

# The Law Office of Tristan M. Shaffer

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Litigation • Injury Law • Criminal Defense

August 15, 2016

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

RECEIVED  
AUG 17 2016  
SC SUPREME COURT

Re: Stevie Aiken v. State 2014-CP-25-0189

Dear Mr. Shearouse,

Please find the enclosed Notice of Appeal, Certificate of Service, and Order of Dismissal in the above referenced case.

Sincerely,



Tristan M. Shaffer

CC: Stevie Aiken # 299883  
Rutledge Johnson  
Hampton County Clerk of Court

**RECEIVED**

AUG 17 2016

**SC SUPREME COURT**

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM HAMPTON COUNTY  
Court of Common Pleas

Brooks P. Goldsmith, Circuit Court Judge

Case No. 2014-CP-25-0189

Stevie Aiken #299883,

Petitioner,

v.


The State of South Carolina,

Respondent.

NOTICE OF APPEAL

Petitioner appeals the Order of the Honorable Brooks Goldsmith dismissing his post-conviction relief action dated July 2, 2016 and filed on July 12, 2016. Petitioner received this Order on July 18, 2016.

August 15, 2016



Tristan M. Shaffer (SC Bar 77565)  
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Chapin, South Carolina 29036  
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Attorney for Petitioner

Other Counsel of Record:  
Rutledge Johnson  
South Carolina Attorney General's Office  
P.O. Box 11549  
Columbia, South Carolina 29211  
Attorney for Respondent

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM HAMPTON COUNTY  
Court of Common Pleas

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Case No. 2014-CP-25-0189

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Stevie Aiken #299883,

Petitioner,

v.

The State of South Carolina,

Respondent.

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PROOF OF SERVICE

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I certify that I have served the Notice of Appeal on The State of South Carolina by mailing a copy to the Attorney General's Office at P.O. Box 11549, SC 29211 on the date listed below.

August 15, 2016



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Attorney for Petitioner

Other Counsel of Record:  
Rutledge Johnson  
South Carolina Attorney General's Office  
P.O. Box 11549  
Columbia, South Carolina 29211  
Attorney for Respondent

**RECEIVED**

AUG 17 2016

SC SUPREME COURT

FORM 4  
FILED

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

JUDGMENT IN A CIVIL CASE  
CASE NUMBER 2014CP2500189

2016 JUL 14 AM 10:24

Stevie Lamont Aiken

State Of Sc  
SYLVIA D. REYNOLDS  
CLERK OF COURT  
HAMPTON COUNTY, S.C.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: CLERK OF COURT

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: ORDER OF DISMISSAL FILED 07-12-2016

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

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 , to attorneys of record or to parties (when appearing pro se) as follows:

Ashleigh Rayanna Wilson 1441 Main Street Suite 1200  
Columbia, SC 29201

Tristan Michael Shaffer 225 Columbia Ave. Chapin, SC  
29026

STEVIE AIKEN #299883

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ATTORNEY(S) FOR THE PLAINTIFF(S)

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ATTORNEY(S) FOR THE DEFENDANT(S)

*Mylynda A Nettles*

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Court Reporter

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Mylynda Nettles - Clerk of Court

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**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.

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STATE OF SOUTH CAROLINA )  
 COUNTY OF HAMPTON )  
 )  
 )  
 Stevie Aiken, #299883, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

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IN THE COURT OF COMMON PLEAS  
 FOURTEENTH JUDICIAL CIRCUIT

2014-CP-25-0189

**ORDER OF DISMISSAL**

2016 JUL 12 AM 11:25  
 KIMBERLY D. NETTLES  
 CLERK OF COURT  
 HAMPTON COUNTY, S.C.

FILED

This matter comes before the Court by way of an Application for Post-Conviction Relief filed May 30, 2014. The Respondent made its Return on November 2, 2015. An evidentiary hearing into the matter was convened on May 18, 2016, at the Beaufort County Courthouse in Beaufort, SC. Tristan Shaffer, Esquire, represented the Applicant. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. Steve Plexico, Esquire, also testified. This Court had before it a copy of the records of the Hampton County Clerk of Court, records from the South Carolina Department of Corrections, the trial transcript and the appellate records.

**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 Hampton County. Applicant was indicted at the November 2010 term of the Hampton County Grand Jury for assault and battery with intent to

kill (ABWIK) (2010-GS-25-0026); March 2010 term for the possession of a weapon during the commission of a violent crime (2010-GS-25-0027); November 2010 term for armed robbery (2010-GS-25-0028); March 2010 term for kidnapping (2010-GS-25-0029); and burglary (after June 20, 1985), first degree (2010-GS-25-0030). Applicant was represented by Stephen Plexico, Esquire. On March 9, 2011, Applicant proceeded to trial before the Honorable Perry M. Buckner, III. The jury found Applicant guilty as indicted. Judge Buckner sentenced Applicant to twenty (20) years' imprisonment for ABWIK, five (5) years' imprisonment for the weapons charge, twenty (20) years' imprisonment for armed robbery, thirty (30) years' imprisonment for kidnapping, and thirty-five (35) years' imprisonment for burglary, first degree, all terms to be served concurrently.

Applicant filed a timely notice of appeal. Stephen Plexico, Esquire, Susan B. Hackett, Esquire, and Elizabeth Anne Franklin-Best, Esquire, of the Office of Appellate Defense represented Applicant on appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on November 28, 2012. *State v. Aiken*, Op. No. 2012-UP-632 (S.C. Ct. App. filed Nov. 28, 2012). The South Carolina Court of Appeals denied Applicant's petition for rehearing on January 25, 2013. The Supreme Court of South Carolina denied petition for writ of certiorari on May 7, 2014. The remittitur was returned to the circuit court on May 15, 2014.

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

1. Ineffective Assistance Counsel
2. Illegible writing
3. "no fingerprint"
4. "I was re-indicted after co-defendants agreed to testify [sic]"
5. "All motions were threw out [sic]"



6. "No blood from victim on clothing[sic]"
7. "Solicitor was leading state's witness on in court room [sic]"
8. "I never confessed to the crime"
9. "No victim testimony or statement no victim present at court [sic]"
10. "General flaws in officer's testimony"

### SUMMARY OF TESTIMONY

Counsel testified that he was appointed to Applicant's case and met with him on March 15, 2010, whereupon he discussed the facts of the case with Applicant. Counsel stated Applicant did not deny committing the crime and that Applicant admitted there was a witness who took him to scope out the scene of the crime. There also was a codefendant who dropped Applicant and his codefendant off at a post office and then both codefendants entered the victim's house. The victim started shooting, whereupon the codefendant shot back. This codefendant went into victim's house and stole her checkbook and a pistol. Applicant admitted he was armed and that the codefendant made him retrieve victim's car. Counsel also stated that Applicant signed a written statement. Counsel articulated that he read his notes back at the end of the meeting to Applicant to ensure their accuracy. Applicant gave the codefendant \$40 for the gun. Applicant was apprehended after his codefendant was caught trying to cash a check.

Counsel then testified that he had multiple meetings with Applicant to discuss his case. Counsel articulated that his trial strategy consist of challenging the loss videotape where Applicant allegedly confessed to the crime. Counsel expressed there was a 20-year offer which Applicant, in no uncertain terms, rejected. Counsel then testified that there was no coercion from law enforcement to entice Applicant to sign his written statement. Counsel stated he did not recall Applicant being

charged with murder because there was no death this case. However, during the trial, Counsel testified he asked a question about a murder charge because he was attempting to portray Applicant as not the brightest person and that the cops were coercive in their interrogation.

Counsel testified that he discussed Applicant's testifying with Applicant, and Applicant decided not to testify based on the facts. Counsel then stated Applicant did not want to accept the plea offer because Applicant told Counsel to tell the State to stick the offer "with the sun does not shine." Counsel articulated, in his professional opinion, that Applicant should have accepted the 20-year offer.

Applicant testified he met with Counsel on March 15, 2010 and that Counsel asked him many questions. Applicant claimed on the video that he did not confess to committing the crime and that he did not know anything about a statement. Applicant admitted he had a prior forgery conviction. Applicant testified that law enforcement called his cell phone to talk with him and that he proceeded to the police station where law enforcement handcuffed him and transported him back to Hampton County. During this interview, there was a sled agent present as well as law enforcement. Applicant stated he only knows victim because he cut her grass. Applicant once again claimed he did not give a written statement or sign a written statement and discuss this with Counsel. Applicant claimed Counsel did not explain anything about a trial strategy, but that he should simply plead guilty. Applicant claimed he did not tell Counsel that he intended to rob the victim, nor did he say anything about the statement.

Applicant then testified that Counsel had a bad attitude and that he tried to fire Counsel, but did not end up doing so. Applicant said that when his case was called for trial, the presiding judge



asked him if he was prepared to which he replied no. Applicant claimed Counsel said the jury would hang him and that Counsel's private investigator said Applicant did not stand a chance. Applicant further claimed that a detective said Applicant could be charged with murder. Applicant once again articulated that Counsel and the private investigator said the jury would convict him. Applicant then stated that if he were able to testify, he said he was not present at the scene and that he had an alibi witness. Applicant lastly stated that if he had testified during the Jackson v. Denno hearing, he would have said he did not write the statement.

On cross-examination, Applicant once again denied writing the statement. However, Applicant admitted that his codefendant testified to almost exactly what the alleged statement said. Applicant also admitted that his statement was presented to the jury and that the jury convicted him of these charges. He also admitted he knew the victim was in the hospital, therefore he cannot be charged with murder.

#### **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 witness presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

#### **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), SCRCP). 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*. 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.

This Court also has read the trial transcript, all of which assists the Court in judging the witnesses' credibility. This Court finds the Applicant's and his father's testimony regarding Counsel's ineffectiveness is not credible while also finding Counsel's testimony is very credible.

This Court finds Counsel's representation of Applicant in this case well above the professional norms. Counsel fully investigated this case and assisted Applicant in his defense.

Counsel explained and relayed the 20-year offer to Applicant, and it was Applicant's decision to reject this offer. It now seems Applicant has a case of buyer's remorse. Counsel, quite properly, based his investigation on information relayed to him by Applicant and on the facts the case. "The reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions. Counsel's actions are usually based, quite properly, on informed strategic choices made by the defendant and on information supplied by the defendant. In particular, what investigation decisions are reasonable depends critically on such information." Strickland v. Washington, 466 U.S. 668, 691, 104 S. Ct. 2052, 2066 (1984). Further, Counsel based his trial strategy on the information supplied by Applicant and on his statement to law enforcement. Counsel challenged this statement and the trial judge ruled it was admissible. Since Counsel performed above and beyond during the Jackson v. Denno hearing, he cannot be said to be ineffective.

Further, a fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. State v. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985), citing Strickland v. Washington, 104 S.Ct. 2052, 890 L.E.2d 674(1984). Because of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel's conduct falls within the range of reasonable professional assistance. Id. Counsel testified that based on the facts of the case, it was not advantageous for Applicant to testify at trial. Further, the trial court fully explained Applicant's right to testify or remain silent during the trial. (See Tr. pp. 369). This Court finds this is valid trial strategy based on the facts of the case and



information supplied by Applicant. Therefore, this Court finds the Applicant has failed to meet his burden of proving counsel's performance was deficient or that he was prejudiced thereby. Accordingly, this allegation is denied.

### 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.

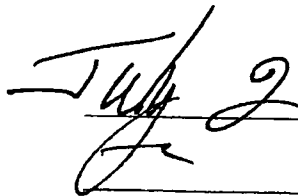
This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

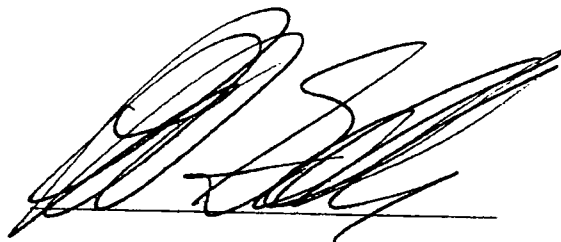
### IT IS THEREFORE ORDERED:

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.

A handwritten signature in black ink, located in the bottom right corner of the page. The signature is stylized and appears to consist of several overlapping loops and a long horizontal stroke extending to the right.

**AND IT IS SO ORDERED!**

 \_\_\_\_\_, 2016  
\_\_\_\_\_, South Carolina



Brooks P. Goldsmith  
Presiding Circuit Court Judge  
Fourteenth Judicial Circuit

2014-CP-25-0189

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