

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

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August 25, 2016

**RECEIVED**

AUG 29 2016

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

**S.C. SUPREME COURT**

RE: Matthew J. Eargle, SCDC # 298691, vs. State of South Carolina  
Appeal of Case No. 2013-CP-32-0168

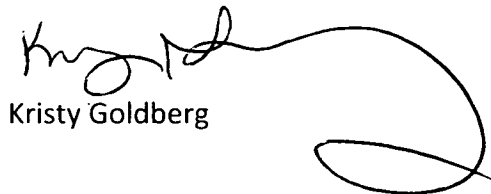
Dear Mr. Shearouse,

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. Eargle, 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: Johanna Valenzuela  
Assistant Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211-1549

Matthew Eargle, SCDC # 298691  
4344 Broad River Road  
Columbia, SC 29210

The Honorable Beth Carrigg  
Clerk of Court  
205 East Main Street  
Lexington , South Carolina 29072

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

APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

**RECEIVED**

DeAndrea G. Benjamin, Circuit Court Judge

AUG 29 2016

**S.C. SUPREME COURT**

Case No. 2013-CP-32-0168

Matthew J. Eargle, SCDC # 298691, ..... Appellant

v.

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

NOTICE OF APPEAL

Applicant Matthew Eargle hereby appeals from the Order of the Honorable DeAndrea G. Benjamin presiding Judge for the 11<sup>th</sup> Judicial Circuit, filed August 12, 2016 and received by counsel for the Applicant on August 22, 2016 in the matter of Matthew Eargle v. State of South Carolina, Case No. 2013-CP-32-0168.

August 25, 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, Johanna Valenzuela

Office of the Attorney General

Post Office Box 11549

Columbia, South Carolina 29211

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

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DeAndrea G. Benjamin, Circuit Court Judge

AUG 29 2016

**S.C. SUPREME COURT**

Case No. 2013-CP-32-0168

Matthew J. Eargle, SCDC # 298691, ..... Appellant

v.

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

PROOF OF SERVICE

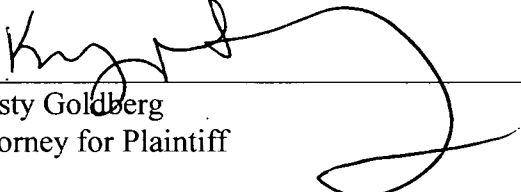
Personally appeared before me, Kristy Goldberg, Esquire, who being duly sworn, deposes  
and states:

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 August 25, 2016 by  
depositing one copy in the U.S. Mail, postage prepaid:

Assistant Attorney General, Johanna Valenzuela  
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, Johanna Valenzuela  
Office of the Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211

STATE OF SOUTH CAROLINA )

COUNTY OF LEXINGTON )

Matthew J. Eargle,  
S.C.D.C. No. 298691 )

Applicant, )

v. )

State of South Carolina, )

Respondent. )

IN THE COURT OF COMMON PLEAS  
FOR THE ELEVENTH JUDICIAL CIRCUIT

Case No. 2013-CP-32-0168

**ORIGINAL**

**ORDER OF DISMISSAL**  
(with prejudice)

This matter comes by way of an Application for Post Conviction Relief (PCR) filed January 15, 2013. Respondent's responsive pleadings followed. The case was called for a hearing on October 15, 2014, at the Lexington County Courthouse. Applicant was present and represented by Kristy Goldberg, Esquire. Assistant Attorney General Walt Whitmire represented the State.

**PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. Applicant was indicted for kidnapping (2012-CP-32-2255) and was represented by Eleventh Circuit Public Defender, Robert M. Madsen, Esq. Applicant pleaded guilty pursuant to Alford.<sup>1</sup> The Honorable Roger M. Young accepted Applicant's plea and sentenced him to a term of twenty-five (25) years imprisonment. Applicant did not appeal his sentence or conviction.

<sup>1</sup> North Carolina v. Alford, 400 U.S. 25 (1970).

FILED  
2014 MAY 12 AM 11:21  
BETH A. CARRIGG  
CLERK OF COURT  
LEXINGTON, SC

## ALLEGATIONS

In his Amended Application dated October 8, 2014, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of counsel in that counsel stipulated to Applicant's competency at the time of his plea and failed to require the court to conduct a hearing under State v. Blair.<sup>2</sup> Applicant asserts there is a reasonable probability the he was incompetent at the time of the plea."<sup>3</sup>

## SUMMARY OF TESTIMONY AND EVIDENCE PRESENTED

Applicant testified to his recollection with counsel's representation. Applicant testified he was transported from pre-trial detention to an inpatient facility during the pendency of his case. He testified he was admitted to the inpatient facility because he was "cutting himself." He testified to his experiences in pre-trial detention and at the inpatient facility. Applicant testified that counsel surprised him with the guilty plea.

Dr. Martin, qualified as an expert in forensic psychiatry, testified on behalf of Applicant. Dr. Martin did not interview plea counsel or review any transcripts or PCR actions related to Applicant's prior unrelated convictions. Dr. Martin relied on Applicant's self-reporting and his medical and mental health records in forming his opinion.

Based on a 2014 pre-hearing evaluation, Dr. Martin testified to his diagnosis of Applicant suffering from depressive disorder, not otherwise specified (NOS) and a personality disorder that included antisocial and borderline traits. Dr. Martin testified that those who are diagnosed with antisocial features or disorders are frequently deceitful and manipulative to gain personal preference and are also apt to lie and malingering.

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<sup>2</sup> State v. Blair, 275 S.C. 529, 273 S.E.2d 536 (1981).

<sup>3</sup> Applicant also had a second allegation in the amended application, but that issue was withdrawn at the start of the hearing by Applicant's counsel.

Dr. Martin testified that “competence is a fluid construct entity [that] needs to be checked periodically depending on how somebody is doing.” Dr. Martin opined that counsel submitted Applicant for an evaluation in August 2012 at time when Applicant was receiving excellent mental health care at an inpatient facility. Dr. Martin suggests that Applicant’s release back to the Lexington County Detention Center constituted a destabilizing condition on Applicant’s condition. Dr. Martin further suggests that when “there is a lot of erratic mental health history” a mental health professional should evaluate a defendant, such as Applicant, immediately prior to the plea. Dr. Martin also testified that counsel should have requested a Blair hearing at the guilty plea hearing on October 3, 2012. Based on Applicant’s 2012 self-reporting, Dr. Martin testified that there might have been some concerns with Applicant’s competency at the guilty plea hearing.

Counsel testified to his course of conduct during the representation. Counsel, the Circuit Public Defender, gave a brief summary of what this Court finds to be an exceptional amount of experience in criminal law at the time of his representation in Applicant’s case. Counsel met with Applicant on eight occasions during the course of the representation. Counsel testified to his observations of Applicant during the representation as follows: Applicant communicated effectively, made eye contact, and asked appropriate questions. Counsel testified he submitted Applicant for competency and criminal responsibility evaluations solely based upon Applicant’s history of mutilation and the cutting Applicant had done. Otherwise, Applicant appeared to be normal to counsel. Dr. Hansen’s 2012 evaluation reports were submitted into evidence. Applicant was found to be competent, criminally responsible, and had the ability to conform his conduct to requirements of the law. Counsel had no reason to question Dr. Hansen’s qualifications or findings. Of note, counsel testified “[q]uite honestly I expected that [Applicant]

would be competent and would have the capacity to conform just in my dealings with him.” Counsel testified his office provided the Department of Mental Health (“DMH”) with the necessary records prior to the 2012 evaluations.

Counsel testified to his consultations with Applicant prior the plea that occurred after the 2012 evaluations. Near the time of the guilty plea hearing, counsel testified Applicant did not exhibit any behaviors or signs that would have indicated a change in competency. Counsel noted the State’s case against Applicant was very strong.

### 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 by S.C. Code Ann. §17-27-80 (2015).

This Court finds Applicant entirely failed to meet his burden to prove: Ineffective Assistance of counsel in that counsel stipulated to Applicant’s competency at the time of his plea and failed to require the court to conduct a hearing under State v. Blair. Applicant asserts there is a reasonable probability the he was incompetent at the time of the plea. Applicant frames the allegation as not whether counsel sought Applicant undergo an independent evaluation, but when counsel acted accordingly. Applicant argues that competency is fluid, and that counsel’s performance was lacking for not submitting Applicant for an evaluation within an almost immediate temporal proximity of the guilty plea hearing. This Court finds Applicant’s argument ~~tenuous at best and ultimately~~ is unavailing to show either deficient performance or prejudice.

The United States Supreme Court has created a two-pronged test to establish ineffective assistance of counsel by which a PCR applicant must show (1) counsel's performance was deficient, and (2) the deficient performance prejudiced the defendant." Holden v. State, 393 S.C. 565, 572, 713 S.E.2d 611, 615 (2011) (citing Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052 (1984)). To prevail in a PCR action, the petitioner must prove by a preponderance of the evidence he was incompetent when he entered his guilty plea. Lee v. State, 396 S.C. 314, 320-22, 721 S.E.2d 422, 466-47. The test of competency to enter a plea is the same as required to stand trial." Id. "The accused must have sufficient capability to consult with his lawyer with a reasonable degree of rational understanding and have a rational as well as factual understanding of the proceedings against him." Id.

A.

As a general matter, this Court rejects Applicant's PCR allegation of ineffective assistance of counsel because it falls outside of a cognizable Strickland duty on a defense attorney to provide constitutionally effective representation. "The Sixth Amendment right to counsel does not provide for the right to the "effective assistance of an expert witness." Wilson v. Greene, 155 F.3d 396, 401-02 (4th Cir.1998); see also Caro v. Calderon, 165 F.3d 1223, 1226 (9th Cir. 1999) (reciting that counsel has an obligation to conduct an investigation which will allow a determination of which experts to consult and then provide the expert with relevant information.).

Based on counsel's submission, Applicant was evaluated by a competent and licensed forensic psychiatrist for competency and criminal responsibility in August 2012. Furthermore, this Court finds counsel's knowledge and experience handling mental health issues to be exceptional. This Court finds counsel's testimony that he provided DMH: the necessary records

to allow Dr. Hansen to conduct a thorough evaluation of Applicant to be convincing and dispositive. See Fautenberry v. Mitchell, 515 F.3d 614, 625 (6th Cir. 2008) (“A licensed practitioner is generally held to be competent unless there is good reason for disbelief which was not shown”). Counsel gave credible testimony that Dr. Hansen’s opinions confirmed counsel’s initial impressions that Applicant was competent to stand trial and that he was of sound mind. See Forsyth v. Ault, 537 F.3d 887, 892 (8th Cir. 2008) (finding that counsel is not ineffective for structuring a case on the basis of opinion received at the time counsel consulted expert). Simply put, counsel’s astute observations coupled with Dr. Hansen’s findings negated any objective justification for a State v. Blair hearing prior to Applicant entering his guilty plea. In any event, despite counsel’s sound representations on the matter at the plea hearing, Judge Young – armed with Applicant’s evaluation reports – had the opportunity to observe Applicant’s demeanor, speech, and gait when he accepted Applicant’s plea.

Importantly, Applicant failed to produce any credible evidence that showed counsel somehow was ineffectual in the sense that he hampered DMH and Dr. Hansen’s ability to render competent evaluations. Thus, Dr. Martin’s 2014 findings and testimony at the PCR hearing equate to nothing more than a red herring to this Court’s limited inquiry of whether counsel rendered constitutionally effective assistance of counsel. Whether Dr. Hansen and DMH did not follow Dr. Martin’s best practices in 2012 in insisting on a follow-up consultation with a defendant/patient proximate to the guilty plea hearing is a dispute best left to the medical community and not this Court.

**B.**

Applicant has similarly fallen well short of meeting his burden to prove Strickland’s prejudice prong. First, and even post hoc, Dr. Martin was unable to render a finding on

Applicant's competency on the day of the plea, as he did not meet with Applicant until April of 2014. Notably, Applicant didn't suffer from psychosis and his cognitive faculties were intact at the time of their meeting. 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"). Second, and in the alternative, Dr. Martin testified that Applicant suffered from interval behavioral disorders. This Court finds counsel was in the best position to observe whether symptoms of Applicant's mild mental illness flared up during counsel's consultations with him between August and October of 2012. This Court finds counsel's testimony that he observed no noticeable cognitive or behavioral deficits during this juncture to be compelling and dispositive. Third, and in the alternative, this Court finds the evidentiary import of Dr. Martin's 2014 evaluation and testimony was substantially neutered by Dr. Martin's inexplicable inability to render a consistent opinion on whether Applicant's anti-social personality disorder diagnosis tainted Applicant's anecdotal self-reporting. This Court finds it hard to believe Applicant was a "good historian" as evidenced by his PCR testimony. While this Court has no reason to question Dr. Martin's professional veracity, there is substantial cause for concern regarding the veracity of Applicant's testimony. This Court finds the vast majority of Applicant's testimony to be incredible, self-serving and dubious; otherwise known as malingering.

### CONCLUSION

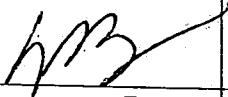
Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes Applicant must file and serve a notice of appeal within thirty 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 post-conviction relief. Rule 71.1(g), SCRCR, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant 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.

AND IT IS SO ORDERED this 2 day of Aug, 2016.

  
HONORABLE DEANDREA G. BENJAMIN  
Presiding Judge  
Eleventh Judicial Circuit

Columbia, South Carolina

FILED  
2016 AUG 12 AM 11:27  
BETH A. CARRIGG  
CLERK OF COURT  
COLUMBIA, SC

FORM 4

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

JUDGMENT IN A CIVIL CASE  
 CASE NUMBER 2013CP3200168

Matthew Jennings Eargle  
 #298691

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), 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: \_\_\_\_\_

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

8/12/2016

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 **15th of August 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

**Johanna Valenzuel**, SC Attorney General's Office

**ATTORNEY(S) FOR THE PLAINTIFF(S)**

**ATTORNEY(S) FOR THE DEFENDANT(S)**

Beth A. Carrigg/mh

**Court Reporter**

**Beth A. Carrigg - 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.


LAW OFFICE OF  
**Kristy Grafon 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

