

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

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September 28, 2016

**RECEIVED**

OCT 03 2016

S.C. SUPREME COURT

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

RE: Allen A. Rauch, SCDC # 260097, vs. State of South Carolina  
Appeal of Case No. 2014-CP-41-0001

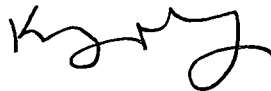
Dear Mr. Shearouse,

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. Rauch as I was appointed in this matter. 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

Allen Rauch, SCDC # 260097  
McCormick Correctional Institution  
386 Redemption Way  
McCormick, SC 29899

The Honorable Doris B. Holmes  
Clerk of Court  
100 East Church Street  
Saluda, South Carolina 29138

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

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S.C. SUPREME COURT

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APPEAL FROM SALUDA COUNTY  
Court of Common Pleas

Brooks P. Goldsmith, Circuit Court Judge

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Case No. 2014-CP-41-0001

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Allen Altorian Rauch, SCDC # 260097..... Appellant

v.

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

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NOTICE OF APPEAL

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Applicant Allen A. Rauch hereby appeals from the Order of the Honorable William P. Keesley presiding Judge for the 11<sup>th</sup> Judicial Circuit, filed September 15, 2016 and received by counsel for the Applicant on September 27, 2016 in the matter of Allen A. Rauch v. State of South Carolina, Case No. 2014-CP-41-0001.

September 28, 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, Johnanna Valenzuela  
Office of the Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211

THE STATE OF SOUTH CAROLINA  
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S.C. SUPREME COURT

APPEAL FROM SALUDA COUNTY  
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Brooks P. Goldsmith, Circuit Court Judge

Case No. 2014-CP-41-0001

Allen Altorian Rauch, SCDC # 260097..... 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 June 30, 2015 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

**Other Counsel of Record:**

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



409). Applicant was originally represented by public defendant Greg Seigler, Esquire. Mr. Seigler was relieved, and Applicant hired Benjamin Stitely, Equire, to represent him. On February 11, 2013, Applicant entered a guilty plea as indicted without negotiations or recommendations. The Honorable Thomas A. Russo sentenced Applicant to seventeen years in prison for kidnapping and armed robbery and five years for the weapons offense. The sentences were to be served concurrently. Applicant did not appeal his sentence or conviction.

### 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 and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

#### Ineffective Assistance of Counsel

*WPA #2*  
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 SCRCF 71.1(e)).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 688, 692, 104 S. Ct. 2052, 2065, 2067 (1984) ("[T]he defendant must show that counsel's representation fell below an objective

standard of reasonableness [and] . . . any deficiencies in counsel's performance must be prejudicial to the defense in order to constitute ineffective assistance under the Constitution."); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006) ("PCR applicant must prove: (1) that counsel failed to render reasonably effective assistance under prevailing professional norms; and (2) that the deficient performance prejudiced the applicant's case."). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (internal citations omitted).

In determining guilty plea issues, the PCR court should consider the guilty plea transcript as well as evidence at the PCR hearing. Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

This Court will now address each allegation of ineffective assistance of counsel:

***I. Alleged failure to inform Applicant the plea offer would be withdrawn***

Applicant alleges former counsel Greg Seigler conveyed an offer of ten years to him in November of 2011. Applicant also alleges he did not know that offer could expire. Applicant also alleges plea counsel Benjamin Stitely did not convey any offers to him.

Applicant, however, admits his former counsel Greg Seigler did convey an offer of ten years that Applicant elected not to take because he wanted a bond hearing. Applicant also admits former counsel Greg Seigler conveyed an offer of a cap of 15 years to him. Applicant explained that because he did not feel comfortable with that offer and worried about getting the max, he elected not to accept that offer as well. Applicant claims neither attorney ever explained that the

offer would expire or told him when it would expire.

Former counsel Greg Seigler explained he conveyed all offers to Applicant. Mr. Seigler explained that it was the practice of the prosecutors to withdraw an offer that was not accepted in the term the offer was made. In October of 2012, Mr. Seigler was notified that Applicant's case was being called to trial; he went to the jail to meet with Applicant, and Applicant refused to meet or speak with Mr. Seigler.

Plea counsel, Benjamin Stitely, testified he took over Applicant's case when it was already on the trial docket. Mr. Stitely explained that he moved to continue the case the next business day after being retained in the case and never received any offers from the State. Mr. Stitely did understand that Applicant was hoping for ten years, and he expressed to Applicant that he would do what he could to try and get that offer from the State; however, the State did not make any further offers.

*W/Ad #4*

In his plea transcript, Applicant was advised he could receive up to sixty-five years in prison and that he was pleading without any recommendation. (Plea Tr. pp. 3-5; p. 27, ll. 22-24.) Applicant told the plea judge he was guilty (Plea Tr. p. 5, l. 24.), he was pleading without any promises or threats being made (Plea Tr. p. 27), he was aware of and waiving his constitutional rights (Plea Tr. pp. 8-10), and that he was satisfied with his counsel (Plea Tr. p. 13, l. 20 – p. 14, l. 15.). Applicant assured the plea judge that he had answered all questions truthfully. (Plea Tr. pp. 14-15.) Applicant admitted the facts as outlined in the record were correct. (Plea Tr. p. 23.)

This Court finds Applicant has failed to meet his burden of establishing either former counsel or plea counsel were ineffective and has failed to establish any prejudice. Applicant rejected or did not accept in a timely manner the plea offers he now contends he should have

available to him. Further, the plea transcript shows Applicant confessed to his crimes and refutes any claim that Applicant did not enter his pleas of guilty freely, knowingly, voluntarily, and intelligently.

*II. Alleged failure to make a motion to reconsider the sentence*

Applicant also claims plea counsel, Benjamin Stitely, was ineffective for failing to file a motion to reconsider his sentence after the plea. Applicant testified plea counsel told him he was going to move the Court to reconsider the sentence, but plea counsel never filed that motion. Applicant, however, admitted that shortly after his sentence was imposed and while the judge was still on the bench, he yelled out a vulgar phrase to the assistant solicitor on the case and had to be restrained by deputies.

*WPC #5*  
Plea counsel testified that due to Applicant's outburst he met with the plea judge in chambers and asked if filing a motion to reconsider would produce a positive result for his client. Plea counsel did not come away from that chambers discussion believing a motion would be favorable for his client. Further, subsequent to this meeting in chambers, the plea judge held a brief hearing<sup>1</sup> where the Court indicated Applicant's sentence could possibly increase.

Furthermore, the plea transcript outlines Applicant's criminal history, including his prior 1998 common law robbery conviction and his 2003 common law robbery conviction. (Plea Tr. p. 20, ll. 3-23.) This was a factor the Court took in consideration in imposing its sentence. (Plea Tr. p. 37, ll. 3-6.)

This Court finds Applicant has failed to meet his burden of establishing prejudice. It is clear from the judge's comments in chambers and what he told Applicant after his outburst in court that Applicant's sentence would not be reduced.

### III. *Overwhelming Evidence of Guilt*

This Court further finds Applicant cannot meet his burden to show that he was prejudiced by any alleged deficiencies because there is overwhelming evidence of his guilt. See Franklin v. Catoe, 346 S.C. 563, 570 n. 3, 552 S.E.2d 718, 722 n.3 (2001), cert. denied, 535 U.S. 1114, 122 S.Ct. 2332, 153 L.Ed.2d 162 (2002) (finding overwhelming evidence of guilt negated any claim that counsel's deficient performance could have reasonably affected the result of the defendant's trial); Geter v. State, 305 S.C. 365, 367, 409 S.E.2d 344, 346 (1991) (concluding reasonable probability of a different result does not exist when there is overwhelming evidence of guilt); cf. Ford v. State, 314 S.C. 245, 248, 442 S.E.2d 604, 606 (1994) (holding respondent failed to prove prejudice from trial counsel's failure to request an alibi charge where there was overwhelming evidence of guilt).

WPC  
#6

The victim in the case recognized Applicant from when Applicant had previously entered the store and from his distinctive tattoos. (Plea Tr. p. 18, ll. 1-11; p. 18, ll. 21-24.) Applicant was captured on still-motion surveillance camera pointing a gun at the victim and taking money out of the cash register and leaving with the cash. (Plea Tr. p. 16, ll. 16-22.) Photos of Applicant's tattoo from the still-motion surveillance camera were a match to Applicant. (Plea Tr. p. 18, ll. 12-18; p. 19, ll. 24-25.) And, after being advised of his rights, Applicant confessed. (Plea Tr. p. 19, ll. 11-12.)

As a result, Applicant can show no prejudice from any of the allegations raised in his PCR application.

#### All Other Allegations

As to any additional allegations that were raised in the application or at the hearing in this

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<sup>1</sup> The Court did not have this transcript; however, testimony of S provided on this issue.

matter and not specifically addressed in this Order, this Court finds Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds Applicant has abandoned any such allegations.

### CONCLUSION

Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations before or during his guilty plea or sentencing. Counsel was not deficient in any manner, and Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court <sup>CAUTIONS (WPC)</sup> advises Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order <sup>BY COUNSEL (WPC)</sup> if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for <sup>(WPC)</sup> the appropriate procedures to follow after notice of intent to appeal has been timely filed.

WPC  
#7

*Signatures on next page*

### **IT IS THEREFORE ORDERED:**

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That Applicant be remanded to the custody of Respondent.

**AND IT IS SO ORDERED** this 12<sup>TH</sup> day of SEPT., 2016.

William P. Keesley  
William P. Keesley  
Presiding Judge  
Eleventh Judicial Circuit

Lynchburg, South Carolina.

#8

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

ALLEN ALTORIAN RAUCH, #260097

Applicant,

v.

STATE OF SOUTH CAROLINA,

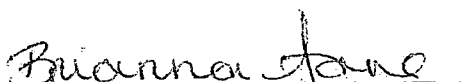
Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Order of Dismissal** has been served upon the applicant by mailing one (1) copy in the United States mail, postage prepaid, addressed to:

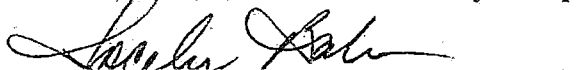
**Kristy G. Goldberg, Esquire**  
1720 Main Street, Suite 303  
Columbia, SC 29201

This 23<sup>rd</sup> day of September, 2016.



Brianna Arnone  
Legal Assistant for Respondent

SWORN to before me this 23<sup>rd</sup> day of September, 2016.



Notary Public for South Carolina.

My Commission Expires: 12/16/2024

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

