

THE

**GIESE**

LAW FIRM, LLC

RECEIVED

JAN 20 2017

January 17, 2017

S.C. SUPREME COURT

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

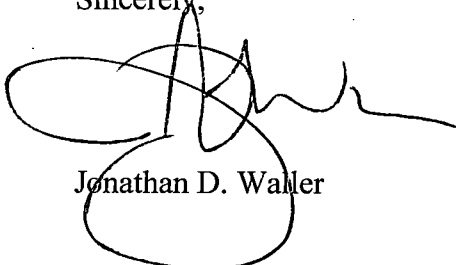
Re: Kendris Brown vs. State of South Carolina  
C/A No: 2014-CP-21-0075

Dear Mr. Shearouse:

Please find enclosed one (1) original and one (1) copy each of Applicant's Notice of Appeal and Certificate of Service in the above referenced case. I would appreciate you filing the original and returning the clocked copies in the enclosed envelope.

I was appointed to represent Mr. BROWN in this matter and am also enclosing a copy of the Order of Dismissal. If you have any questions, please do not hesitate to ask. My telephone number is 803-708-6767.

Sincerely,



Jonathan D. Waller

Cc: Lindsey McCallister, South Carolina Office of Attorney General

Enclosures

STATE OF SOUTH CAROLINA  
In The Supreme Court

---

**RECEIVED**

JAN 20 2017

S.C. SUPREME COURT

APPEAL FROM FLORENCE COUNTY  
D. Craig Brown, Circuit Court Judge

---

2014-CP-21-0075

---

Kendris Brown, #355055,

Appellant,

v.

STATE OF SOUTH CAROLINA,

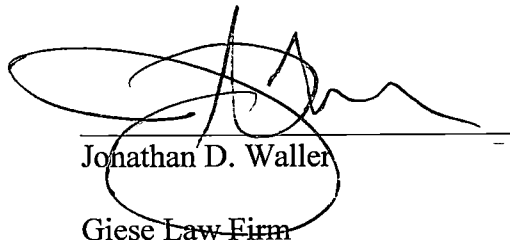
Respondent.

---

NOTICE OF APPEAL

---

Kendris Brown, #355055, appeals the Order of Dismissal denying his Application for Post-Conviction Relief filed December 30, 2016, issued by the Honorable D. Craig Brown, Presiding Judge, Twelfth Judicial Circuit.



---

Jonathan D. Waller

Giese Law Firm  
SC Bar No.: 76290  
1315 Blanding Street  
Columbia, SC 29201  
803-708-6767 (phone)  
803-708-6769 (fax)  
jwaller@thegieselawfirm.com  
ATTORNEY FOR PETITIONER

This 17 day of January, 2017.

Other Counsel of Record:

Lindsey McAllister, Assistant Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3319

STATE OF SOUTH CAROLINA  
In The Supreme Court

---

**RECEIVED**

JAN 20 2017

S.C. SUPREME COURT

APPEAL FROM FLORENCE COUNTY  
D. Craig Brown, Circuit Court Judge

---

2014-CP-21-0075

---

Kendris Brown, #355055,

Appellant,

v.

STATE OF SOUTH CAROLINA,

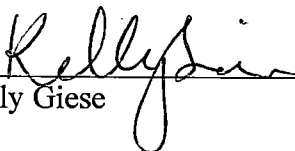
Respondent.

---

CERTIFICATE OF SERVICE

---

The undersigned hereby certifies that one copy of the Appellant's Notice of Appeal in the above-entitled case has been served upon opposing counsel, Lindsey McAllister, Assistant Attorney General, by mailing in an envelope properly addressed with postage prepaid on this 18<sup>th</sup> day of January 2017, to her office located at P.O. Box 11549, Columbia, SC 29211.

  
\_\_\_\_\_  
Kelly Giese

CASE NO. CP-2014-CP-21-0075

Kendris Brown

2017 JAN 3 AM 9:58

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

FLORENCE COUNTY, S.C.

Attorney for:  Plaintiff  Defendant  
 or  
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX)**  
 Affirmed;  Reversed;  Remanded;  Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order (formal order to follow)  Statement of Judgment by the Court:

ORDER INFORMATION

This order  ends  does not end the case.  
 Additional Information for the Clerk :

CERTIFIED A TRUE COPY  
 Clerk of Court C.P. & G.S.  
 FLORENCE COUNTY, S.C.  
*[Signature]*

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

Date



CERTIFIED: A TRUE COPY

STATE OF SOUTH CAROLINA  
COUNTY OF FLORENCE

*Constance Reed-Singer*

CLERK OF COURT OF THE  
FLORENCE COUNTY, S.C.

IN THE COURT OF COMMON PLEAS  
TWELFTH JUDICIAL CIRCUIT

Kendris Brown, #355055,

2014-CP-21-0075

Applicant,

**ORDER OF DISMISSAL**

v.

State of South Carolina,

Respondent.

FILED  
2016 DEC 30 PM 3:05  
CLERK OF COURT  
FLORENCE COUNTY, SC

This matter comes before the Court by way of an Application for Post-Conviction Relief filed January 10, 2014. Respondent made its Return on November 5, 2015. An evidentiary hearing into the matter was convened on November 9, 2016 at the Florence County Courthouse. Jonathan D. Waller, Esquire, represented Applicant. Lindsey A. McCallister, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

At the hearing, Applicant testified on his own behalf. Henry "Skip" Duffee, Jr., Esquire, also testified. This Court had before it a copy of the records of the Florence County Clerk of Court, records from the South Carolina Department of Corrections, the application, the State's Return, and the guilty plea transcript.

**I. PROCEDURAL HISTORY**

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. Applicant was indicted at the September 2012 term of the Florence County Grand Jury for murder, burglary first degree, armed robbery, possession of a weapon during the commission of a violent crime, and conspiracy (2012-

*DCB  
1/10/10*

GS-21-1250). Applicant was represented by Henry "Skip" Duffee, Jr., Esquire. On April 5, 2011, Applicant pled guilty. The Honorable Michael G. Nettles sentenced Applicant to concurrent terms of life imprisonment for murder and first degree burglary. The other charges were dropped. Applicant did not appeal his plea or sentences.

In his original Application, Applicant alleged that he is being held in custody unlawfully because his sentence of life without parole is unconstitutional because he was under age eighteen at the time the crime was committed. Applicant has filed for a resentencing hearing pursuant to Aiken v. Byars, which remains pending, and that allegation was not addressed at this hearing. However, Applicant also filed an Amended Application for Post-Conviction Relief on November 10, 2015, alleging that he is being held in custody unlawfully for the additional reason listed below, which is the only claim that Applicant prosecuted at the PCR hearing:

1. Counsel was ineffective in failing to advise client of possible sentences, evidence, and procedures of trial that ultimately led to client making an unintelligent and unknowing decision to enter a plea of guilt.

## **II. SUMMARY OF TESTIMONY**

### **Applicant's Testimony**

At the evidentiary hearing, Applicant testified that Counsel represented him at his plea and that they met twice prior to the plea. Applicant stated that Counsel did explain "everything" regarding a plea or going to trial and that Counsel advised Applicant that he would be facing a long sentence if he went to trial. Applicant testified that Counsel discussed issues regarding his codefendants with him, but Counsel did not discuss the State's evidence or review discovery with him. Applicant testified that he saw a copy of his discovery in Family Court, but Applicant stated he

PCB  
P-2/10

did not see it again after he was waived up to General Sessions and Counsel was appointed in place of his juvenile public defender. Applicant testified that he wanted a trial, but Counsel never discussed defenses with him, and he did not know what case they would present. Applicant also testified that Counsel told him there was program where he could "do fifteen years and go home." Applicant further testified that Counsel did not discuss mitigation evidence with him and that his family and friends were not present at the plea because they weren't aware of the court date.

On cross-examination, Applicant claimed that Counsel "did not keep his word" regarding "what he told [Applicant]" before the plea. However, Applicant admitted that during his guilty plea, he testified he was satisfied with Counsel, that he understood all of his conversations with Counsel, and, specifically, that Counsel went over all of the elements of his charges and his constitutional rights. Applicant also testified that he told the judge that Counsel had done everything Applicant had asked him to do, and he had no complaints with Counsel's representation. Applicant further testified that he recalled that the judge reviewed the facts on which these charges were based, and Applicant admitted that the facts were true and told the judge that he wished to plead guilty. Applicant stated that when the judge asked him if he had anything to say on his own behalf, Applicant answered, "I ain't got nothing to say."

#### Counsel's Testimony

Counsel testified that at the time of this case, he had been practicing law for four and a half years and that he handled hundreds of clients annually, including both state and federal cases. He stated that he first met with Applicant shortly after he had been waived up to General Sessions, and at that time, Applicant seemed to be scared or untrusting of Counsel, and Counsel did not get much information from him. Counsel testified that there was a "maelstrom" of evidence against Applicant,

PCB  
p 3/10

including multiple witnesses and codefendants who would testify against him and that Applicant did not offer any defenses for investigation. Counsel testified that he received a banker's box full of transcripts from statements and interviews. Counsel explained that did go over the evidence with Applicant by pulling out the most relevant parts and summarizing. On cross-examination, Counsel also testified that he did everything he felt he was legally and ethically required to do for his client, including going over the evidence and elements of the crimes with Applicant, speaking with his family and his attorney from Family Court, and engaging in discussions with the Solicitor's office and counsel for Applicant's codefendants. Counsel testified that his second meeting with Applicant took place after he had a chance to speak with these collateral contacts.

Counsel stated that he never considered going to trial and that his strategy was to try to get Applicant less than a life sentence by being able to present a "truncated version of the facts" at a guilty plea and avoiding a highly publicized trial in a case that was well known in the community. Counsel testified that he discussed this strategy with Applicant and that Applicant was in agreement.

Counsel stated multiple times that there was no official plea offer made before the hearing or in open court. Counsel testified that the only indication that less than a life sentence might be possible was during a conversation in the judge's chambers before the plea where the Solicitor made "informal remarks" indicating that the State would be comfortable with a sentence in the range of thirty to forty years. Counsel further stated that he was not sure what program Applicant was referring to, but there was no YOA offer due to the nature of the charges and if Applicant had asked him about that, he would have told Applicant it wasn't possible.

Counsel also testified that he notified Applicant's family of the date of the plea several times in the week leading up to it, and he did not know why they were not present. He stated that he spoke

PCB  
p. 4 of 10

in mitigation on Applicant's behalf using information that he had gathered from Applicant's mother and grandmother. Counsel also testified that he advised Applicant that it would be nice for Applicant to apologize to the victims' family, and he was surprised when Applicant did not do so.

### III. 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).

#### Applicable Law

Applicant alleges that he received ineffective assistance of counsel. In a post-conviction relief action, the applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, 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 (1984); Butler, 286 S.C. at 443, 334 S.E.2d at 814. 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. at 689. 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).

DCB  
P. 58/10

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. Id. at 117, 625. First, the applicant must prove that counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Id. (quoting Strickland v. Washington, 466 U.S. 668, 688 (1984)). 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. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). 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 pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243-44 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)). When a defendant pleads guilty on the advice of counsel, the plea may only be attacked through a claim of ineffective assistance of counsel. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2002) (citations omitted).

PCB  
p. 6/7/10

### Findings of Fact

This Court finds the Applicant's testimony regarding Counsel's ineffectiveness is not credible while also finding Counsel's testimony is credible. This Court also finds Counsel provided effective assistance of counsel in this case. Counsel is a trial practitioner who has extensive experience in the trial of serious offenses. Counsel conferred with the Applicant on two occasions, during which Counsel discussed the pending charges, the elements of the charges, Applicant's constitutional rights, Applicant's version of the facts, and lack of possible defenses. Counsel credibly testified that there was never a formal plea offer for any sentence less than life. Furthermore, this Court finds credible Counsel's testimony that his strategy was to try for less than life through a guilty plea and that Counsel discussed this strategy with Applicant, who agreed with it. *See Stokes v. State*, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992) ("Where, as here, counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel." (citing *Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 529 (1992))).

The record reflects that Applicant's plea was entered freely, voluntarily, knowingly, and intelligently. The plea judge also explained the charges to Applicant, including the maximum penalties on each. The judge informed him he could be sentenced to up to life on both charges. The plea judge also went through each of Applicant's constitutional rights and questioned Applicant as to whether he understood those rights and wished to give them up to plead guilty. Applicant agreed that he did. Applicant admitted he was guilty of these offenses and agreed with the facts presented by the State at the plea. Applicant told the plea court that he was satisfied with his attorney and that Counsel had done everything that Applicant had asked of him. This Court finds that Applicant understood the terms of the plea and the possible sentence.

DCB  
p. 7/7/10

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

This Court also finds that the record fully supports the knowing and voluntary nature of Applicant's guilty plea. See Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (holding defendant’s knowing and voluntary waiver of statutory or constitutional rights in a guilty plea “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.”). In addition, Applicant has presented no evidence or valid reasons why he should be allowed to depart from the truth of his statements made at the plea. See Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (“[Admissions] 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.” (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975))).

For these reasons this Court finds Applicant has failed to satisfy his burden of proving ineffective assistance. Accordingly, this allegation is denied and dismissed.

DCH  
P. 8/10

### 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 evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

### IV. CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Counsel was not deficient in any manner, nor was Applicant prejudiced by counsel's representation. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice. This Court also finds as to all other allegations that Applicant failed to present evidence of such claims and thus, this Court deems them abandoned, with the exception of Applicant's petition for resentencing pursuant to Aiken v. Byars, which is still pending.


The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt 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, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRPC, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

DCB  
p. 9 of 10

**IT IS THEREFORE ORDERED:**

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

**AND IT IS SO ORDERED.**



THE HONORABLE D. CRAIG BROWN  
Presiding Circuit Court Judge  
Twelfth Judicial Circuit

12-21, 2016

Florence, South Carolina

2016 DEC 30 PM 3:05  
CONNIE REED-SHEARIN  
CLERK & OS  
FLORENCE COUNTY, SC

FILED

DCB  
P. 10/27/10

THE

**GIESE**

**LAW FIRM, LLC**

1315 Blanding Street  
Columbia, SC 29201

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

B86700.23

**\$1.095**  
**US POSTAGE**  
**FIRST-CLASS**  
062S0009473977  
29201



[www.usps.com](http://www.usps.com)