

# The Law Office of Tristan M. Shaffer

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Litigation • Injury Law • Criminal Defense

February 7, 2017

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

RECEIVED

FEB 09 2017

S.C. SUPREME COURT

Re: Johnell Richardson v. State 2014-CP-21-0908

Dear Mr. Shearouse,

Please find the enclosed Notice of Appeal, Certificate of Service, and Order of Dismissal in the above referenced case.

Sincerely,



Tristan M. Shaffer

CC:  
Lindsey McCallister  
Florence County Clerk of Court

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM FLORENCE COUNTY  
Court of Common Pleas

Craig Brown, Circuit Court Judge

Case No. 2014-CP-21-0908

RECEIVED  
FEB 09 2017  
S.C. SUPREME COURT

Johnell Richardson # 355032,

Petitioner,

v.

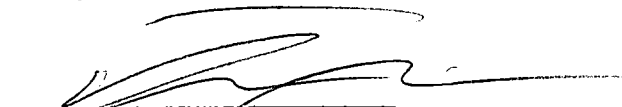
The State of South Carolina,

Respondent.

NOTICE OF APPEAL

Petitioner appeals the order dismissing his post-conviction relief action filed on December 30, 2016. This order was received by Petitioner on January 9, 2017.

February 7, 2017

  
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Attorney for Petitioner

Other Counsel of Record:  
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South Carolina Attorney General's Office  
P.O. Box 11549  
Columbia, South Carolina 29211  
Attorney for Respondent

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM FLORENCE COUNTY  
Court of Common Pleas

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Case No. 2014-CP-21-0908

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S.C. SUPREME COURT

Johnell Richardson # 355032,

Petitioner,

v.

The State of South Carolina,

Respondent.

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PROOF OF SERVICE

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I certify that on the date below I served the Notice of Appeal on The State of South Carolina by mailing a copy to the Attorney General's Office at P.O. Box 11549, SC 29211.

February 7, 2017



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Attorney for Petitioner

Other Counsel of Record:  
Lindsey McCallister  
South Carolina Attorney General's Office  
P.O. Box 11549  
Columbia, South Carolina 29211  
Attorney for Respondent

FILED

*Johnell Richardson* vs *State of South Carolina*

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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 :

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 TRUE COPY  
Clerk of Court C.P. & G.S.  
Florence County, S.C.  
*Christine Kelly Spann*

For Clerk of Court Office Use Only

This judgment was entered on the 30 day of Dec, 2016 and a copy mailed first class or placed in the appropriate attorney's box on this 3 day of Jan 2017 to attorneys of record or to parties (when appearing pro se) as follows:

Iristan Shaffer  
225 Columbia Avenue  
Chapel Hill NC 27030  
ATTORNEY(S) FOR THE PLAINTIFF(S)

Lindsey A. McCallister  
P.O. Box 71549  
Columbia SC 29211  
ATTORNEY(S) FOR THE DEFENDANT(S)  
Doris P. O'Hara  
CLERK OF COURT

Court Reporter:

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.

Multiple horizontal lines for additional information.

CERTIFIED: A TRUE COPY

*Cornie Reel Shearin*

STATE OF SOUTH CAROLINA CLERK OF COURT OF PLEAS IN THE COURT OF COMMON PLEAS  
COUNTY OF FLORENCE FLORENCE COUNTY, S.C. TWELFTH JUDICIAL CIRCUIT

Johnell Richardson, #355032,

2014-CP-21-0908

Applicant,

v.

**ORDER OF DISMISSAL**

State of South Carolina,

Respondent.

2016 DEC 30 PM 3:05  
CORNIE REEL-SHEARIN  
CLERK OF COURT & US  
FLORENCE COUNTY, SC

FILED

This matter comes before the Court by way of an Application for Post-Conviction Relief filed April 10, 2014. Respondent made its Return on November 5, 2014. An evidentiary hearing into the matter was convened on November 7, 2016 at the Florence County Courthouse. Tristan Shaffer, Esquire, represented Applicant. Lindsey A. McCallister, Esquire, of the South Carolina Attorney General's Office, represented Respondent. At the call of the case, Applicant requested a continuance in order to arrange for a witness to be present. Applicant stated that he had mailed a letter to his attorney the previous week requesting that the witness be present. Mr. Shaffer informed the Court that he had not yet received the letter. Respondent opposed the continuance because Applicant had known about the witness, his sister, since the beginning of the case and had ample time to arrange for her to be present. Applicant's request for a continuance was denied.

At the hearing, Applicant testified on his own behalf. Karen E. Parrott, 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.

*DCS  
P 1/17/16*

## **I. PROCEDURAL HISTORY**

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 March 2012 term of the Florence County Grand Jury for six counts of kidnapping and seven counts of armed robbery (2012-GS-21-0238). Applicant was represented by Karen Parrott, Esquire. On April 17, 2013, Applicant pled guilty to five counts of kidnapping and six counts of armed robbery. The Honorable William H. Seals, Jr., sentenced Applicant to concurrent terms of twenty-five years imprisonment. Applicant did not appeal his guilty pleas or sentences.

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

1. Ineffective assistance of counsel.
  - a. Failure to hire a "mitigation investigator."
  - b. Failure to adequately prepare.

## **II. SUMMARY OF TESTIMONY**

### **Applicant's Testimony**

At the evidentiary hearing, Applicant testified that he decided to plead guilty after the jury was seated because Counsel told him that he would lose and could get a life sentence and because his codefendants were prepared to testify against him. Applicant also testified that Counsel contacted his family, and his family members advised him that he should plead guilty. He stated that it was his decision to plead and that he did so because of the influence of his family, even though he wanted to go to trial. Applicant testified that, once he decided to plead, Counsel told him that she would try to get him fifteen years like the previous offer, but Applicant felt she did not put forth any effort to do so. Applicant stated that Counsel advised him not to argue with the judge or Solicitor during the plea and "maybe" he would receive fifteen years. Applicant testified that he turned down two plea

offers, one for twenty years and one for fifteen years, because he was innocent of the charges and wanted a trial.

Applicant testified that Counsel never provided copies of discovery to him, and he did not receive his full file until after his plea, in December 2015. Applicant also testified that Counsel did not review any cell phone records with him, but Counsel did discuss his codefendants' statements with him, and he reviewed a summary report. Applicant further testified that he spoke with the Public Defender's Office investigator multiple times and gave him the names of witnesses who could provide an alibi for him. Applicant stated that the investigator only contacted one witness, but if the investigator had contacted all of the witnesses, Applicant would have gone to trial. Applicant also stated that he never asked Counsel to contact the witnesses herself because he only spoke with her at court, and Counsel did not come to the jail like the investigator did.

Applicant stated he had a hostile relationship with Counsel and that he did not want to plead guilty even after she advised him that he would lose at trial. Applicant stated that he wrote to the Clerk of Court and asked to have Counsel replaced, and he asked Counsel to remove herself from the case, but he was told "that is not how it works." Applicant stated that he never made a motion to relieve Counsel.

On cross-examination, Applicant testified that Counsel did relay the offer of fifteen years to him prior to the plea, but he declined it. Applicant admitted that during his guilty plea, he told the judge that he was satisfied with Counsel, that she had answered all of his questions, and specifically, that she had done everything he asked her to do. 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 he told the judge that he wished to plead guilty. Applicant testified that he did not

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understand that the sentence would be up to the judge, and he did not recall Counsel asking the judge to honor the "offer as of last Friday," which referred to the fifteen year sentence, despite what the transcript showed.

### **Counsel's Testimony**

Counsel testified that she has been practicing law for eighteen years, thirteen of which have been with Public Defender's Office. Counsel stated that she was unsure of the exact number of times she met with Applicant, but her notes reflected multiple phone calls and letters, as well as visits to the jail by the investigator. Counsel also testified that she gave a copy of Applicant's discovery to an officer at the jail and received a letter from Applicant dated the same day, asking questions about the contents of the file. Counsel stated that Applicant gave the names of several family members who purportedly could verify that he was at home at the time of the crimes, but the witnesses did not cooperate with Counsel or the investigator, and none of them could account for Applicant through the entire time period in question. Counsel further stated that Applicant was aware that his family members were not contacting Counsel like he had believed they would and that the investigator was having difficulty locating them. Counsel testified that the State's evidence was particularly strong, including eyewitnesses, codefendants' statements, and cell phone and text message records. Counsel stated that even though some of the text messages were time stamped for the day before the crime, her opinion was that it was not enough to overcome the possibility of a combined 390 year sentence. Counsel believed that the State could prove its case beyond a reasonable doubt and conveyed that belief to Applicant on multiple occasions. Counsel also stated that she believed a plea was in Applicant's best interest.

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Regarding the plea offers, Counsel stated that the first offer was for the State to recommend a cap of twenty years, dropping one count each of armed robbery and kidnapping. Counsel testified a few weeks before trial the State offered fifteen years on two counts of armed robbery. Counsel stated that she conveyed the offer to Applicant via letter on April 1, 2013, and Applicant responded that he wanted a trial on April 10, 2013. Further, Counsel testified that she called Applicant at the jail on April 12, 2013, and he again told her he wanted a trial. Counsel stated she also negotiated for a plea pursuant to North Carolina v. Alford, which the Solicitor at first refused, then changed his mind, and then Applicant refused to agree. In Counsel's opinion, Applicant's refusal to take the Alford plea angered the Solicitor and ended negotiations, so Applicant ultimately pleaded without recommendation from the State. Counsel stated that she and Applicant went over the plea in detail using a standard guilty plea form, though the form was not signed by Applicant.

Finally, Counsel testified that she was prepared to go to trial and was ready to cross examine the State's witnesses. She also testified that she had prepared mitigation arguments for sentencing, which were the same arguments she made during the plea – that Applicant was young, that other codefendants were more involved, and that Applicant was not “the ringleader.

### **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).

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### 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).

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

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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).

### Findings of Fact

This Court finds 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 criminal offenses. Counsel conferred with Applicant on multiple occasions, during which Counsel discussed the pending charges, Applicant's version of the facts, the State's evidence, and the lack of possible witnesses or defenses for Applicant. Additionally, this Court finds that Counsel conducted a thorough investigation of this case. Counsel credibly testified that she conveyed all plea offers to Applicant, which he rejected on numerous occasions, despite Counsel's advice to the contrary.

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The record reflects that Applicant's plea was entered freely, voluntarily, knowingly, and intelligently. In addition to Counsel, the plea judge also explained the charges to Applicant, including the maximum penalties on each. The judge also reviewed 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 her. This Court finds that Applicant understood the terms of the plea and the possible sentence.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in her representation of Applicant. Even assuming *arguendo*, that Counsel's performance was deficient, this Court finds that Applicant has failed to prove the second prong of Strickland, that he was prejudiced by Counsel's performance, because Applicant has failed to establish that the result of the proceeding would have been different even if his allegations were true. This Court concludes the 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

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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.

#### **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.

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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), SCRCP, 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.

**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.**



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

12-21, 2016  
Florence, South Carolina

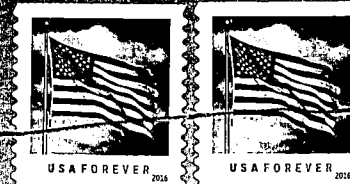
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