

LAW OFFICE OF  
**Kristy Grafton Goldberg, LLC**  
ATTORNEY AT LAW

---

July 26, 2016

**RECEIVED**

JUL 29 2016

**SC SUPREME COURT**

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

RE: Brian Evans, SCDC # 111059, vs. State of South Carolina  
Appeal of Case No. 2014-CP-28-0946

Dear Mr. Shearouse,

Enclosed for filing is a Notice of Appeal in the above referenced case. Also enclosed are a certificate of service and a copy of the original court order which is to be challenged on appeal. I would appreciate it if you could file the Notice of Appeal and mail a date-stamped copy back to me in the enclosed pre-stamped envelope.

By copy of this letter I am informing the Office of Appellate Defense of this Appeal so that they may begin representation of Mr. Evans, as I was appointed to represent him in this PCR action. I am also hereby requesting that Appellate Defense obtain a copy of the court transcript within the time required by this court.

Please let me know if you have any questions or concerns regarding this matter.

Respectfully,

  
Kristy Goldberg

CC: Clay Mitchell  
Assistant Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211-1549

Brian Evans, SCDC # 111059  
Broad River Correctional Institution  
4460 Broad River Road  
Columbia, SC 29210

Kershaw County Clerk of Court  
ATTN: Lynn Lyons  
Post Office Box 1557  
Camden, South Carolina 29021 - 8557

Office of Appellate Defense  
Chief Appellate Defender – Robert Dudek  
PO Box 11433  
Columbia, SC 29211-1433

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

RECEIVED

JUL 29 2016

SC SUPREME COURT

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APPEAL FROM KERSHAW COUNTY  
Court of Common Pleas

G. Thomas Cooper, Circuit Court Judge

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Case No. 2014-CP-28-0946

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Brian F. Evans, SCDC # 111059, ..... Appellant

v.

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

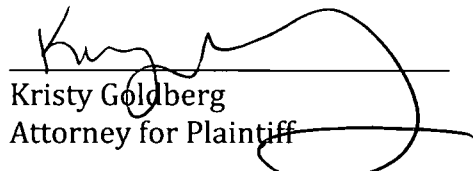
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NOTICE OF APPEAL

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Applicant Brian Evans hereby appeals from the Order of the Honorable G. Thomas Cooper presiding Judge for the 5<sup>th</sup> Judicial Circuit, filed May 18, 2016 and the Order Denying Applicant's Motion to Alter or Amend Judgment filed July 22, 2016 and received by counsel for the Applicant on July 26, 2016 in the matter of Brian Evans v. State of South Carolina, Case No. 2014-CP-28-0946.

July 26, 2016

  
\_\_\_\_\_  
Kristy Goldberg  
Attorney for Plaintiff

Law Office of Kristy Goldberg, LLC.  
1720 Main Street, Suite 303  
Columbia, SC 29201  
Phone (803) 667-6633  
kristy@kristygoldberglaw.com

Other Counsel of Record:  
Assistant Attorney General, Clay Mitchell  
Office of the Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

RECEIVED  
JUL 29 2016  
SC SUPREME COURT

APPEAL FROM KERSHAW COUNTY  
Court of Common Pleas

G. Thomas Cooper, Circuit Court Judge

Case No. 2014-CP-28-0946

Brian F. Evans, SCDC # 111059, ..... Appellant

v.

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

CERTIFICATE OF SERVICE

Personally appeared before me, Kristy Goldberg, Esquire, who being duly sworn, deposes  
and states:

She is the counsel of record for Applicant;  
Service by mail is proper in this instance; and

She has served the NOTICE OF APPEAL on the following party on July 26, 2016 by  
depositing one copy in the U.S. Mail, postage prepaid:

Assistant Attorney General, Clay Mitchell  
Office of the Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211

  
Kristy Goldberg  
Attorney for Plaintiff

Law Office of Kristy Goldberg, LLC.

1720 Main Street, Suite 303  
Columbia, SC 29201  
Phone (803) 667-6633  
[kristy@kristygoldberglaw.com](mailto:kristy@kristygoldberglaw.com)

Other Counsel of Record:  
Assistant Attorney General, Clay Mitchell  
Office of the Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211

STATE OF SOUTH CAROLINA  
COUNTY OF KERSHAW

2016 JUL 22 PM 3:50  
IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT

Brian F. Evans, #111059,

2014-CP-28-0946

Applicant,

v.

**ORDER DENYING APPLICANT'S  
MOTION TO ALTER OR AMEND  
JUDGMENT**

State of South Carolina,


Respondent.

This matter comes before the Court by way of Applicant's Motion to Alter or Amend the Judgment pursuant to Rule 59(e), SCRPC. Specifically, Plaintiff asks this Court to reconsider its Order of Dismissal filed May 18, 2016.

After careful consideration of the record in this case and the submissions of the parties, this Court is unable to discover any material fact or principle of law that has either been overlooked or disregarded and further finds no error of law or facts not appropriately considered.

Accordingly, this Court hereby **DENIES** Plaintiff's Motion under Rule 59(e), SCRPC, to reconsider this Court's Order filed May 18, 2016. Furthermore, pursuant to Rule 59(f), SCRPC, the Court is of the opinion that oral argument is not necessary.

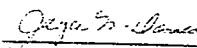
**IT IS SO ORDERED.**

  
G. Thomas Cooper, Jr., Judge  
Fifth Judicial Circuit

Columbia, South Carolina

July 20, 2016

ATTEST True, Correct & Certified  
Copy of Original on File in this  
Court

  
Clerk of Court Kershaw County

FORM 4

STATE OF SOUTH CAROLINA  
 COUNTY OF KERSHAW  
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE  
 CASE NUMBER 2014-CP-28-946

Brian Franklin Evans

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), SCRCP;  Rule 41(a), SCRCP (Vol. Nonsuit);  
 Rule 43(k), SCRCP (Settled);  Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j) SCRCP;  Bankruptcy;  Other: \_\_\_\_\_  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other: \_\_\_\_\_

RECEIVED  
 CLERK OF COURT  
 KERSHAW COUNTY, S.C.  
 MAY 18 AM 11:09  
 2016

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  
 For Clerk of Court Office Use Only

Date: True, Correct & Certified  
 Copy of Original on File in this  
 Court

*[Signature]*  
 Clerk of Court Kershaw County

This judgment was entered on 18th day of May, 2016, and a copy mailed first class or placed in the appropriate attorney's box on 18th day of May, 2016, to attorneys of record or to parties (when appearing pro se) as follows:

Kristy Grafton Goldberg 1720 Main Street, Suite 303  
Columbia, SC 29201

ATTORNEY(S) FOR THE PLAINTIFF(S)

James Clayton Mitchell III PO Box 11549 Columbia, SC  
29211

ATTORNEY(S) FOR THE DEFENDANT(S)

*Joyce M. McDonald*

Court Reporter

Joyce McDonald - 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 KERSHAW

IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT

Brian F. Evans, #111059,

2014-CP-28-0946

Applicant,

**ORDER OF DISMISSAL**

v.

State of South Carolina,

Respondent.

11:27:03 RECORD  
2016 MAY 18 AM 11:09  
JUDITH MCGONNELL  
CLERK OF COURT  
KERSHAW COUNTY, S.C.

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed October 9, 2014. Respondent filed a Return on June 10, 2015, requesting an evidentiary hearing be convened. Kristy G. Goldberg, Esquire, was appointed to represent Applicant. An amended application was filed on March 7, 2016. An evidentiary hearing was held on March 29, 2016, at the Richland County Courthouse. Applicant was present and represented by Counsel Goldberg. 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, Brian R. Shealey, Jr., Esquire, Joette Scarborough of the South Carolina Department of Corrections (SCDC), and Kershaw County Deputy Solicitor Brett A. Perry, Esquire. This Court had before it the Kershaw County Clerk of Court records, Applicant's South Carolina Department of Corrections records, the PCR application, the Return, and the transcript.

**I. PROCEDURAL HISTORY**

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

ATTEST True, Correct & Certified  
Copy of Original on File in this  
Court

*Debra M. Wainwright*  
Clerk of Court Kershaw County

the February 2011 term of the Court of General Sessions for Kershaw County for two counts of Murder (2011-GS-28-0110; -0111). Applicant was represented by Brian Shealey, Esq.; Luke Shealey, Esq.; and Tivis Sutherland, Esq. Applicant appeared before the Honorable DeAndrea G. Benjamin on October 14, 2014 and pleaded guilty as indicted. Pursuant to negotiations, Judge Benjamin sentenced Applicant to concurrent terms of thirty (30) years' imprisonment. Applicant did not appeal his sentence or convictions.

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

1. Ineffective assistance of counsel in:
  - a. Advising Applicant to accept plea offer on conditions that he be placed in statewide protective custody and that a downward departure motion be filed by the State.
  - b. Failing to ensure that the conditions within the plea agreement were met, and for failing to file a motion to withdraw the plea when it became apparent that the conditions of the plea agreement were not fulfilled.
2. Involuntary plea in that Applicant relied on representations by counsel that he would be placed in statewide protective custody and that a downward departure motion would be filed.

## II. 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).

### III. 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.

CT 3

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

### **Ineffective Assistance of Counsel**

This Court will first address the allegation that Applicant pled guilty to a conditional plea. A guilty plea cannot have any qualifications or conditions attached to it. State v. Peppers, 346 S.C. 502, 552 S.E.2d 288 (2001). Here, the guilty plea was not based on any conditions. The plea was a negotiated sentence with terms regarding placement in statewide protective custody and a motion for sentence reduction. There is nothing before the Court to prove the plea was conditional.

This Court turns to Applicant's other allegations and addresses them in turn.

#### Involuntary Plea/Misadvise Concerning the Plea

##### *Statewide Protective Custody*

Applicant alleges Counsel was ineffective for advising him to accept a plea offer with negotiated terms regarding placement in statewide protective custody and a motion for sentence reduction for substantial assistance. Applicant testified that he was previously in protective custody when he was in prison on unrelated charges and that he wanted to be placed in protective custody when he entered SCDC. He testified that he witnessed an incident involving the Muslim Brotherhood which affirmed his desire to be placed in protective custody.

Ms. Scarborough is the Division Direct of Inmate Classification and Inmate Records at SCDC. She gave an overview of the inmate classification system in place at SCDC. Inmates who are held in protective custody have their status reviewed every six months. She testified that she was familiar with Applicant's file and that she took part in the decision to remove Applicant



from protective custody. Ms. Scarborough explained that Applicant was removed from protective custody because the committee did not feel there was a verified threat to justify his placement in protective custody. The committee then gave a recommendation that he be removed. She noted that it is not common for inmates to remain in protective custody for very long and that it was certainly not common for inmates to serve an entire sentence in protective custody. She emphasized that the threat level would dictate the duration in protective custody. Ms. Scarborough further explained that any orders from a court attempting to direct SCDC to classify an inmate in a certain way, would be viewed as a recommendation and not a directive. She clarified that this was consistent with her understanding of the law and that General Counsel would be consulted on these matters.

Solicitor Perry also testified in Applicant's case. He recalled that SCDC seemed to be willing to place Applicant in protective custody. A recommendation would be made to SCDC that he could return to protective custody. Solicitor Perry testified he believed Applicant became accustomed to life in protective custody and hoped to make his time less demanding by being placed there again.

Counsel's testimony that the plea deal was for Applicant to be placed in statewide protective custody, not that he would serve his entire sentence in protective custody is credible and persuasive on the issue. Counsel testified he did not advise Applicant that he would remain in protective custody for the duration of his sentence. Counsel testified that he did not have an extensive discussion with Applicant regarding the conditions of protective custody because Applicant had prior knowledge of the procedures. Counsel testified that Applicant was most concerned with getting into protective custody.



This Court finds circuit court judges do not have the authority to order, as part of the sentence, that a defendant be placed in protective custody because it infringes on SCDC's statutory authority. South Carolina law is clear that SCDC is vested with the authority to determine where an inmate is housed. See S.C. Code 24-3-30(A) ("Notwithstanding any other provision of law, a person convicted of an offense against the State must be in the custody of the Department of Corrections, and the department shall designate the place of confinement where the sentence must be served."); S.C. Const. art. XII, § 2 ("The General Assembly shall establish institutions for the confinement of all persons convicted of such crimes as may be designated by law, and shall provide for the custody, maintenance, health, welfare, education, and rehabilitation of the inmates."); see also Skipper v. South Carolina Department of Corrections, 370 S.C. 267, 274-75, 633 S.E.2d 910, 914 (2006); Davis v. State, 274 S.C. 549, 551, 265 S.E.2d 679, 681 (1980). Applicant failed to meet his burden in proving Counsel was deficient in any manner. Acknowledging Applicant's concern that he would be harmed if he was placed in the general prison population, Counsel acted reasonably in successfully having Applicant placed in protective custody. This Court finds that Applicant was never advised or guaranteed that he would remain in protective custody for the duration of his sentence. The Department of Corrections makes the ultimate decision as to whether the circumstances justify holding him in protective custody. It was concluded that there were no verifiable threats to Applicant, and this Court does not have the authority to review that decision.

This Court also finds Applicant failed to meet his burden in proving he was prejudiced in any way. Applicant's testimony that he would have gone to trial if he was not placed in protective custody is not credible considering that he was facing two murder charges and was able to plead to the mandatory minimum sentence of thirty years.



*Motion for Substantial Assistance*

Next, Applicant alleges Counsel was ineffective for failing to ensure the plea agreement was enforced.

Solicitor Perry testified he had discussions with Counsel regarding the filing of a motion for substantial assistance. He recalled that Applicant aided a guard at Alvin S. Glenn Detention Center when a fight broke out. There was also the chance that Applicant would testify in a death penalty case for the State. He noted that this never came to fruition as the death penalty defendant pled guilty. Solicitor Perry testified that he considered Applicant's assistance he gave to the guard when offering him the plea deal of thirty (30) years. Solicitor explained that he did not file a motion for substantial assistance because nothing took place after sentencing to warrant its filing. He also believed it would not be proper for him to file a motion asking Judge Benjamin to impose an illegal sentence.

Counsel testified that the discussions with Solicitor Perry regarding sentence reduction were based on his assistance with the guard at the jail. He emphasized that he did not guarantee that Judge Benjamin would actually reduce his sentence. Counsel testified that he had discussions with counsel at SCDC to ensure they would honor an illegal sentence if Applicant was granted a reduction. Counsel believed that Solicitor Perry was required to make the motion pursuant to the plea agreement.

This Court finds Counsel cannot be found to be ineffective because the language of S.C. Code Ann. § 17-25-65 clearly indicates the State, not defense counsel, is the party who must move for a sentence reduction. The statute reads, in part:

(A) Upon the state's motion made within one year of sentencing, the court may reduce a sentence if the defendant, after sentencing, provided: (1) substantial assistance in investigating or prosecuting another person;

GR # 7

(C) A motion made pursuant to this provision shall be filed by that circuit solicitor in the county where the defendant's case arose.

S.C. Code Ann. § 17-25-65.

The statute unambiguously sets forth that it is incumbent on the State, not defense counsel to move for a sentence reduction hearing. It is not logical or prudent to find counsel ineffective for failing to do something which he has no statutory authority to do. Such a finding would effectively misconstrue the statute to include defense counsel as a party with an obligation to move for a sentence reduction. In construing a statute, the Court will reject an interpretation when such an interpretation leads to an absurd result that could not have been intended by the legislature. Auto Owners Ins. Co. v. Rollison, 378 S.C. 600, 663 S.E.2d 484 (2008); Lancaster Cty. Bar Ass'n v. S. Carolina Comm'n on Indigent Def., 380 S.C. 219, 222, 670 S.E.2d 371, 373 (2008). Such a finding of ineffectiveness and its resulting effect on statutory interpretation would be absurd.

Most importantly, Applicant's testimony that he would have taken the two separate murder cases to trial if the solicitor did not file a motion for substantial assistance is not credible. It is clear from Counsel's testimony that Applicant's was most concerned with his placement in protective custody, not with whether his sentence would be reduced. The State had substantial evidence against Applicant including his confessions to both murders. Applicant was motivated to accept the plea deal because he was able to receive the mandatory minimum of thirty (30) years on two separate murder charges running concurrently.

This Court further finds that a motion for substantial assistance would not be granted. First, the motion would not be made in accordance with the statute. The statute is based on information obtained or actions that take place *after* sentencing. It is undisputed that Applicant provided no information and took no action to warrant the motion after sentencing. Applicant's



claims that he was entitled to a sentence reduction are based on information known at the time of the plea. Solicitor Perry's testimony that he took Applicant's actions with the jail into consideration at the time of the plea is persuasive. It seems that if Applicant provided the State with favorable testimony in the death penalty case, then Solicitor Perry would have moved to reduce the sentence. No such testimony or information was given after sentencing.

Second, Judge Benjamin would not have reduced Applicant's sentence below the mandatory minimum of thirty (30) years. To go any lower would be to impose an illegal sentence. Mandatory minimum sentences are exactly that, mandatory minimum sentences. See State v. Taub, 336 S.C. 310, 314, 519 S.E.2d 797, 800 (App. 1999)(ruling that the mandatory nature of the statute in question was clear under the plain meaning the word mandatory). Taking into account the weight of evidence and the brutality of the two separate murders, this Court is not convinced Judge Benjamin would reduce Applicant's sentence. This allegation is denied and dismissed with prejudice.

#### Failure to move to Withdraw Plea

Finally, Applicant alleges Counsel was ineffective in failing to move to withdraw Applicant's guilty plea when the conditions of the sentence were not met.

Motions to withdraw a plea of guilty must be filed within ten (10) days of the entry of the plea. See State v. Campbell, 376 S.C. 212, 656 S.E.2d 371 (2008)(holding that the trial court does not retain authority to entertain a motion which is not made within ten (10) days of sentencing); State v. Warren, 392 S.C. 235, 708 S.E.2d 234 (App. 2011)(timely post-trial motion limits the court's authority to the issue raised in the motion, and any amendments to the motion raising additional issues are subject to the Rule 29 deadlines).

CV # 9

Here, considering that Applicant alleges Solicitor Perry had a year to file the motion for sentence reduction, a proper motion could not have been made within the ten day time limits imposed by Rule 29, SCRCrimP. Judge Benjamin could not have properly heard a motion to withdraw the plea filed more than ten days after Applicant's guilty plea. This allegation is denied and dismissed.

#### All Other Allegations

As to any and all allegations that were raised 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.

#### IV. 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), SCRCrP, 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 will 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 May, 2016.

  
G. THOMAS COOPER, JR.  
Presiding Judge

COLUMBIA, South Carolina

LAW OFFICE OF  
**Kristy Grafton Goldberg, LLC**  
ATTORNEY AT LAW  
1720 MAIN STREET, SUITE 303  
COLUMBIA, SOUTH CAROLINA 29201

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

