

THE

**GIESE**

LAW FIRM, LLC

July 6, 2016

Daniel E. Shearouse  
Clerk of Court  
Supreme Court of South Carolina  
Post Office Box 11330  
Columbia, SC 29211

**RECEIVED**

JUL 11 2016

**SC SUPREME COURT**

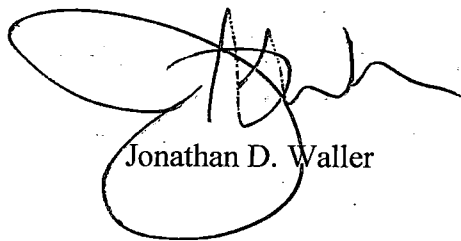
Re: Devourshay A. Williams vs. State of South Carolina  
C/A No: 2014-CP-38-0222

Dear Mr. Shearouse:

Please find enclosed one (1) original and one (1) copy each of Applicant's Notice of Appeal and Certificate of Service in the above referenced case. I would appreciate you filing the original and returning the clocked copies in the enclosed envelope.

I was appointed to represent Mr. Williams in this matter and am also enclosing a copy of the Order of Dismissal. If you have any questions, please do not hesitate to ask. My telephone number is 803-708-6767.

Sincerely,



Jonathan D. Waller

Cc: J. Clayton Mitchell, South Carolina Office of Attorney General

Enclosures

STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM ORANGEBURG COUNTY  
Maité Murphy, Circuit Court Judge

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2014-CP-38-0222

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**RECEIVED**

JUL 17 2016

**SC SUPREME COURT**

Devourshay A. Williams, #354051,

Appellant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

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NOTICE OF APPEAL

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Devourshay A. Williams, #354051, appeals the Order of Dismissal denying his Application for Post-Conviction Relief, issued by the Honorable Maité Murphy, Presiding Judge, First Judicial Circuit, and served on counsel by letter dated June 8, 2016.



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Jonathan D. Waller  
Giese Law Firm  
SC Bar No.: 76290  
1315 Blanding Street  
Columbia, SC 29201  
803-708-6767 (phone)  
803-708-6769 (fax)  
jwaller@thegieselawfirm.com  
ATTORNEY FOR PETITIONER

This 7 day of July, 2016.

Other Counsel of Record:  
J. Clayton Mitchell, Assistant Attorney General

Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3319

STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM ORANGEBURG COUNTY  
Maité Murphy, Circuit Court Judge

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2014-CP-38-0222

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Devourshay A. Williams, #354051,

Appellant,

v.

STATE OF SOUTH CAROLINA,

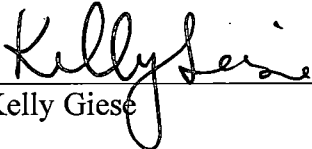
Respondent.

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CERTIFICATE OF SERVICE

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The undersigned hereby certifies that one copy of the Appellant's Notice of Appeal in the above-entitled case has been served upon opposing counsel, J. Clayton Mitchell, Assistant Attorney General, by mailing in an envelope properly addressed with postage prepaid on this 7<sup>th</sup> day of July 2016, to his office located at P.O. Box 11549, Columbia, SC 29211.

  
\_\_\_\_\_  
Kelly Giese

STATE OF SOUTH CAROLINA  
COUNTY OF ORANGEBURG

IN THE COURT OF COMMON PLEAS  
FIRST JUDICIAL CIRCUIT

Devourshay A. Williams, Jr., #354051,

2014-CP-38-0222

Applicant,

ATTES.: TRLE COPY

v.

*Winnifia B. Clark*

ORDER OF DISMISSAL

State of South Carolina,

CLERK OF COURT

Respondent.

FILED FOR RECORD  
WINNIFIA B. CLARK  
CLERK OF COURT  
ORANGEBURG, SC

2015 AUG 26 1 A 12: 02

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed January 17, 2014. Respondent made its Return on April 17, 2014, requesting an evidentiary hearing be convened. Jonathan D. Waller, Esquire was appointed by the Orangeburg County Clerk of Court. An evidentiary hearing was held on May 20, 2015, at the Dorchester County Courthouse. Applicant was present and represented by Counsel Waller. 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 were Applicant's plea counsel, R. Douglas Mellard, Esquire, and Ashley D. Chisholm, Esquire. This Court had before it the Orangeburg 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 incarcerated within the South Carolina Department of Corrections pursuant to orders of commitment from the Orangeburg County Clerk of Court. Applicant was indicted during the November 2011 term of the Orangeburg County Grand Jury for four counts of attempted murder (2011-GS-38-2017 through -2020). Applicant was represented by Counsel

Chisholm and Counsel Mellard. On January 22, 2013, Applicant appeared before the Honorable Edgar W. Dickson, where he pleaded guilty as indicted. Judge Dickson sentenced Applicant to fifteen (15) years' imprisonment for each count of attempted murder, with all sentences to be served concurrently.

A notice of appeal was filed on Applicant's behalf. 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). The Remittitur was sent on April 22, 2013.

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

1. Ineffective assistance of counsel in failing to investigate.

## **II. SUMMARY AND EVIDENCE PRESENTED AT THE PCR HEARING**

### **Applicant's Testimony**

Applicant testified he was represented by Ashley Chisholm who represented him for about five months. He was charged with four counts of attempted murder. He testified he was shot at the scene of the incident and had surgery to have a bullet removed from his throat. He did not believe any testing had been done on that bullet. He testified he was not advised of the charges he was facing or the elements of those charges. He alleged that his attorneys could have more thoroughly investigated his case. He testified he did not shoot as many times as was alleged and that he was threatened if he ran he would be shot. Applicant acknowledged giving a confession and admitting to the trial court that he made a mistake and apologizing to the court.

### **Counsel Ashley D. Chisholm's Testimony**

Counsel Chisholm testified he has been practicing law for about seven (7) years. He recalled that he was appointed to represent Applicant in late September 2011. He testified he

received a copy of discovery in October 2011 and gave Applicant a copy to review himself. Counsel Chisholm met with Applicant on December 2, 2011, along with Counsel Mellard. He testified he reviewed the charges with Applicant. He explained that he transferred from the Orangeburg County Public Defender's Office to the Dorchester office and that Counsel Mellard took over his representation. He recalled that Applicant fired shots towards law enforcement who then returned fire and hit Applicant, requiring him to have surgery.

### **Counsel R. Douglas Mellard's Testimony**

Counsel Mellard testified he was appointed to represent Applicant through his position with the Orangeburg County Public Defender's Office. He testified he took over representation of Applicant because Counsel Chisholm left the office. He testified he advised Applicant to plead guilty due to the weight of evidence the State was prepared to present if he were to go to trial. Specifically, Counsel Mellard noted that Applicant and his codefendant gave incriminating statements. He also noted that the 911 call provided a play by play of the shootings and events which also strongly implicated Applicant. He gave a brief summary of the facts: individuals were chasing Williams and his codefendant because the individuals believed them to be involved in an attempted burglary, an investigator arrived, and Applicant fired towards the investigator and other individuals. Applicant was shot in the return fire. Counsel Mellard testified he did not thoroughly investigate whether Applicant actually fired the shots towards the investigator and individuals.

### **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 and persuasive on all matters. These credibility findings have been applied to the Court's findings and conclusions set forth below.

#### **Failure to Investigate**

This Court finds Applicant failed to meet his burden to prove that counsel's performance was either deficient or ineffective for failing to investigate Applicant's claim that he did not fire at the investigator and individuals at the scene. "Criminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." Edwards v. State, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011) (internal citations omitted). In light of Counsel's credible testimony that he evaluated and apprised Applicant on the matter, Applicant has produced no reliable testimony that would diminish his culpability on the attempted murder charges. Regardless, the allegation rests entirely on speculation. See Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998) ("failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result."). Applicant failed to present any evidence that he was not the one who fired towards the investigator and individuals at the scene. This Court finds all the evidence before it supports the State's contention that Applicant was clearly the shooter including his statement, his codefendants' statement, and the 911 tape.

Additionally, the record reflects Applicant fully admitted his guilt to the plea court. "A guilty plea constitutes a waiver of nonjurisdictional defects and claims of violations of constitutional rights." Jamison v. State, 410 S.C. 456, 467, 765 S.E.2d 123, 129 (2014) (citing State v. Rice, 401 S.C. 330, 331-32, 737 S.E.2d 485, 485-86 (2013); Hyman v. State, 397 S.C. 35, 44, 723 S.E.2d 375, 379 (2012)). Notably the South Carolina Supreme Court has held "[a] guilty plea represents a break in the chain of events which has preceded it in the criminal process." Id (citations omitted). "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." Id (citing Rice, 401 S.C. at 332, 737 S.E.2d at 486). Thus, this allegation is readily 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.

#### **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 counsels' 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 18 day of Aug, 2015.

St. George, South Carolina

Maité Murphy  
MAITÉ MURPHY  
Presiding Judge

ATTEST: TRUE COPY

Winnaja B. Clark  
CLERK OF COURT  
ORANGEBURG COUNTY, SOUTH CAROLINA

THE

**GIESE**

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