The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

March 12, 2012

Johnson J. Mitchell,#316424
Allendale Correctional Institution
P. O. Box 1151, Hwy 47
Fairfax, SC 29827

Re: Mitchell, Johnson J. v. The State

Dear Mr. Mitchell:

Your counsel has submitted a Petition for Writ of Certiorari indicating that this appeal is without merit and moves to be relieved as your counsel. Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988). The records of this Court reflect that counsel served you with a copy of the Petition & Appendix on March 9, 2012.

You may, within forty-five (45) days of the date of this letter, file with this Court a pro se response to the Petition filed by your counsel. In this response, you may raise and argue any issues you believe the Court should consider in this appeal. Upon receipt of your pro se response or the expiration of forty-five (45) days, the matter will be submitted to the Court for its consideration.

If you do decide to file a pro se response, the response must be either typewritten or legibly hand printed, and must have at least a one inch margin on all sides. Further, you will need to only submit one copy of your response, and this copy **should not** be stapled or bound in any manner.

Very truly yours,

CLERK

DES/jj

cc: Appellate Defender Susan B. Hackett
Assistant Attorney General Harrison D. Brant

SCCID
SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332

Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1343
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

January 10, 2012

The Honorable Daniel E. Shearouse
Clerk, S.C. Supreme Court
Post Office Box 11330
Columbia, SC 29211

Dear Mr. Shearouse:

The following case falls under the 60 day rule for appeals, and the date we received the transcript is listed to the side.

Johnson J. Mitchell v. State of South Carolina 1/9/2012

I would appreciate you beginning our time limits from the above date, and if you need additional information, or have any questions please contact me.

Thank you for your assistance in this matter.

Sincerely,

Sharon A. Graham

Sharon A. Graham
Administrative Coordinator

SCCID
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Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

December 15, 2011

Ms. Wanda S. Nelson
Circuit Court Reporter
1428 Dove Landing Road
York, SC 29745

Dear Ms. Nelson:

Please provide us with the following transcript:

Johnson J. Mitchell v. State of South Carolina Case #: 11-CP-46-03970

County: York Date of Trial: June 2, 2011

Presiding Judge: Lee S. Alford

To ensure prompt payment, please sign and complete the enclosed CID FORM 3500 and include the original criminal case number (Indictment number) where the space is provided.

Please number the lines on the paper from 1-25, and include any and all recorded motions, pre and post-trial. Additionally, please transcribe the jury selection, and the State and defense counsel's opening and closing arguments.

If you are aware of any co-defendants or if the Attorney General's Office has already requested a transcript, please let us know.

Sincerely,

Sharon A. Graham

Sharon A. Graham
Administrative Coordinator

cc: S.C. Supreme Court
Attorney General's Office

Brian R. Murphy
brian@brmurphy.com
888.454.1338

LAW OFFICE OF BRIAN R. MURPHY, LLC

Fort Mill | 803.548.0321
Beaufort | 843.321.9001
web | www.brmurphy.com

Mailing Address: PO Box 805. Fort Mill. SC 29716 | Fax: 803.403.9517

November 8, 2011

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

RE: Mitchell v. South Carolina
Case No.: 2010-CP-46-3970

Dear Mr. Shearouse:

Enclosed for filing is a notice of appeal in the above-referenced case. Also enclosed are the following:

1. Proof of Service of the Notice of Appeal on the Respondent.
2. A copy of the order which is to be challenged on appeal.
3. No filing fee is required as this is a Post-Conviction Relief case.
4. This appeal is being filed with the Supreme Court pursuant to Rule 243.
5. This is an appointed case for an Indigent Defendant.

With warmest regards,

Brian R. Murphy
BRM/aec

Enclosure: Notice of Appeal
Proof of Service of the Notice of Appeal
Order of Dismissal

CC: Mr. Harrison D. Brandt, Assistant Attorney General
Mr. Johnson Mitchell

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM YORK COUNTY
Court of Common Pleas

The Honorable Lee S. Alford

Case No: 2010-CP-46-3970

Johnson Mitchell, #316424, Appellant

v.

State of South Carolina, Respondent

NOTICE OF APPEAL

Johnson Mitchell appeals the decision of the Honorable Lee S. Alford filed on October 11, 2011. Appellant received written notice of entry of this order on October 16, 2011.

November 9, 2011 By: _____

Brian R. Murphy
Law Office of Brian R. Murphy, LLC
PO Box 805
Fort Mill, SC 29716
803-548-0321
brian@brmurphy.com
Attorney for Appellant

Other Counsel of Record:

Mr. Harrison D. Brant
Assistant Attorney General
PO Box 11549
Columbia, SC 29211
Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM YORK COUNTY
Court of Common Pleas

The Honorable Lee S. Alford

Case No: 2010-CP-46-3970

Johnson Mitchell, #316424, Appellant

v.

State of South Carolina, Respondent

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the Respondent by depositing a copy of it in the United States Mail, postage prepaid on November 9, 2011 addressed as follows:

Mr. Harrison D. Brant
Assistant Attorney General
PO Box 11549
Columbia, SC 29211
Attorney for Respondent

November 9, 2011

By: _____

Brian R. Murphy
Law Office of Brian R. Murphy, LLC
PO Box 805
Fort Mill, SC 29716
803-548-0321
brian@brmurphy.com
Attorney for Appellant

STATE OF SOUTH CAROLINA

COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 2010CP4603970

Johnson Mitchell *vs.* South Carolina State Of

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.

☐ **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:

☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other: _____

IT IS ORDERED AND ADJUDGED: ☒ See attached order; ☐ Statement of Judgment by the Court:

ORDER OF DISMISSAL

Dated at York, South Carolina, this 11th day of October, 2011.

Court Reporter:

s/ LEE S. ALFORD

PRESIDING JUDGE - LEE S. ALFORD

This judgment was entered on the 13th day of October, 2011, and a copy mailed first class this 13th day of October, 2011, to attorneys of record or to parties (when appearing pro se) as follows:

Brian R Murphy Law Office Of Brian R. Murphy P. O. Box 805 Fort Mill, SC 29716

ATTORNEY(S) FOR THE PLAINTIFF(S)

Harrison Brant Office Of The Attorney General P O Box 11549 Columbia, SC 292111549

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

David Hamilton - Clerk of Court

SCRCP APP-24/FORM 4

CPFORM4M

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF YORK) SIXTEENTH JUDICIAL CIRCUIT
)
)
) 2010-CP-46-3970
Johnson J. Mitchell, #316424,)
)
Applicant,)
)
v.) **ORDER OF DISMISSAL**
)
State of South Carolina,)
)
Respondent.)
)

This matter comes before the Court by way of Application for Post-Conviction Relief filed September 17, 2010. The Respondent filed its Return and Partial Motion to Dismiss on April 28, 2011. An evidentiary hearing into the matter was convened at the Moss Justice Center in York County on June 2, 2011. The Applicant was present at the hearing and was represented by Brian R. Murphy, Esquire. The Respondent was represented by Assistant Attorney General Harrison D. Brant.

The Applicant testified on his own behalf at the hearing, and also presented the testimony of another witness, Tabitha Castleberry. The Applicant's plea counsel, Erik Delaney, also testified at the hearing. This Court had before it the records of the York County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript.

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 York County. He was indicted at the November 2009 term of the York County Grand Jury for Distribution of Crack Cocaine, 3rd

offense (2009-GS-46-4386), and Distribution of Crack Cocaine within Proximity of a Public Park or Playground (2009-GS-46-4387). Erik D. Delaney, Esquire, represented the Applicant on these charges. On December 18, 2009, the Applicant pled guilty to the lesser offense of Distribution of Crack Cocaine, 2nd offense, and pled guilty as indicted to the proximity charge. As part of plea negotiations, the State recommended a sentence of six (6) to twelve (12) years and agreed to dismiss a second set of distribution and proximity charges. The Honorable John C. Few sentenced the Applicant to ten (10) years for each charge, concurrent to each other. The Applicant did not appeal his convictions or sentences.

ALLEGATIONS

In his application for post-conviction relief, and through his testimony at the evidentiary hearing, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel

   a) Failure "to advise Applicant of his right to direct appeal"

   b) Failure "to request a suppressing hearing to establish a physical chain of custody pursuant to State v. Chisolm"

   c) Failure "to challenge the indictment when indictment fail to allege all the essential elements of the offense charged. The indictment should have alleged to be in violation of section 44-53-445 and therefore the court was divested of jurisdiction. . . . [C]ounsel was ineffective for failure to make a pretrial motion to quash the indictment, and should have known that a defendant who fail to properly execute waivers of indictment before properly pleading guilty to an indictment which had not been presented to grand jury would have his guilty plea vacated."

   d) Conflict of interest

e) Counsel advised that he would receive a 6 to 8 year sentence if he pled guilty

2. Lack of subject matter jurisdiction

3. "Invalid indictment, double jeopardy"

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 (2003).

Ineffective Assistance of Counsel/ Involuntary Guilty Plea

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove "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, 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, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant must overcome this presumption 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

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counsel. 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.

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).

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). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the post-conviction relief hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

Failure to Advise of Right to Appeal

The Applicant alleges counsel failed to advise him of his right to appeal his guilty plea. "[C]ounsel has a constitutionally imposed duty to consult with the defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal), or (2) that this particular defendant

reasonably demonstrated to counsel that he was interested in appealing." Roe v. Flores-Ortega, 528 U.S. 470, 480, 120 S. Ct. 1029, 1036 (2000). Absent extraordinary circumstances, such as those set forth in Flores-Ortega, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea. Turner v. State, 380 S.C. 223, 224, 670 S.E.2d 373, 374 (2008). "The bare assertion that a defendant was not advised of his appellate rights is insufficient to grant relief. Instead, there must be proof that extraordinary circumstances exist such that the defendant should have been advised of the right to appeal." Weathers v. State, 319 S.C. 59, 61, 459 S.E.2d 838, 839 (1995).

The Applicant initially testified counsel did not advise him of the right to an appeal, and that he would have asked for one if he had been aware of the right. However, he later testified that counsel actually advised him that he could not appeal his conviction. On cross-examination, he testified he did not know what grounds he had for an appeal.

Counsel testified he talked to the Applicant after the plea, and the Applicant never indicated he wanted an appeal. He also testified he saw no grounds for an appeal, and could not provide a legitimate basis for one. He specifically testified he never told the Applicant he could not appeal his conviction, and he would have filed one if the Applicant had so asked.

This Court first finds the Applicant's testimony on this issue not credible, while also finding counsel's testimony credible. The Applicant's testimony on this issue was inconsistent, and his assertions are irreconcilable with each other. This Court also finds the Applicant failed to meet his burden of proof. The Applicant never indicated to counsel that he wanted an appeal, nor did he have any grounds for one. Extraordinary circumstances did not exist such that counsel was required to advise the Applicant that he could appeal his guilty plea. Therefore, counsel was not deficient in this manner, and the claim is without merit.

Conflict of Interest

The Applicant alleges his attorney was ineffective because he had a conflict of interest. To establish ineffective assistance due to a conflict of interest arising from multiple representation, a defendant who did not object at trial must shown an actual conflict of interest adversely affected his attorney's performance. Thomas v. State, 346 S.C. 140, 143, 551 S.E.2d 254, 257 (2001). "An actual conflict of interest occurs where an attorney owes a duty to a party whose interests are adverse to the defendant's." Staggs v. State, 372 S.C. 549, 551, 643 S.E.2d 690, 692 (2007). "The mere possibility defense counsel may have a conflict of interest is insufficient to impugn a criminal conviction." State v. Gregory, 364 S.C. 150, 152-53, 612 S.E.2d 449, 450 (2005). "[U]ntil a defendant shows that his counsel actively represented conflicting interests, he has not established the constitutional predicate for his claim of ineffective assistance." Lomax v. State, 379 S.C. 93, 102, 665 S.E.2d 164, 168 (2008) (citation omitted). "[T]he fact that counsel does not advise a defendant of the potential conflict of interest does not affect the constitutionality of the conviction." Id. (citation omitted).

The Applicant testified he and his ex-girlfriend, Tabitha Castleberry, were arrested on possession of marijuana charges. He stated counsel represented both of them on these charges, but never advised him that he represented his ex-girlfriend. Ms. Castleberry testified she was arrested in her home in 2009 for possession of marijuana. She stated the police came in her house looking for the Applicant, and the marijuana was on her table. She testified she was charged and represented by a public defender. She could not say for certain who the public defender was, but thinks it was Erik Delaney, plea counsel for the Applicant. She testified the public defender who represented her wanted her to testify against the Applicant and say the marijuana was his; however, she did not want to because it was her marijuana. She did not,

however, discuss with anyone the Applicant's crack cocaine charges underlying this application for post-conviction relief.

Plea counsel testified he represented the Applicant on two sets of crack distribution charges and the possession of marijuana charge involving Ms. Castleberry. The marijuana charge was dismissed at a preliminary hearing. He also testified, however, that he never represented Ms. Castleberry, has never seen her before today, and was never approached by the State about her testifying against the Applicant. He stated he reviewed the records of the public defender's office, and those records indicate Ms. Castleberry was pro se on this 2009 marijuana charge. The records do indicate, however, that she was later represented by John Cummings, another public defender, on a later marijuana charge unrelated to this case.

This Court finds the testimonies of the Applicant and Ms. Castleberry not credible on this issue. The Applicant provided no proof or first-hand knowledge to support his testimony that counsel represented his co-defendant and ex-girlfriend, Ms. Castleberry. In addition, Ms. Castleberry herself could not positively identify counsel as the attorney who represented her. On the other hand, this Court finds the testimony of counsel credible on this issue. This Court also finds the Applicant failed to prove counsel ever represented any individual with interests adverse to that of his own, or that counsel's performance was ever adversely affected by his representation of another individual. Accordingly, this claim is denied and dismissed.

Failure to File Motion to Quash Indictment

The Applicant alleges counsel should have filed a motion to quash an indictment. Indictments are sufficient when they allege time and place, as required by law, and charge the crime substantially in the language of the statute or the common law which prohibits the crime or so plainly that the offense charged may be easily understood and, if the offense is statutory, that

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the offense is contrary to the statute involved. S.C. Code Ann. § 17-19-20 (2003). All indictments must be viewed with a "practical eye" to determine whether they fulfill their function to notify the accused of the charge he must answer, notify the court of what judgment and sentence to pronounce, and present a bar to subsequent prosecution. See State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005).

The Applicant testified indictment 2009-GS-46-4387 for the proximity charge was defective because it does not properly cite § 44-53-445(B)(2) as the statutory section he was accused of violating. Therefore, he asserts, counsel should have moved to dismiss the indictment.

This allegation is conclusively refuted by the record. Indictment 2009-GS-46-4387 properly identifies § 44-53-445 as the statutory section the Applicant violated. The reference to this section encompasses all of the subsections of that statute, including § 44-53-445(B)(2). The language of the indictment also properly alleges that the Applicant violated this section in the language of subsection (B)(2): "That on or about April 16, 2009 . . . Johnson J. Mitchell, did distribute . . .a quantity of cocaine base . . . within a one-half mile radius of the grounds of Arcade Victoria Park." Therefore, this Court finds no basis on which the indictment was defective, and counsel was not ineffective for failing to file a motion to quash the indictment. This claim is denied and dismissed.

Counsel's Advice Regarding Sentence

The Applicant alleges counsel misadvised him regarding the sentence he would receive as a result of his guilty plea. The Applicant testified counsel advised that he would receive a sentence between six to eight years. This Court finds the testimony of the Applicant not credible. Counsel testified he never promised the Applicant a sentence of six to eight years, and

the Applicant was aware of the best and worst case scenarios as far as sentencing.

Furthermore, the record supports counsel's testimony and contradicts the Applicant's. The trial court stated the minimum sentence for the proximity charge was ten years, and suspension of that sentence was highly unlikely. (Tr. 3). The court also stated that the potential sentence for the second offense distribution charge was five to thirty years. The Solicitor recommended a sentence of six to twelve years. The court then explained that the sentence for the distribution charge was not parolable, and thus a six year sentence on the distribution charge would not likely make a difference the Applicant's release date in consideration of the ten year sentence he would receive for the proximity charge. (Tr. 4). The court then gave counsel time to discuss this issue with the Applicant, after which counsel indicated the Applicant wished to proceed. The Applicant then testified that he understood the proximity charge carried ten to fifteen years, and the distribution charge carried five to thirty years. The Applicant then testified nobody made him any promises to get him to plead guilty, notwithstanding the Solicitor's recommendation of six to twelve years. (Tr. 7-8).

This Court finds the Applicant was made fully aware of the potential consequences of his plea. This Court finds counsel did not promise the Applicant a six to eight year sentence. Assuming counsel misadvised the Applicant in this manner, any such error was cured by the colloquy with the plea court. See Wolfe v. State, 326 S.C. 158, 485 S.E.2d 367 (1997). Accordingly, this claim is denied and dismissed.

Failure to Request Suppression Hearing

In his application, the Applicant alleged counsel was ineffective for failing to request a suppression hearing regarding the chain of custody of certain evidence. The Applicant failed to present any evidence on this issue at the evidentiary hearing. Accordingly, this Court finds the

Applicant failed to meet his burden of proof as to this claim, and the claim is denied and dismissed.

Knowing and Voluntary Nature of the Plea

This Court otherwise finds that the Applicant's plea was entered into voluntarily, knowingly, and intelligently. The Applicant was made aware of the right to a jury trial and rights pertinent thereto as well as the fact these rights would be waived by entering a plea of guilty. (Tr. 6-7). The Applicant stated he understood the charges and the potential sentences they carry. (Tr. 5-6). He stated he wished to plead guilty and is guilty of these offenses. (Tr. 7). He stated he was satisfied with his attorney, and there is nothing his attorney failed to do. He stated he was not promised anything or threatened to plead guilty, and this was his own decision. (Tr. 8). He agreed with the facts as stated by the Solicitor, and stated he sold the crack to the confidential informant. (Tr. 11). This Court finds the Applicant has failed to show why he should be allowed to depart from the truth of these statements. See Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct.App.2007) ("A guilty plea is a solemn, judicial admission of the truth of the charges against an individual. . . .Therefore, statements made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements.").

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence trial counsel committed either errors or omissions in his representation of the Applicant.

This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by counsel's performance. This Court concludes Applicant has not met his

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burden of proving counsel failed to render reasonably effective assistance. Therefore, the allegation of ineffective assistance of counsel is denied.

Subject Matter Jurisdiction

The Applicant generally alleged the trial court lacked subject matter jurisdiction. A circuit court has subject matter jurisdiction to convict a defendant of an offense if there is an indictment that sufficiently states the offense, the defendant waives presentment, or the offense is a lesser-included offense of the crime charged in the indictment. State v. Wilkes, 353 S.C. 462, 464-465, 578 S.E.2d 717, 719 (2003), citing Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001). To the extent the Applicant testified at the hearing that the indictments were invalid, this Court has already held such a claim is without merit. The Applicant otherwise failed to present any evidence as to this claim. Accordingly, the Applicant failed to meet his burden of proof. This Court finds the trial court had subject matter jurisdiction to accept the Applicant's plea. This claim is denied and dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes 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 advises the parties that in order to secure the appropriate appellate review, notice of appeal must be served and filed within thirty (30) days after receipt by counsel of notice of entry of this order. See Rules 203 and 243 of the South Carolina Appellate Court Rules. This Court notes that post-conviction relief counsel must advise an applicant of the right to seek appellate review of a post-conviction relief order. State v. Bray, 366 S.C. 137, 620

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S.E.2d 743 (2005). Also, pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (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), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on an applicant's behalf.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be dismissed with prejudice; and

2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 11th day of October, 2011.

Lee S. Alford
Presiding Judge
Sixteenth Judicial Circuit

York, South Carolina.

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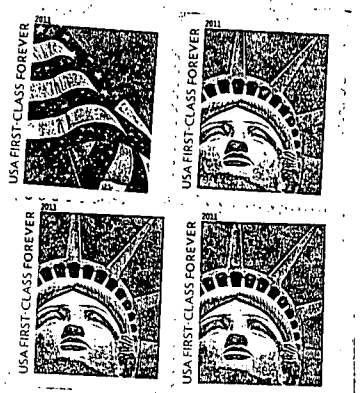

Law Office of Brian R. Murphy, LLC
Post Office Box 805
Fort Mill, South Carolina 29716

Johnson D. Mitchell

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