

IN THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT  
APPEAL FROM CALHOUN COUNTY  
COURT OF COMMON PLEAS  
MAITE MURPHY, CIRCUIT COURT JUDGE

**RECEIVED**  
JUN 14 2016  
SC SUPREME COURT

2014-CP-09-0004

Terry Whisenhunt,.....Petitioner.

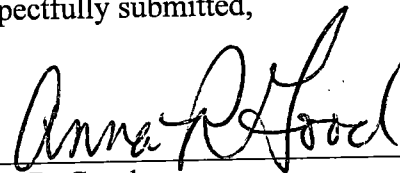
vs

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

**NOTICE OF APPEAL**

Terry Whisenhunt appeals the Honorable Maite Murphy's June 2, 2016 Order of Dismissal. Undersigned counsel received notice of entry of the order on ~~January~~ <sup>June</sup> 10, 2016. A copy of the order on appeal is attached to this notice.

Respectfully submitted,



Anna R. Good  
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Columbia, South Carolina 29202  
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Attorney for the Petitioner.

June 14, 2016.

OTHER COUNSEL OF RECORD:  
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South Carolina Attorney General's Office  
Post Office Box 11549  
Columbia, SC 29211-1549

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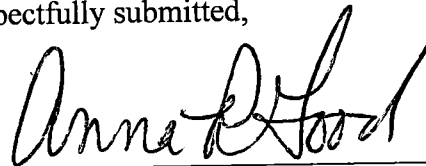
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**PROOF OF SERVICE**

I, Anna Good, certify that I have today served the within notice of appeal upon the Respondent by depositing a copy of it in the United States Mail, postage prepaid, addressed to the attorney of record, Clay Mitchell, P.O. Box 11549, Columbia, South Carolina 29211-1549. I further certify that all parties required by Rule to be served have been served this 14th day of June 2016.

Respectfully submitted,



Anna R. Good, Esquire  
Law Office of Anna Good, LLC  
PO Box 7284  
Columbia, South Carolina 29202

STATE OF SOUTH CAROLINA  
COUNTY OF CALHOUN

Terry Whisenhunt, #343850,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS  
FIRST JUDICIAL CIRCUIT

2014-CP-09-0004

**ORDER OF DISMISSAL**

2016 JUN -2 P 4: 01

FILED


This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed January 21, 2014. Respondent made its Return on March 28, 2014, requesting an evidentiary hearing be convened. Jonathan D. Waller, Esquire, was appointed by the Calhoun County Clerk's Office to represent Applicant. Counsel Waller filed a motion to be relieved as Counsel on March 4, 2014. The Court relieved Counsel Waller, and Anna R. Good, Esquire, was appointed by the Calhoun County Clerk of Court. An evidentiary hearing was held on February 25, 2016, at the Dorchester County Courthouse. Applicant was present and represented by Counsel Good. J. Clayton Mitchell, Esquire, of the South Carolina Attorney General's Office represented Respondent.

At the PCR hearing, Applicant testified on his own behalf. Also testifying was Applicant's plea counsel, Glenn Walters, Sr., Esquire. This Court had before it the Calhoun County Clerk of Court records, Applicant's South Carolina Department of Corrections records, the PCR application, the Return, and the guilty plea transcript.

#### I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Calhoun County Clerk of Court. Applicant was indicted by

ATTEST TRUE COPY

  
KENNETH HASTY  
CLERK OF COURT  
CALHOUN COUNTY

Calhoun County Grand Jury for Armed Robbery (2012-GS-09-0020) and Burglary in the First Degree (2012-GS-09-0017). Applicant was represented by Glenn Walters, Sr., Esquire. On May 27, 2012, Applicant appeared before the Honorable Kristi Lee Harrington, where he pled guilty as indicted to Armed Robbery and to the lesser included offense of Burglary in the Second Degree. Judge Harrington sentenced Applicant to fifteen (15) years for each offense, with the sentences to be served concurrently.

Counsel filed a notice of appeal at Applicant's request. The South Carolina Court of Appeals dismissed Applicant's appeal for failure to provide a sufficient explanation as required by Rule 203(d)(1)(B)(iv), SCACR. The Remittitur was sent on March 28, 2013.

In this action, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Involuntary and unintelligent guilty plea.

### III. APPLICABLE LAW

In a post-conviction relief action, Applicant bears the burden of proving the allegations in the 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, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable

professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced 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. With respect to guilty plea counsel, the Applicant 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).

#### IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the guilty plea transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

As a matter of general impression, this Court finds Applicant's testimony and assertions to be not credible. In contrast, this Court finds Counsel's testimony to be credible. These credibility findings have been applied to the Court's findings and conclusions set forth below.

### **Involuntary and Unintelligent Guilty Plea**

Applicant alleges he did not plead guilty knowingly and voluntarily. Specifically, Applicant argues that Counsel failed to advise him of the plea he was entering. This Court finds Applicant's guilty plea was ~~entered~~<sup>made</sup> freely and voluntarily entered. 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. Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709, 23 L.Ed.2d 274 (1969). Defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 97 S. Ct. 1621, 52 L.Ed.2d 136 (1977)). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. United States, 519 F.2d 347 (4th Cir.1975).

Applicant claims he did not plead guilty voluntarily because he believed he was pleading guilty to a sentence under the Youthful Offender Act (YOA). He testified that Counsel failed to advise him of his rights and also failed to adequately explain the plea he was entering. Applicant believed there would be a separate hearing to address the different charges. This Court finds these contentions meritless and finds Applicant's testimony not credible. This Court finds the record reflects Applicant was fully advised of his rights. Counsel also reviewed the State's

evidence with Applicant. The plea court's thorough colloquy with Applicant demonstrates that he understood the charges, penalties, and his waiver of rights. Applicant presented no credible evidence as to why he should be able to depart from his statements at the plea hearing. Counsel unequivocally testified that Applicant fully understood the charges, the plea agreement, and that he was not pleading guilty to a YOA sentence. This Court finds very credible Counsel's testimony regarding his preparation and advice concerning the case, specifically that he reviewed the charges, plea offer, and all evidence with Applicant. The record further reflects Applicant fully admitted his guilt to the plea court. Therefore, this Court finds the plea judge correctly found Applicant's plea was freely, <sup>voluntarily</sup> ~~voluntary~~, and intelligently made. <sup>MM</sup>

#### All Other Allegations

As to any and all allegations that were raised in the application 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.

#### V. CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Applicant failed to demonstrate <sup>counsel's</sup> ~~counsel's~~ performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

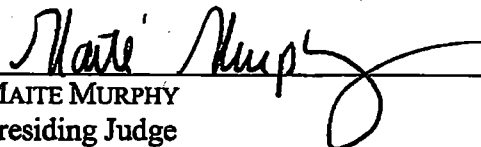
The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate

appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED THAT:**

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 23 day of May, 2016.

  
MAITE MURPHY  
Presiding Judge

St. George, South Carolina