

# THE BOOZER LAW FIRM, LLC

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**Lance S. Boozer, Esq.\***

\*Also admitted in Florida

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April 4, 2017

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

**RECEIVED**

APR 06 2017

S.C. SUPREME COURT

The Honorable Robert J. Harte  
Clerk of Court  
P.O. Box 583  
Aiken, SC 29802-0583

**RE: London Wooden, #357930, v. State of South Carolina  
2015-CP-02-816**

Dear Mr. Shearouse and Mr. Harte:

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. Wooden in his PCR proceeding, I anticipate that the Office of Appellate Defense will represent Mr. Wooden in this appeal.

Yours very truly,



Lance S. Boozer

cc: Julie Coleman, AAG  
Office of Appellate Defense  
London Wooden, #357930

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

**RECEIVED**

APR 06 2017

S.C. SUPREME COURT

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APPEAL FROM AIKEN COUNTY  
Court of Common Pleas

The Honorable Maite Murphy, Circuit Court Judge

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Case No. 2015-CP-02-816

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London Wooden, #357930 .....Petitioner,

v.

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

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**NOTICE OF APPEAL**

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The Petitioner appeals the Honorable Maite Murphy's Order dated March 13, 2017, denying post-conviction relief to the Petitioner. The Order was received by undersigned counsel on March 30, 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

April 4, 2017

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

**RECEIVED**

APR 06 2017

APPEAL FROM AIKEN COUNTY  
Court of Common Pleas

S.C. SUPREME COURT

The Honorable Maite Murphy, Circuit Court Judge

Case No. 2015-CP-02-816

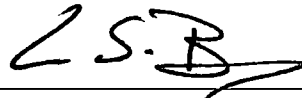
London Wooden, #357930 .....Petitioner,

v.

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

**PROOF OF SERVICE**

I, Lance S. Boozer, appointed 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 4th day of April, 2017.



Lance S. Boozer  
The Boozer Law Firm, LLC  
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Columbia, SC 29201  
Tele: 803-608-5543

STATE OF SOUTH CAROLINA )  
 COUNTY OF AIKEN )  
 )  
 London Devonta Wooden, #357930, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 SECOND JUDICIAL CIRCUIT

2015-CP-02-00816

**ORDER OF DISMISSAL**

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on April 1, 2015. Respondent submitted its Return and Partial Motion to Dismiss on August 27, 2015. An evidentiary hearing was convened on January 23, 2017, at the Bamberg 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**

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. Applicant was true bill indicted at the April 2012 term of the Aiken County Grand Jury for murder (2012-GS-02-473) and possession of a weapon during a violent crime (2012-GS-02-474). Applicant was subsequently indicted for burglary, first degree (2013-GS-02-906) by the June 2013 term of Aiken County Grand Jury. DeGrant Gibbons, Esquire, represented Applicant. On November 15, 2013, Applicant proceeded to a jury trial before the Honorable James R. Barber on the murder and possession of a weapon charges. Applicant was found guilty on both charges. Following the trial, Applicant entered a guilty plea to burglary.

FILED 3/27 2017  
*Robert L. White*  
 C.C.P. & G.S.  
*Ashleigh M. Payne*  
 Deputy Clerk

first degree. Judge Barber sentenced the Applicant to a thirty-five year term of imprisonment for murder and burglary, first degree, and five years for possession of a weapon. All sentences were ordered to run concurrently.

A Notice of Appeal was filed on Applicant's behalf for the murder and weapons charges. By Order filed March 24, 2015, the South Carolina Court of Appeals dismissed the appeal pursuant to Applicant's request. The Remittitur was issued on April 14, 2015. Due to a filing error by Mr. Gibbons, Applicant did not appeal his guilty plea or sentence.

Applicant filed the current application for post-conviction relief on April 1, 2015. A hearing was held on May 26, 2016 at the Aiken County Courthouse before the Honorable Diane Goodstein. Judge Goodstein denied the State's Partial Motion to Dismiss and granted Applicant a belated appeal of his guilty plea. Subsequently, Applicant communicated to counsel that he did not wish to pursue a belated appeal and wanted only to continue forward with his post-conviction relief allegations. The full evidentiary hearing was heard over all allegations on January 23, 2017.

## 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. Failed to challenge the probative value of states DNA expert opinion being substantially outweighed by the danger of unfair prejudice.
2. Involuntary guilty plea.

Applicant filed amendments to his application on December 2, 2015, and on April 5, 2016, adding the following allegations:

- (a) Ineffective assistance of counsel for advising Applicant to submit a DNA sample for the Burglary, First charge while advising Applicant it would have no effect in his murder case.
- (b) Ineffective assistance of counsel for failing to discuss and put forth a defense.
- (c) Ineffective assistance of counsel for opening the door to prior bad acts by the Applicant.
- (d) Ineffective assistance of counsel for failing to adequately cross-examine the State's DNA expert.
- (e) Trial counsel's ineffectiveness rendered his subsequent guilty plea involuntary.
- (f) Ineffective assistance of counsel for failing to challenge the reliability of DNA expert.

### 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).

#### V. SUMMARY OF RELEVANT TESTIMONY

At the evidentiary hearing, Applicant testified on his own behalf and presented testimony from Trial Counsel, DeGrant Gibbons, Esquire.

Applicant testified that Trial Counsel was appointed to represent him two or three weeks prior to when he was charged with the crime. He stated that Trial Counsel waived his preliminary hearing and put in a motion for a speedy trial. He stated that he was given a plea offer for thirty years, but he did not want to waive his rights, so he went to trial instead. He stated that Trial Counsel advised him to take the plea deal.

Applicant testified that a lot of the State's witnesses did not come into play until a week prior to the trial, and there were new witnesses and DNA evidence that he did not know about. He stated that he discussed the evidence with Trial Counsel twice, but they did not fully come to an agreement about their defense strategy. He stated that Trial Counsel wanted him to testify that he was acting in self-defense. He stated that they did not discuss defense witnesses. Applicant testified that Trial Counsel called a coroner, a dispatcher, and a gang violence expert as defense

witnesses at trial, but he did not understand why until during the trial. He stated that they were trying to show the jury that the Victim was affiliated with a gang.

Applicant testified that he gave a DNA sample to law enforcement for the burglary charge, and three months later, he found out from Trial Counsel that they would also use the DNA sample against him in his murder trial. However, Applicant stated that he gave two separate samples, one for each charge.

Applicant testified that the Victim was shot in the back. Applicant stated that he had nothing to do with it. He stated that Trial Counsel knew about a fight that Applicant had previously had with a witness, and he brought it up in front of the jury, which opened the door to his prior bad acts. Trial tr. 321.

Applicant testified that Trial Counsel did not cross-examine the DNA expert, Webb, properly at trial. He stated that he should have brought out to the jury that the DNA found on the gun was a mixture of two people, not just his DNA.

Applicant testified that he pled guilty to the burglary charge immediately after his murder trial because he lost his trial, and he thought that his counsel could have been better. He stated that he did not ask for a lawyer before pleading guilty. However, he stated that he did ask for a new attorney two months prior to his trial, but his motion was denied. Applicant stated that he and Trial Counsel barely discussed the burglary charge. He stated that, if he had been found guilty of burglary at trial, he would have gotten a life without parole sentence.

After Applicant's testimony, Applicant called Trial Counsel to the stand. Trial Counsel testified that he met with Applicant at least fifteen times before the trial. He stated that he met with the investigator three or four times, and met with Andrew Smith, the Assistant Public Defender who helped him defend the case, at least a couple of times to discuss it. Trial Counsel

stated that he had the most contact with Applicant out of the two attorneys. He stated that he told Applicant that there were no viable defenses in his case and he should have taken the plea deal.

Trial Counsel testified that this crime took place in a bad neighborhood with lots of gang-related activity. He stated that there were ten to twenty shots going back and forth during the fight at issue. He stated that his strategy was to have Applicant claim self-defense and bring out the fact that the investigating officers did not speak to many witnesses who were at the scene of the crime. He stated that he wanted to attack the credibility of the eye-witnesses and to emphasize the chaos that ensued during this event to suggest that no one really saw what happened. He stated that his self-defense strategy was negated by mutual combat.

Trial Counsel stated that Applicant was adamant about proceeding to trial. Trial Counsel stated that he called three witnesses for the defense, including a dispatcher, which allowed them to play the 9-1-1 tapes and demonstrate the chaos and show that multiple people were shooting. He stated he also called a coroner to show the Victim's suspected drug activity, but the trial court would not allow this testimony in. He stated he called a gang expert to testify about the Victim's gang-related tattoos. Trial Counsel stated that he did not have a lot of evidence to work with, so he had to find something.

Trial Counsel testified that law enforcement took Applicant's DNA sample for the murder charge. He stated that law enforcement matched the burglary crime to Applicant through a CODIS hit, and he gave a separate DNA sample for the burglary charge to ensure the proper chain of custody. Trial Counsel stated that there was no link between the DNA samples given for the two crimes. He stated that regardless of whether he advised Applicant to give the sample, law enforcement would have been able to get a cheek swab DNA sample from him. He stated that

there were no witnesses of the burglary, but there was blood at the crime scene that matched Applicant's DNA.

Trial Counsel testified that Applicant did not tell him about the specific incident between him and witness Erica Richardson; he had only told them that they "had a bad history." He stated he was not aware that she had pressed charges against him, and they would not have asked her about their history if Applicant had told them. He stated that they both should have treated that situation a little better. Regardless, Trial Counsel testified that he did not believe that this specific testimony of his prior bad acts affected the outcome of the trial; he believed that Applicant would have been convicted even without that testimony.

Trial Counsel stated that he *did* cross-examine the DNA expert on the issue of the DNA mixture on the gun handle. He stated that he challenged her credibility on this issue and on the very low percentages that she gave to the jury.

Trial Counsel testified that he felt like Applicant knew what he was doing when he pled guilty to burglary. He stated that their trial strategy for the burglary charge would have been to attack the accuracy of the DNA, and this was a tough argument to win. He testified that the solicitors had already discussed with him that they would serve notice of Life Without Parole before the trial if they won on the murder charge. He stated that he discussed this with Applicant.

## **VI. 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).

As a matter of general impression, this Court finds Applicant's testimony and assertions to be not credible. In contrast, this Court finds Counsel's testimony to be credible and persuasive. These credibility findings have been applied to the Court's findings and conclusions set forth below.

#### INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant has asserted several allegations of ineffective assistance of counsel. This Court finds these claims to be meritless and they should be denied and dismissed with prejudice. Each allegation presented at the evidentiary hearing is addressed below.

##### *Failure to adequately challenge the State's DNA expert*

This Court finds that Trial Counsel was not ineffective in failing to adequately challenge the State's DNA expert. A review of the transcript shows that trial counsel effectively cross-examined the State's witness and highlighted the inconsistencies in her testimony. Although counsel admitted at the hearing that he should have asked for certain portions of the transcript to be replayed when the jury requested to review this expert's testimony, Petitioner failed to show that he was prejudiced as a result.

Furthermore, Applicant cannot meet his burden in proving prejudice because he failed to present the proper testimony of the DNA expert witness. The South Carolina Supreme Court "has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial." Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998). "The applicant's mere speculation what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice." Glover v. State, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). Applicant did not

present any testimony from Agent Webb to show how Trial Counsel should have properly cross-examined him, thus he has not proven prejudice.

Because Applicant has failed to show deficiency or prejudice, this allegation is denied and dismissed with prejudice.

*Improperly advising Applicant to submit a DNA sample*

This Court finds that Trial Counsel was not ineffective in advising Applicant to submit a DNA sample for his burglary charge. Trial Counsel presented credible, strategic reasons for doing so. Furthermore, Applicant can show no prejudice from this advice; Trial Counsel testified that a Schmerber<sup>1</sup> hearing was held in this case, and the trial court found the DNA evidence admissible. Because Applicant has failed to prove either prong of the Strickland test, this allegation is denied and dismissed with prejudice.

*Opening the door to prior bad acts*

As to Applicant's allegation that Trial Counsel was ineffective in opening the door to prior bad acts, this Court concludes that Trial Counsel was deficient in failing to investigate these acts before trial and allowing the prosecution to examine them with the witness. However, the Court finds that Applicant did not prove prejudice under the second prong of Strickland. Considering the cumulative weight of the evidence supporting Applicant's conviction, this mistake was simply not significant enough to change the jury's verdict. Therefore, this allegation is denied and dismissed with prejudice.

*Advising Applicant to enter an involuntary guilty plea*

Applicant alleges that Trial Counsel improperly advised him to enter an involuntary guilty plea. This Court finds that Trial Counsel was not ineffective in rendering advice on Applicant's subsequent guilty plea to burglary. Applicant had sufficient time to weigh the pros

<sup>1</sup> Schmerber v. California, 384 U.S. 757 (1966).

and cons of accepting the plea and Trial Counsel credibly testified that he discussed these options with Petitioner. In light of the strong DNA evidence against Applicant, this Court does not question the manner in which Trial Counsel advised his client. This Court finds that Applicant's guilty plea was not involuntary. Therefore, since Applicant has failed to prove either prong of the Strickland test, this allegation is denied and dismissed with prejudice.

*Failing to Discuss and Put Forth a Defense*

The Court finds that Trial Counsel was not ineffective in failing to discuss and put forth a defense. Trial Counsel testified at the PCR hearing that he spoke with Applicant about using a self-defense strategy. Trial Counsel also testified that a self-defense argument was negated by the evidence of mutual combat and the fact that the Victim was shot in the back. At trial, Trial Counsel called three witnesses for the defense, including a dispatcher, which allowed the jury to hear the 9-1-1 tapes to show that multiple shots were fired. Trial Counsel also called a coroner to show the Victim's suspected drug activity, and an expert on gang activity to testify as to the Victim's gang-related tattoos.

The Court concludes that Applicant failed to show Trial Counsel was deficient in using this defense strategy.

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.

## VII. CONCLUSION

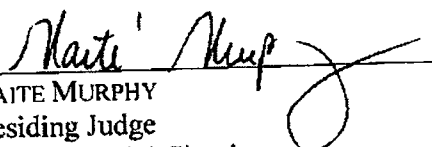
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

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.

### 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 13 day of March, 2017.

  
MAITE MURPHY  
Presiding Judge  
Second Judicial Circuit

St. Matthews, South Carolina

STATE OF SOUTH CAROLINA )  
 COUNTY OF AIKEN )  
 London Devonta Wooden, )  
 Plaintiff(s), )  
 -vs- )  
 South Carolina State Of, )  
 Defendant(s). )

IN THE COURT OF COMMON PLEAS  
 2nd JUDICIAL CIRCUIT  
 CASE NO.: 2015CP0200816  
 APPOINTMENT OF COUNSEL OR GAL  
 (Select one.)

ORDER  
 AMENDED ORDER

TYPE OF CASE/PROCEEDING: (Check one.)

- Post-Conviction Relief (PCR)/habeas case     Adoption     Juvenile  
 SVP case     Custody and/or Visitation     Abuse and Neglect  
 Minor Name Change     Other: Post Convict Rel 500

It appears London Devonta Wooden, 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: PCR.

FILED April 9 2015

*Jim Godard*  
 J.C.C.P.A.G.S.  
*Janet Comal*

Therefore, it is ordered that Lance hereby is appointed as (Select one.)

- counsel     lead counsel (if capital PCR case)     guardian ad litem  
 for the above-named person. Any counsel or GAL previously appointed is/are hereby relieved.

18:50pm

(If Death Penalty PCR Case) It is further ordered that Boozer, 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  
 April 9, 2015

*Jim Godard* by *Janet Comal*  
 Circuit Judge     Clerk of Court

Plaintiff Attorney:

Lance Boozer	
807 Gervais St, Suite 2013	
Columbia, S.C. 29201	

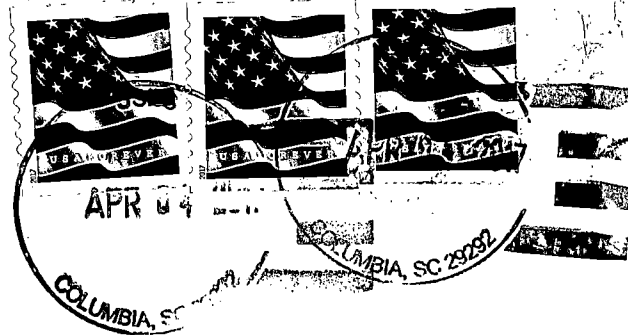
Defendant Attorney:

Daniel Francis Gourley II	
P.O Box 11549	
Columbia, SC 29211	

NOTICE: SC Supreme Court Order of September 29, 2006, requires appointed counsel entitled to payment from the Office of Indigent Defense (OID) to register the case online with OID within fifteen (15) days of this appointment at [www.sccid.sc.gov](http://www.sccid.sc.gov), and further directs that reimbursement vouchers be submitted directly to SCCID and not to the trial judge or clerk of court. See SCCID website for further details.

**THE BOOZER LAW FIRM, LLC**

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The Honorable Daniel E. Shearouse  
Clerk, Supreme Court of South Carolina  
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