ROSS AND ENDERLIN, PA
ATTORNEYS AT LAW

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S.C. SUPREME COURT

March 24, 2017

Mr. Daniel E. Shearouse
Clerk, The S.C. Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re: Antoine L. Shields v. State

Dear Mr. Shearouse:

Enclosed you will find the original Notice of Appeal in the above matter along with Proof of Service upon the Respondent and the Order of Dismissal. These matters are being referred to the Office of Appellate Defense.

Sincerely,

Susannah Ross
Attorney at Law

enclosure

cc: Office of the Attorney General
Office of Appellate Defense

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THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Frank R. Addy, Jr., Circuit Court Judge

2015-CP-42-2885

Antoine L. Shields, ... Appellant,

v.

The State, ... Respondent.

NOTICE OF APPEAL

Antoine L. Shields appeals the Honorable J. Frank R. Addy, Jr's Order filed on March 17, 2017denying the Applicant post-conviction relief.

This 24 day of March, 2017.

Susannah Ross, Attorney at Law
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Greenville, SC 29601
(864) 242-0029
Attorney for Appellant

Other Counsel of Record:
Alicia Olive, Assistant Attorney General
P.O. Box 11549
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(803) 734-3970
Attorney for Respondent

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
ANTOINE L. SHIELDS,)
APPELLANT,)
)
)
VS.)
)
)
)
THE STATE OF SOUTH CAROLINA,)
RESPONDANT.)
)

IN THE SUPREME COURT

AFFIDAVIT OF SERVICE BY MAIL

1. I am the attorney for the Applicant in the above-captioned matter.

2. Regular communication by mail exists throughout the state of South Carolina and this is a proper circumstance of service by mail.

3. I have this day served a copy of the **Notice of Appeal** on the above-captioned matter on the following person by depositing the same in the United States mail with proper postage affixed thereto:

Attorney General
Alan Wilson
P.O. Box 11549
Columbia, SC 29211

Attorney for Defendant

STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG	)	IN THE COURT OF COMMON PLEAS FOR THE SEVENTH JUDICIAL CIRCUIT
Antoine L. Shields, #363038, Applicant, v. State of South Carolina, Respondent.	)	Case No.: 2015-CP-42-2885 **ORDER OF DISMISSAL**

THIS MATTER COMES BEFORE THE COURT by way of an Application for Post-Conviction Relief filed June 25, 2015, and Addendum filed November 1, 2016. Respondent made a Return on February 17, 2016. The Court convened an evidentiary hearing into the matter on November 7, 2016 at the Spartanburg County Courthouse. Applicant was present at the hearing and represented by Susannah Ross, Esquire. Alicia A. Olive, Esquire of the South Carolina Attorney General's Office represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's stepfather, Rodney Smith, Applicant's co-defendant, Tobias Rogers, and Applicant's plea counsel, Michael D. Morin, Esquire also testified. The Court had before it a copy of the plea transcript, the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the pleadings, the return and amendments, and the exhibits introduced by Applicant and Respondent. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. In September 2014, the Spartanburg County Grand Jury indicted Applicant for three (3) counts of armed robbery and

three (3) counts of possession of a weapon during the commission of a violent crime (2014-GS-42-4298 counts 1 and 2); (2014-GS-42-4299 counts 1 and 2); (2014-GS-42-4300 counts 1 and 2). Applicant waived presentment to the grand jury for the charge of assault and battery—1st degree (2015-GS-42-0628).[1] Michael D. Morin, Esquire, represented Applicant. On February 11, 2015, Applicant pleaded guilty as indicted to all charges. Applicant's plea to counts 1 and 2 in indictments 2014-GS-42-4298 and -4299 were made under North Carolina v. Alford[2] and with a recommendation of concurrent sentencing. The Honorable Letitia H. Verdin sentenced Applicant to concurrent terms of imprisonment for twenty-one (21) years each for the armed robbery charges, ten (10) years for assault and battery—1st degree, and five (5) years for each weapons charge. Applicant did not appeal his guilty plea or sentence.

II. ALLEGATIONS

In his application and addendum, Applicant alleged he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
   a. Failure to investigate
2. Involuntary Guilty Plea
   a. "Guilty plea was not voluntarily obtained under Alford"
3. "Violation of fourth amendment rights
   a. "Counsel failed to protect right to a Gerstein hearing"
4. "Due Process violations in that the plea was not knowingly and voluntarily made without proper inducement"

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. Furthermore, the Court has had the opportunity to observe each witness who testified at the hearing and to closely pass upon their credibility.

[1] Applicant also waived presentment to the Grand Jury and pleaded guilty to financial transaction card fraud (2015-GS-42-0629); however Applicant did not challenge that conviction in this action.
[2] 400 U.S. 25 (1970).

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.

A. Summary of Testimony

Applicant testified that he is innocent. He testified plea counsel did not investigate or interview any of Applicant's witnesses. Applicant testified plea counsel partially reviewed discovery with him. Tobias Rogers, Applicant's co-defendant, testified on behalf of Applicant and testified Applicant had no knowledge of the robbery. Rogers admitted he had five prior convictions for burglary, second degree.

Plea counsel testified he has been practicing law since 1992 and has practiced predominantly criminal law throughout his career. He testified he met with Applicant three (3) or four (4) times prior to the plea. He stated that in his meetings with Applicant, he focused on the robbery involving the police officer, Patrick Thomas, because that was the strongest case the State had and that was the first case the State would take to trial. He testified he filed a motion for discovery and reviewed the discovery with Applicant. He testified he explained to Applicant the evidence against him. He testified that Applicant was found driving the vehicle used in the armed robbery within twenty-five (25) minutes following the incident. He testified Applicant told him his version of the facts, which was that Applicant was asleep in the car while Rogers was driving. He testified he reviewed the police reports and compared them against Google Maps and drove the route himself. He testified that the robbery was carried out by two people, and that Officer Thomas identified one of the individuals but not the other. He testified that he reviewed possible defenses with Applicant. He testified Applicant did not provide him with any leads or potential defense witnesses. He testified that he discussed Applicant's rights with him and that Applicant signed a waiver-of-rights form prior to entering the guilty plea. Counsel

testified his practice is to review the form line-by-line with his clients, placing a check mark next to each item after going over it. He stated that Applicant then signed the form. (See Respondent's Exhibit 1).

B. Ineffective Assistance of Plea Counsel

In a PCR action, Applicant bears the burden of proving the allegations in his 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, 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 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland. 466 U.S. 668; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). First, Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have 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 to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's

unprofessional errors, he would not have [pleaded] guilty, but would have insisted on going to trial." Thompson v. State, 340 S.C. 112, 116, 531 S.E.2d 294, 297 (2000).

Failure to Investigate

Applicant's allegation that Counsel was ineffective for failing to investigate is without merit. Plea counsel engaged in a thorough investigation of the allegations and advised Applicant that there was sufficient evidence to convict him at trial. Counsel testified he met with Applicant three (3) or four (4) times prior to the plea, and that in those meetings he reviewed all discovery material with Applicant, explained the charges and the elements thereof, discussed possible defenses, and discussed with Applicant his constitutional rights. Counsel testified that in these meetings he focused on the armed robbery case that involved the police officer because it was the strongest case and because the State would try it first. Counsel testified that they discussed the possibility of going to trial and that Applicant decided to plead guilty. Counsel testified that if Applicant had proceeded to trial instead of pleading guilty, the State would have tried him separately on the three (3) indictments and would have had three (3) opportunities to convict him which could have resulted in a sentence of life without parole if the State succeeded.

The Court finds plea counsel conducted a proper investigation, adequately conferred with Applicant, and was thoroughly competent in his representation. Applicant has failed to point to any information or evidence Counsel failed to uncover. See Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009) (holding an applicant must show "something that would have affected counsel's advice to [the applicant] to accept the plea bargain offered or that would have caused [the applicant] to decline to accept it"). Applicant has failed to demonstrate Counsel's performance fell below an objective standard of reasonableness. Therefore, Applicant has failed prove Counsel's conduct was deficient.

Applicant has likewise failed to demonstrate that but for any alleged deficiency of counsel, he would not have pleaded guilty but would have insisted on going to trial. Applicant pleaded guilty to three (3) counts of armed robbery. Regardless of the fact that he pleaded under Alford to two (2) of those charges, Applicant pleaded straight up to indictment 2014-GS-42-4300, which was the indictment for the armed robbery of Patrick Thomas, a police officer; as the State related, this case was the lead indictment for the plea. (Tr. at 3). Of all of Applicant's charges, this case was the strongest. Furthermore, Applicant received a benefit from pleading guilty to all three (3) armed robbery charges at once. Applicant's exposure at trial on a single charge of armed robbery would have been ten (10) to thirty (30) years. In addition, Applicant could have been exposed to a sentence of life without parole if the State had tried him separately and obtained convictions on two (2) or more of the armed robbery indictments. Applicant received a sentence of twenty-one (21) years for pleading to all three (3) charges at once. Plea counsel testified that Applicant provided him with no leads or witnesses for investigative purposes. Though Applicant's co-defendant, Tobias Rogers, testified at the evidentiary hearing, the Court finds Rogers' testimony to be completely lacking in credibility, especially in light of his subsequent testimony at his *own* post-conviction relief hearing, which took place on November 8, 2016. Applicant, therefore, has failed to show that there is a reasonable probability he would not have pleaded guilty but would have proceeded to trial on any of the charges. Accordingly, this allegation is denied and dismissed.

Involuntary Guilty Plea

This Court finds that this allegation is without merit and Applicant has failed to carry his burden of proving that his guilty plea was involuntarily made.

In PCR cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citing Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993); Hyman v. State, 278 S.C. 501, 299 S.E.2d 330 (1983); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993)). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. at 56. Further, "[t]hat a guilty plea must be intelligently made is not a requirement that all advice offered by the defendant's lawyer withstand retrospective examination in a post-conviction hearing." McMann v. Richardson, 397 U.S. 759, 770 (1970). Rather, "whether a plea of guilty is unintelligent . . . depends as an initial matter, not on whether a court would retrospectively consider counsel's advice to be right or wrong, but on whether that advice was within the range of competence demanded of attorneys in criminal cases." Id. at 771.

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 (1977)). Furthermore, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant. Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63). 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." Id. at 137-38, 654 S.E.2d at 874 (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)). "In considering an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing." Dalton v. State, 376 S.C. 130, 138–39, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997)).

The record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Dalton v. State, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Boykin v. Alabama, 395 U.S. 238, 242 (1969)). A 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 the court and defendant, between the 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)). "'[T]he voluntariness of a guilty plea is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing.'" Dalton, 376 S.C. at 138, 654 S.E.2d at 874 (quoting Harres v. Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984)).

Applicant asserts that his Alford pleas to two (2) armed robbery charges were not supported by a sufficient inducement. The Court finds that the concurrent recommendation was sufficient inducement to warrant Judge Verdin's acceptance of the plea. In addition, the record of Applicant's plea and the testimony presented at the evidentiary hearing clearly shows that Applicant's plea was entered freely and voluntarily. Applicant testified at the evidentiary hearing

that it was his decision to plead guilty. This Court finds that Judge Verdin thoroughly reviewed all of the ramifications of the pleas with Applicant. Furthermore, plea counsel also fully explained the ramifications of an Alford plea to Applicant. This Court finds Applicant's statements at the plea were entered freely and voluntarily, and he has made no showing why he should be allowed to depart from the truth of those statements. See Dalton v. State, 376 S.C. at 137-38, 654 S.E.2d at 874. Applicant was thoroughly advised of the waiver of his constitutional rights by both plea counsel and Judge Verdin. (Tr. at 12). The record reflects that Applicant told the Court that he had not been forced by anyone or promised anything to plead guilty. (Tr. at 12). Accordingly, this Court finds that the Applicant had a full understanding of the consequences of his plea and the charges against him. Therefore, Applicant has failed to demonstrate any deficiency of counsel.

Applicant has also failed to demonstrate any prejudice with regard to this allegation. Applicant pleaded guilty to three (3) counts of armed robbery. Applicant entered an Alford plea to only *two* (2) of the charges. As this Court found above, Applicant received a benefit from pleading guilty to all three armed robbery charges at once. Applicant's exposure at trial on a single charge of armed robbery would have been ten (10) to thirty (30) years, and Applicant received a total sentence of twenty-one (21) years by pleading to all the charges. Therefore, Applicant has failed to show that there is a reasonable probability that he would not have pleaded guilty but would have insisted on going to trial on *any* of the charges. Accordingly, this allegation is denied and dismissed.

In conclusion, this Court finds plea counsel's representation met professional norms in all respects, and this application for post-conviction relief is denied and dismissed.

C. 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.

IV. CONCLUSION

Based on the foregoing, the 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 is denied and dismissed with prejudice.

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 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.

IT IS SO ORDERED this 9th day of March, 2017.

FRANK R. ADDY, JR.
Presiding Judge, Seventh Judicial Circuit

Greenwood, South Carolina

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M. Hope Blackley
Clerk of Court

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS

7TH JUDICIAL CIRCUIT

Lataire L. Shields #363038
Applicant

CASE # 2015-CP-42-2885

VS

Stee
Respondent

CERTIFICATE OF SERVICE

I certify that, on this date, I served a copy of the Order of Dismissal
In this action dated March 9 2017 on March 17, 2017

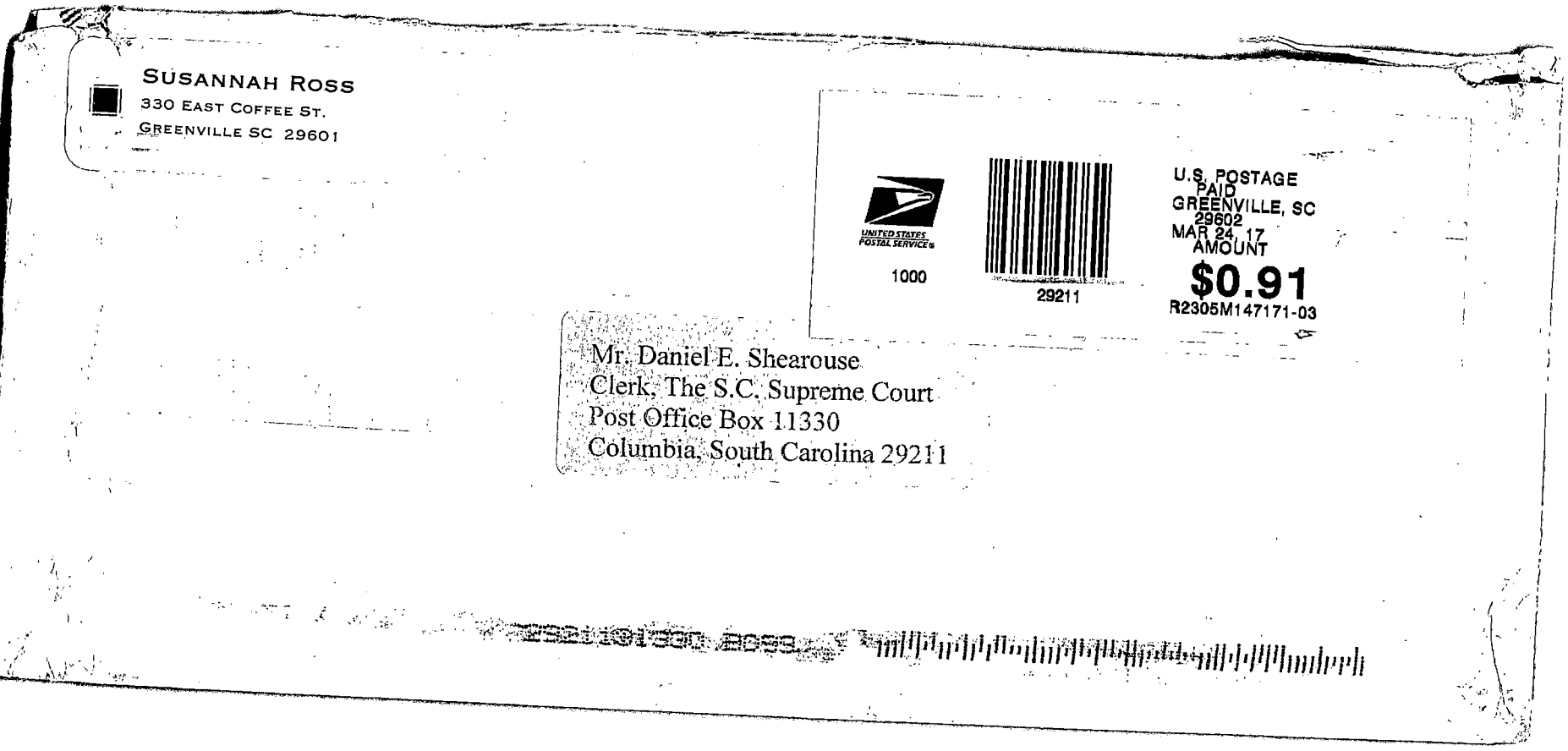
By mailing to him/her, at his/her last known address, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

Ashley Harwood
Olivia Oliver
Susannah Ross

2017 MAR 17 AM 10:56
M. HOPE BLACKLEY
SPARTANBURG, S.C.

March 17, 2017
(Date)

(Signature)



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