

*Hugh W. Welborn*

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May 24, 2016

**RECEIVED**

JUN 01 2016

**S.C. SUPREME COURT**

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

In RE: Keith Antonio Rucker #353895 vs. State of South Carolina  
Case #: 2014-CP-04-1429

Dear Sir/Madam:

Please find enclosed herewith the original and one (1) copy of the Appellant's Notice of Appeal in connection with the foregoing matter which I ask that you file for record, returning the clocked copy to my office. I also enclose a copy of the Order of Dismissal and the original Proof of Service on Patrick Schmeckpeper, Office of the Attorney General. Please use the enclosed self-addressed envelope to return the clocked copy to my office.

With kind regards,



Hugh W. Welborn

HWW/sba  
Enclosures

cc: Office of the Appellate Defense  
Office of the Attorney General  
SC Court of Appeals

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM ANDERSON COUNTY  
COURT OF COMMON PLEAS

HONORABLE BROOKS P. GOLDSMITH

2014-CP-04-1429

KEITH ANTONIO RUCKER, #353895

APPELLANT,

vs

STATE OF SOUTH CAROLINA,

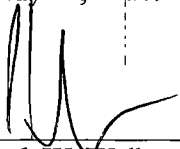
RESPONDENT.

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**NOTICE OF APPEAL**

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Keith Antonio Rucker, #353895 appeals the denial of his Post Conviction Relief. The Post Conviction Relief Action was heard and denied by the Honorable Brooks P. Goldsmith, Circuit Court Judge on February 9, 2016, and Order of Dismissal issued on May 10, 2016, and filed on May 17, 2016. The Appellant received Order of Dismissal on May 24, 2016.



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Hugh W. Welborn  
Attorney for the Appellant  
Post Office Box 173  
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(864) 226-5787  
Attorney for Keith Antonio Rucker, #353895

Other Counsel of Record:  
Patrick Schmeckpeper  
Office of Attorney General State of SC  
Post Office Box 11549  
Columbia, South Carolina 29211

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM ANDERSON COUNTY  
COURT OF COMMON PLEAS

**RECEIVED**

JUN 01 2016

HONORABLE BROOKS P. GOLDSMITH

S.C. SUPREME COURT

2014-CP-04-1429

KEITH ANTONIO RUCKER, #353895

APPELLANT,

VS

STATE OF SOUTH CAROLINA,

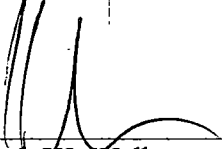
RESPONDENT.

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**PROOF OF SERVICE**

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I certify that I have served the Notice of Appeal on the State of South Carolina by depositing a copy of it in the United States Mail postage prepaid on May 24, 2016, addressed to its attorney of record Patrick Schmeckpeper, Office of the Attorney General, Post Office Box 11549, Columbia, South Carolina 29211-1549

  
\_\_\_\_\_  
Hugh W. Welborn  
Attorney for the Appellant  
Post Office Box 173  
Anderson, South Carolina 29622  
(864) 226-5787

Attorney for Keith Antonio Rucker, #353895

Anderson, South Carolina

24 May, 2016

STATE OF SOUTH CAROLINA ) THE COURT OF COMMON PLEAS  
COUNTY OF ANDERSON ) TENTH JUDICIAL CIRCUIT

Keith Antonio Rucker,  
S.C.D.C. No. 353895

TRUE COPY  
MAY 17 2016  
Richard X. Rucker  
CLERK OF COURT

C.A. No. 2014-CP-04-1429

CLERK OF COURT'S OFFICE  
ANDERSON SC  
2016 MAY 17 PM 11:19  
COMMON PLEAS AND  
GENERAL SESSIONS

Applicant,

v.

State of South Carolina,

Respondent.

**ORDER OF DISMISSAL  
(with prejudice)**

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on July 1, 2014. Respondent filed its Return on October 1, 2015. An evidentiary hearing into the matter was convened on February 9, 2016, at the Anderson County Courthouse. Applicant was present at the hearing and was represented by Hugh W. Welborn, Esquire. Respondent was represented by Patrick Schmeckpeper, Esquire, of the South Carolina Attorney General's Office.

**PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Anderson County Clerk of Court. In March 2011, the Anderson County Grand Jury indicted Applicant for murder (2013-GS-32-3509) and death or bodily injury to a child in utero during the commission of a violent crime (2011-GS-04-0547). Chuck Allen, Esq., represented Applicant. On January 16, 2013, Applicant pled guilty as indicted. The Honorable J. Cordell Maddox sentenced Applicant to a term of thirty (30) years imprisonment for voluntary manslaughter; and to a term of seventeen (17) years imprisonment for death of a child in utero.

A timely Notice of Appeal was filed; however, Counsel for Applicant informed the Court of Appeals that he did not believe there were any issues of merit to raise on appeal. Subsequently, the South Carolina Court of Appeals dismissed the appeal due to Applicant's failure to provide the Court with a written explanation pursuant to Rule 203(d)(B)(iv), SCACR. The Remittitur was issued on March 13, 2014.

### Allegations

In his application for post-conviction relief, Applicant alleged he was being held in custody unlawfully for the following reasons:

1. "Ineffective assistance of counsel"
  - a. "trial counsel failed to investigate the facts surrounding the nature of the offenses"
2. "Coercive nature of the plea bargain"
  - a. "Forced plea by threats from the solicitor and attorney using scare tactics and coercion"
  - b. "Plea was forced by threats from attorney"
3. "Conflict of interest"
4. "Involuntary plea"

### 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 reviewed the Clerk of Court records regarding the subject guilty pleas, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the transcripts and documents from the prior proceedings, and the legal arguments of counsel. Pursuant to S.C. Code Ann. §17-27-80 (2015), this Court makes the following findings of fact and conclusions of law based upon all of the probative evidence presented.

### 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, 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, 386 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." Id. at 117-18, 386 S.E.2d at 625. Because Applicant pled guilty, he must show 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, 59 (1985).

### Involuntary Guilty Plea

Applicant's testimony that his guilty plea was involuntary is without merit. A plea of guilty is an admission or a confession of guilt, and is as conclusive as a verdict of a jury; it admits all material fact averments of the accusation, leaving no issue for the jury, except in those instances where the extent of the punishment is to be imposed or found by the jury. State v. Fuller, 254 S.C. 260, 266, 174 S.E.2d 774, 777 (1970); see North Carolina v. Alford, 400 U.S. 25, 37, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970) (noting guilty pleas constitute a waiver of trial and an express admission of guilt upon which a sentence may be imposed). Thus, when a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea. Jamison v. State, 410 S.C. 456, 468, 765 S.E.2d 123, 129 (2014). The rule that a plea must be intelligently made to be valid does not require that a plea be vulnerable to later attack if the defendant did not correctly assess every relevant factor entering into his decision. Jamison v. State, 410 S.C. 456, 471, 765 S.E.2d 123, 130 (2014).

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Roddy v. State, 339 S.C. 29, 33, 528 S.E.2d 418, 422 (2000); Boykin v. Alabama, 395 U.S. 238 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984). Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, an Applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63 (1977).

In Boykin, the United States Supreme Court held that before a court can accept a guilty plea, a defendant must be advised of the constitutional rights he is waiving. Id. Specifically, a defendant must be aware of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers. Id. In addition, a defendant entering a guilty plea must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived. Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999).

#### *Sentencing Range*

Applicant's allegation that he was misled as to what his sentence would be is without merit. The plea judge went through an extensive colloquy with Applicant. It ensured Applicant understood that he was waiving a number of constitutional rights, including the right to trial, the right to remain silent, the right to put up a defense, and the right to confront witnesses. Tr. p. 6; 8. Applicant acknowledged he understood he had to waive those rights to plead guilty. Id.

The plea judge further explained to Applicant that the maximum penalty on each offense was thirty years, and that the maximum aggregate sentence he could receive was sixty years. Tr. p. 11. Applicant said he understood. Id. The plea judge informed applicant that he was not bound by the State's recommendation of forty years. Tr. p. 11-12. Applicant said he understood. Id.

This Court finds Applicant's sworn statements at the plea hearing are dispositive, and his guilty plea knowing and voluntary. See Harris v. Leeke, supra. Applicant's contrary testimony at the evidentiary hearing – that if he had known that he would get a forty-seven year sentence, he would not have pled guilty – is not credible. In any event, it does not form a valid basis for relief. See Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 371 (1997) (“Wishful thinking

regarding sentencing does not equal a misapprehension concerning the possible range of sentences, especially where one acknowledges on the record that one knows the range of sentences and that no promises have been made.”). Applicant was aware of and understood the sentencing range, of the possibility that the sentencing judge would deviate from the sentencing recommendation, and of the constitutional rights he was waiving by pleading guilty. Because Applicant has failed to meet his burden with respect to this allegation, it is denied and dismissed.

#### *Coercion*

This Court further finds Applicant’s allegations of coercion are without merit. Counsel admitted he told Applicant he was facing the prospect of life imprisonment if he proceeded to trial, and that he thought pleading guilty was in his best interest. Rather than attempting to coerce Applicant into an involuntary guilty plea, this Court finds counsel gave sound legal advice.

Accordingly, Applicant has failed to meet his burden to prove his plea was coerced. This allegation is therefore denied and dismissed.

#### *Conflict of Interest*

This Court finds Applicant has failed to meet his burden to prove any conflict of interest. The constitutional right to effective assistance of counsel includes the right to conflict free counsel. See, e.g., Cuyler v. Sullivan, 446 U.S. 335, 100 S.Ct. 1708 (1980). An actual conflict of interest occurs where an attorney owes a duty to a party whose interests are adverse to the defendant’s. Staggs v. State, 372 S.C. 549, 551, 643 S.E.2d 960, 692 (2007). Until a defendant shows that his counsel actively represented conflicting interests, he has not established the constitutional predicate for his claim of ineffective assistance. Lomax v. State, 379 S.C. 93, 102,

665 S.E.2d 164, 168 (2008) (citing Duncan v. State, 281 S.C. 435, 438, 315 S.E.2d 809, 811 (1984)).

Applicant's testimony that counsel spent too much time at the solicitor's table, and appeared to be "on their side" does not constitute evidence that counsel actively represented conflicting interests. Instead, it reflects a misunderstanding of counsel's duty to negotiate, particularly in light of the fact that he did not believe it was possible that counsel was trying to work something out on his behalf. Counsel testified credibly that he was able to negotiate a plea for Applicant that allowed him to plea to voluntary manslaughter rather than murder. Counsel stated he was surprised at the offer, considering he did not think Applicant would have been entitled to a jury charge on voluntary manslaughter at trial. Accordingly, there is no doubt in this Court's mind that counsel was zealously advocating for Applicant.

Counsel testified credibly that he did not have any conflicting or competing interests.

Because Applicant has failed to present any evidence that counsel was acting under a conflict of interest, this allegation is denied and dismissed with prejudice.

#### **Failure to Investigate**

This Court finds Applicant has failed to meet his burden with respect to failure to investigate. Without a doubt, "[a] criminal defense attorney has a duty to investigate, but this duty is limited to a reasonable investigation." Ard v. Catoe, 372 S.C. 318, 331-32, 642 S.E.2d 590, 597 (2007). Accordingly, the controlling standard for counsel's duty to investigate is *reasonableness*. Edwards v. State, 392 S.C. 449, 457, 710 S.E.2d 60, 64 (2011). So long as a defendant's attorney conducts a reasonable investigation, including interviewing potential witnesses when it is reasonable to do so, his performance will not be deficient. Id. at 457, 710 S.E.2d at 65. Moreover, 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. Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998).

Counsel testified that he met with Applicant roughly seven (7) times, prepared discovery motions, and had Applicant evaluated. Counsel testified that he reviewed the evidence and discovery material. Counsel said that he did not remember whether he interviewed witnesses, but that the facts were not in dispute.

This Court finds counsel's investigation entirely reasonable, particularly in light of the fact that Applicant gave a full confession. Moreover, Applicant has failed to present this Court with any evidence or meritorious issue that counsel missed. See Moorehead, supra.

Applicant's allegation that counsel was ineffective in failing to investigate the indictment issue is entirely without merit. First, a grand jury may issue indictments outside a term of general sessions. See Administrative Order Re: Authority of Judge Designated as a Chief Judge for Administrative Purposes - Circuit Court, 2011-02-04-01 (S.C. Sup. Ct., dated February 4, 2011) (the chief judge for administrative purposes may convene the grand jury outside a term of general sessions as the public interest may necessitate); see also S.C. Const. Art. V. § 4 ("The Chief Justice of the Supreme Court shall set the terms of any court and shall have the power to assign any judge to sit in any court within the unified judicial system."). In any event, Applicant has failed to show that but for counsel's purported error in failing to object to the alleged deficiency in the indictments he would have proceeded to trial, particularly in light of the fact that Applicant *waived indictment* to the charge of voluntary manslaughter immediately prior to pleading guilty. Tr. p. 3-4. This allegation is therefore denied and dismissed.

ALL OTHER ALLEGATIONS

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this order, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

*[Signature follows]*



**CONCLUSION**

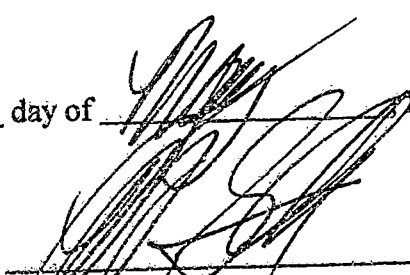
Based on the foregoing, this Court finds that the Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of intent to appeal within thirty (30) days from receipt of this Order to secure the appropriate appellate review. See Rule 203, SCACR. Rule 71.1(g), SCRCP; Bray v. State, 336 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant's counsel to file and serve notice of appeal. The Applicant's attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely filed.

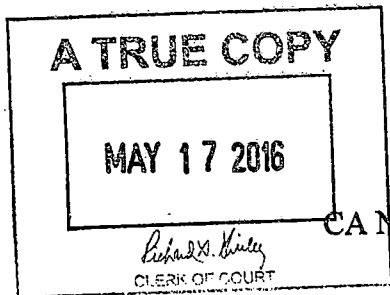
**IT IS THEREFORE ORDERED**

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

AND IT IS SO ORDERED this 10 day of May 2016.

  
 \_\_\_\_\_  
 BROOKS P. GOLDSMITH  
 Presiding Judge  
 Tenth Judicial Circuit

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



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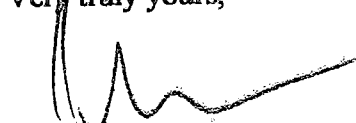
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In RE: Keith Antonio Rucker #353895 vs. State of South Carolina  
Case #: 2014-CP-04-1429

Dear Sir or Madam:

In connection with the foregoing matter, please be advised that I was the Court Appointed Attorney and enclose herewith a copy of my appointment. I also enclose copies of all documents you requested for filing a copy of the Appellant's Notice of Appeal in this matter together with a copy of the Order and Proof of Service. I ask that your office assume representation of this indigent Applicant.

Very truly yours,



Hugh W. Welborn

HWW/sba  
Enclosures

cc: South Carolina Supreme Court  
Court of Appeals  
Office of Attorney General