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June 16, 2016

RECEIVED

JUN 20 2016

S.C. SUPREME COURT

The Supreme Court of South Carolina
ATTN: Daniel Shearouse, Clerk of Court
PO Box 11330
Columbia, SC 29211

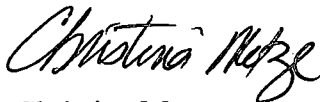
RE : Joshua Phillips v. State of SC
2013CP322341

Dear Mr. Shearouse:

Enclosed please find a Notice of Appeal along with a Certificate of Service and a copy of the Order being appealed. Also enclosed is a copy which I request you stamp as "filed" and return to me in the enclosed stamped envelope.

Thank you for your assistance in this matter.

Yours very truly,



Christina Metze
Paralegal

cc: Johanna Valenzuela
Beth Carrigg, Lexington County Clerk of Court
Joshua Phillips

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Brooks Goldsmith, Circuit Court Judge

Case No.: 2013CP322341

RECEIVED

JUN 20 2016

State of South Carolina,

Respondent,

S.C. SUPREME COURT

v.

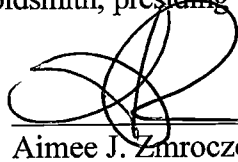
Joshua Brandon Phillips,

Appellant.

NOTICE OF APPEAL

Joshua Phillips, #335243, appeals the Order of Dismissal denying his Application for Post-Conviction Relief filed March 14, 2016, and received by counsel on March 17, 2016, and the Order Denying Rule 59(E) Motion filed May 25, 2016, and received by counsel on June 9, 2016, issued by the Honorable Brooks Goldsmith, presiding Judge.

June 16, 2016



Aimee J. Zimroczek, Esq.
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Attorney for Appellant

Other Counsel of Record:
Johanna Valenzuela
PO Box 11549
Columbia, SC 29211
Counsel for Respondent

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Brooks Goldsmith, Circuit Court Judge

Case No.: 2013CP322341

RECEIVED

JUN 20 2016

State of South Carolina,

Respondent,

S.C. SUPREME COURT

v.

Joshua Brandon Phillips,

Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Johanna Valenzuela by depositing a copy of it in the United States Mail, postage prepaid, on June 16, 2016, addressed to her office at:

PO Box 11549
Columbia, SC 29211

June 16, 2016



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Attorney for Appellant

ORIGINAL

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

Joshua Brandon Phillips, #335243,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

Case No. 2013-CP-32-2341

ORDER

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

2016 MAY 25 PM 2:43

SP
FILED

This matter comes before the Court by way of an Application for Post-Conviction Relief filed July 12, 2013. An evidentiary hearing was convened on June 8, 2015, at the Lexington County Courthouse. The Applicant was present at the hearing and Walt Whitmire, Esquire, of the South Carolina Attorney General's Office. The Court denied relief by an order dated March 3, 2016, and filed March 14, 2016. Applicant subsequently filed a motion asking the Court to reconsider the findings of fact and conclusions of law contained in the order of dismissal. Respondent made its return to the motion, requesting this motion be denied.

[Signature follows]

Based upon careful reconsideration of the evidence in this case, including Applicant's motion and supporting memorandum, this Court is not persuaded to alter or amend its judgment. This Court further finds oral argument would not aid in the reconsideration of the original judgment. The Order of Dismissal issued by this Court contains the required findings of fact and conclusions of law as required by section 17-27-80 of the South Carolina Code (2014) and Rule 52(a) of the South Carolina Rules of Civil Procedure.

IT IS THEREFORE ORDERED that Applicant's motion be denied and dismissed.

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



BROOKS P. GOLDSMITH
Presiding Judge
Eleventh Judicial Circuit

BETH A. CARRIGG
CLERK OF COURT
LEXIPRESS
2016 MAY 25 PM 2:43

FILED

_____, South Carolina

FORM 4

**STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON
IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP3202341**

Joshua Brandon Phillips
#335243

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: Plaintiff Defendant
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

Judge Code

6/6/2016
Date

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on June 6, 2016, to attorneys of record or to parties (when appearing pro se) as follows:

**Aimee Jendrzejewski Zmroczek A.J.Z. Law Firm, LLC PO
Box 11961 Columbia, SC 29211**

ATTORNEY(S) FOR THE PLAINTIFF(S)

**Patrick Lowell Schmeckpeper PO Box 11549 Columbia, SC
29211**

ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg/kpk

Court Reporter

Beth A. Carrigg - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

FILED
2016 MAR 14 P 12:00

Joshua Brandon Phillips,
S.C.D.C. No. 335243

C.A. No. 2013-CP-32-2341
BETH A. CARRICO
CLERK OF COURT
LEXINGTON, SC

Applicant,

v.

**ORDER OF DISMISSAL
(with prejudice)**

State of South Carolina,

Respondent.

ORIGINAL

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed July 12, 2013. Respondent made its Return on or about April 15, 2015. An evidentiary hearing into the matter was convened on June 8, 2015, at the Lexington County Courthouse. Applicant was present and was represented by Aimee Zmroczek, Esquire. Respondent was represented by Walt Whitmire, Esquire, of the South Carolina Attorney General's Office.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's trial counsel, Arie Bax, Esquire, also testified. This Court had before it a copy of Applicant's guilty plea transcript, the records of the Lexington County Clerk of Court regarding the subject guilty pleas, Applicant's records from the South Carolina Department of Corrections, and the pleadings. The Court finds as follows:

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Lexington County. The Applicant

was indicted at the October 2012 term of the Court of General Sessions for Lexington County for murder (2012-GS-32-2618); and armed robbery (2012-GS-32-2620). The Applicant was represented by Arie D. Bax, Esq.¹ On December 5, 2012, Applicant pled guilty to the lesser included offense of voluntary manslaughter; Applicant also pled guilty as indicted to armed robbery. The Honorable R. Knox McMahon sentenced Applicant to a term of twenty (20) years imprisonment on each charge, to be served concurrently.

A notice of appeal was filed on Applicant's behalf and perfected by Arie D. Bax, Esq. In an Order filed May 31, 2013, the Court of Appeals dismissed Applicant's appeal pursuant to Rule 203(d)(1)(B)(iv), SCACR. The Court of Appeals denied Applicant's pro se petition for rehearing in an order filed September 3, 2013. The Remittitur was returned on October 21, 2013.

Allegations

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

1. Involuntary guilty plea:
 - a. Pled by way of coercion and being misled;
2. Ineffective assistance of counsel:
 - a. "Counsel refused to obtain the relevant documentation that shows defendant Owen has a substantial amount of documentation, showing his invariable state of mind through the Lexington Mental Health Facility";
3. Intoxication and temporary insanity.

¹ Applicant was originally represented on these charges by Elizabeth Fullwood, Esquire, of the Eleventh Circuit Public Defender's Office. Applicant pled guilty on April 16, 2009 to armed robbery and voluntary manslaughter before the Honorable Michelle Childs. In accordance with the plea agreement, the State recommended a ten (10) year sentence for armed robbery, and held the sentence in abeyance for voluntary manslaughter pending Applicant's cooperation with the State in the trial of Applicant's co-defendant, Robert Prather. Applicant subsequently refused to cooperate and filed a motion to withdraw his plea as to voluntary manslaughter; and filed an application for post-conviction relief as to the armed robbery (2009-CP-32-5760). The Motion to vacate the plea on his voluntary manslaughter was granted by the Honorable Thomas W. Cooper; Applicant's PCR was consented to by the State, and granted by the Honorable William P. Keesley.

Summary of Testimony Presented

Applicant testified that he has lived in the penitentiary for ten (10) years and has approximately seven (7) years remaining on his sentence. Applicant said that he learned counsel was ineffective, in part, due to after-discovered evidence. Applicant stated that he was present at his co-defendant's trial. He said he was passed out during the commission of the crime, had no knowledge of the crime, and pled guilty under the "hand of one, hand of all" theory. He stated that he was advised by counsel that because he was present where the crime was committed he was guilty. Applicant testified that he told counsel he was passed out, and that counsel should not have advised him to plead guilty.

Applicant stated that the numerous statements made would not establish guilt as an "aider and abettor." He said that if counsel had correctly explained accomplice liability, he would not have pled but would have instead proceeded to trial. Applicant said that he was not in the living room, where the murder occurred, but instead "on the bed." He said that he had these discussions with his attorney. He further stated that his attorney was wrong in advising him to plead guilty, because this information would have changed of his proceeding, and that counsel's bad advice induced his plea. Applicant alluded to a "mere presence" charge, and that it "doesn't establish guilt as an aider or abettor." He further testified that counsel gave him bad advice on "mere presence," rendering his guilty plea involuntary.

On cross-examination, Applicant said that he asked his original attorney – Ms. Fullwood – why he "should plead guilty first when new evidence can come from [his co-defendant's] trial." He said that at that point, the State consented to post-conviction relief. Applicant said that he heard his co-defendant say that Applicant passed out during the crime, and "new he couldn't testify." Applicant said there were no other statements to police. Applicant said he had been

coached on what to say by the solicitor's office. Applicant testified that he did not want to "start back over," but instead wanted his original plea agreement. He said part of the reason he ultimately pled guilty was that his co-defendant was convicted.

Counsel testified that he has practiced for over eleven (11) years, primarily in criminal defense. Counsel said that he was contacted in late 2009 or early 2010 about this case. He said Beth Fullwood asked if he would be willing to be appointed to represent Applicant. At the time, he had pled guilty to armed robbery and sentenced to ten (10) years imprisonment, and voluntary manslaughter. The manslaughter sentence had been held in abeyance. Applicant had then filed a PCR application alleging ineffective assistance of counsel. Counsel said that he received the defense file from Applicant's previous attorney, Elizabeth Fullwood. Counsel said Applicant was a "prolific writer," and had written over one hundred letters to Ms. Fullwood when she was representing him.

Counsel said that in his initial meeting with Applicant he wanted to see if there were any competency issues and make sure he still wanted a new trial. He testified that Applicant said he wanted a new trial. He further testified that the Solicitor's office wanted "another crack" at the case. Counsel testified that the Attorney General's Office consented to post-conviction relief² without a finding of ineffective assistance of counsel. PCR was ultimately granted in that case.

Counsel said he then addressed competency issues. He said Applicant was looked at by the South Carolina Department of Disabilities and Special Needs and the Department of Mental Health. Counsel said he got Applicant's school records from his adoptive parents, which showed a general functional IQ of between sixty (60) to seventy (70). Counsel noted that he still questions Applicant's competency.

² Applicant had a separate PCR attorney.



Concerning the substance of the State's evidence, counsel said that the statements made by Applicant were the "number one detriment to his case. Period." Counsel said that if Applicant had exercised his right to remain silent and stayed silent, he would have had a much stronger case. Counsel said Applicant made at least four (4) statements. He said that the last two were given in anticipation of his cooperation in his co-defendant's case. Counsel said that Applicant implicated himself with an attorney present in the courthouse. Counsel said that there were problems with his statements, in that Applicant would "try and clarify and detail" a second time, but would change his story. He explained that because the statements had so many glaring disparities, the State felt he'd have been more of a liability than an asset in the prosecution of his co-defendant. He also said that based on contact with Applicant, the State did not think he would have been able to handle testifying very well.

Counsel said that according to Applicant's original story, he and his co-defendant were at the victim's house partying with alcohol and cocaine. He said that Applicant and his co-defendant knew the victim as a homosexual. The co-defendant apparently left at one point to get more cocaine – when he got back, the victim was standing at the door naked and with an erection. Applicant was in the bed.

Later, Applicant said that at that point he woke up, and was mad because he did not understand how he got there. The problem with this story, according to counsel, was that it involved Applicant getting out of bed and participating in the attacks – Applicant talked about knowingly hitting the victim, and smacking him with a fake wood particle board table that the victim was hit with. He said Applicant took police to where that board was. Applicant also said something about him and co-defendant going to a bar, having a few drinks, and talking about the assault. They then went to the hospital and claimed Applicant had been raped.



Counsel testified that he never had a problem visiting with Applicant. He said that Applicant was already writing letters and doing legal research from prison when he started representing him. Applicant would also send him cases. Counsel said he put a substantial amount of time into Applicant's case, and remembers meeting with him a number of times. Counsel said his preparation for Applicant's trial was extensive, and that he was on his "fifth or sixth trial notebook" at the point Applicant decided to plead guilty. Counsel testified that he hired a private investigator, who produced roughly forty-five to fifty percent of his file. Counsel said he did not attend the co-defendant's trial, but got funds for the entire transcript. He said that he read the direct and cross of the State's expert several times.

Counsel explained that it was an "eye-opener" for Applicant when his co-defendant was convicted, particularly since the State's case was weaker against the co-defendant. Counsel stated that another big fact was that the best trial strategy he could come up with to argue that the victim had died of natural causes. He noted there was initially evidence to support that strategy. The victim's cause of death was cardiomegaly, or an enlarged heart. Counsel got funding for a medical expert and forensic pathologist. Counsel said he believed that there were problems with the State's experts and the cause of death, in that there was no cause of death in the first report. However, after consulting with police, the expert said the cause of death was heart related as a result of the stress of the attack. Counsel hired an expert, and physically went to the expert's house to review the report.

Counsel said the expert told him that he not only thought it was murder, but thought the State's expert missed some evidence of asphyxiation. Counsel said that this undercut the primary defense he would have wanted to proceed with in Applicant's case. He further emphasized that it would have been a "good trial" if the doctor's testimony had panned out.



Because of the statements, and because of the fact that the co-defendant had a weaker case and was still convicted, counsel negotiated a plea deal. He said he never thought the prosecuting solicitor would "make that offer," because he was "still pretty pissed" at Applicant.

On cross-examination, Counsel stated that he still questions Applicant's competency, although he was ultimately found competent by "the psychiatrists." Counsel said that he honestly believes Applicant cannot assist his attorney because he cannot "let go of things," even if obviously wrong. Counsel said he explained to Applicant many times that the State could indict him for murder if they thought they had enough evidence for murder. He said he told Applicant the State would not promise him anything on the voluntary manslaughter so it would not come up before a jury. He said that that was the standard practice in the 11th Circuit. Counsel said he explained to Applicant that he could not "expert shop."

Counsel said that in his legal opinion, he would not have been able to get Applicant's statements to police suppressed. He said that it would have been almost impossible to argue voluntariness when they were given in the presence of counsel. Moreover, he did not think Applicant's prior attorney would have let the solicitors pressure him. Accordingly, he did not believe there would have been any objectionable pressure.

Counsel said the guilty plea was a negotiated twenty (20) years with credit for time served since the original warrants were served. Counsel noted that he did not originally get credit for all of his time served, and that he had to go back in and draft an order clarifying his sentence. He said that Judge McMahon signed the order specifically clarifying it, saying Applicant would get all the time he had served.

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 plea, 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 legal arguments of counsel. Pursuant to S.C. Code Ann. §17-27-80 (2015), this Court makes the following findings of fact 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), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 286 S.C. 441, 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. 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. 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 a guilty plea, 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).

a. Failure to investigate

Applicant has failed to meet his burden with respect to this allegation. 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).

Applicant has not brought to this court's attention any error or omission on counsel's part, or any fact or theory counsel could have, through a more thorough investigation, uncovered. Further, in light of counsel's extensive and credible testimony to the contrary, this Court is unable to find any deficiency. Counsel testified to the extensive number of hours he spent on Applicant's defense, and said that he remembered meeting with him a number of times. He said that he was on his fourth or fifth trial notebook by the time Applicant ultimately decided to enter a guilty plea. Counsel obtained funds to hire an expert and went to her house to review her

findings. Counsel also obtained funds to order a copy of Applicant's co-defendant's trial transcript, and reviewed it thoroughly – particularly the sections pertinent to Applicant's case. Because Applicant has failed to show either deficiency or prejudice with respect to this allegation, is denied and dismissed.

b. Competency

To the extent Applicant is alleging counsel was ineffective for failing to raise the issue of competency, this Court finds he has failed to meet his burden to show deficiency or prejudice. Due process prohibits the conviction of an incompetent defendant, and this right may not be waived by a guilty plea. Matthews v. State, 358 S.C. 456, 458, 596 S.E.2d 49, 50 (2004). Counsel testified credibly that he had concerns about Applicant's competency, and that he still had those concerns at the time of the evidentiary hearing. Counsel said that he received Applicant's school records from his adoptive parents, which showed a general functional IQ of between sixty and seventy. However, counsel said that Applicant was evaluated by the South Carolina Department of Disabilities and Special Needs and the Department of Mental Health, and that the psychiatrists ultimately found that he was competent.

While counsel's concerns are understandable, he also acknowledged that the "psychiatrists say he's competent." Because Applicant has not presented any credible evidence to refute that finding or counsel's performance on the issue, this Court finds Applicant has not met his burden to show ineffective assistance of counsel. See . Ramirez v. State, 413 S.C. 351, 110, 776 S.E.2d 101, 110 (Ct. App. 2015) (in order to show prejudice within the context of plea counsel's failure to fully investigate a PCR applicant's mental capacity, the applicant need only show a reasonable probability that he was either insane at the time the crime was committed or incompetent at the time of the plea). This allegation is therefore denied and dismissed.



Involuntary Guilty Plea

A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of a plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Holden v. State, 393 S.C. 565, 572, 713 S.E.2d 611, 615 (2011) (citing Rolen v. State, 3841 S.C. 409, 413, 683 S.E.2d 471, 474 (2009)).

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, 421 (2000). A defendant's knowing and voluntary waiver of the constitutional rights which accompany a guilty plea may be accomplished by colloquy between the Court and the defendant, between the Court and defendant's counsel, or both. Holden at 573, 713 S.E.2d at 615 (citing Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 625 (1999)). The longstanding test for determining the validity of a guilty plea is "whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant. Id.

In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Suber v. State, 371 S.C. 554, 558, 640 S.E.2d 84, 886 (2007). Specifically, the voluntariness of a guilty plea is not determined by an examination of a specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the guilty plea, and also from the record of the PCR hearing. Roddy, 339 S.C. at 33, 528 S.E.2d at 420.



Applicant has failed to present any credible or probative testimony that his plea was coerced. Counsel's credible testimony – that Applicant pled guilty because his codefendant was convicted – is dispositive. Interestingly enough, Applicant also admitted that he basically pled guilty because his codefendant was convicted. Accordingly, Applicant has failed to show his guilty plea was made unknowingly, unintelligently, or involuntarily. This allegation is therefore denied and dismissed.

a. Improper Advice on Accomplice Liability

Applicant's allegation that his guilty plea was rendered involuntary by counsel's improper advice on accomplice liability is entirely without merit. Applicant testified that he was passed out during the commission of the crime, and only pled guilty because his attorney told him that "because he was present where the crime was committed he was guilty." This testimony was not credible, particularly in light of counsel's credible testimony and Applicant's many conflicting statements to law enforcement. In fact, counsel testified that the statements made by Applicant were the "number one detriment to his case. Period." Counsel said that if Applicant had exercised his right to remain silent and stayed silent, he would have had a much stronger case.

According to counsel, Applicant gave at least four statements, the last two of which were given in anticipation of his cooperation in his co-defendant's trial. Counsel said Applicant implicated himself with an attorney present in the courthouse.^{3,4}

Counsel said that according to Applicant's original story, he and his co-defendant were at the victim's house partying with alcohol and cocaine. He said that Applicant and his co-

³ In fact, during Applicant's plea hearing, the assistant solicitor said that "every time [Applicant] opened his mouth, he implicated himself each time." Tr. p. 26.

⁴ This Court also finds credible counsel's testimony that he would not have been able to get Applicant's statements to police suppressed. Counsel said that it would have been almost impossible to argue voluntariness when they were given in the presence of counsel.

defendant knew the victim as a homosexual. The co-defendant apparently left at one point to get more cocaine – when he got back, the victim was standing at the door naked and with an erection. Applicant was in the bed.

Later, Applicant said that at that point he woke up, also mad, because he did not understand how he got there. The problem with this story, according to counsel, was that it involved Applicant getting out of bed and participating in the attacks – Applicant talked about knowingly hitting the victim, and smacking him with a fake wood particular board table that the victim was hit with. He said Applicant took police to where that board was. Counsel said that Applicant also told law enforcement something about him and co-defendant going to a bar, having a few drinks, and talking about the assault. They then went to the hospital and claimed Applicant had been raped.

Because there is no credible testimony in support of Applicant's allegation, this Court finds he has failed to meet his burden to show deficiency or prejudice. As a result, it is 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.

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



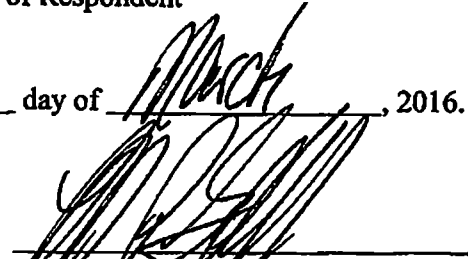
post-conviction relief. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

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 Respondent

AND IT IS SO ORDERED this 3 day of March, 2016.

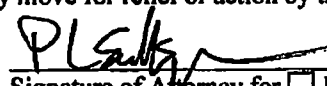

BROOKS P. GOLDSMITH
Presiding Judge
Eleventh Judicial Circuit

_____, South Carolina

FILED
2016 MAR 14 P 12:00
BETH A. CAMPBELL
CLERK OF COURT
LEXINGTON, SC

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)
)
)
)
JOSHUA BRANDON PHILLIPS,#335243)
 Plaintiff,)
 vs.)
)
)
STATE OF SOUTH CAROLINA)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 ELEVENTH JUDICIAL CIRCUIT
 CASE NO.: 2013-CP-32-2341
**MOTION AND ORDER INFORMATION
 FORM AND COVERSHEET**

Plaintiff's Attorney: Almee J. Zmroczek,, Bar No. _____ Address: PO Box 11961 Columbia, SC 29211 Phone: _____ Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: Patrick Schmeckpeper, Bar No. _____ Address: PO Box 11549 Columbia, SC 29211 Phone: _____ Fax _____ E-mail: _____ Other: _____
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input checked="" type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input checked="" type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: _____ Estimated Time Needed: _____ Court Reporter Needed: <input type="checkbox"/> YES/ <input checked="" type="checkbox"/> NO	
SECTION II: Motion/Order Type	
<input type="checkbox"/> Written motion attached <input checked="" type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
 Signature of Attorney for <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant	February 25, 2016 Date submitted
SECTION III: Motion Fee	
<input type="checkbox"/> PAID - AMOUNT: \$ _____ <input type="checkbox"/> EXEMPT: (check reason)	
<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input checked="" type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ <input type="checkbox"/> Other: _____	
JUDGE'S SECTION <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE CODE _____ Date: _____
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____ <input type="checkbox"/> MOTION FEE COLLECTED: \$ _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: \$ _____	

FORM 4

**STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON
IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP3202341**

Joshua Brandon Phillips #335243	State of South Carolina
------------------------------------	-------------------------

PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge	Judge Code	Date
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3/15/2016

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on **March 15, 2016**, to attorneys of record or to parties (when appearing pro se) as follows:

**Aimee Jendrzewski Zmroczek A.J.Z. Law Firm, LLC PO
Box 11961 Columbia, SC 29211**

ATTORNEY(S) FOR THE PLAINTIFF(S)

**Patrick Lowell Schmeckpeper PO Box 11549 Columbia, SC
29211**

ATTORNEY(S) FOR THE DEFENDANT(S)

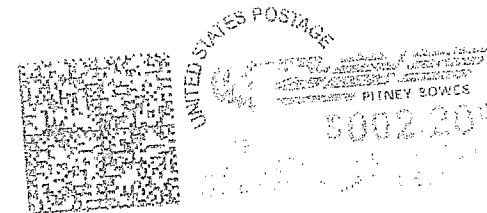
Beth A. Carrigg/kpk

Court Reporter

Beth A. Carrigg - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.



A. J. Z. Law Firm, LLC
P.O. Box 11961
Columbia, SC 29211

The Supreme Court of South Carolina
ATTN: Daniel Shearouse, Clerk of Court
PO Box 11330
Columbia, SC 29211

