

# THE BOOZER LAW FIRM, LLC

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January 12, 2017

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

The Honorable James C. Campbell  
Clerk, Sumter County  
215 N. Harvin Street  
Sumter, SC 29150

**RECEIVED**

**JAN 17 2017**

**S.C. SUPREME COURT**

**RE: Timothy Wilson, #359578, v. State of South Carolina  
2015-CP-43-2130**

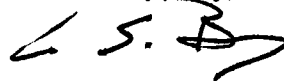
Dear Mr. Shearouse and Mr. Campbell:

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;
- (2) A copy of the Order which is to be challenged on appeal; and
- (3) Prior Order of Appointment of Counsel.

As I was appointed to represent Mr. Wilson in his PCR proceeding, I anticipate that the Office of Appellate Defense will represent Mr. Wilson in this appeal.

Yours very truly,



Lance S. Boozer

Enclosures

cc: Julie Coleman, AAG  
Loriene French, OAD  
Timothy Wilson, #359578

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

**RECEIVED**

JAN 17 2017

S.C. SUPREME COURT

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APPEAL FROM SUMTER COUNTY  
Court of Common Pleas

The Honorable Jocelyn Newman, Circuit Court Judge

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Case No. 2015-CP-43-2130

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Timothy Wilson, #359578, .....Petitioner,

v.

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

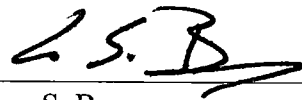
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**NOTICE OF APPEAL**

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The Petitioner appeals the Honorable Jocelyn Newman's Order dated December 20, 2016, denying post-conviction relief to the Petitioner and received by undersigned counsel on January 4, 2017. A copy of the Order on appeal is attached to this notice.

Respectfully submitted,



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Lance S. Boozer  
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Tele: 803-608-5543

January 12, 2017

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**JAN 17 2017**

**S.C. SUPREME COURT**

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM SUMTER COUNTY  
Court of Common Pleas

The Honorable Jocelyn Newman, Circuit Court Judge

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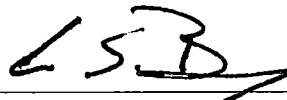
Timothy Wilson, #359578, .....Petitioner,

v.

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

**PROOF OF SERVICE**

I, Lance S. Boozer, attorney for Petitioner, certify that I have today served within Notice of Appeal upon the Respondent by depositing a copy of it in the United States Mail, postage prepaid, addressed to Assistant Attorney General Julie Coleman, P.O. Box 11549, Columbia, SC 29211. I further certify that all parties required by Rule to be served have been served this 12th day of January, 2017.

  
Lance S. Boozer  
The Boozer Law Firm, LLC  
1400 Laurel Street, Suite 4A  
Columbia, SC 29201  
Tele: 803-608-5543

STATE OF SOUTH CAROLINA  
COUNTY OF SUMTER

RECORDED  
IN THE COURT OF COMMON PLEAS  
JUDICIAL CIRCUIT  
2016 DEC 30 PM 5:59

Timothy Jamal Wilson, #359578,

JAMES C. CALDWELL 2015-CP-43-2130  
CLERK OF COURT  
SUMTER COUNTY, S.C.

Applicant,

v.

**ORDER OF DISMISSAL**

State of South Carolina,

Respondent.

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on September 11, 2015. Respondent submitted its return on November 17, 2015. An evidentiary hearing was convened on July 27, 2016, at the Sumter County Courthouse. Applicant was present at the hearing and was represented by Lance Boozer, Esquire. Respondent was represented by Assistant Attorney General Julie A. Coleman of the South Carolina Attorney General's Office.

**I. PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. Applicant was true bill indicted at the July 2013 term of the Sumter County Grand Jury for murder, possession of a weapon during the commission of a violent crime, unlawful carrying of a pistol, weapons/sale or delivery of pistol to, and possession by, certain persons unlawful; stolen pistol (2013-GS-43-0744). Elaine Cooke, Esquire represented Applicant. On June 17, 2015, Applicant pled guilty to attempted murder before the Honorable W. Jeffrey Young. Judge Young sentenced Applicant pursuant to negotiations to a twelve year term of imprisonment. Applicant did not appeal his guilty plea or sentence.



## II. ALLEGATIONS

In his current application, Applicant alleges that he is being held in custody unlawfully based on the following allegations:

1. Ineffective assistance of counsel
  - a. Failure to investigate and suppress any evidence
  - b. Failure to file an appeal

Applicant filed an amended application on February 24, 2016, adding an additional allegation of an involuntary guilty plea.

## III. APPLICABLE LAW

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order 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 counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any 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." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty pleas, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart , 474 U.S. 52, 106 S.Ct. 366 (1985).

#### IV. 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 (1985).

##### INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant raises two allegations arguing that Plea Counsel was ineffective in his representation surrounding his guilty plea. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. See Al-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (1999) (citing Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993)). This Court finds that the testimony presented at the PCR hearing satisfies neither prong of the Strickland test; Applicant can show neither ineffectiveness nor prejudice, thus these allegations should be denied and dismissed with prejudice.

This Court finds that Plea Counsel's representation did not fall below the standard of reasonableness under professional norms set out in Strickland. Plea Counsel acted competently in Applicant's best interest throughout the course of her representation and went above and beyond what was required of her.

At the hearing, Plea Counsel credibly testified that she met with Applicant several times prior to the guilty plea and they discussed Applicant's version of the facts and possible defenses. She stated that on April 2, 2014, she reviewed all of the discovery material with Applicant. She testified that Applicant wanted to claim self-defense, but she explained to him that law enforcement had a taped statement from him that negated his self-defense claim. Plea Counsel stated that she was prepared for a castle doctrine hearing, even though she believed the argument would fail based on the circumstances, but he pled guilty before a hearing was held.

Based on this testimony, this Court finds that Plea Counsel was not ineffective for failing to investigate Applicant's case, and that it was reasonable for Plea Counsel to focus on pursuing plea negotiations under the circumstances. Plea Counsel met a reasonable standard of professional norms in her investigation of this case. This Court further finds that Applicant has failed to prove that Plea Counsel was ineffective in any way regarding his charges or guilty plea.

This Court further finds that Plea Counsel was not ineffective for failing to file an appeal of Applicant's guilty plea. Plea Counsel testified that she did not recall Plea Counsel or his mother asking her to file an appeal, but if they had, she would have filed one. She stated that her typical practice is to discuss the right to appeal with her clients during or after the plea. Although she did not recall doing this in this case, Plea Counsel testified that the plea judge explained Applicant's right to appeal on the record during the plea. This Court finds that Applicant has produced no credible evidence that he requested an appeal, and Plea Counsel was not ineffective for failing to file an appeal.

Because Applicant has failed to meet his burden in proving that Plea Counsel was ineffective and that his ineffectiveness prejudiced him, these allegations are denied and dismissed with prejudice.

### INVOLUNTARY GUILTY PLEA

Applicant alleges that his guilty plea was entered involuntary. He testified that the only reason he pled guilty is because Plea Counsel brought his mother to the trial to coerce him into taking the plea deal rather than going to trial. This claim is meritless and must be denied.

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant 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, 23 L.Ed.2d 274 (1969). Defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 97 S. Ct. 1621, 52 L.Ed.2d 136 (1977)). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. United States, 519 F.2d 347 (4th Cir.1975).

At the evidentiary hearing, Applicant testified that he did not want to take the plea deal, but he decided to plead because his mother was upset and she talked him into taking the deal. Applicant's mother testified that she did not actually get a chance to tell her son to take the plea deal. She stated that she did not want to influence him to do anything that he did not want to do. She stated that it was Applicant's decision to plead guilty, not hers.

This Court finds that the record reflects that Applicant was fully advised of the rights he was giving up by pleading guilty. Applicant presented no credible evidence as to why he should be able to depart from his statements at the plea hearing. This Court finds very credible Plea Counsel's testimony that she advised Applicant of all facts and risks of pleading guilty. This Court finds that Applicant's plea was knowingly and intelligently entered. Applicant, Applicant's mother, and Plea Counsel all testified that it was Applicant's decision to plead guilty. This Court finds that Applicant was not coerced and forced in any way to plead guilty, and he voluntarily chose to enter his plea.

The record reflects Applicant fully admitted his guilt to the plea court. "A guilty plea constitutes a waiver of nonjurisdictional defects and claims of violations of constitutional rights." Jamison v. State, 410 S.C. 456, 467, 765 S.E.2d 123, 129 (2014) (citing State v. Rice, 401 S.C. 330, 331-32, 737 S.E.2d 485, 485-86 (2013); Hyman v. State, 397 S.C. 35, 44, 723 S.E.2d 375, 379 (2012)). Notably the South Carolina Supreme Court has held "[a] guilty plea represents a break in the chain of events which has preceded it in the criminal process." Id. (citations omitted). "When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea." Id. (citing Rice, 401 S.C. at 332, 737 S.E.2d at 486). Therefore, this Court finds the plea judge correctly found Applicant's plea was freely, voluntary, and intelligently made. Accordingly, this allegation must be denied and dismissed with prejudice.



### ALL OTHER ALLEGATIONS

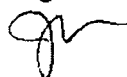
As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds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

### **V. CONCLUSION**

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

This Court notes that 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), SCRCP, 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.

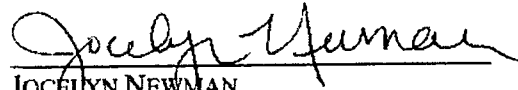
*[signature block on following page]*



**IT IS THEREFORE ORDERED:**

1. That the application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

**AND IT IS SO ORDERED** this 20<sup>th</sup> day of December, 2016.



JOCELYN NEWMAN  
Presiding Judge  
Third Judicial Circuit

Columbia, South Carolina

STATE OF SOUTH CAROLINA )  
COUNTY OF )

Timothy Wilson #359578 )

Plaintiff(s), )  
-vs- )

SC State of )

Defendant(s). )

IN THE COURT OF (Select one.)

COMMON PLEAS  FAMILY COURT

JUDICIAL CIRCUIT

CASE NO.: 2015-CP-43-2130

APPOINTMENT OF COUNSEL OR GAL

(Select one.)

ORDER

AMENDED ORDER

CERTIFIED TRUE COPY  
OF ORIGINAL FILED

*[Signature]*  
DEPUTY CLERK OF COURT  
SUMMER COUNTY  
SOUTH CAROLINA

TYPE OF CASE/PROCEEDING: (Check one.)

- Post-Conviction Relief (PCR)/habeas case
- SVP case
- Minor Name Change
- Adoption
- Custody and/or Visitation
- Other:
- Juvenile
- Abuse and Neglect

It appears that <sup>T. Wilson</sup> ~~Wilson~~, who is a litigant in this case, is entitled to court-appointed counsel or a guardian ad litem.

It further appears that: (Select only one.)

- counsel/guardian ad litem has not yet been appointed by the court; therefore, an appointment for counsel/guardian ad litem is necessary.
- counsel or a guardian ad litem was previously appointed by the court but has indicated either a possible conflict of interest, an entitlement to exemption, or other good cause warranting the appointment of new counsel or guardian ad litem based on: \_\_\_\_\_
- counsel was previously appointed by the court but has not indicated that the litigant has retained private counsel and is no longer entitled to appointed counsel.
- court appointed counsel has obtained \_\_\_\_\_, Esquire as substitute counsel pursuant to Rule 608(h)(2); provided, however, only the member who originally received the appointment and who sought substitute counsel shall receive credit.
- Other:   
Lance Dozer  
1331 Park St  
Columbia, SC 29201

counsel  lead counsel (if capital PCR case)  guardian ad litem

Therefore, it is ordered that \_\_\_\_\_, hereby is appointed as (Select one.)  
for the above-named person. Any counsel or GAL previously appointed is/are hereby relieved.

(If Death Penalty PCR Case) It is further ordered that \_\_\_\_\_, Esquire, is hereby appointed as second counsel in this capital PCR case.

The clerk of court is directed to forward a copy of this order to all persons entitled to notice.

IT IS SO ORDERED THIS 9<sup>th</sup> DAY OF Oct, 2015.

**THE BOOZER LAW FIRM, LLC**

1400 Laurel Street, Suite 4A  
Columbia, SC 29201

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



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