

THE BOOZER LAW FIRM, LLC

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May 26, 2017

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

The Honorable James C. Campbell
Clerk, Sumter County
215 N. Harvin Street
Sumter, SC 29150

RECEIVED

MAY 30 2017

**RE: Daniel Brunson, #192542, v. State of South Carolina
2015-CP-43-1130**

S.C. SUPREME COURT

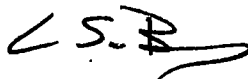
Dear Mr. Shearouse and Mr. Campbell:

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

Yours very truly,



Lance S. Boozer

Enclosures

cc: Julie Coleman, AAG
Loriene French, OAD
Daniel Brunson, #192542

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

The Honorable D. Craig Brown, Circuit Court Judge

Case No. 2015-CP-43-1130

RECEIVED

MAY 30 2017

S.C. SUPREME COURT

Daniel Brunson, #192542,Petitioner,

v.

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

NOTICE OF APPEAL

The Petitioner appeals the Honorable D. Craig Brown's Order dated April 25, 2017, and filed May 4, 2017, denying post-conviction relief to the Petitioner. The Order was received by undersigned counsel on May 26, 2017. A copy of the Order on appeal is attached to this notice.

Respectfully submitted,



Lance S. Boozer
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1400 Laurel Street, Suite 4A
Columbia, SC 29201
Tele: 803-608-5543

May 26, 2017

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

The Honorable D. Craig Brown, Circuit Court Judge

Case No. 2015-CP-43-1130

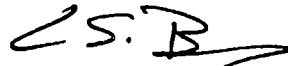
Daniel Brunson, #192542,Petitioner,

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 26th day of May, 2017.



Lance S. Boozer
The Boozer Law Firm, LLC
1400 Laurel Street, Suite 4A
Columbia, SC 29201
Tele: 803-608-5543

RECEIVED

MAY 30 2017

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

RECORDED THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

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2015-CP-43-1130

Daniel Evers Brunson, #192542,

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

Applicant,

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on May 11, 2015. Respondent made its Return on July 23, 2015. An evidentiary hearing was convened on March 27, 2017, at the Sumter 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.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's plea counsel, Timothy Murphy, Esquire ("Plea Counsel") also testified. The Court had before it a copy of the guilty plea transcript, the records of the Sumter County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, and the pleadings. The Court finds as follows:

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 Sumter County Clerk of Court. Applicant was true bill indicted at the April 2014 term of the Sumter County Grand Jury for criminal sexual conduct-first degree, kidnapping, and assault and battery-first degree (2014-GS-43-0293). Tim Murphy, Esquire represented Applicant. On July 21, 2014,

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Applicant pled guilty as indicted to kidnapping and assault and battery before the Honorable R. Ferrell Cothran, Jr. The criminal sexual conduct charge was dismissed. Judge Cothran sentenced Applicant without recommendations or negotiations to an eight year term of imprisonment for kidnapping and an eight year term of imprisonment for assault and battery-first degree running concurrent. Applicant did not appeal his guilty plea or sentence.

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. Failing to investigate social history.
 - b. Had counsel investigated he would have discovered Applicant was blind.
2. Subject Matter Jurisdiction
 - a. Indictment multiplicity
3. Double Jeopardy.

At the evidentiary hearing, Applicant orally amended his allegations to include the following:

1. Ineffective Assistance of Counsel
 - a. Failure to review defenses, evidence or trial strategy with Applicant.
2. Involuntary Guilty Plea

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, (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

Before the evidentiary hearing, Applicant introduced as an exhibit a transcript from a hearing on June 4, 2014, at which Applicant began to plead guilty but instead moved to have Plea Counsel relieved. Applicant's exhibit was considered as part of the record before this Court.

Applicant testified that he had been blind his entire life as a birth defect from his father's battle wounds from the Vietnam War. He testified that he can see some illumination out of his left eye, but he cannot see or read anything, and he has never been able to read. He stated that his disability was never investigated or brought up to the plea court in his defense. Applicant stated

that Plea Counsel failed to investigate an incident report that should have been used in his defense, and if it had been investigated, he would not have gone to prison because in the report, the Victim was telling untruths.

Applicant stated that he had a preliminary hearing before Judge Gibson, who is related to him, which was a conflict of interest. He stated that he told Plea Counsel about this conflict of interest, but Judge Gibson still heard his case at the hearing. Applicant stated that his indictments were invalid. He stated that the indictments for kidnapping and criminal sexual conduct were worded the same way, and he believed that having both charges was a violation of the Double Jeopardy clause of the constitution.

Applicant testified that he did strike the Victim and he stole her money. He stated that Plea Counsel never spoke to any of the witnesses that he told him to investigate, and he relied solely on the State's investigation. He stated that Plea Counsel had mentioned to him a possibility that he would get a probationary sentence instead of prison time. He stated that Plea Counsel told him that he would not get a bond. He stated that he told Plea Counsel that he could not read, and Plea Counsel read all the discovery material to him in front of the Sheriff at the jail, which was a violation of his due process rights. Applicant stated that he asked Plea Counsel to file an appeal, but he did not.

After his testimony, Plea Counsel took the stand. Plea Counsel testified that the State's evidence against Applicant was overwhelming. He stated that law enforcement officers came to the scene of crime for another reason, but heard screams for help and burst into the apartment, breaking down a locked bedroom door and finding Applicant straddling the female Victim and beating her face. He stated that Applicant was adamant that he did not attempt to rape the Victim, he only stole her money and physically beat her while restraining her to the bed. He

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stated that the State dropped the criminal sexual conduct charge and Applicant only pled to kidnapping and assault and battery.

Plea Counsel testified that there was never any discussion between them about probation; he told Applicant that he would probably get a five to eight year sentence at best. He stated that Applicant gave him several witnesses to investigate, and he would have investigated them if the State had not dropped the criminal sexual conduct charge, because they were only relevant to that charge. Plea Counsel testified that he went over all the discovery with Applicant, including the incident report that law enforcement produced after they witnessed the crime. He stated that he read all of the material to him, and Applicant reviewed it himself, because he could read at the time he represented him. Plea Counsel testified that he communicated with Applicant through letters that he wrote in very large print so that Applicant could see it, and he knew that Applicant could read and understand the letters because he would hand him a document, Applicant would look at it, and Applicant would respond to substance within the document.

Plea Counsel testified that it was Applicant's decision to plead guilty; Applicant initiated a request for a guilty plea. He stated that Applicant never asked him to file an appeal. Plea Counsel stated that there was no issue with the indictments in this case, and he did not feel that there was a double jeopardy issue in this case. He testified that Applicant was granted bond. He stated that Applicant never told him that he was related to Judge Gibson and he was never aware of a conflict of interest. He stated that if he had known, he would have asked the Judge to recuse himself.

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 to be not credible. In contrast, this Court finds Plea Counsel's testimony to be very credible. These findings are applied to the specific findings below.

INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant has asserted an allegation of ineffective assistance of counsel. This Court finds this claim to be meritless and it should be denied and dismissed with prejudice. This Court finds that Plea Counsel's representation did not fall below the standards of professional norms in any manner. He communicated properly with Applicant and reviewed all discovery materials with him. Based on this testimony and the record before the court, this Court finds that Plea Counsel's representation was not ineffective in any regard.

Applicant alleges that Plea Counsel was ineffective for failing to investigate his social history with the Victim and failure to discover that Applicant is blind. This allegation is meritless. Plea Counsel credibly testified that he investigated this case and reviewed all discovery material, including the police incident report, with Applicant multiple times. He stated that he would have investigated the witnesses Applicant asked him to, but they were not necessary because they were only relevant to the criminal sexual conduct charge that the State dropped before the guilty plea. Plea Counsel testified that he knew very well that Applicant was blind at the time of his representation, and this was evidenced by the letters that he sent to Applicant with very large font and the fact that he read the discovery materials aloud to him.

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Based on this testimony, this Court finds that Plea Counsel thoroughly investigated Applicant's case and was not ineffective in this regard.

Applicant further alleges that Plea Counsel was ineffective for failing to review defenses, evidence or trial strategy with Applicant. The testimony presented clearly shows that Plea Counsel thoroughly reviewed all the evidence and discovery with Applicant, both in writing and by reading it aloud to him. As Plea Counsel credibly testified, the evidence against Applicant was *overwhelming*, and included a report from two law enforcement officers that were present to witness Applicant straddling and beating the Victim. Plea Counsel testified that he was preparing the case for trial, but there were likely not many defenses to pursue in this situation. Furthermore, Applicant chose to plead guilty, so any failure to discuss Plea Counsel's trial strategy had no bearing on the final outcome of his case.

It is clear that Plea Counsel went above and beyond the standards of representation in this case, and he did everything he could to represent Applicant in the face of overwhelming evidence against him. Plea Counsel was not deficient in any regard, and there was no prejudice to Applicant from any of Plea Counsel's actions or inactions. Therefore, this allegation is denied and dismissed with prejudice.

INVOLUNTARY GUILTY PLEA

Applicant argues his plea was not given freely and voluntarily. This Court finds otherwise and concludes that Applicant's plea was entered freely and voluntarily. 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). 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 court and defendant, between 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)). 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, 97 S. Ct. 1621, 52 L.Ed.2d 136 (1977)). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. United States, 519 F.2d 347 (4th Cir.1975).

This Court finds that the record reflects that Applicant was fully advised of the rights he was giving up by pleading guilty. Applicant presented no credible evidence as to why he should be able to depart from his statements at the plea hearing. This Court finds very credible Plea Counsel's testimony that he advised Applicant of all facts and risks of pleading guilty.

The record reflects Applicant fully admitted his guilt to the plea court. "A guilty plea constitutes a waiver of nonjurisdictional defects and claims of violations of constitutional rights." Jamison v. State, 410 S.C. 456, 467, 765 S.E.2d 123, 129 (2014) (citing State v. Rice, 401 S.C. 330, 331-32, 737 S.E.2d 485, 485-86 (2013); Hyman v. State, 397 S.C. 35, 44, 723 S.E.2d 375, 379 (2012)). Notably the South Carolina Supreme Court has held "[a] guilty plea represents a break in the chain of events which has preceded it in the criminal process." Id. (citations omitted). "When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea." Id. (citing Rice, 401 S.C. at 332, 737 S.E.2d at 486). Therefore, this Court finds the plea

judge correctly found Applicant's plea was freely, voluntary, and intelligently made. Accordingly, this allegation must be denied and dismissed with prejudice.

SUBJECT MATTER JURISDICTION

Applicant alleges the court did not have subject matter jurisdiction over his charges. An Applicant may challenge the subject matter jurisdiction of the trial court and such a claim is one that may be raised at any time. See Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001), overruled in part by Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). However, “[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters.” Gentry, 363 S.C. 93; See also S.C. Const. Art. V, § 7. Thus, Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. Applicant’s conviction involved a criminal charge in General Sessions Court. Thus, the circuit court had subject matter jurisdiction. Applicant has failed to present any evidence that the convictions he challenges in this application are in a class over which the circuit court does not have the authority to provide.

A review of the record clearly indicates that there is no basis upon which to conclude that the court lacked subject matter jurisdiction. Further, Applicant's indictments are facially valid and proper. An indictment is adequate and valid on its face if the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, the defendant to know what he is called upon to answer, and acquittal or conviction to be placed in bar to any subsequent prosecution. State v. James, 321 S.C. 75, 472 S.E.2d 38 (Ct. App. 1996); State v. McIntire, 221 S.C. 504, 71 S.E.2d 410 (1952). The indictments in this case are facially valid because they contain all the necessary elements of the offenses intended to be charged, state the date of the offenses, and the name of the accused. Therefore, this allegation is denied and dismissed with prejudice.

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DOUBLE JEOPARDY

Applicant contends that he was subjected to double jeopardy. This issue is not one that can be raised in a post-conviction relief proceeding. PCR is not a substitute for a direct appeal. Claims that could or should have been raised in a direct appeal cannot be asserted for the first time in a post-conviction relief proceeding. See Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974); Sellers v. Boone, 261 S.C. 462, 200 S.E.2d 686 (1973) (double jeopardy). Nevertheless, Applicant's allegation of a double jeopardy violation is without merit.

The Double Jeopardy Clauses of both the United States and South Carolina Constitutions protect against multiple punishments for the same offense and second prosecutions for the same offense after an acquittal, a conviction, or an improvidently granted mistrial. When there are multiple punishments imposed in the same trial, the Double Jeopardy Clause does no more than prevent the sentencing judge from prescribing greater punishment than the legislature intended. Missouri v. Hunter, 459 U.S. 359 (1983); State v. Wilson, 311 S.C. 382, 429 S.E.2d 453 (1993). Accordingly, this allegation is dismissed because it is a direct appeal issue and because no constitutional violations occurred in this case.

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.

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VII. CONCLUSION


Based on all the foregoing, this Court finds and concludes that 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 25 day of April, 2017.


D. CRAIG BROWN
Presiding Judge
Third Judicial Circuit

Florence, South Carolina

DAB
P. 11 of 11

STATE OF SOUTH CAROLINA)
COUNTY OF)

Daniel Brunson #192642)

Plaintiff(s),)

-vs-)

State of South Carolina)

Defendant(s).)

IN THE COURT OF (Select one.)

COMMON PLEAS FAMILY COURT

JUDICIAL CIRCUIT

CASE NO.: 2015-CP-43-1130

APPOINTMENT OF COUNSEL OR GAL

(Select one.)

ORDER

AMENDED ORDER

TYPE OF CASE/PROCEEDING: (Check one.)

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

It appears that ^{Daniel} ~~Brunson~~, 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: Lance Bozler
1331 Park St
Columbia, SC 29201

counsel lead counsel (if capital PCR case) guardian ad litem

Therefore, it is ordered that ^{Bryon} ~~Bryon~~, hereby is appointed as (Select one.) for the above-named person. Any counsel or GAL previously appointed is/are hereby relieved.

(If Death Penalty PCR Case) It is further ordered that _____, Esquire, is hereby appointed as second counsel in this capital PCR case.

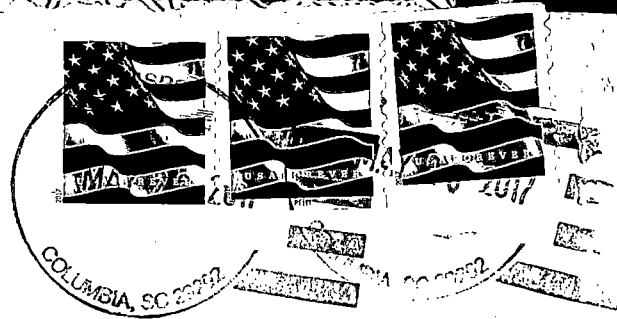
The clerk of court is directed to forward a copy of this order to all persons entitled to notice.

IT IS SO ORDERED THIS 29 DAY OF June 20 14.

2015 JUN 29 11 9:36
CLERK OF COURT
SOUTH CAROLINA
JUDICIAL CIRCUIT
COLUMBIA, S.C.

THE BOOZER LAW FIRM, LLC

1400 Laurel Street, Suite 4A
Columbia, SC 29201



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