

## Lowcountry Law Office

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March 17, 2017

**RECEIVED**

MAR 23 2017

S.C. SUPREME COURT

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

RE: James D. Griffin v. State of South Carolina, Case #: 2014-CP-08-1044

Dear Mr. Shearhouse:

Enclosed for filing is the Notice of Appeal (original and clocked copy) in the above Post Conviction Relief (PCR) case. Also enclosed are the following:

- (1) Proof of service of the Notice of Appeal on the respondent;
- (2) The Order of Dismissal &
- (3) A Request for Representation on Appeal.

The Applicant-Appellant was represented by me as an indigent pursuant to my contract with the South Carolina Commission on Indigent Defense (SCCID) to handle PCR cases. By copy of this letter, I am forwarding a duplicate set of documents to the SCCID.

The Request for Representation on Appeal and the Affidavit in Support thereof are signed by me as attorney for Applicant-Appellant. If you need anything further, do not hesitate to contact me. Thank you for your time and attention to this matter.

Sincerely,

Rodney D. Davis  
South Carolina Bar #: 12396  
4000 Faber Place Drive, Suite 300  
Charleston, SC 29405  
(843) 323-4353  
[Davis@LowcountryLawOffice.com](mailto:Davis@LowcountryLawOffice.com)

Enclosures. As stated above.  
RDD/mmt

cc: ✓ Ruston W. Neely, Assistant Attorney General  
Kimberly McCall, Appellate Division, SCCID

**RECEIVED**

**MAR 23 2017**

**S.C. SUPREME COURT**

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM BERKELEY COUNTY  
Court of Common Pleas

The Honorable G. Thomas Cooper

Case #: 2014-CP-08-1044

James D. Griffin,

Appellant.

v.

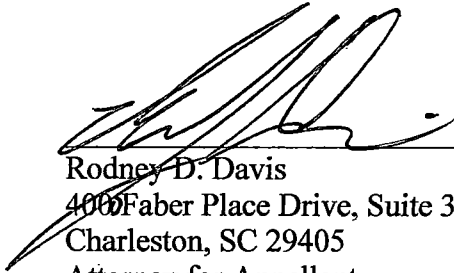
State of South Carolina,

Respondent.

NOTICE OF APPEAL

James D. Griffin appeals the denial of his Post Conviction Relief (PCR) application in this case. The application for relief was denied following an evidentiary hearing before the Honorable G. Thomas Cooper on December 9, 2016.

3/16, 2017

  
Rodney D. Davis  
400 Faber Place Drive, Suite 300  
Charleston, SC 29405  
Attorney for Appellant

Other Counsel of Record:  
Ruston W. Neely  
Assistant Deputy Attorney General  
State of South Carolina  
P.O. Box 11549  
Columbia, SC 29211-1549  
Attorney for Respondent

**RECEIVED**

MAR 23 2017

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM BERKELEY COUNTY  
Court of Common Pleas

The Honorable G. Thomas Cooper

Case #: 2014-CP-08-1044

James D. Griffin,

Appellant.

v.

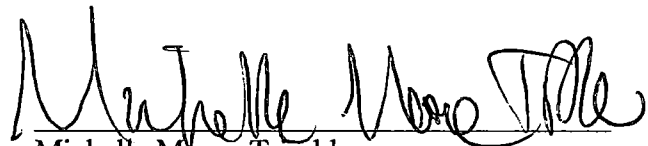
State of South Carolina,

Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the State by mailing a copy, via US Mail, to the address of record, Ruston W. Neely, P.O. Box 11549, Columbia, South Carolina 29211-1549, on March 16, 2017.

March 16, 2017



Michelle Moore Trimble  
Paralegal to Rodney D. Davis  
400 Faber Place Drive, Suite 300  
Charleston, SC 29405  
(843) 323-4353  
Davis@LowcountryLawOffice.com  
Attorney for Appellant

Other Counsel of Record:  
Ruston W. Neely, Assistant Attorney General  
Office of the Attorney General, State of South Carolina  
P.O. Box 11549  
Columbia, SC 29211-1549  
Attorney for Respondent



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**March 17, 2017**

Kimberly McCall  
South Carolina Commission on Indigent Defense  
P.O. Box 11433  
Columbia, SC 29211-1433

RE: James D. Griffin v. State of South Carolina, Case #: 2014-CP-08-1044

Dear Ms. McCall:

Enclosed is a duplicate set of Appeal documents that I have forwarded to the Clerk of the Supreme Court concerning the above-listed Post Conviction Relief (PCR) case. I was appointed to the PCR case pursuant to a contract that I have with your office. I have requested that your office assume the appeal of this case.

Should you need anything further, please do not hesitate to contact me.

Thank you for your time and attention to this matter.

Sincerely,



Rodney D. Davis  
South Carolina Bar #: 12396  
4000 Faber Place Drive, Suite 300  
Charleston, SC 29405  
(843) 323-4353  
[Davis@LowcountryLawOffice.com](mailto:Davis@LowcountryLawOffice.com)

Enclosure(s). As stated above.  
RDD/mmt

cc: James D. Griffin

STATE OF SOUTH CAROLINA )  
COUNTY OF BERKELEY )

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT

James D. Griffin, #231859, )

Case No. 2014-CP-08-1044

v. )

**ORDER OF DISMISSAL**

State of South Carolina, )

Respondent. )

17 FEB 21 PM 1:48  
CLERK OF COURT  
BERKELEY COUNTY, S.C.

*Handwritten initials*

This Court convened an evidentiary hearing into the matter on December 19, 2016, at the Spartanburg County Courthouse. Applicant was present at the hearing and represented by Rodney Davis, Esquire. Ruston W. Neely, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant's plea counsel, Grover "Beau" Seaton, Esquire (hereinafter "plea counsel") was present and testified. This Court had the opportunity to listen to the testimony of Applicant and plea counsel. This Court had before it a copy of the plea transcript, the records of the Berkeley County Clerk of Court regarding the subject conviction. Applicant's records from the South Carolina Department of Corrections, and the pleadings in this matter. This Court finds as follows:

**I. PROCEDURAL HISTORY**

Applicant was indicted at the February 2012 term of the Berkeley County Grand Jury for Burglary, 1<sup>st</sup> degree (2012-GS-08-0254) and Criminal Conspiracy (2012-GS-08-0335). Applicant was also indicted at the September 2012 term of the Berkeley County Grand Jury for Unlawful Escape (2012-GS-08-1720). On June 11, 2013, Applicant pleaded guilty as indicted and to the lesser-included offense of Common Law Escape. The Honorable Stephanie P. McDonald sentenced Applicant to confinement for a period of twenty years for Burglary 1<sup>st</sup>

*Handwritten signature*

degree, ten years concurrent for Common Law Escape, and five years concurrent for Criminal Conspiracy. The Applicant did not appeal his conviction or sentence.

## **II. ALLEGATIONS**

Applicant alleged the following grounds in his original application:

1. "Infect (sic) Assist. Counsel"
  - a. "Counsel failed to inform defendant of his right to appeal"
  - b. "Counsel failed to file motion for appeal"
2. "Due process rights violated"
3. "Pros. Misconduct"

## **III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This Court reviewed the record in its entirety, listened to the testimony given, and heard the arguments presented at the evidentiary 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 fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

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 assistance of plea counsel as a ground for relief, Applicant must prove plea counsel's "conduct so undermined the proper functioning of the adversarial process" that the plea proceedings "cannot be relied upon as having produced a just result." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The Court uses a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove counsel's performance was deficient. Id. Under this first prong, the proper measure of performance is whether plea counsel

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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 plea 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). Second, any 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. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 688.

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 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. 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. Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976). A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the

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defendant would not have pled guilty, but would have insisted on going to trial. Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993).

As an initial matter, this Court finds 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))). Therefore, this Court dismisses Applicant's application for the reasons set out below:

**A. Ineffective Assistance of Counsel**

This Court finds plea counsel's testimony credible and persuasive. This Court finds Applicant's testimony lacks credibility. This Court finds Applicant has failed to satisfy his burden of proving the alleged deficiencies. This Court also finds that Applicant has failed to prove he was prejudiced by plea counsel's actions.

1. Counsel failed to file inform defendant of right to appeal or file an appeal

While trial counsel is required to make certain the defendant is made fully aware of the right to appeal, the standard for a guilty plea differs. Turner v. State, 380 S.C. 223, 224, 670 S.E.2d 373, 374 (2008). Absent extraordinary circumstances, such as when there is reason to think a rational defendant would want to appeal (for example, because there are non-frivolous

grounds for appeal) or when the defendant reasonably demonstrated an interest in appealing, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea. *Id.* at 225, 670 S.E.2d at 374 (citing Roe v. Flores-Ortega, 528 U.S. 470, 120 S.Ct. 1029, 145 L.Ed.2d 985 (2000); Weathers v. State, 319 S.C. 59, 459 S.E.2d 838 (1995)). "Acts inconsistent with the continued assertion of a right, such as a failure to insist upon the right, may constitute waiver." Bonnette v. State, 277 S.C. 17, 18, 282 S.E.2d 597, 598 (1981) (citing 92 C.J.S. Waiver, p. 1063 (1955)). Furthermore, Applicant was told by the plea judge he had 10 days to file an appeal if he wished to do so. Trans. 24.

This Court finds that Applicant has failed to satisfy his burden to prove there was a rational reason to appeal or reasonably demonstrate he informed his attorney he wanted an appeal. Accordingly, Applicant has failed to satisfy his burden to prove ineffective assistance of counsel with regard to this allegation and it is therefore denied and dismissed.

## 2. Due Process rights violated

This Court construes this allegation as an allegation of general ineffectiveness of counsel. At the evidentiary hearing, Applicant claimed he was not able to meet with plea counsel often enough. Applicant claimed plea counsel did not raise the defenses he wanted raised, including an alibi defense, and was not prepared for trial. Applicant admitted he agreed with everything he said during his guilty plea and told the truth at the plea. Applicant agreed he was happy with his attorney and told the truth about what he did the day of the incident at his guilty plea. Plea counsel testified the alibi offense did not cover the time period during which the burglary occurred and was based on Applicant's father. Plea counsel testified he was ready for trial and the trial was docketed to begin the day Applicant entered a plea of guilty.

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This Court finds that Applicant has failed to satisfy his burden to prove plea counsel was deficient or Applicant was prejudiced. Furthermore, Applicant waived any potential defenses he had at trial when he pleaded guilty. Accordingly, Applicant has failed to satisfy his burden to prove ineffective assistance of counsel with regard to this allegation and it is therefore denied and dismissed.

### 3. Prosecutorial misconduct

No testimony or evidence supporting this allegation was presented at the evidentiary hearing. Accordingly, this allegation is denied and dismissed.

### **B. 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 Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds Applicant has abandoned any such allegations.

## **IV. CONCLUSION**

Based on the foregoing, this Court finds and concludes 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 Applicant must file and serve a notice of appeal within thirty (30) days from 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

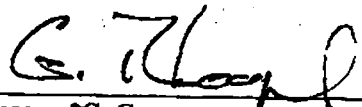
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review, his post-conviction relief attorney must serve and file a notice of appeal on Applicant's behalf. Applicant and his attorney are directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED THAT:**

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 16 day of February, 2017.

  
G. THOMAS G. COOPER  
Presiding Judge  
9<sup>th</sup> Judicial Circuit

Causton, South Carolina



State of South Carolina  
The Circuit Court of the Fifth Judicial Circuit

G. Thomas Cooper, Jr.  
Judge

Post Office Box 1557  
1121 Broad Street, Room 313  
Camden, SC 29021  
Phone: (803) 425-7182  
gcooperj@sccourts.org

February 17, 2017

The Honorable Mary P. Brown  
Berkeley County Clerk of Court  
Post Office Box 219  
Moncks Corner, South Carolina 29461-0219

*RE: James D. Griffin, #231859, v State of South Carolina C/A No.: 2014CP081044*  
Dear Ms. Brown:

Please find enclosed for filing, a signed order in the above captioned case. I have enclosed a copy of the order and if possible, please timestamp and return to Judge Cooper's chambers for our records.

Very truly yours,

A handwritten signature in black ink, appearing to read "George James".

George James  
Law Clerk to the Honorable G. Thomas  
Cooper, Jr.

GTCJr.:gcj

Enclosures

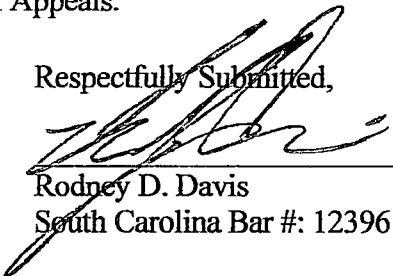
STATE OF SOUTH CAROLINA	)	IN THE SUPREME COURT OF SOUTH CAROLINA
	)	
COUNTY OF BERKELEY	)	Case #: 2014-CP-08-1044
	)	
JAMES D. GRIFFIN,	)	
	)	
Applicant.	)	REQUEST FOR REPRESENTATION ON APPEAL
	)	
-versus-	)	
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

On behalf of the request of the above-named Applicant, to be represented by the South Carolina Commission of Indigent Defense, Appellate Division (SCCID), the undersigned attorney would show unto this Honorable Court that:

1. He is the attorney for the Applicant-Appellant in the above captioned case. The Applicant-Appellant was in custody during and taken into custody immediately following the Post Conviction Relief (PCR) hearing and was not available to personally sign this request;
2. The Applicant-Appellant was represented by the undersigned attorney as an indigent, pursuant to a contract with the SCCID;
3. The Applicant-Appellant has been informed that he may request assistance from the SCCID Appellate Division in perfecting his appeal;
4. A timely Notice of Intent to Appeal has been filed on the Applicant-Appellant's behalf;
5. The Applicant-Appellant has been informed that nothing requires SCCID Appellate Division to pursue this appeal unless that office's Chief Attorney is satisfied that there is arguable merit to this appeal and that he cannot afford to hire an attorney.

At this time, the Applicant-Appellant requests the aid of the SCCID Appellate Division in perfecting his appeal to the South Carolina Court of Appeals.

Respectfully Submitted,

  
 Rodney D. Davis  
 South Carolina Bar #: 12396

Charleston, South Carolina.  
3/16, 2017

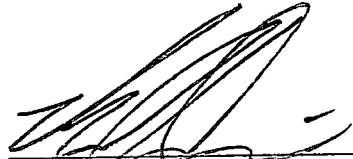
STATE OF SOUTH CAROLINA )

CASE NO: 2014-CP-08-1044

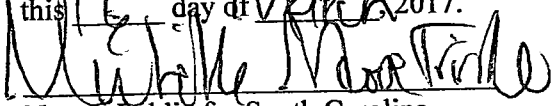
COUNTY OF BERKELEY )

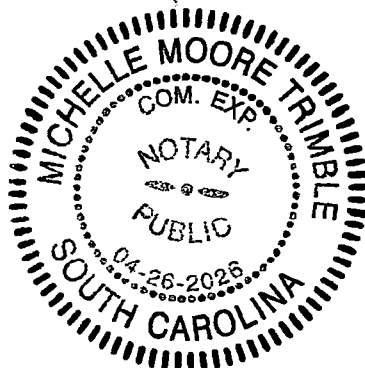
VERIFICATION

PERSONALLY appeared before me, Rodney D. Davis, being first duly sworn, deposes and says that he has read the foregoing *Request for Representation on Appeal* to be filed on behalf of the Applicant-Appellant, **James D. Griffin**, and the same is true of his knowledge except those matters alleged on information and belief, and as to those matters, he believes them to be true.

  
Rodney D. Davis  
South Carolina Bar #: 12396

SWORN to and subscribed to me  
this 16 day of March 2017.

  
Notary Public for South Carolina  
My Commission expires 04/26/2026



**Lowcountry Law Office**

Rodney D. Davis  
4000 Faber Place Drive, Suite 300  
Charleston, SC 29405

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

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