



LAW OFFICE OF TRICIA A. BLANCHETTE

January 9, 2017
VIA HAND DELIVERY

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

RECEIVED

JAN - 9 2017

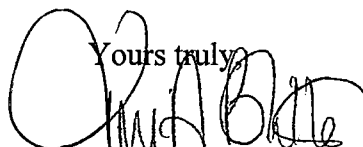
S.C. SUPREME COURT

RE: Kadeem Johnson v. State; Docket No.: 2014-CP-43-0794

Dear Sir:

For filing, attached please find an original Notice of Appeal, copies of the Orders issued by the Honorable Brooks P. Goldsmith, and Certificate of Service. I am copying this letter and attached documents on the Office of Appellate Defense since Mr. Johnson is in need of the services of the Office of Appellate Defense for his appeal.

Thank you for your assistance with this matter. Please contact my office with any questions.

Yours truly,


Tricia A. Blanchette
Attorney at Law

cc: Julie Coleman, Office of the Attorney General
Office of Appellate Defense
Sumter County Clerk of Court (Notice)
Kadeem Johnson

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SUMTER COUNTY
Court of Common Pleas
Post Conviction Relief

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JAN -9 2017

Honorable Brooks P. Goldsmith, Circuit Court Judge

S.C. SUPREME COURT

Case No.: 2014-CP-43-794

Kadeem Johnson, 350533,

Petitioner,

vs.

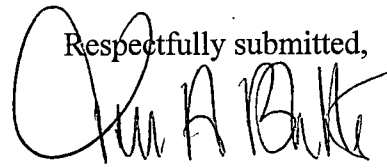
State of South Carolina

Respondent.

NOTICE OF APPEAL

Kadeem Johnson, Petitioner, appeals the Order of Dismissal issued by the Honorable Brooks Goldsmith on October 18, 2016. Petitioner also appeals the Order on Motion Pursuant to 59(a) & (e), SCRCPP, issued by the Honorable Brooks Goldsmith on November 28, 2016, which was filed on December 1, 2016. Petitioner, through counsel, received notice of the entry of the Order on December 12, 2016.

Respectfully submitted,



Tricia A. Blanchette
S.C. Bar No. 74904
PO Box 2147
Leesville, SC 29070
(803) 908-3266

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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JAN -9 2017

S.C. SUPREME COURT

APPEAL FROM SUMTER COUNTY
Court of Common Pleas
Post Conviction Relief

Honorable Brooks P. Goldsmith, Circuit Court Judge

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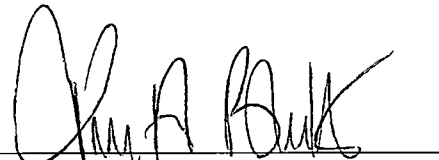
State of South Carolina

Respondent.

CERTIFICATE OF SERVICE

I, Tricia A. Blanchette, Attorney at Law, hereby certify that a copy of a Notice of Appeal, with attachments was placed in the United States mail this 9th day of January 2017 to Julie Coleman of the Attorney General's Office, at:

Office of the Attorney General
Att: Julie Coleman, Ast. AG
PO Box 11549
Columbia, SC 29211



Tricia A. Blanchette
Bar #74904
PO Box 2147
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(803) 908-3266

January __, 2017

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)

IN THE COURT OF COMMON PLEAS)
FOR THE THIRD JUDICIAL CIRCUIT)

Kadeem Johnson, #350533)

Case No.: 2014-CP-43-794)

Applicant,)

v.)

ORDER OF DISMISSAL)

State of South Carolina,)

Respondent.)
_____)

This matter came before the Court by way of an application for post-conviction relief (PCR) filed April 25, 2014. Respondent filed its return on or about August 28, 2014. Applicant filed an amended application on or about February 10, 2016, to which Respondent did not file a response. An evidentiary hearing was convened regarding this matter on March 13, 2016 at the Sumter County Judicial Center. Applicant was represented by Tricia Blanchette, Esquire, and Respondent was represented by Jessica E. Kinard, Esquire of the South Carolina Attorney General's Office.

Testimony was provided by the Applicant and Charles T. Brooks, III, Esquire ("plea counsel"). At the close of testimony, argument was heard from the attorneys regarding whether plea counsel provided Applicant with a definitive amount regarding the number of years he was likely to receive during sentencing after a guilty plea. The attorneys and the Court could not reach a consensus as to what the testimony revealed, and the Court ordered Respondent to request the transcript of the testimony of the witnesses to be used in preparation of briefs on this issue. The Court had before it a copy of the PCR transcript, a copy of the plea and pre-trial transcript, the records of the Sumter County Clerk of Court regarding the subject conviction,

Applicant's records from the South Carolina Department of Corrections, and the pleadings. The Court finds as follows:

I. Procedural History

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. The Applicant was true bill indicted at the March 2011 term of the Sumter County Grand Jury under a three count indictment for Attempted Murder, Attempted Armed Robbery, and Possession of a Weapon During the Commission of a Violent Crime (2011-GS-43-0481) and under a two count indictment for Armed Robbery, and Possession of a Weapon During Violent Crime (2011-GS-43-0469). Subsequently, Applicant was true bill indicted at the July 2011 term of the Sumter County Grand Jury for Armed Robbery (2011-GS-43-0939). Charles Brooks, Esquire represented Applicant. On April 17, 2012, Applicant pled guilty before the Honorable W. Jeffrey Young. Judge Young sentenced Applicant to twenty-five year term of imprisonment for Armed Robbery (2011-GS-43-0939), twenty year term of imprisonment for Attempted Armed Robbery (2011-GS-43-0481), twenty year term of imprisonment for Attempted Murder, five year term of imprisonment for Possession of a Weapon During Violent Crime (2011-GS-43-0481), twenty five years for Armed Robbery (2011-GS-43-0469), five year term of imprisonment for Possession of a Weapon During Violent Crime (2011-GS-43-0469). All sentences were to run concurrently.

A timely Notice of Appeal was filed and an Anders¹ brief was submitted on Applicant's behalf by Robert M. Pachak, Esquire. The South Carolina Court of Appeals affirmed

¹ Anders v. California, 386 U.S. 738 (1967).

Applicant's conviction. State v. Kadeem Johnson, Op. No. 13-UP-331 (Ct. App. filed July 31, 2013). The Remittitur was issued on August 23, 2013.

II. Allegations

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

1. Ineffective Assistance of Counsel
 - a. "Counsel failed to conduct adequate investigation and prepare for trial. Therefore providing me inadequate (sic) legal advise."
 - b. "Between the filing of speedy trial motion and trial. The delay was helpful to the state."
2. "Discrimination in sentencing between me and my co-defendant."

The amended application contained the following additional allegations:

1. Ineffective Assistance of trial/plea counsel for failure to prepare and investigate Applicant's case during the two years leading up to trial, which resulted in a failure to review the evidence with Applicant and properly prepare Applicant for trial culminating in an involuntary guilty plea. Specifically, but not limited to:
 - a. Ineffective assistance of counsel for failure to move for dismissal at the preliminary hearing or anytime thereafter since the arrest warrant was issued based upon the statements of Randy Lowery, which do not name Applicant.
 - b. Ineffective assistance of counsel for failure to either obtain the statements of Higgins and Gordon in time to prepare for trial and investigate the statements or make a Brady motion regarding the State's disclosure of the statements. Pre-trial Transcript pp. 21-24.
 - c. Ineffective assistance of counsel for failure to have knowledge of and/or review the SLED findings with Applicant and make sure such findings were properly reflected in the record.
 - d. Ineffective assistance of counsel for failure to address the differing language in the indictments and for failure to clarify if Applicant was being charged as a principal or under the theory of hand of one is the hand of all.
 - e. Ineffective assistance of counsel for failure to prepare to cross-examine and impeach the testimony of co-defendant Upchurch.
 - f. Ineffective assistance of counsel for failure to act on Applicant's request for a speedy trial.

2. Ineffective assistance of counsel for appearing to not know what charges the State planned to proceed with at trial and for not preparing Applicant for the charges he would face at trial, which resulted in an involuntary guilty plea Pre-trial Transcript. Pp. 25-6.
3. Ineffective assistance of counsel for failure to object to the Court's opening comments to the jury regarding a true and just verdict. Pre-trial Transcript p. 6, Ins. 8-12. See State v. Daniels, 401 S.C. 251, 737 S.E.2d 473 (2012).
4. Ineffective assistance of counsel for inducing Applicant's guilty plea on advice that the court would sentence him close to the fifteen year sentence of his codefendant and failing to put such information on the record during the plea and reconsideration phase.
5. Pursuant to United States v. Cronin, 466 U.S. 648, 104 S.Ct. 2039 (1984) and Nance v. Ozmint, 367 S.C. 547, 626 S.E.2d 878 (2006), Applicant alleges that counsel rendered ineffective assistance in violation of the Sixth Amendment's requirement that Applicant have counsel acting in the role of an advocate and in violation of the adversarial process the Sixth Amendment protects when counsel failed to subject the State's case to a meaningful adversarial testing.
6. Pursuant to Rule 15(b), SCRPC, Applicant would move to amend to conform to the evidence and testimony presented at the evidentiary hearing.

III. Findings of Fact and Conclusions of Law

The Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the evidentiary hearing. The Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court finds Counsel's testimony credible and Applicant's testimony not credible. The 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).

Summary of Testimony

Kadeem Johnson, Applicant

The Applicant began by testifying that counsel had represented him on a juvenile case and that his grandmother retained him for this matter. He stated that they met approximately three times, and were focusing getting him bond, to the point where he thought they were going

for a bond hearing when they were actually ready to proceed to trial. Applicant testified that counsel "told" him to take a plea and that they were pushing for a trial, but did not seem to be preparing for it. He testified that he reviewed the discovery in the case with counsel, including a video. He further testified that he believed counsel waived a preliminary hearing without consulting him.

PCR counsel presented two statements from Randy Lowery as evidence in the matter. Applicant testified that neither statement had his name on them, even though they were used to implicate him. Two other statements were admitted, one from Brady Higgins and one from Michael Gordon, for the proposition that plea counsel did not review their testimony. When questioned about whether he provided this information to his attorney, though, Applicant admitted that he did not give this information to plea counsel. Similarly, PCR counsel admitted reports from the South Carolina Law Enforcement Division ("SLED") regarding DNA evidence on the basis that it was no in plea counsel's file.

Applicant testified that he did not discuss the indictments with plea counsel, particularly the difference between his indictment as a principal versus a participant under the "hand of one is the hand of all" theory. He further testified that he was not consulted on any preparation regarding cross examination of his co-defendant, particularly regarding to what he could or would testify. He did, however, understand that the fact that his co-defendant pled and would testify against him changed the dynamics of his case.

Applicant testified to several motions that were made prior to the trial. One was a motion for a speedy trial because he wanted to have a trial before January of 2012. He was also aware of a motion to elect charges that was made by plea counsel, as well as a motion for a continuance

due to the late revelation of some statements through the discovery process. None of these resulted in rulings in the Applicant's favor.

Applicant testified at length regarding his understanding of the changes and the advice of counsel regarding taking a plea deal. He understood that if he testified, the solicitor could use his prior record to impeach him. He testified that counsel urged him to take a plea before a jury was ever pulled, and that counsel told him that he would not be sentenced to the same term of fifteen years as his co-defendant, but he would not get much more than that. Applicant testified that he ultimately pled because he did not believe his counsel was prepared to go forward with trial. He further testified that he did not believe that counsel fairly submitted his case to adversarial testing as required by Cronic, supra, and Ozmin, supra, because plea counsel continued to tell Applicant that everything was okay and refused to answer questions. Applicant testified that even though he was aware at the time of all of these issues that he has raised as allegations in this PCR, he decided to plead guilty, regardless. Ultimately, Applicant agreed that he knew of all of these issues before he entered his plea, yet he still entered his plea freely, knowingly, intelligently, and voluntarily, as well as with the advice of counsel.

Charles T. Brooks, III, Esquire – plea counsel

Plea counsel was called by PCR counsel and began by testifying that he did not recall any facts about a preliminary hearing in this matter. He did recall that there were problems receiving discovery, and that he filed an inventory motion due to that. The discovery was sent piecemeal, and there was still not much harmful evidence because no one could put the Applicant at the scene. He further recalled that the Applicant had been in jail for quite a while, which led him to file a motion for a speedy trial. He was aware that the solicitor's office was under pressure to

dispose of this case, or else the Applicant may be released. Part of this pressure was due to the fact that there had been changes in the solicitor's office during Applicant's pre-trial detention.

PCR counsel inquired of plea counsel why he did not raise more issues regarding discovery problems in pre-trial conference, and he stated that with everything that he had been provided, the State had no case and, even with the items that were provided the first day of trial, the State still did not have a case, so there was no value in fighting. This opinion led him to state that he did not investigate the statements that he received on the first day of trial because they were written a year after the crime occurred and the affiants probably had criminal records, on top of the fact that they still did not provide any hard evidence. He agreed with PCR counsel that the solicitor's office should have sent the discovery far earlier than it did.

Regarding further possibility of investigation, plea counsel testified that he remembered many of the statements implicating the co-defendant, rather than the Applicant. This was particularly true regarding the statements of Randy Lowery, which he recalled and remembered having in his file at the time of trial/plea entry.

The majority of testimony from plea counsel is revolved around the plea negotiation that occurred in chambers on the first day of trial after Applicant and plea counsel learned that the co-defendant was going to plead and become a state's witness. Plea counsel recalled telling Applicant that, "The dynamics of your case have changed drastically," as co-defendant's testimony was the only way Applicant could be linked to the crime. Plea counsel testified that, upon hearing this information, Applicant stated, "Man, I got to plea now." Regarding the chambers conference, plea counsel recalled the plea judge stating that he would not give Applicant the same sentence that he gave his co-defendant, but he would not give him much more. PCR counsel relayed this information to the Applicant with the understanding that this

meant a 16-18 year range. Based on this information, the Applicant pled, even though he had never wavered in his desire for a trial until that point due to the lack of evidence against him. When he received a sentence of twenty-five years, plea counsel testified that they were both shocked. He further testified that the Applicant had not done anything to antagonize the judge, such as waffling on whether he would take the plea, and plea counsel had no explanation for the sentencing. For this reason, he filed a motion for reconsideration of the sentence. When asked by PCR counsel if he believed he should have put the chambers conference on record, plea counsel testified that he did not believe he had an affirmative duty to do that – sometimes it is done and sometimes it is not. In this particularly case, because he was not given a definite number by the judge, only the information that the Applicant would not get the same benefit of pleading early that his co-defendant had received.

Plea counsel testified that he was ready to go to trial and proceed under a defense of actual innocence because the State simply did not have enough evidence to make a case against the Applicant. However, when the co-defendant decided to plead guilty, everything changed. He would have had to try to work around any testimony of the co-defendant, which would have certainly linked the Applicant to the crimes, and attempt to impeach his testimony. Based on the totality of those circumstances, he believed that his best advice for the Applicant was to plead guilty.

Ineffective Assistance of Counsel²

In this post-conviction relief action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective

² This case law will cover all following allegations and subsections of this order that involve ineffective assistance of counsel.

assistance of counsel as a ground for relief, 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." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether counsel provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The Court strongly presumes counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The Court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove counsel's performance was deficient. Id. Under this prong, the Court measures counsel's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

Similarly, in order to warrant a new trial after a guilty plea, an applicant must prove that (1) counsel's performance was deficient and (2) there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty. Johnson v. Catoe, 336 S.C. 354, 520 S.E.2d 617 (1999); Wolfe v. State, 326 S.C. 158, 485 S.E.2d 367 (1997); Satterwhite v. State, 325 S.C. 254, 481 S.E.2d 709 (1997).

a. Failure to prepare and investigate Applicant's case leading to an involuntary guilty plea

To establish that counsel failed to adequately prepare for trial, an applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel prepared more fully. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998); 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). This Court finds that Applicant failed to present any credible evidence that either counsel was actually unprepared in the preparation that was done, or that any extra preparation would have produced a different result. The record and testimony reflects that, although pleading guilty was not the original plan for the Applicant nor his primary desire, he understood the ramifications of the plea deal, as well as the alternative he faced in going to trial.

b. Ineffective assistance of counsel for failure to move for dismissal at the preliminary hearing or anytime thereafter since the arrest warrant was issued based upon the statements of Randy Lowery, which do not name Applicant.

Applicant's testimony at the PCR hearing was that, upon initially reviewing his arrest warrants and indictments, he believed the implicating witness was a man named Randy Lowery; however, upon review of discovery received for purposes of the PCR, he discovered that Mr. Lowery's statements to law enforcement do not implicate him by name. He further testified that he would have wanted plea counsel to try to dismiss the indictments, and that plea counsel did not discuss the possibility of using these statements to impeach Mr. Lowery if the State had called him as a trial witness. He also stated that plea counsel waived a preliminary hearing without his permission. Plea counsel did not recall if he was retained in time to request a preliminary hearing.

An underlying flaw in this allegation is the apparent belief of the Applicant that the laws of this State require arrest warrants to reveal the sources of information upon which they are issued. "...[A] requirement in arrest warrants [to disclose the source of their information] would tend to a

miscarriage of justice in many instances, and would be tantamount to requiring the prosecution to furnish defendant with the names of the witnesses against him, and this has never been required in this State, even in felonies." Town of Mayesville v. Clamp, 149 S.C. 346, 147 S.E. 455 (1920), citing State v. Robinson, 61 S. C. 106, 39 S. E. 247. The warrant was not required to list the name of the person providing the statement, and the Applicant presented merely his own belief and no evidence as to whether Randy Lowery was the implicating witness. Furthermore, arrest warrants are not required to include the name of the individual to be arrested if they include a particular description so that the suspect may be positively identified. See generally U.S. Const., Fourth Amendment; S.C. Const., Art. I, Sect. 10. This Court finds that Applicant did not meet his burden in establishing ineffective assistance of counsel regarding this allegation.

- c. Ineffective assistance of counsel for failure to either obtain the statements of Higgins and Gordon in time to prepare for trial and investigate the statements or make a Brady motion regarding the State's disclosure of the statements. Pre-trial Transcript pp. 21-24.

Applicant alleged that the statements of Higgins and Gordon should have been investigated or plea counsel should have moved to have them excluded pursuant to Brady³ because of their late receipt by plea counsel. These documents were turned over by the State on the Friday before trial began on Monday. Applicant testified that he was not aware of these statements before they were turned over, nor was he aware of these men as potential witnesses. Plea counsel testified credibly that, at the time that he could address the issue of these statements with the trial court, he did not see them as a threat or in any way detrimental to the case against the Applicant. Furthermore, when it became apparent that Applicant's best course of action would be to plead guilty, the statements and any details surrounding them became irrelevant.

³ Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194 (1963).

This Court finds that Applicant did not meet his burden in establishing ineffective assistance of counsel regarding these statements.

- d. Ineffective assistance of counsel for failure to have knowledge of and/or review the SLED findings with Applicant and make sure such findings were properly reflected in the record.

Applicant alleged that plea counsel was ineffective because he failed to have knowledge of a SLED report, as well as to discuss it with Applicant and reflect the findings in the record. Applicant testified that, after reviewing the SLED files himself, he wished that plea counsel had discussed with him the fact that testing could not be done on the items that were received. He believed that, because there was no physical evidence that could put him at the scene, these SLED reports were key evidence in a possible exoneration. Plea counsel testified that the inconclusive SLED reports were but one piece of evidence that proved nothing against the Applicant – part of his strategy of actual innocence. Certainly this is a reasonable and articulated trial strategy and, “where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel.” Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992). This Court finds that Applicant did not meet his burden in establishing ineffective assistance of counsel regarding the SLED reports.

- e. Ineffective assistance of counsel for failure to address the differing language in the indictments and for failure to clarify if Applicant was being charged as a principal or under the theory of hand of one is the hand of all.

Applicant alleged that the differing language in the three indictments, which contained multiple counts in total, raises questions as to how he was actually charged, whether it is as principal or under accomplice liability. This Court finds that Applicant failed to present any evidence as to how this alleged failure by plea counsel was actually a deficiency on his part or

caused any prejudice. As a result, this Court further finds that Applicant failed to meet the burden of establishing ineffective assistance of counsel regarding this allegation.

- f. Ineffective assistance of counsel for failure to prepare to cross-examine and impeach the testimony of co-defendant Upchurch.

Applicant alleged that plea counsel was not prepared to cross-examine and/or impeach the testimony of Kareene Upchurch if the case had proceeded to trial. The only evidence provided at the PCR hearing regarding this allegation is Applicant's testimony that he was unaware if plea counsel ever tried to speak with Mr. Upchurch, and he was unaware of what trial counsel would ask Mr. Upchurch during trial. Conversely, plea counsel testified that both he and Applicant were aware that Mr. Upchurch was the only evidence, so to speak, linking Applicant to the crime, and that Mr. Upchurch's decision to plead changed the entire posture of Applicant's case. This Court finds that Applicant has failed to present any credible evidence to support his claim that plea counsel was unprepared. There is no evidence in the record to support this claim and, therefore, Applicant has failed to meet his burden of establishing ineffective assistance of counsel regarding this allegation.

- g. Ineffective assistance of counsel for failure to act on Applicant's request for a speedy trial.

Applicant alleged and testified that, due to plea counsel's failure to act on his request for a speedy trial, the State gained an advantage due to the delay. Plea counsel testified that he was aware that the State was under pressure to dispose of this case, as Applicant could be released from jail due to his long stay and lack of any movement or negotiation on the case. He was further aware of issue within the solicitor's office due to the change in the elected solicitor. Plea counsel again testified that he knew the State had no evidence against the Applicant, and was therefore not too concerned about the time that had passed. This Court finds that plea counsel's

decision to file a speedy trial motion and pursue it in the timeframe and manner that he did is a valid trial strategy and, as discussed above, a valid trial strategy cannot be considered ineffective assistance of counsel. Applicant has failed to meet his burden of proof regarding ineffective assistance of counsel on this matter.

- h. Ineffective assistance of counsel for appearing to not know what charges the State planned to proceed with at trial and for not preparing Applicant for the charges he would face at trial, which resulted in an involuntary guilty plea

Applicant alleged that plea counsel appeared not to know which charges the State planned to proceed on and, thereby, provided ineffective assistance of counsel. As a subpart of this allegation, Applicant contended that this caused him to be unprepared for the charges he would face at trial, which resulted in an involuntary guilty plea. Applicant testified that plea counsel's making of the motion to elect charges sent him a message that his attorney did not know why there in court that day. Conversely, plea counsel testified that he made this motion out of an abundance of caution – the charges against Applicant were crimes that occurred over a three day span, and he was attempting to limit his client's exposure as much as possible, especially as he was only then learning of the co-defendant's guilty plea.

This Court finds that plea counsel's motion to elect charges is reasonable and articulable trial strategy. This is a motion that is regularly made during the course of criminal cases, and its existence has no bearing or indication on whether plea counsel knew what charges the Applicant was facing. Further, it stretches the imagination to believe this motion equates a lack of preparedness on the part of plea counsel for this matter to go forward at trial, or that it could lead to an involuntary guilty plea by the Applicant. Applicant has failed to meet his burden of proof regarding ineffective assistance of counsel on this matter.

- i. Ineffective assistance of counsel for failure to object to the Court's opening comments to the jury regarding a true and just verdict.

Applicant alleged that the plea court's statement to the jury regarding a true and just verdict should have drawn an objection from plea counsel, and this failure to object equals ineffective assistance of counsel. For this proposition, Applicant cites State v. Daniels, 401 S.C. 251, 737 S.E.2d 473 (2012). This court agrees with the Applicant's reading of the Daniels case, as well as that it applies in this matter. However, this court does not find that this is a case of ineffective assistance of counsel, as the Applicant ultimately pled guilty. Because a plea was entered, any actions involving the jury become moot and ultimately have no bearing on the outcome of this plea. Therefore, this court finds that Applicant did not meet his burden to prove ineffective assistance of counsel.

- j. Ineffective assistance of counsel for inducing Applicant's guilty plea on advice that the court would sentence him close to the fifteen year sentence of his codefendant and failing to put such information on the record during the plea and reconsideration phase.

Applicant alleged that he pled guilty upon the reliance of plea counsel's statement that he would not get a sentence of more than fifteen years, as that was the sentence that his co-defendant received. At the PCR hearing, plea counsel credibly testified that he did not advise Applicant that he would get fifteen years, but rather that he believed the plea judge was inclined to give him a sentence of "not much more" than what his co-defendant received fifteen years based on a chambers conference. Extensive testimony and argument was presented at the PCR hearing regarding both plea counsel's and Applicant's understanding of this conversation, and this court ordered that transcripts of their testimony be prepared to help produce this order.

After reviewing the information provided, this court finds that this claim does not satisfy the burden required to prove ineffective assistance of counsel, nor does it provide any indication

that this guilty plea was involuntarily entered. The testimony showed that, though the contents of the chambers conference was not put on the record, its recollection by plea counsel to the Applicant yielded a mutual understanding of the conversation – they both believed that the plea judge’s statement indicated a likely sentence of sixteen or seventeen years. It is clear that plea counsel acted within reason based on his understanding of the situation. His decision not to put this conversation on the record, whether during sentencing phase or during reconsideration, is a decision made within the bounds of reasonable trial strategy and prevailing professional norms. Furthermore, Applicant testified that the fear of a long sentence was not his primary reason for pleading guilty. For these reasons, this court finds that Applicant did not meet his burden to prove ineffective assistance of counsel.

- k. Pursuant to United States v. Cronin, 466 U.S. 648, 104 S.Ct. 2039 (1984) and Nance v. Ozmint, 367 S.C. 547, 626 S.E.2d 878 (2006), Applicant alleges that counsel rendered ineffective assistance in violation of the Sixth Amendment's requirement that Applicant have counsel acting in the role of an advocate and in violation of the adversarial process the Sixth Amendment protects when counsel failed to subject the State's case to a meaningful adversarial testing.

This court finds that this allegation is without merit, and no evidence was presented to satisfy the burden of proving ineffective assistance of counsel. Applicant testified that plea counsel told him that everything was okay and under control, but Applicant did not feel prepared for the proceedings. He felt that plea counsel had not investigated his case, and he did not realize that until the day that trial began, which ultimately led him to enter a guilty plea.

Though Applicant has alleged that plea counsel was ineffective in many ways, this court is not persuaded by any arguments presented during the PCR hearing or afterward by way of brief. Plea counsel testified credibly regarding his preparation, his analysis of the factors involved in the case, and his weighing of the options between proceeding with trial and advising

his client to take a guilty plea. This court is not convinced that any of the evidence presented rises to the level of a failure to submit this matter to adversarial testing or to perform as an advocate pursuant to the Sixth Amendment guarantees. For these reasons, this court finds that Applicant did not meet his burden to prove ineffective assistance of counsel.

The South Carolina Supreme Court has held that "a guilty plea need only represent a voluntary and intelligent choice among alternative courses of action open to the defendant." James v. State, 377 S.C. 81, 84, 659 S.E.2d 148, 150 (2008) (citing North Carolina v. Alford, 400 U.S. 25, 31, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970)). It is clear from the credible testimony of plea counsel, and echoed by portions of the Applicant's less credible testimony, that Applicant made a knowing, intelligent decision to plead guilty based on the information and advice provided to him by plea counsel.

Lastly, this court finds that there is no reason to conclude that there was overwhelming evidence of guilt in this matter, and specifically refrains from making such a finding. There is a presumption under South Carolina law that, if there is overwhelming evidence of guilt, deficient performance may not result in prejudice. Geter v. State, 305 S.C. 365, 409 S.E.2d 344 (1991). That matter is not at issue in this application.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this order, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

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

RECORDED

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2014CP4300794

Kadeem Johnson

2016 DEC -2 AM 10:11
JAMES R. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

South Carolina State of

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Clerk of Court

Attorney for: Plaintiff Defendant
 Self-Represented Litigant

TRUE COPY
OF ORIGINAL FILED

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: _____

DEPUTY CLERK OF COURT
SOUTH CAROLINA

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: **See attached Order.**

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 2099 Date 12/2/2016
For Clerk of Court Office Use Only

SCANNED
JAN 9 2016

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 parties (when appearing pro se) as follows:

Kadeem #350533 Johnson Lee Correctional Inst/Asu North
34 990 Wisacky Hwy Bishopville, SC 29010
Tricia A. Blanchette PO Box 12725 Columbia, SC 29211

Alan McCrory Wilson PO Box 11549 Columbia, SC
29211-1549

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

James C. Campbell

Court Reporter

James C. Campbell - 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.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER) DOCKET NO.: 2014-CP-43-0794

RECORDED
2016 DEC -1 PM 3:03
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

CERTIFIED TRUE COPY
OF ORIGINAL FILED
Sherry H. Shaw
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

KADEEM JOHNSON,)
Applicant,)

v.) ORDER ON MOTION PURSUANT TO
) 59(a) &(e), SCRPC

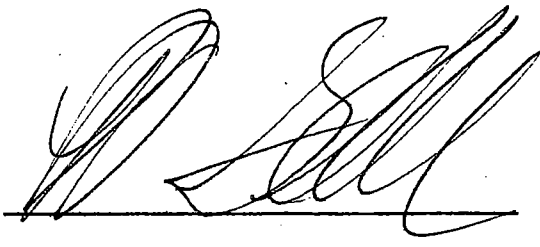
STATE OF SOUTH CAROLINA)
Respondent)

THIS MATTER COMES BEFORE THE COURT UPON APPLICANT'S MOTION DATED November 1, 2016. Both parties submitted briefs. After thoroughly reviewing the briefs and considering the issues raised therein I find no compelling reason to alter or amend the prior order of this court dated October 18, 2016.

ACCORDINGLY, Applicant's Motion is hereby denied.

IT IS ALL SO ORDERED.

November 28, 2016



Brooks P. Goldsmith
CIRCUIT JUDGE