

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

June 20, 2016

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

RECEIVED

JUL 06 2016

The Honorable Gwen T. Hyatt
Clerk of Court
301 W. Main Street
Dillon, SC 29536

S.C. SUPREME COURT

RE: Isaiah Brown, #347241, v. State of South Carolina
2014-CP-17-414

Dear Mr. Shearouse and Ms. Hyatt:

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. Brown in his PCR proceeding, I anticipate that the Office of Appellate Defense will represent Mr. Brown in this appeal.

Yours very truly,



Lance S. Boozer

cc: Jessica Kinard, AAG
Office of Appellate Defense
Isaiah Brown, #347241

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM DILLON COUNTY
Court of Common Pleas

RECEIVED

JUL 06 2016

The Honorable Roger E. Henderson, Circuit Court Judge

S.C. SUPREME COURT

Case No. 2014-CP-17-414

Isaiah Brown, #347241,.....Petitioner,

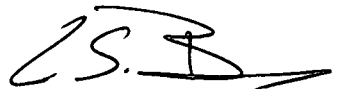
v.

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

NOTICE OF APPEAL

The Petitioner appeals the Honorable Roger E. Henderson's Order dated June 1, 2016, granting Respondent's Motion to Alter or Amend and Denying post-conviction relief to the Petitioner. Undersigned counsel received notice of entry of the Order on June 20, 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

June 20, 2016

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM DILLON COUNTY
Court of Common Pleas

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JUL 06 2016

The Honorable Roger E. Henderson, Circuit Court Judge

S.C. SUPREME COURT

Case No. 2014-CP-17-414

Isaiah Brown, #347241,.....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 Jessica Kinard, P.O. Box 11549, Columbia, SC 29211. I further certify that all parties required by Rule to be served have been served this 20th day of June, 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 DILLON)

IN THE COURT OF COMMON PLEAS
OF THE FOURTH JUDICIAL CIRCUIT

Case No.: 2014-CP-17-0414

Isaiah M. Brown,
S.C.D.C. No. 347241,

Applicant,

v.

State of South Carolina

Respondent.

*CERTIFIED
TRUE COPY*

*CLERK OF COURT
DILLON COUNTY*

**ORDER GRANTING RESPONDENT'S
MOTION TO ALTER OR AMEND
AND DENYING PCR RELIEF**
(Ending action)

2016 JUN 13 AM 8:56
DILLON COUNTY
CLERK OF COURT

This matter comes before the Court by way of a post-conviction relief (PCR) application filed September 10, 2014, and amended on January 6, 2016. Respondent made its return on November 21, 2014. An evidentiary hearing into the matter was convened on January 12, 2016 at the Darlington County Courthouse. Applicant was present at the hearing and represented by Lance S. Boozer, Esquire. Respondent was represented by Jessica E. Kinard, Esquire of the South Carolina Attorney General's Office.

At the close of testimony, the matter was taken under advisement. Within several days, this Court ruled in favor of the Applicant, granting him relief on the basis of plea counsel's failure to investigate. An order to this effect was signed on January 25, 2016 and filed January 27, 2016. On February 1, 2016, Respondent filed a Motion to Alter or Amend the Order Granting PCR. Upon careful review and consideration, this Court **GRANTS** the motion for reconsideration on the basis that the Applicant failed to prove that plea counsel was ineffective in his representation. The majority of the prior order remains appropriate and in effect; however, the portion of the Findings of Fact and Conclusions of Law regarding Ineffective Assistance of Counsel/Involuntary Guilty Plea shall be amended to read as follows:

1. Ineffective Assistance of Counsel/Involuntary Guilty Plea

At the evidentiary hearing, Applicant alleged and testified that plea counsel failed to appear for a meeting involving the Applicant and Solicitor resulting in ineffective assistance of counsel and prosecutorial misconduct. He further alleged and testified counsel failed to properly advise Applicant of the possible sentencing range for the charges; failed to challenge Applicant's statements given to law enforcement at the age of 16 without being allowed to consult with his mother; failed to alert the plea court Applicant had a pending Motion to Relieve Counsel; failed to properly prepare for the hearing on Applicant's Motion for Reconsideration; and failed to investigate the matter properly because he did not meet with a co-defendant, Mikael Bethea, who testified at the PCR hearing that he would have assumed all responsibility for the crime if he had been asked.

Plea counsel testified he met with the Applicant on several occasions prior to the plea. Plea counsel further testified he did not think Applicant had any viable defenses at trial. Plea counsel indicated he recalled there being a meeting between the Applicant and Solicitor for which he was not present; however, plea counsel testified another attorney from the Public Defender's office was present to advise Applicant during the meeting. Plea counsel further testified that he advised the Applicant of the potential penalties for the charges. Plea counsel also testified that he was aware law enforcement interviewed the Applicant while he was sixteen (16) years old. He further indicated that, had the case proceeded to trial, he would have filed the appropriate motions to challenge or quash the statements Applicant made to law enforcement. Counsel testified that he was very surprised the Applicant received a forty-five (45) year sentence. Counsel further indicated had he thought there was a realistic chance that the Applicant could have received a forty-five (45) year sentence, he would have advised the Applicant to

move forward with a trial. Following the plea and the sentence, Counsel indicated he initially filed a Motion to Reconsider the sentence; however, he could not find any law to support his position. He further testified, and the record reflects, he also orally amended the Motion to include a Motion to Withdraw the plea. Counsel testified he could not recall whether the Applicant had filed a Motion to Relieve him as counsel; however, he recalled that the relationship was strained. He acknowledged no hearing was ever held regarding a motion to relieve him as counsel.

This Court finds Applicant has failed to meet his burden of proof in alleging counsel was ineffective as it relates to these specific allegations. This Court finds although appointed counsel was not present at the meeting with the Applicant and Solicitor, Applicant was sufficiently represented and accompanied by another attorney from the Public Defender's office. This Court further finds that, because Applicant was represented by a member of the Public Defender's office, there was no prosecutorial misconduct. This Court also finds that counsel testified, and the record reflects, the Applicant was advised of the potential penalties for the charges he faced. This Court also finds counsel was not ineffective for failing to challenge the statements Applicant made to law enforcement. Counsel testified he would have challenged the statements had the case proceeded to trial and this Court finds counsel's testimony to be credible. This Court further finds counsel was not deficient in his representation of Applicant at the hearing on the Motion to Reconsider the sentence. This Court finds after reviewing the hearing transcript, counsel made the appropriate arguments on Applicant's behalf. This Court further finds that counsel was not ineffective for failing to bring to the plea court's attention that there was a pending Motion to Relieve counsel filed by the Applicant. The plea transcript reflects Applicant

testified he was satisfied with plea counsel. Accordingly, this Court finds that counsel was not ineffective regarding these specific allegations.

Applicant also alleged and testified counsel was ineffective for failing to prepare for trial and also for failing to investigate and interview his co-defendant, Mikael Bethea. At the PCR hearing, Bethea testified that, in July 2012, he contacted the Applicant by letter and indicated he was willing to testify on his behalf in a court setting. Bethea testified that he and the Applicant were co-defendants along with a third individual named Matthew Cade.¹ Bethea testified that he was the most culpable of the three (3) defendants and admitted both at his own guilty plea and during the PCR hearing he had the weapon and shot the victim. Bethea also testified he forced the Applicant to participate in the robbery. Bethea testified he was previously represented by Myesha Brown, Esq., and Marshall Weaver, Esq.² Bethea indicated that, to his knowledge, Applicant's counsel never attempted to interview him either directly or through his attorneys. Bethea further testified he would have made the same statements on the Applicant's behalf prior to and at the time of Applicant's plea. Counsel testified he never contacted either of Bethea's attorneys to investigate Bethea or any statements he may have made. His justification for this course of action was that he had not received through discovery any statements that Bethea had made, and he was aware of Bethea's attorneys' intention to protect their client and not let him speak against his own interest. He further testified that Bethea was in the best situation, factually, of the three (3) defendants precisely because he had not made a statement.

¹This Court notes the Dillon County Clerk of Court records reflect that Bethea and Cade were originally charged with the same crimes as the Applicant. The records further reflect Bethea pled guilty to voluntary manslaughter on November 16, 2011, and was sentenced by the Honorable J. Michael Baxley to fifteen (15) years. The records also reflect Cade pled guilty to voluntary manslaughter on November 17, 2011, and was sentenced by Judge Baxley to seven (7) years.

² Bethea testified at the PCR hearing that he had the opportunity to consult with his former attorney, Mr. Weaver, prior to testifying on Applicant's behalf, and he also understood that he was not under any obligation to testify.

"Counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." Strickland v. Washington, 466 U.S. 668, 687 (1984). This is well-settled case law, and holds true today. Counsel's investigations or lack thereof were completely reasonable in this scenario, as he had no reason to believe that Bethea would break his silence to speak against his own interest, or that his attorneys would allow him to do so. This Court finds the testimony of counsel to be most credible as it relates to this allegation. This Court finds Bethea's testimony regarding his intent to speak on behalf of Applicant not to be credible. At this point in time, he has nothing to lose by attempting to help Applicant receive a new trial though, at the time of the plea, he had a great deal to lose. This Court cannot give any credit to Bethea's statements that he would have sacrificed his own case and future to benefit Applicant. The 2011 Supreme Court of South Carolina opinion in Edwards v. State neatly summarizes why we, in considering PCR matters, must respect the judgment and efforts of the trial level attorneys:

However, "[t]here is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case." Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (citing Strickland v. Washington, 466 U.S. 668, 689, 104 S.Ct. 2052, 2065). "[W]hen counsel articulates a *valid* reason for employing a certain strategy, such conduct generally will not be deemed ineffective assistance of counsel. The validity of counsel's strategy is viewed under an 'objective standard of reasonableness.'" Lounds v. State, 380 S.C. 454, 462, 670 S.E.2d 646, 650 (2008). The United States Supreme Court has cautioned that "every effort be made to eliminate the distorting effects of hindsight" and evaluate counsel's decisions at the time they were made. Strickland, 466 U.S. at 689, 104 S.Ct. 2052. Accordingly, we must be wary of second-guessing trial counsel's tactics. Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

Edwards v. State, 392 S.C. 449, 456-57, 710 S.E.2d 60, 64 (2011) (emphasis in original)

(supplemented with full citations).

Because Counsel was not ineffective in his investigation and presentation of this case, this Court needs not consider the idea that Applicant's guilty plea may have been involuntary. The proof that must be shown is that, but for counsel's ineffective performance, Applicant would have proceeded to trial.³ There is no ineffective assistance of counsel, so this analysis cannot be conducted.

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. The record shows no prejudice to the Applicant, nor does it show any action by plea counsel that would be deficient under the terms provided by Strickland. Plea counsel was not deficient and did not perform at level that fell below prevailing professional norms. Even if he had, there is no evidence to show prejudice to this Applicant. Additionally, Applicant has failed to show that his guilty plea was anything other than knowingly, intelligently, and voluntarily entered, and has not shown that, but for the defects he alleges in his plea, he would have proceeded to trial. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

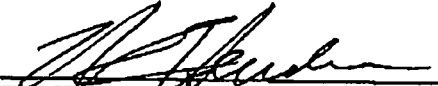
The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a 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.

³ Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice;
2. The above-noted text shall replace the described portion of the Order Granting PCR that this Court previously issued in this matter; and
3. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 1st day of June, 2016.


The Honorable Roger E. Henderson
Presiding Judge


, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF DILLON)

IN THE COURT OF (Select one.)

COMMON PLEAS FAMILY COURT
JUDICIAL CIRCUIT

ISAAH MARCOS BROWN,
Plaintiff(s),

) CASE NO.: 2014-CP-17-00414

-vs-

) APPOINTMENT OF COUNSEL OR GAL
(Select one.)

STATE OF SOUTH CAROLINA,
Defendant(s).

) 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: | |

It appears that ISAAH BROWN, 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:

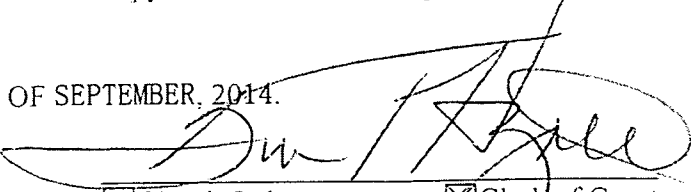
Therefore, it is ordered that LANCE BOOZER, hereby is appointed as (Select one.)

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 THIS 22 DAY OF SEPTEMBER, 2014.


 Circuit Judge Clerk of Court

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.

THE BOOZER LAW FIRM, LLC

807 Gervais Street, Suite 203
Columbia, SC 29201



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B 164606 17 1850 11



usps

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

FWD

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