant stated Plea Counsel met with him four days later. During that meeting, Applicant told Plea Counsel that he used a wrench to murder his wife. Applicant stated eleven days later, Plea Counsel sent him a sheet showing the sentencing range was thirty years to life. Applicant stated Plea Counsel advised him that the Solicitor would notice him for life without parole based on his prior convictions if he did not plead guilty. Applicant stated that he pled guilty because a potential thirty year sentence was better than a mandatory life without parole sentence. Applicant stated that he was convicted in 1989 for trafficking in marijuana and received one year of probation. Applicant further stated he was convicted of burglary in 1998. Applicant stated that Plea Counsel was ineffective for failing to advise him that the Solicitor was required to serve a life without parole notice on him. Applicant stated he was never served with a notice to seek life without parole.

Applicant stated that Plea Counsel was ineffective for failing to request an independent mental evaluation. Applicant stated that he was suicidal and remorseful. Applicant stated that he never meant to murder his wife. Applicant stated that he had a court ordered mental evaluation. Applicant claimed that he was not aware of the mental evaluation was going to occur. Applicant stated that Plea Counsel never discussed the findings of the mental evaluation. Applicant acknowledged that the report revealed that Applicant was malingering. Applicant claimed that Plea Counsel should have requested a Blair hearing. Applicant stated Plea Counsel

was ineffective for failing to investigate into the possibility of an insanity defense. Applicant noted that he was banging his head against the wall.

Applicant acknowledged that he told the plea judge that he was pleading freely and voluntarily. Applicant stated that Plea Counsel was ineffective for failing to review discovery or pictures with him prior to his guilty plea. Applicant claimed Plea Counsel was ineffective for failing to get the blood found on his face analyzed. Applicant stated Plea Counsel was ineffective for failing to investigate or secure witnesses. Applicant stated Plea Counsel never interviewed his family or children. Applicant stated Plea Counsel was ineffective for failing to discuss the differences between murder and manslaughter. Applicant stated that Plea Counsel failed to explain the elements of each crime. Applicant stated that he did not murder his wife with malice or aforethought. Applicant claimed that Plea Counsel was ineffective for showing him the indictment for the first time on May 11, 2010. Applicant stated Plea Counsel was ineffective for advising the plea judge that the crime was a "horrendous crime and there [was] no justification." (Pl. p. 27 lines 8-10). Applicant claimed Plea Counsel was ineffective for failing to have him subjected to the Minnesota Multiphasic Inventory Psychological test.

Following Applicant's testimony, Plea Counsel was called to testify. Plea Counsel stated that he met with Applicant at least four times. Plea Counsel stated that he hired an investigator who also met with Applicant. Plea Counsel stated that he reviewed all discovery material with Applicant. Plea Counsel stated that they reviewed the video confession, elements of murder, and the sentencing range. Plea Counsel stated that Applicant had no defenses to the charges.

Plea Counsel stated Applicant may have named one of his relatives for him to investigate. Plea Counsel recalled that Applicant was mostly embarrassed by the situation. Plea Counsel

recalled that Applicant did not want to involve his relatives in the proceedings. Plea Counsel stated Applicant was most concerned about his children.

Plea Counsel stated that he did not file an appeal on Applicant's behalf. Plea Counsel stated that he did file a motion for reconsideration. Plea Counsel stated that he met with the solicitor's office on multiple occasions. Plea Counsel stated that the solicitor refused to make an offer. Plea Counsel stated that the solicitor informed him that they were prepared to try the case on the August 2010 term of court. Plea Counsel stated that the solicitor believed that they could "strike out" Applicant and seek life without parole based on his prior convictions. Plea Counsel stated that the solicitor's office had not noticed Applicant for life without parole. Regardless, Plea Counsel stated that this was not a case that could be tried. Plea Counsel stated the evidence against Applicant was overwhelming. Plea Counsel stated that forensically speaking, there were no defenses. Plea Counsel stated that Applicant was concerned about putting his family through a trial. Plea Counsel further stated that he had concerns on how Applicant would perform on the witness stand.

Plea Counsel stated that he reviewed the evidence with Applicant. Plea Counsel stated that he did not provide Applicant a copy of the discovery for fear of other inmates viewing it. Plea Counsel stated Applicant did not want to review the pictures. Plea Counsel stated that they reviewed the video confession. Plea Counsel stated that there were no other witnesses to the crime. Plea Counsel stated Applicant did not want to involve his in laws or family members because he was embarrassed by the situation. Plea Counsel stated Applicant could never provide a reason for why he murdered his wife.

Plea Counsel stated that he felt Applicant understood their discussions. Plea Counsel stated Applicant was suffering from depression and anxiety. Plea Counsel stated that the plea

judge ordered Applicant to be evaluated. Plea Counsel stated that he did not get Applicant re-evaluated after the initial evaluation showed that he was malingering. Plea Counsel stated that he has represented countless individuals who are mentally ill. Plea Counsel stated that he did not feel Applicant was mentally ill and did not feel it was necessary to have him reevaluated.

Plea Counsel stated that he did not have the blood found on Applicant's face analyzed because it was not in dispute that Applicant killed his wife. Plea Counsel stated there was no beneficial reason to have the blood analyzed. Plea Counsel stated that he reviewed the elements of murder with Applicant. Plea Counsel stated that he explained malice aforethought and what that meant. Plea Counsel stated that he also explained why he did not feel the facts met the elements of manslaughter. Plea Counsel noted that there was no provocation, no huge argument, or heat of passion.

Plea Counsel stated that he first saw the indictment on the day of the plea. Plea Counsel further explained that his mitigation strategy was to acknowledge that Applicant's actions were inexcusable. Plea Counsel stated that characterizing the crime as "horrendous" was an attempt to acknowledge the depravity of the crime itself. Plea Counsel stated Applicant never requested a trial. Plea Counsel stated that he did not anticipate Applicant receiving a life sentence after electing to plead guilty. Plea Counsel stated that he felt Applicant would receive around thirty five years. However, Plea Counsel stated that he never told Applicant to expect a certain number. Plea Counsel stated that he advised Applicant that murder carried thirty years up to life in prison. Plea Counsel opined that if he elected to proceed to trial he would receive a life sentence given the facts and circumstances involved in the case.

Plea Counsel stated that he did discuss the possibility of the Solicitor noticing Applicant for a mandatory life without parole sentence based on his prior convictions. Plea Counsel stated

that this was first brought to his attention on the day of the plea. Plea Counsel stated that he never mentioned the possibility of being noticed for life without a parole sentence prior to Applicant deciding to enter his guilty plea.

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).

INEFFECTIVE ASSISTANCE OF COUNSEL

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; 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, (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 Trial 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 (1985).

ALLEGATIONS

1. Ineffective assistance of counsel for failing to file an appeal.

This Court finds Applicant's allegation that he received ineffective assistance of counsel when counsel failed to file an appeal is meritless. "[C]ounsel has a constitutionally imposed duty to consult with the defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing." Roe v. Flores-Ortega, 528 U.S. 470, 480, 120 S. Ct. 1029, 1036, 145 L. Ed. 2d 985 (2000). This Court notes Applicant complains that Plea Counsel never advised him of the right to appeal. However, the plea court properly advised Applicant of his right to appeal. (Pl. p. 12 lines 18-21). This Court finds Applicant failed to present any credible evidence or arguments that he affirmatively requested Plea Counsel to file an appeal following the denial of

his motion for reconsideration. Based off of the foregoing, this Court finds Applicant's allegation must be denied and dismissed with prejudice.

2. Ineffective assistance of counsel for failing to negotiate or secure a plea offer.

This Court finds Applicant's allegation that he received ineffective assistance of counsel for failing to negotiate or secure a plea offer lacks merit. Initially, this Court notes the South Carolina Supreme Court has held "[t]he decision whether to offer a plea bargain is within the *solicitor's* discretion." State v. Whipple, 324 S.C. 43, 49, 476 S.E.2d 683, 686 (1996) (emphasis added), citing State v. Chisolm, 312 S.C. 235, 439 S.E.2d 850 (1994). A criminal defendant has "no right to be offered a plea . . . nor a federal right that the judge accept it." Lafler v. Cooper, 132 S. Ct. 1376, 1387, 182 L. Ed. 2d 398 (2012). This Court finds credible Plea Counsel's testimony that he met with the solicitor's office a number of times and the solicitor refused to offer a plea deal. As a result, Applicant ultimately pled guilty straight up with no recommendation or negotiation in place. Plea Counsel was not deficient in any regard as he made attempts to work with the prosecuting solicitors. Applicant has failed to show any resulting prejudice because there has been no evidence submitted to show that the State had any intention of offering Applicant a deal. This Court denies and dismisses this allegation with prejudice.

3. Ineffective assistance of counsel for failing to investigate.

Applicant further alleges that Plea Counsel was ineffective for failing to investigate the case. This allegation rests entirely on speculation because witnesses were not produced at the hearing to allow the Court to judge the relevance of their testimony. See Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998) ("failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result."). Applicant failed to present any credible evidence to this Court as

to what additional investigation could have uncovered. Based off of the foregoing, this Court finds Applicant's allegation must be denied and dismissed with prejudice.

4. Ineffective assistance of counsel for advising Applicant he could face mandatory life without parole based off of his prior convictions.

Applicant further alleges Plea Counsel was ineffective for advising him that he could potentially receive a mandatory life without parole notice based upon his prior convictions. Applicant claims that his prior convictions would not amount to a strike in South Carolina. However, this allegation rests solely on speculation as Applicant failed to provide this Court with any evidence as to why his prior convictions were not appropriate strikes. See Palacio v. State, 333 S.C. 506, 513, 511 S.E.2d 62, 66 (1999) (holding that, since the contents of challenged documents were not presented at the PCR hearing, the Applicant could not demonstrate how the failure of counsel to obtain these documents prejudiced the defense). Furthermore, Plea Counsel credibly testified that the possibility of facing a mandatory life without parole sentence was only mentioned to Applicant the day of his plea and was not a factor in Applicant deciding to plead guilty. To the contrary, Plea Counsel stated that Applicant did not want to put his family through the additional turmoil that a trial would cause, the evidence against Applicant was overwhelming, Applicant had previously confessed to the crime, and Applicant was ready to accept responsibility for his actions. Notably, Applicant was never noticed for a life without parole sentence. Based off of the foregoing, this Court finds Applicant's allegation must be denied and dismissed with prejudice.

5. Ineffective assistance of plea counsel for failing to advise him that the solicitor was required to serve LWOP notice on him.

Applicant further alleges that Plea Counsel was ineffective for failing to advise him that the solicitor was required to provide notice to him if they intended to seek life without parole.

Initially, this Court notes Applicant failed to show that if he proceeded to trial, the solicitor would have actually sought a mandatory life without parole. Furthermore, this Court finds credible Plea Counsel's testimony that the possibility of facing a mandatory life without parole sentence was only mentioned to Applicant the day of his plea and was not a factor in Applicant decision to plead guilty. To the contrary, Plea Counsel stated that Applicant did not want to put his family through the additional turmoil that a trial would cause, the evidence against Applicant was overwhelming, Applicant had previously confessed to the crime, and Applicant was ready to accept responsibility for his actions. Based off of the foregoing, this Court finds Applicant's allegation must be denied and dismissed with prejudice.

6. Ineffective assistance for failing to request an independent examination of mental state.

Applicant further alleges Plea Counsel was ineffective for failing to have Applicant independently evaluated. Initially, this Court notes a defendant must be mentally competent to stand trial to assist counsel in his defense. Drope v. Missouri, 420 U.S. 62 (1975). In determining if counsel is ineffective for failing to request a competency hearing, an applicant must show that a reasonable probability exists that he would be found incompetent at the time of this trial or plea. Jeter v. State, 308 S.C.230, 417 S.E.2d 594 (1992). Counsel may reasonably rely on his own perceptions in deciding if a client is competent to stand trial. Id.

This Court finds Applicant failed to present any credible evidence that he would have been found incompetent at the time of his plea had he been re-evaluated. Notably, Applicant's initial evaluation revealed Applicant was malingering. This Court further finds credible Plea Counsel's testimony that he did not see any additional reasons to have Applicant evaluated a second time. Plea Counsel opined that Applicant did not suffer any mental deficiencies. Plea Counsel stated that he reviewed the report with Applicant. Plea Counsel opined that Applicant

was able to understand and comprehend their discussion and the ramifications of pleading guilty. Based on the foregoing, this Court finds Applicant has failed to carry his burden of proving counsel was ineffective for failing to have the Applicant evaluated.

7. Ineffective assistance of counsel for failing to review discovery or pictures prior to his plea.

Applicant further alleges Plea Counsel was ineffective for failing to review discovery and pictures of the murder scene prior to his guilty plea. This Court finds credible Plea Counsel's testimony that he reviewed all discovery material with Applicant prior to his plea. This Court further finds Plea Counsel's testimony credible that Applicant did not want to view the pictures. This Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test – that Plea Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Plea Counsel committed either errors or omissions to prove the second prong of Strickland – that he was prejudiced by Plea Counsel's performance.

8. Ineffective assistance of counsel for failing to have the blood found on his face analyzed.

Applicant further alleges that Plea Counsel was ineffective for failing to have the blood recovered from his face analyzed. This Court notes Applicant was arrested shortly after murdering his wife. There is little question that the blood on his face would have matched his deceased wife. This Court agrees with Plea Counsel's assessment that it would not have been beneficial to have the blood analyzed. Furthermore, Applicant is not disputing that he killed his wife. This Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test – that Plea Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and

compelling evidence that Plea Counsel committed either errors or omissions to prove the second prong of Strickland – that he was prejudiced by Plea Counsel’s performance.

9. Ineffective assistance of counsel for failing to investigate and secure witnesses.

Applicant further alleges Plea Counsel was ineffective for failing to investigate and secure various witnesses. This Court notes 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). Furthermore, this Court notes the applicant's mere speculation what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice.” Glover v. State, *supra* 318 S.C. at 498-99, 458 S.E.2d at 540. In the instant case, Applicant failed to present testimony from any of the alleged witnesses that Plea Counsel failed to investigate or secure. As a result, Applicant has fallen well short of his burden of proof. Therefore, this allegation must be denied and dismissed.

10. Ineffective assistance of counsel for failing to advise him of different elements of murder versus manslaughter.

Applicant further alleges Plea Counsel was ineffective for failing to advise him of the various elements of murder and voluntary manslaughter. Initially, this Court notes that the plea transcript reveals Applicant acknowledging “that here in Barnwell County on or about December 8 of 2009 that with malice aforethought [Applicant] did kill Denise Michelle Johnican by beating her to death.” (Pl. p. 11 lines 6-11). Additionally, this Court finds credible Plea Counsel’s testimony that he reviewed all elements of murder, including the definition of malice aforethought. Plea Counsel further testified that he discussed the possibility of seeking a manslaughter charge with Applicant. Plea Counsel opined that the evidence did not fit a

manslaughter case. This Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test – that Plea Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Plea Counsel committed either errors or omissions to prove the second prong of Strickland – that he was prejudiced by Plea Counsel’s performance.

11. Ineffective assistance of counsel for showing him the indictment for the first time on May 11, 2010.

This Court finds Applicant’s allegation that Plea Counsel was ineffective for failing to show Applicant the indictment until the day of his plea is meritless. Plea Counsel stated that he may not have received the indictment until the day of the plea, but there was never any question that Applicant was charged with the murder of his wife. Plea Counsel stated that they had reviewed discovery, discussed Applicant’s version of events, and reviewed the elements of murder. Based off of the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test – that Plea Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Plea Counsel committed either errors or omissions to prove the second prong of Strickland – that he was prejudiced by Plea Counsel’s performance.

12. Ineffective assistance of counsel for advising the plea judge that the crime was horrendous and that there was no justification for the crime.

This Court finds Applicant’s allegation that Plea Counsel was ineffective for telling the judge that the murder committed by Applicant was horrendous is meritless. Plea Counsel further stated that the calling the crime “horrendous” was an accurate characterization of the murder. Plea Counsel stated that it was his mitigation strategy to show that Applicant recognized the

seriousness of the charges and was prepared to take full responsibility of his actions. Where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1996); Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). Courts must be wary of second guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992). Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test – that Plea Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Plea Counsel committed either errors or omissions to prove the second prong of Strickland – that he was prejudiced by Plea Counsel's performance.

13. Ineffective assistance of counsel for failing to have Applicant subjected to the Minnesota Multiphasic Inventory Psychological test.

This Court finds Applicant's allegation that Plea Counsel was ineffective for failing to have him tested under the Minnesota Multiphasic Inventory Psychological test is without merit. This Court notes Applicant was found competent prior to his guilty plea. Furthermore, Applicant failed to produce any credible evidence to show how the Minnesota Multiphasic Inventory Psychological examination would have resulted in a different outcome. Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test – that Plea Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and

compelling evidence that Plea Counsel committed either errors or omissions to prove the second prong of Strickland – that he was prejudiced by Plea Counsel's performance.

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.

[signature to follow]

CONCLUSION

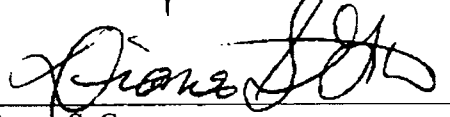
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

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), SCRPC, 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 7 day of March, 2016.



DIANE S. GOODSTEIN
Presiding Judge
Second Judicial Circuit

, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF BARNWELL)
Samual Bruce Johnican,)
Plaintiff(s),)
-vs-)
South Carolina State of,)
Defendant(s).)

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT
CASE NO.: 2010-CP-06-0017
APPOINTMENT OF COUNSEL OR GAL
(Select one.)

ORDER
 AMENDED ORDER

TYPE OF CASE/PROCEEDING: (Check one.)

- | | | |
|--|--|--|
| <input checked="" type="checkbox"/> Post-Conviction Relief (PCR)/habeas case | <input type="checkbox"/> Adoption | <input type="checkbox"/> Juvenile |
| <input type="checkbox"/> SVP case | <input type="checkbox"/> Custody and/or Visitation | <input type="checkbox"/> Abuse and Neglect |
| <input type="checkbox"/> Minor Name Change | <input type="checkbox"/> Other: Post Convict Rel 500 | |

It appears Samual Bruce Johnican, who is a litigant in this case, is entitled to court-appointed counsel or a guardian ad litem.

It further appears that: (Select only one.)

- counsel/guardian ad litem has not yet been appointed by the court; therefore, an appointment for counsel/guardian ad litem is necessary.
- counsel or a guardian ad litem was previously appointed by the court but has indicated either a possible conflict of interest, an entitlement to exemption, or other good cause warranting the appointment of new counsel or guardian ad litem based on:
- counsel was previously appointed by the court but has not indicated that the litigant has retained private counsel and is no longer entitled to appointed counsel.
- court appointed counsel has obtained , Esquire as substitute counsel pursuant to Rule 608(h)(2); provided, however, only the member who originally received the appointment and who sought substitute counsel shall receive credit.
- Other: Order Relieving Charles Brooks as Attorney for Plaintiff.

Therefore, it is ordered that Lance S. Boozer hereby is appointed as (Select one.)

counsel lead counsel (if capital PCR case) guardian ad litem
for the above-named person. Any counsel or GAL previously appointed is/are hereby relieved.

(If Death Penalty PCR Case) It is further ordered that , Esquire, is hereby appointed as second counsel in this capital PCR case.

The clerk of court is directed to forward a copy of this order to all persons entitled to notice.

IT IS SO ORDERED
August 5, 2015

Constance B. Mansfield
 Circuit Judge Clerk of Court
Deputy

Plaintiff Attorney:

Lance S. Boozer	
807 Gervais St., Suite 203	
Columbia, SC 29201	

Defendant Attorney:

Daniel Francis Gourley II	
P.O Box 11549	
Columbia, SC 29211	

NOTICE: SC Supreme Court Order of September 29, 2006, requires appointed counsel entitled to payment from the Office of Indigent Defense (OID) to register the case online with OID within fifteen (15) days of this appointment at www.sccid.sc.gov, and further directs that reimbursement vouchers be submitted directly to SCCID and not to the trial judge or clerk of court. See SCCID website for further details.

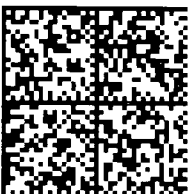
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The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211