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May 13, 2017

Daniel E. Shearouse, Clerk  
The Supreme Court of South Carolina  
P.O. Box 11330  
Columbia, SC 29201

Re.: Abbdul Emmanuel v. State  
2015-CP-46-2745

**RECEIVED**

MAY 16 2017

**S.C. SUPREME COURT**

Dear Mr. Shearouse:

Please find enclosed the following documents being submitted in the above referenced case:

- 1- Notice of Appeal
- 2- Proof of Service
- 3- Copy of Judge Hayes' Order denying PCR relief

Please note that I have forwarded all of this information to appellate defense along with my Order of Appointment asking them to handle this appeal for me. Thank you and please contact me with any additional questions or concerns.

Sincerely Yours,

Nathan Sheldon  
The Law Office of Nathan J. Sheldon

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

**RECEIVED**

MAY 16 2017

APPEAL FROM YORK COUNTY  
Court of Common Pleas

J. Mark Hayes, II, Circuit Court Judge

**S.C. SUPREME COURT**

Case No. 2015-CP-46-2745

State of South Carolina, Respondent,

v.

Abbdul Emmanuel, Petitioner.

NOTICE OF APPEAL

Abbdul Emmanuel appeals the order of the Honorable J. Mark Hayes, II dated April 26, 2017 denying his request for post-conviction relief. Appellant received written notice of entry of this order on May 11, 2017.

May 13, 2017



Nathan J. Sheldon  
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331 E. Main St., Suite 200  
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(803) 909-9343  
Attorney for Petitioner

Other Counsel of Record:  
Justin J. Hunter, Esquire  
Assistant Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211-1549  
Attorney for Respondent  
(803) 734-3970

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM YORK COUNTY  
Court of Common Pleas

J. Mark Hayes, II, Circuit Court Judge

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Case No. 2015-CP-46-2745

State of South Carolina, Respondent,

v.

Abbdul Emmanuel, Petitioner.

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PROOF OF SERVICE

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I certify that I have served the Notice of Appeal on Justin J. Hunter with the Attorney General's Office by depositing a copy of it in the United States Mail, postage prepaid, on May 13, 2017 mailed to Post Office Box 11549, Columbia, South Carolina 29211-1549.

May 13, 2017



Nathan Sheldon  
SC Bar # 0074943  
331 E. Main St., Suite 200  
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803-909-9343  
Attorney for Petitioner

**FORM 4**

**STATE OF SOUTH CAROLINA  
COUNTY OF YORK  
IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE  
CASE NUMBER 2015CP4602745**

Abdul Emmanuel		South Carolina State Of	
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<b>PLAINTIFF(S)</b>	<b>DEFENDANT(S)</b>
<b>Submitted by: Justin J. Hunter</b>	Attorney for: <input type="checkbox"/> Plaintiff <input checked="" type="checkbox"/> Defendant <input type="checkbox"/> 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: \_\_\_\_\_
- STAYED DUE TO BANKRUPTCY**
- 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**

**ORDER OF DISMISSAL**

**This order**  ends  does not end the case.

Additional Information for the Clerk: \_\_\_\_\_

<b>INFORMATION FOR THE JUDGMENT INDEX</b>		
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.**

**E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.**

*S/J. Mark Hayes 99*

**Circuit Court Judge**

**2132**

**Judge Code**

**04/26/2017**

**Date**

**For Clerk of Court Office Use Only**

This judgment was entered on May 9, 2017, and a copy mailed first class or placed in the appropriate attorney's box or May 9, 2017, to attorneys of record or to parties (when appearing pro se) as follows:

Nathan James Sheldon PO Box 36682 Rock Hill, SC 29732

Justin James Hunter PO Box 11549 Columbia, SC  
29211-1549

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ATTORNEY(S) FOR THE PLAINTIFF(S)

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ATTORNEY(S) FOR THE DEFENDANT(S)

*David Hamilton*

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Court Reporter

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David Hamilton - Clerk of Court

**Court Reporter:**

**E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.**

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**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.

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STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF YORK )  
 )  
 Abbdul Emmanuel, )  
 S.C.D.C. No. 350618, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 OF THE SIXTEENTH JUDICIAL CIRCUIT

2015-CP-46-2745

**ORDER OF DISMISSAL**

FILED-RECEIVED  
 2017 MAY -9 AM 10:04  
 DAVID HAMILTON  
 C.C.P. & G.S.  
 YORK COUNTY, SC

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed September 11, 2015. Respondent made its Return on or about July 8, 2016. An evidentiary hearing into the matter was convened on Wednesday, February 1, 2017, at the Moss Justice Center in York, South Carolina. Applicant was present at the hearing and represented by Nathan Sheldon, Esquire. Justin J. Hunter, Esquire, of the South Carolina Attorney General's Office represented the Respondent. At the hearing, Applicant testified on his own behalf. Tyler Burns, Esquire, also testified. This Court also had before it a copy of the records of the York County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the Return, and the plea transcripts.

**I. PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. Applicant was indicted at the April 2014 term of General Sessions for murder (2014-GS-46-1220), possession of a weapon during the commission of a violent crime (2014-GS-46-1220A), armed robbery (2014-GS-46-1221), possession of a weapon during the commission of a violent crime (2014-GS-46-1221A), criminal

conspiracy (2014-GS-46-1222), and pointing/presenting a firearm (2014-GS-46-1223). Applicant waived presentment to the grand jury on the charges of criminal conspiracy (2014-GS-46-1503), assault and battery of a high and aggravated nature (2014-GS-46-2876), possession of a weapon during the commission of a violent crime (2014-GS-46-2876A), unlawful carrying of a pistol (2014-GS-46-2884) and criminal conspiracy (2014-GS-46-2885).

Applicant was represented by Tyler Burns, Esquire, on these charges. On July 21, 2014, Applicant and his plea counsel appeared before the Honorable Roger Couch and pled guilty to voluntary manslaughter as a lesser included offense of murder, possession of a weapon during the commission of a violent crime, armed robbery, and one count of criminal conspiracy. Sentencing was deferred to September 29, 2014. Applicant appeared on September 29, 2014, before the Honorable Edward Miller and pled guilty to the other charges as indicted. Applicant was sentenced with all sentences running concurrently except armed robbery. His sentences are as follows:

Voluntary Manslaughter (2014-GS-46-1220)	30 years
Possession of a Weapon During the Commission of a Violent Crime (2014-GS-46-1220A)	5 years
Armed Robbery (2014-GS-46-1221)	10 years (consecutive)
Possession of a Weapon During the Commission of a Violent Crime (2014-GS-46-1221A)	5 years
Criminal Conspiracy (2014-GS-46-1222)	5 years
Pointing/Presenting a Firearm (2014-GS-46-1223)	5 years
Criminal Conspiracy (2014-GS-46-1503)	5 years
ABHAN (2014-GS-46-2876)	20 years
Possession of a Weapon During the Commission of a Violent Crime (2014-GS-46-2876A)	5 years
Unlawful Carrying of a Pistol (2014-GS-46-2884)	1 year
Criminal Conspiracy (2014-GS-46-2885)	5 years

Applicant did not file a notice of appeal.

### **PCR Allegations**

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

1. Ineffective Assistance of Counsel
  - a. Failure to object to sentencing phase
  - b. Failure to investigate

Applicant also lists in his application, "I was promised that if I took the plea that I wouldn't receive 'no more' than 20-25 years, I would like to vacate current sentence and remand for new trial."

## **II. SUMMARY OF EVIDENCE PRESENTED AT PCR HEARING**

### **Applicant's Testimony**

Applicant testified that he met with Mr. Burns (hereinafter "Counsel") four to five times after his arrest. He testified that he did not have a good relationship with Counsel and did not review discovery. He testified that the first plea offer he received was for forty-five years, which he rejected. Applicant testified that he received a final offer, and Counsel told him it would be twenty to twenty-five years. Applicant testified that he wanted to go to trial but was coerced to take the plea. Applicant testified that Counsel hired an investigator but he only spoke with this investigator on one occasion.

### **Counsel Tyler Burns' Testimony**

Counsel testified that he met with Applicant several times. He testified that there were a large number of charges pending, including five additional attempted murder charges that were eventually dropped. He testified that he received discovery and reviewed it with Applicant, including five DVDs of information, recordings of his statements, and photos. Counsel testified that Applicant admitted a great deal in his statement and there were multiple neutral



eyewitnesses implicating Applicant. Counsel testified that Applicant assisted in his own defense but Counsel was weary about his alibi. He testified that he devoted a great deal of time to Applicant's case, which included hiring an investigator to look at the timeline of events that the State was alleging occurred.

Counsel testified that this was not Applicant's first run-in with the criminal justice system and believed he was very familiar with the process. He testified that the evidence against Applicant was overwhelming and the State indicated they might use strikes on other charges to seek a life without parole sentence. Counsel testified that he was able to leverage a civil case by Applicant against the police department to get the State to agree to drop the murder charge to voluntary manslaughter.

Counsel testified that the first plea offer he received was for around forty to fifty years. He testified that Applicant rejected this offer and wanted to pursue a trial. He testified that the final plea offer was for a recommendation of twenty to forty years, which was placed on the record by the State during the plea hearing. He testified that the plea offer also included a reduction from murder to voluntary manslaughter, and the dismissal of many other charges. Counsel also testified that part of the plea offer was that it was understood certain charges against Applicant's family members would be dropped.

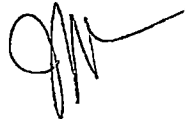
Counsel testified that he did not promise Applicant on the amount of time he would receive, but told Applicant that he thought the best-case scenario would result in a range of twenty to twenty-five years. Counsel testified that Applicant wanted to know exactly how much time he would receive, but Counsel again explained to him that he could not guarantee what he would receive and could only give an educated guess. He further testified that he did his own plea affidavits for his clients at the time that explained the client's rights and the plea offer.

### 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 plea counsel, the Applicant must show 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, 59 (1985).



#### IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the guilty plea transcripts, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

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 on all matters. These credibility findings have been applied to the Court's findings and conclusions set forth below.

##### **Ineffective Assistance of Counsel**

Applicant alleges Counsel was ineffective regarding his guilty plea. This Court finds that Applicant failed to meet his burden of proving that his plea counsel was ineffective. This Court finds Applicant's attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, 466 U.S. at 668; Butler, 286 S.C. 441, 334 S.E.2d 813.

An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the applicant 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) (citations omitted). An

applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709, 23 L.Ed.2d 274 (1969).

*Failure to Investigate*

Applicant alleged that Counsel was ineffective for failing to investigate. "[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." Walker v. State, 397 S.C. 226, 235, 723 S.E.2d 610, 615 (Ct. App. 2012). "Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result." Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)).

This Court finds that Counsel performed a proper investigation into the facts and law during his representation of Applicant. This representation included the instigation of legal proceedings that forced the State to reduce the murder charge to manslaughter. Counsel also reduced Applicant's exposure by getting the State to drop numerous other charges as part of the plea negotiations. This Court finds that during the PCR hearing, Counsel appeared believable and credible in his explanation of his investigation into the facts of the case. Applicant has failed also failed to show that he was prejudiced by Counsel's actions as he has failed to show what

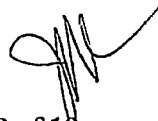


additional investigation would have uncovered and that he would have proceeded to trial but for Counsel's actions. Accordingly, this allegation must be dismissed.

*Plea Advice*

After conducting the hearing, and reviewing the transcript of the guilty pleas before Judges Couch and Miller, this Court cannot find that applicant has met his burden of proof of establishing that his plea counsel was ineffective in his advice to Applicant concerning the guilty plea. While the forty-year total sentence imposed by Judge Miller was substantial, the sentence was in the range originally recommended and announced on the record by the State during the first hearing before Judge Couch. This Court finds that Counsel relayed the plea offer recommendation of twenty to forty years and did not promise or guarantee a specific amount of time that Applicant would receive. This Court finds that Applicant's belief that he would receive a sentence between twenty and twenty-five years does not change the fact that he was well informed from Counsel prior to the plea and from the plea judge during the plea hearing that the recommendation from the State was twenty to forty years. See Wolfe v. State, 485 S.E.2d 367, 371, 326 S.C. 158, 165 (1997) (Wishful thinking regarding sentencing does not equal a misapprehension concerning the possible range of sentences, especially where one acknowledges on the record that one knows the range of sentences and that no promises have been made). The record also reflects that Applicant was well aware that the plea judge did not have to accept the State's recommendation. Accordingly, this Court finds that Counsel was not ineffective regarding his advice surrounding Applicant's to guilty plea.

Furthermore, this Court finds that Applicant has failed to show that he was prejudiced by Counsel's actions because Applicant has failed to show that he otherwise would have elected to go to trial, and has not shown any error in Counsel's assistance that led him to plead guilty



instead. Therefore he cannot prove any prejudice. Accordingly, this allegation is denied and dismissed with prejudice.

*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 testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds Applicant has abandoned any such allegations.

**V. 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. Applicant failed to demonstrate counsels' performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be 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), SCRCR, 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 will remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 26<sup>th</sup> day of April, 2017.



J. MARK HAYES, II  
Presiding Judge  
Sixteenth Judicial Circuit

York, South Carolina