

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS

COUNTY OF CLARENDON )

CERTIFIED TRUE COPY  
OF ORIGINAL FILED IN THIS OFFICE  
Case No. 2014-CP-14-0595

Eric Q. Tindal,  
S.C.D.C. No. 243834

Applicant,

DATE ) 1/8/2014  
Rebecca M. Roberts  
CLERK OF COURT  
CLARENDON COUNTY, SC

v. )

ORDER DENYING RULE 59, SCRPC,  
MOTION TO ALTER OR AMEND

vs. )

State of South Carolina, )

Respondent. )

This matter comes before the Court by way of the Applicant's *pro se* motion to alter or amend pursuant to Rule 59, SCRPC. This matter originally came before the Court by way an Application for post-conviction relief (PCR) filed November 11, 2011. A hearing was held at the Sumter County Courthouse on December 14, 2012. The Applicant was present and represented by James Brian O'Conner, Esquire. The Respondent was represented by Assistant Attorney John W. Whitmire. By Order dated January 23, 2013, this Court dismissed the Application.

This Court dismisses Applicant's Rule 59(e), SCRPC motion because it was a pro se filing made while the Applicant was represented by counsel. See Rule 11(a), SCRPC; Jones v. State, 348 S.C. 13, 14, 558 S.E.2d 517, 517 (2002) (holding there is no constitutional right to hybrid representation either at trial or on appeal). Furthermore, the previous order fully comports with the requirements of Rule 52(a), SCRPC.

**IT IS THEREFORE ORDERED:**

1. That the Applicant's motion to alter or amend judgment is denied and dismissed.

AND IT IS SO ORDERED this 17 day of May, 2013

[Signature]  
CLERK OF COURT  
CLARENDON COUNTY, SC

R. FERRELL COTHRAN, Jr.  
Presiding Judge  
Third Judicial Circuit

\_\_\_\_\_, South Carolina

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CLARENDON )  
 )  
 Eric Q. Tindal, #243834, )  
 )  
 Applicant, )  
 )  
 v. )  
 State of South Carolina, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 2011-CP-14-595

BEULAH G. ROBERTS  
 CLERK OF COURT  
 CLARENDON COUNTY, SC  
 2013 FEB -5 PM 3:27

CERTIFIED TRUE COPY  
 OF ORIGINAL FILED IN THIS OFFICE  
**ORDER OF DISMISSAL**  
 DATE 3/7/13  
*Beulah G. Roberts*  
 CLERK OF COURT  
 CLARENDON COUNTY SC

This matter comes before the Court by way of an Application for Post-Conviction Relief filed November 22, 2011. The Respondent made its Return on or about February 14, 2012. An evidentiary hearing was convened on December 14, 2012 at the Sumter County Courthouse. The Applicant was present at the hearing and was represented by James Brian O'Conner, Esquire. The Respondent was represented by John W. Whitmire, Esquire, of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. Also testifying was Scott L. Robinson, Esquire. This Court had before it the records of the Clarendon County Clerk of Court, the guilty plea transcript, the appellate records, and the Applicant's records from the South Carolina Department of Corrections.

**I. PROCEDURAL HISTORY**

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clarendon County Clerk of Court. The Applicant was indicted at the January 2011 term of the Clarendon County Grand Jury for (1) Attempted Murder

and (2) Burglary—1<sup>st</sup> Degree (2011-GS-14-00039). Scott L. Robinson, Esquire, represented the Applicant. On July 12, 2011, the Applicant pled guilty before the Honorable Howard P. King. Pursuant to a negotiated sentence, he was sentenced to twenty-two years imprisonment for Attempted Murder and twenty-two years imprisonment for Burglary—1<sup>st</sup> Degree, sentences to be served concurrently. Applicant did not appeal his guilty plea or sentence.

At the August 14, 2012 evidentiary hearing, Applicant moved forward on two allegations of ineffective assistance of counsel: (1) failure to investigate Applicant's case; (2) involuntary guilty plea.

## II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80.

### Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRPC). 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, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State,

286 S.C. 441, 334 S.E.2d 813 (1985).

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, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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, supra). 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. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland). With respect to guilty plea counsel, 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, 88 L.Ed. 2d 203 (1985).

#### *Failure to Investigate*

This Court finds this allegation is without merit. This Court finds plea counsel's testimony credible and Applicant's testimony not credible. This Court finds plea counsel is an experienced criminal defense attorney equipped to represent defendants in cases of this nature. This Court finds plea counsel conducted a sufficient investigation into Applicant's case.

Accordingly, plea counsel effectively advised Applicant during the course of representation. Plea counsel discussed the elements and punishments of the offense with Applicant. Plea counsel obtained discovery and adequately reviewed it with Applicant. Plea counsel reasonably investigated potential witnesses and defenses that Applicant provided him.

This Court finds that plea counsel reasonably investigated and advised Applicant on the strength of the State's case in relation to Applicant's potential defenses. Plea counsel stated that emergency dispatch recording of the offense rendered a self-defense strategy untenable. Plea counsel held the legally sound opinion that the recording would have been admissible at trial. Applicant presented no evidence to the contrary. Plea counsel also stated that the victim was willing to testify against Applicant at trial. Plea counsel diligently had Applicant undergo a mental evaluation which resulted in a finding that Applicant was not criminally insane. Plea counsel stated that Applicant had a strong defense to the Burglary—1<sup>st</sup> charge that he would have further pursued at trial.

This Court also finds plea counsel pursued a valid plea strategy. Plea counsel prepared for trial and strengthened his bargaining position in plea negotiations by waiting to until the Solicitor offered a favorable plea bargain at the eve of trial. Plea counsel stated that Applicant desired a favorable guilty plea bargain instead of proceeding to trial. Plea counsel stated that Applicant was facing a potential life sentence. As a result, Plea counsel obtained a favorable plea bargain for Applicant where Applicant's sentences would run concurrently under the thirty year maximum term of imprisonment he was facing for the attempted murder charge. Plea counsel was prepared to proceed to trial if Applicant rejected the offer.

This Court finds Applicant failed to present any evidence that proves plea counsel was

ineffective in investigating the case and advising him to plead guilty. An applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for trial counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993).

#### *Involuntary Guilty Plea*

This Court finds Applicant's allegation that his guilty plea was involuntarily rendered is without merit. This Court finds plea counsel's testimony credible and Applicant's testimony not credible. Plea counsel stated that he did not coerce Applicant into pleading guilty. This Court also finds that plea counsel held the reasonable belief that Applicant understood their discussions and was able to communicate with counsel during the course of representation. Plea counsel thoroughly advised Applicant on the consequences of entering a guilty plea. Plea counsel further stated that Applicant's mother was present during these discussions where Applicant decided to accept the twenty-two year negotiated offer from the State.

Furthermore, this Court finds that the guilty plea hearing record shows that Applicant entered his guilty plea knowingly and voluntarily. At the guilty plea hearing, Applicant told the guilty plea judge that he was entering his plea freely and voluntarily. (Tr. 19, lines 8-9). Applicant also told the guilty plea judge that no one promised him anything in return for pleading guilty. (Tr. 19, lines 4-7). Additionally, Applicant told the guilty plea judge that he was completely satisfied with plea counsel and needed no additional time to consult with plea counsel before entering his guilty plea. (Tr. 20, lines 4-8).

Last, this Court finds Applicant failed to prove his allegation that his guilty plea was rendered involuntarily because plea counsel illegally represented him at the guilty plea hearing. Although Applicant had discussions with outside counsel on seeking his substitute representation, Applicant failed to present evidence that substitute counsel was retained. Applicant failed to produce an Order of Substitution. The record reflects that plea counsel was the counsel of record for Applicant at the guilty plea hearing.

Therefore, Applicant fails to meet his burden to prove that his guilty plea was involuntarily rendered. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the Applicant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991).

#### **Other Allegations**

No other allegations were raised at the PCR hearing. Therefore, any additional allegations are deemed waived because no evidence was presented. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

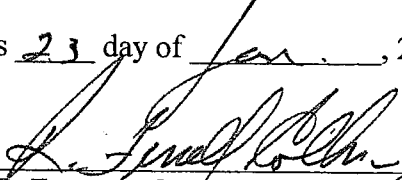
## CONCLUSION

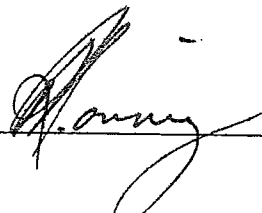
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his Application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

### IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be DENIED AND DISMISSED WITH PREJUDICE; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 23 day of Jan., 2003.

  
R. FERRELL COTHRAN, JR.  
Presiding Judge  
Fourth Judicial Circuit

, South Carolina.

STATE OF SOUTH CAROLINA )

COUNTY OF CLARENDON )

Eric Q. Tindal, 243834, )

Plaintiff )

v. )

State Of South Carolina )

Defendant. )

IN THE COURT OF COMMON PLEAS

CASE NO.  
2011-CP-14-595

MOTION AND ORDER INFORMATION  
FORM AND COVER SHEET

2011 FEB -5 PM 3:27  
BEULAH G. ROBERTS  
CLERK OF COURT  
CLARENDON COUNTY, SC

Plaintiff's Attorney:  
James Brian O'connor, Bar No.  
Address:  
Post Office Box 97 Lexington, SC 29071-0310  
phone: (803) 429-5733 fax:  
e-mail: other:

Defendant's Attorney:  
John W. Whitmire, Bar No.  
Address:  
Post Office Box 11549 Columbia SC 29211-1549  
phone: (803) 734-3737 fax: (803) 734-4113  
e-mail: other:

- MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
- FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
- PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

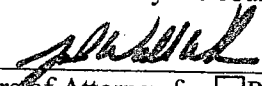
**SECTION I: Hearing Information**

Nature of Motion:  
Estimated Time Needed: Court Reporter Needed:  YES /  NO

**SECTION II: Motion/Order Type**

- Written motion attached
- 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  Plaintiff /  Defendant

January 15, 2013  
Date submitted

**SECTION III: Motion Fee**

- PAID - AMOUNT:
- EXEMPT:
  - Rule to Show Cause in Child or Spousal Support
  - (check reason)  Domestic Abuse or Abuse and Neglect
  - Indigent Status  State Agency v. Indigent Party
  - Sexually Violent Predator Act  Post-Conviction Relief
  - Motion for Stay in Bankruptcy
  - Motion for Publication  Motion for Execution (Rule 69, SCRPC)
  - 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:
  - Other:

**JUDGE'S SECTION**


- Motion Fee to be paid upon filing of the attached order.
- Other:

JUDGE \_\_\_\_\_  
CODE: \_\_\_\_\_ Date: \_\_\_\_\_

**CLERK'S VERIFICATION**

Collected by: \_\_\_\_\_ Date Filed: \_\_\_\_\_

- MOTION FEE COLLECTED: \_\_\_\_\_
- CONTESTED - AMOUNT DUE: \_\_\_\_\_

CERTIFIED TRUE COPY  
OF ORIGINAL FILED IN THIS OFFICE  
DATE 3/7/13  
  
CLERK OF COURT  
CLARENDON COUNTY, SC