

LAW OFFICE OF
JAMES R. SNELL, JR.

James R. Snell, Jr. • Vicki Koutsogiannis

LLC

May 25, 2017

RECEIVED

MAY 30 2017

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

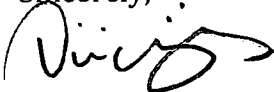
S.C. SUPREME COURT

Re: Notice of Appeal (Writ of Certiorari)
Ryan Freeland Trojan, SCDC #360663, v. State of South Carolina

Dear Mr. Shearouse:

Enclosed please find the Notice of Appeal in this case, a check for \$100.00, two (2) Proofs of Service, a copy of the Order of Dismissal, a copy of the Judgment form, a copy of the Motion for Reconsideration (Denial of PCR), and a copy of the cover letter to the court reporter requesting the transcript.

Please also find a copy of the Notice of Appeal and the Proofs of Service, along with a return envelope (postage prepaid) so that our office may receive a clocked copy of the same. Thank you.

Sincerely,

Vicki Koutsogiannis
Attorney at Law

cc: Valerie Giovanoli, Esq.
Jessica Kinard, Esq.
The Honorable Jocelyn Newman
Ryan Freeland Trojan

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM KERSHAW COUNTY
Court of Common Pleas

Jocelyn Newman, Circuit Court Judge

Case No. 2015-CP-28-0639

Ryan Freeland Trojan, SCDC
#360663,

Appellant,

v.

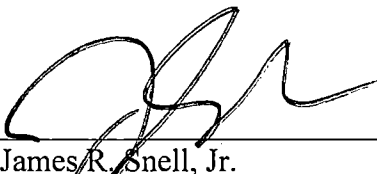
State of South Carolina,

Respondent.

**NOTICE OF APPEAL
(WRIT OF CERTIORARI)**

Ryan Freeland Trojan hereby appeals the "Order Denying the Post-Conviction Relief" and "Order of Dismissal" of The Honorable Jocelyn Newman dated January 27, 2017 and filed on January 30, 2017. Appellant received notice of entry of the "Order of Dismissal" on January 31, 2017. Appellant submitted a "Motion for Reconsideration (Denial of PCR)" on February 10, 2017 that was filed on February 13, 2017. Appellant received notice of entry of the Judgment denying his motion on April 27, 2017, said Judgment filed April 26, 2017.

May 25, 2017
Lexington, South Carolina



James R. Snell, Jr.
Vicki Koutsogiannis
LAW OFFICE OF JAMES R. SNELL, JR., LLC
316 South Lake Drive
Lexington, South Carolina 29072
(803) 359-3301
Attorneys for the Appellant

RECEIVED

MAY 30 2017

S.C. SUPREME COURT

Other Counsel of Record:

Valerie Giovanoli, Esq.
Jessica Kinard, Esq.
SC Attorney General's Office
Post Office Box 11549
Columbia, SC 29211

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

MAY 30 2017

APPEAL FROM KERSHAW COUNTY
Family Court

S.C. SUPREME COURT

Jocelyn Newman, Circuit Court Judge

Case No. 2015-CP-28-0639

Ryan Freeland Trojan, SCDC
#360663,

Appellant,

v.

State of South Carolina,

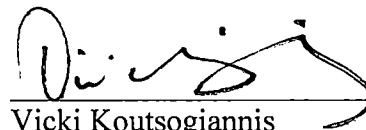
Respondent.

PROOF OF SERVICE

I hereby certify that I have served a copy of the *Notice of Appeal (Writ of Certiorari)* in this case on the Respondent, by depositing a copy of it in the United States mail, postage prepaid, on May 25, 2017, addressed to the following:

**Valerie Giovanoli, Esq.
Jessica Kinard, Esq.
SC Attorney General's Office
Post Office Box 11549
Columbia, SC 29211**

May 25, 2017
Lexington, South Carolina



Vicki Koutsogiannis
Attorney at Law
LAW OFFICE OF JAMES R. SNELL, JR., LLC
316 South Lake Drive,
Lexington, South Carolina 29072
(803) 359-3301
(803) 359-7691 (facsimile)

FILED FOR RECORD

RYAN FREELAND TROJAN (SCDC #360663)

STATE OF SOUTH CAROLINA

2017 APR 26 AM 9: 29

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: NEWMAN, J.	JANET C. HASTY CLERK OF COURT KERSHAW COUNTY, S.C.	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant
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- DISPOSITION TYPE (CHECK ONE)**
- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
 - DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
 - ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
 - ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
 - DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court: Applicant's Motion for Reconsideration is DENIED.

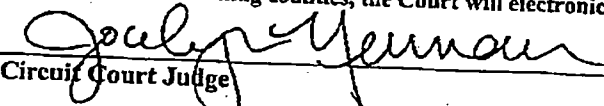
ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.
 E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.


 Circuit Court Judge

2757
 Judge Code

April 20, 2017
 Date

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

Ryan F. Trojan, #360663,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
OF THE FIFTH JUDICIAL CIRCUIT

2015-CP-28-639

ORDER OF DISMISSAL

JANET C. HASTY
CLERK OF COURT
KERSHAW COUNTY, S.C.

2017 JAN 30 AM 11:37

FILED FOR RECORD

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed July 1, 2015. Respondent made its return on December 21, 2015. An evidentiary hearing into the matter was convened on September 1, 2016 at the Richland County Courthouse. Applicant was present at the hearing and represented by James R. Snell, Jr., Esquire. Valerie Garcia Giovanoli, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

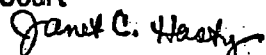
Applicant testified on his own behalf at the PCR hearing. Also testifying were Daniel Grigg and Applicant's trial counsel, Ronald W. Moak, Esquire. The Court had before it the trial transcript, the records of the Kershaw County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, and the pleadings.

PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Kershaw County Clerk of Court. Applicant was indicted at the October 2013 term of the Kershaw County Grand Jury for attempted murder (2013-GS-28-0941). He was represented by Ronald W. Moak, Esquire.

1


**ATTEST True, Correct & Certified
Copy of Original on File in this
Court**



Clerk of Court

Kershaw County

On July 9, 2014, Applicant pled guilty to the lesser included offense of assault and battery of a high and aggravated nature (ABHAN). The Honorable DeAndrea G. Benjamin sentenced Applicant to eleven (11) years of imprisonment. Applicant did not appeal his plea, conviction, or sentence.

ALLEGATIONS

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

1. Ineffective Assistance Counsel
 - a. "Counsel failed to adequately advise [Applicant] of [Applicant's] rights
 - b. "[Counsel] failed to request and/or review discovery materials"
 - c. "[Counsel] did no interview any witnesses"
 - d. "[Counsel] failed to adequately pursue available legal defenses"
2. Involuntary Guilty Plea
 - a. "Guilty plea was note entered freely, knowingly & voluntarily"

On August 26, 2016, one week before his evidentiary hearing, Applicant filed a document captioned, "Statement of Grounds" in which he further alleged:

1. "Lawyer... does not have a file and never receive (sic) or request any medical records in this case."
2. "His lawyer did not have a written engagement agreement with the Plaintiff."
3. "His lawyer failed to spend adequate time with him to explain his case, his options, or do anything else to prepare this case to be challenged in anyway or to do anything else that would be considered effective representation."
4. "The lawyer failed to request, obtain, or review the MMA fighting application from the Department [of Labor, Licensing, and Regulation], or to otherwise inquire as to its contents."

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 and arguments presented at the PCR hearing. This Court has further had the

opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This 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 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, “[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel’s ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052). When there has been a guilty plea, the applicant must prove that counsel’s representation was below the standard of reasonableness and that, but for counsel’s unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

To be knowing and voluntary, a plea must be entered with a full understanding of the

charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243-44 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)). When a defendant pleads guilty on the advice of counsel, the plea may only be attacked through a claim of ineffective assistance of counsel. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2002) (citations omitted).

Daniel E. Grigg, Deputy Director of the South Carolina Department of Labor, Licensing, and Regulation testified that the victim, Dillon Robertson, filed an application for a license to participate in Mixed Martial Arts fighting on March 21, 2014. Mr. Grigg testified that in order to receive a license to fight, applicants must submit to a physical examination by a licensed medical doctor. Mr. Grigg testified that per regulation, an application would be denied if the physical examination revealed any history of "cerebral hemorrhaging." Mr. Grigg testified that the victim's application was granted.

Applicant testified he came to retain plea counsel, Ronald Moak, through a mutual friend. Applicant testified that he first met plea counsel at the Kershaw County Courthouse after his bond reduction hearing. Applicant testified that he met with plea counsel two more times at Applicant's residence after the bond reduction hearing to discuss his case. Applicant testified that his communication with plea counsel was mainly through a mutual friend. Applicant testified that he never received from or reviewed with plea counsel any paperwork or discovery. Applicant testified that in their meetings plea counsel advised Applicant to plead guilty; however, plea counsel did not advise Applicant about his right to a jury trial, his right to confront

witnesses against him, the State's burden of proof, his right to remain silent, trial options, or potential defenses. Applicant testified he pled guilty because plea counsel advised him to do so and that had he known of his right to trial, he would have proceeded to trial. Applicant also testified he wanted to proceed to trial and that Applicant relayed that to plea counsel during a break in the plea colloquy, but that plea counsel told him to stop arguing and answer the Judge's questions.

Plea counsel, Ronald W. Moak, testified that he has been practicing criminal law for all sixteen (16) years he has been in practice. Plea counsel testified that he was a solicitor from 1999-2012 when he joined the Camden Law Firm. Plea counsel testified that he now has his own practice. Plea counsel testified that a mutual friend called him to request that he help defend Applicant in his criminal charge. Plea counsel testified that he first laid out a trial strategy during his first meeting with Applicant around the same time as Applicant's preliminary hearing. Plea counsel testified Applicant executed a written engagement agreement. Plea counsel testified he was involved in plea negotiations with the Solicitor on behalf of Applicant. Plea counsel testified to the tumultuous history the Applicant and victim had and how the night of the incident unfolded. Plea counsel testified that because of this violent past, he and Applicant had considered a defense of self-defense, but that it was not a perfect defense because the Applicant was the initial aggressor on the night of the incident. Plea counsel testified that he attempted to get the Solicitor to reduce the charge of attempted murder to assault and battery in the first or second degree, but that he was only able to get the charge reduced to ABHAN. Plea counsel testified that he advised Applicant of the sentencing range for ABHAN.

Plea counsel testified that he informally requested discovery and received the Solicitor's file on April 22, 2014. Plea counsel testified that he reviewed discovery with Applicant at

Applicant's then-residence. Plea counsel testified that he and Applicant discussed Applicant's version of the facts. Plea counsel testified that neither he nor the Solicitor had any of the victim's medical records. Plea counsel testified that he did not request any medical records because Applicant had always maintained that he wanted to plead guilty and not go to trial. Plea counsel testified he was aware that victim continued to fight MMA after the incident involving Applicant, but did not investigate that fact any further because he did not believe it was relevant and he was focusing on getting a plea deal from the Solicitor. Plea counsel testified he kept a case file in hard copy and that the file was also scanned into the Camden Law Firm records. Plea counsel testified that he typically never takes or keeps notes because he has a very good memory and that he did not keep notes in this case. He demonstrated his memory by referring to certain witnesses by first and last names, addresses of important locations, and his memory of the specific facts of the case – all without referring to any notes. Plea counsel testified that he interviewed various witnesses and that none of them were willing to testify in court.

Plea counsel testified that there was a brief break during the plea colloquy between Applicant and the Judge because Applicant's responses to the Judge's questions were not responsive. Plea counsel testified that Applicant was aware of his option to plead guilty or go to trial. Plea counsel testified that Applicant never expressed to him a desire to go to trial. Plea counsel testified that he and Applicant were expecting a sentence of 6 to 8 years and that the plea was entered straight up, with no negotiated or recommended sentence from the Solicitor. Plea counsel testified that the Solicitor wanted a higher sentence and that Plea counsel fought hard to get less than what the Solicitor proposed. Plea counsel testified that, at all times, Applicant knew what was going on and that it was Applicant's decision to plead guilty.

Plea counsel testified that he advised Applicant of his right to appeal the conviction and

sentence and he advised Applicant about post-conviction relief. Plea counsel testified he advised Applicant of his right to a jury trial, his right to confront witnesses against him, the State's burden of proof, the potential range of sentencing, his right to remain silent, trial options, and potential defenses.

This Court finds the Applicant failed to meet his burden of proving that plea counsel failed to adequately advise Applicant of his rights. Applicant testified that plea counsel never advised him of his constitutional rights, but this Court finds that testimony not credible and refuted by the record. Not only did plea counsel testify that he advised Applicant of all of his constitutional rights, but the record also reveals that Applicant was aware of the consequences of pleading guilty, rather than proceeding to trial, and voluntarily and intelligently relinquished his constitutional rights to a jury trial and all other attendant trial rights during the plea proceeding. Hyman v. State, 397 S.C. 35, 732 S.E.2d 375 (2012).

This Court finds the Applicant failed to meet his burden of proving plea counsel did not request or review discovery or did not investigate evidence and witnesses. Plea counsel testified that he maintained a hard case file for this case and that it had been scanned into the records of his previous law firm, Camden Law Firm. Plea counsel testified that he received the Solicitor's entire file without formally moving for discovery because of his connections with his previous employer, the Solicitor's office. Plea counsel testified that he did not request medical records and the Solicitor did not have medical records either, but the uncontroverted evidence was that the victim was treated at the hospital due to the injuries inflicted upon by Applicant. Plea counsel also testified about interviewing specific witnesses and the detailed facts of the history leading up to the incident as well as the incident. Plea counsel testified that no witnesses were willing to testify in court. This Court finds Plea counsel's testimony is more credible on this

point. Regardless, this Court finds the information revealed by the testimony at the PCR hearing would likely not have changed the decision of the Applicant to plead guilty. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

This Court finds the Applicant failed to meet his burden of proving plea counsel failed to pursue available legal defenses. Plea counsel testified that he considered and discussed with Applicant a defense of self-defense, but that such a defense would be unsuccessful given the uncontroverted evidence that Applicant was the aggressor. See McCray v. State, 317 S.C. 557, 455 S.E.2d 686 (1995). Plea counsel also testified that he spoke with various witnesses, all of whom gave the same story and refused to testify in court. Plea counsel testified that a defense strategy was not pursued further because of Applicant's expressed desire to plead guilty and avoid trial. This Court finds plea counsel adequately pursued available legal defenses to the extent necessary. Id. This Court also finds it was not improper for plea counsel to discontinue investigating legal defenses upon Applicant's consistent assertion of his desire to plead guilty.

This Court finds that Applicant failed to meet his burden of proving that Plea counsel failed to execute a written engagement agreement or that Plea counsel failed to fully prepare and explain Applicant's case. Applicant presented no evidence of what counsel could have discovered or what other defenses could have been pursued had counsel more fully prepared. Jackson v. State, 329 S.C. 345, 495 S.E. 2d 768 (1998); Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998). Plea counsel testified that he met with Applicant at least three times to discuss the case, including the facts, the discovery, trial strategies, defense theories, plea negotiations, and Applicant's rights. Plea counsel also testified that he did have a written and executed engagement agreement with the Applicant. This Court finds that plea counsel sufficiently met with Applicant and thoroughly discussed all aspects of Applicant's case with

him.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that plea counsel failed to render reasonably effective assistance under prevailing professional norms. Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984). The Applicant failed to present specific and compelling evidence that plea counsel committed either errors or omissions in his representation of the Applicant. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

Involuntary Guilty Plea

This Court finds that Applicant failed to meet his burden of proving that his guilty plea was entered involuntarily. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984). Plea counsel is a trial practitioner who has extensive experience in the trial of serious offenses. Plea counsel conferred with the Applicant in which plea counsel discussed the pending charges, what the State was required to prove, Applicant's constitutional rights, Applicant's version of the facts, and possible defenses or lack thereof. The record reflects that Applicant's plea was entered freely, voluntarily, knowingly, and intelligently. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975) overruled on other grounds by U.S. v. Whitley, 450 F.2d 327 (4th Cir. 1985). Applicant acknowledged that he was guilty of these offenses. Applicant told the plea court that he was satisfied with his attorney and that no one had threatened him or promised him anything to plead guilty. Id. This Court finds that Applicant understood the terms of an open plea with no negotiated sentence.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this

matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his plea and sentencing proceedings. Counsel was not deficient and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.


This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 27th day of January, 2016. ¹⁷

Columbia, South Carolina.


Honorable Jocelyn Newman
Presiding Judge
Fifth Judicial Circuit

STATE OF SOUTH CAROLINA)
)
 COUNTY OF KERSHAW)
)
 Ryan Freeland Trojan,)
 # 00360663,)
)
 Plaintiff,)
)
 vs.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE FIFTH JUDICIAL CIRCUIT

Case No.: 2015-CP-28-00639

**MOTION FOR RECONSIDERATION
 (DENIAL OF PCR)**

2017 FEB 13 PM 12:55
 CLERK OF COURT
 KERSHAW COUNTY, S.C.

The Plaintiff filed his application for Post-Conviction relief on July 1, 2015, seeking relief from his sentence following a plea to Assault and Battery of a High and Aggravated Nature (ABHAN). Plaintiff's plea counsel was Ronald W. Moak, Esq. Respondent's Return was submitted December 21, 2015. Plaintiff submitted his Statement of Grounds on August 26, 2016. The matter was heard as an evidentiary hearing before the Honorable Jocelyn Newman on September 1, 2015. On January 31, 2017, Plaintiff received the Order of Dismissal in this matter, and hereby submits his Motion for Reconsideration, said motion being timely submitted ten (10) days from the receipt of the Order of Dismissal pursuant to Rule 59(e), SCRCP.

FAILURE TO REQUEST MEDICAL RECORDS

During the plea hearing, the facts entered into the record claimed that the victim was struck in the back of the head. Plea counsel's knowledge of this crucial fact, coupled with his knowledge that the victim had since applied to become a Mixed Martial Arts fighter, should have prompted him to seek out the medical records so that a thorough account of the injuries involved could have been reviewed by Plaintiff. Plaintiff's decision to enter a guilty plea to the offense of

ABHAN was not fully informed due to plea counsel's failure to obtain the medical records prior to the plea.

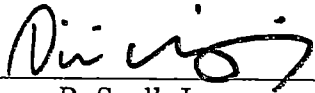
Plaintiff submits that his plea counsel's failure to request and to review the medical records of the victim prior to entering the plea was prejudicial to the Plaintiff, who would not have plead guilty to Assault and Battery of a High and Aggravated Nature (ABHAN) had there been an opportunity for Plaintiff to review the victim's medical records. Daniel E. Grigg, Deputy Director of the South Carolina Department of Labor, Licensing and Regulation (LLR) was present at the evidentiary hearing and offered testimony concerning an applicant's fitness to participate in Mixed Martial Arts (MMA). Mr. Grigg testified that victim applied for a fighter license on March 21, 2014. The incident between the Plaintiff and Defendant occurred on July 14, 2013. Mr. Grigg testified that the victim was granted a license to participate in Mixed Martial Arts fights, and that he would have been required to submit to a physical examination by a licensed medical doctor prior to receiving this license. Mr. Grigg further testified that an application would be denied if the examination revealed any history of "cerebral hemorrhaging."

Plea counsel testified that he did not request any medical records because Plaintiff had always maintained that he wanted to plead guilty and not go to trial. Plea counsel's testimony also indicated that, in his opinion, the medical records were unnecessary due to the injuries inflicted on the victim. Plea counsel also testified that he was aware that the victim continued to fight in MMA after the incident with the Plaintiff, however, that plea counsel did not believe it was relevant and was focusing on the plea deal with the solicitor.

Plaintiff respectfully submits this Motion for Reconsideration of his plea counsel's ineffective assistance. Plaintiff submits that the medical records were directly relevant to the defense and would have assisted Plaintiff's decision to plead guilty or go to trial. The medical

records would further have assisted counsel in potentially obtaining a more favorable plea deal for the Plaintiff (such as to Assault and Battery 1st Degree or 2nd Degree). Plaintiff submits that the timeline between the incident and the victim's application for an MMA license demonstrated that the victim's injuries should have been evaluated further by the defense in their pursuit of the plea. Plaintiff submits that plea counsel's deliberate refusal to seek out the medical records in this case was prejudicial to the Plaintiff, who was unable to make a complete and informed decision as to whether he should plead guilty and to which offense, or whether to go to trial.

Respectfully Submitted,



James R. Snell, Jr.
Vicki Koutsogiannis
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(803) 359-7691 (facsimile)
Attorneys for the Plaintiff



LAW OFFICE OF
JAMES R. SNELL, JR.
LLC

16 South Lake Drive, Lexington, South Carolina 29072



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