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ATTORNEYS AT LAW

*A PROFESSIONAL ASSOCIATION*

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July 14, 2017

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

**RECEIVED**

JUL 21 2017

Re: Steve Leon Griffin vs. State of South Carolina  
Case No: 2016-CP-23-5256

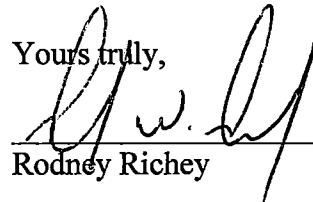
S.C. SUPREME COURT

Dear Mr. Shearouse:

Please find enclosed a Notice of Appeal and a Proof of Service for the same. Also, I have enclosed a copy of the Order from which the appeal is taken. Please file the copies that I have enclosed and return the copies to me. Thank you for your help and if you should have any questions please feel free to call me.

RICHEY AND RICHEY, P.A.

Yours truly,

  
\_\_\_\_\_  
Rodney Richey

RWR/  
enclosures  
cc: Jessica E. Kinard, Esquire

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

HONORABLE BROOKS P. GOLDSMITH

2016-CP-23-5256

**RECEIVED**

JUL 21 2017

S.C. SUPREME COURT

STEVE LEON GRIFFIN, SCDC#: 121940,

APPELLANT,

against

STATE OF SOUTH CAROLINA,

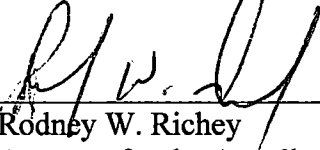
RESPONDENT.

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**NOTICE OF APPEAL**

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Steve Leon Griffin. appeals the denial of his Post- Conviction Relief. The Post- Conviction Relief action was heard and denied by the Honorable Brooks P. Goldsmith, Circuit Judge on February 22, 2017 and Order issued on June 17, 2017 and filed on July 5, 2017. The Appellant received notice of the judgment on July 12, 2017.



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Rodney W. Richey  
Attorney for the Appellant  
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(864) 467-0503

Other Counsel of Record:  
Jessica E. Kinard, Esquire  
Office of Attorney General State of SC  
Post Office Box 11549  
Columbia, SC 29211-1549

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

HONORABLE BROOKS P. GOLDSMITH

2016-CP-23-5256

**RECEIVED**

JUL 21 2017

S.C. SUPREME COURT

STEVE LEON GRIFFIN, SCDC#: 121940,

APPELLANT,

against

STATE OF SOUTH CAROLINA,

RESPONDENT.

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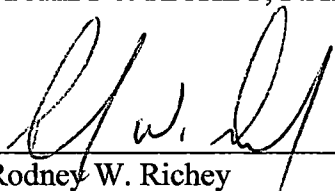
**PROOF OF SERVICE**

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I certify that I have served the Notice of Appeal on the State of South Carolina by depositing copy of it in the United States Mail, postage prepaid, on July 14, 2017, addressed to their attorney of record, Jessica E. Kinard, Office of Attorney General State of South Carolina, Post Office Box 11549, Columbia, SC 29211-1549.

Dated: July 14, 2017

RICHEY & RICHEY, P.A.



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Rodney W. Richey  
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STATE OF SOUTH CAROLINA )  
 COUNTY OF GREENVILLE )  
 )  
 Steve Leon Griffin, #121940, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 THIRTEENTH JUDICIAL CIRCUIT

Case No.: 2016-CP-23-5256

**ORDER OF DISMISSAL  
 WITH PREJUDICE**

ENTERED COMPUTER

FILED-CLERK OF COURT  
 PAUL B. WINGARD  
 GREENVILLE, SC

2017 JUL -5 PM 4:46

*JW*

This matter comes before the Court by way of an application for Post-Conviction Relief filed September 12, 2016. Respondent made its Return on or about January 12, 2017. An evidentiary hearing into the matter was convened on February 22, 2017 at the Greenville County Courthouse in Greenville, SC at which time the Applicant was present in court and represented by Rodney W. Richey, Esquire. The Respondent was represented by Jessica E. Kinard, Esquire of the South Carolina Attorney General's Office.

At the hearing, Applicant testified on his own behalf. Applicant's plea counsel, Christopher D. Scalzo, Esquire also testified. This Court had before it a copy of the records of the Greenville County Clerk of Court regarding the Applicant's convictions, the transcript from Applicant's guilty plea, the PCR application, Respondent's Return, and Applicant's records for the Department of Corrections.

**PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Greenville County. Applicant was indicted by the September 2015 term of the Grand Jury for Greenville County for count one of Armed Robbery and count two of Possession of a Weapon during the Commission of a Violent Crime

(2014-GS-23-07782). Applicant was represented by Christopher D. Scalzo, Esquire. On February 1, 2016, Applicant pled guilty to the lesser included offense of Attempted Armed Robbery and was sentenced by the Honorable Edward W. Miller to thirteen years imprisonment for Attempted Armed Robbery.

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

1. Ineffective Assistance of Counsel
  - a. "Counsel advised Applicant to plead to an unindicted offense."
2. "Violation of Due Process"
  - a. "The court lacked subject matter jurisdiction to convict applicant."

#### **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 had the opportunity to observe the witnesses presented at the hearing, and can weigh their testimony and credibility accordingly. Below are the findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2017). This Court finds the testimony of Counsel to be credible. This Court further finds that the testimony by Applicant is not credible.

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

This Court interprets Applicant's allegations as a claim that his guilty plea was improper due to ineffective assistance of counsel. Applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence. (Rule 71.1 (e), SCRCP). When an applicant alleges ineffective assistance of counsel, 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 (1984); Butler v. State, 286 S.C. 441, 334 S.E. 2d 813 (1985).

To receive relief, an Applicant must prove that counsel’s performance was both deficient and prejudicial. Attorneys are held to an objective standard of “reasonably effective assistance” under “prevailing professional norms.” Cherry v. State, 300 S.C. 115, 117, 386 S.E. 2d 624, 625 (1989) (citing Strickland, 466 U.S. at 688). The presumption will always be that counsel was effective and the applicant must overcome this presumption to receive relief. Id., 300 S.C. at 118, 386 S.E.2d at 625. To prove prejudice, an Applicant must prove that counsel’s deficient performance was so poor that the Applicant prove that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Strickland, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the proceeding. Strickland, 466 U.S. at 694. In a PCR action, an Applicant who has pled guilty must prove that because of counsel’s deficient performance, 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).


To find a guilty plea is voluntarily and knowingly entered into, the record must establish the Applicant 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 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984). An Applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel’s representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for trial



counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. See Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993).

This Court finds Counsel provided effective assistance in this case. Counsel testified that he advised Applicant of all the charges and the potential sentences the charges carried. Counsel also reviewed all of the discovery with Applicant. Counsel advised Applicant of all of his Constitutional rights, including his right to a jury trial, to remain silent, to confront accusers, and so forth. Counsel testified that it was ultimately Applicant's decision to plead guilty, based on their discussions. He further testified that he was handling several charges for the applicant, and that pleading guilty would resolve those all of them without risking a mandatory minimum sentence. In Applicant's testimony, he stated that he did not know that he was no indicted on attempted armed robbery until he got his discovery after his plea; however, he further testified that he believed taking a guilty plea was in his best interest. Counsel testified that the attempted armed robbery did not need to be separately indicted because it was being viewed as a lesser included offense. It is evident from the record that the questions asked by the plea court and the responses given by Applicant that he made the decision to plead guilty freely and voluntarily. This Court further finds that Applicant was fully aware of his rights and those rights that he was waiving.

Additionally, Applicant's allegation that the circuit court lacked subject matter jurisdiction due to a defective indictment is meritless. A circuit court has subject matter jurisdiction to convict a defendant of an offense if there is an indictment that sufficiently states the offense, the defendant waives presentment, or the offense is a lesser-included offense of the crime charged in the indictment. State v. Wilkes, 353 S.C. 462, 464-465, 578 S.E.2d 717, 719



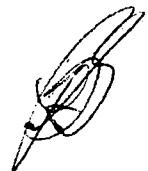
(2003) (citing Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001)). In this case, the Applicant was indicted by the Greenville County Grand Jury. That indictment was true-billed and signed by the foreman of the grand jury. The said indictment contains all the necessary elements of the offense, and further cites the applicable statute. A presumption of regularity attaches to all proceedings in the courts of this State, and it is incumbent upon one who challenges a proceeding to prove his claims. See, e.g., Tate v. State, 345 S.C. 577, 549 S.E.2d 601 (2001); Pringle v. State, 287 S.C. 409, 339 S.E.2d 127 (1986). Moreover, the Applicant pled to Attempted Armed Robbery, a lesser included offense of the charge he was indicted for. The Applicant here cannot show any irregularity, because the indictment in question is sufficient on its face.

Therefore, Applicant having failed to prove any deficiency by Counsel as required by Strickland, his application is denied and dismissed with prejudice.

### CONCLUSION

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

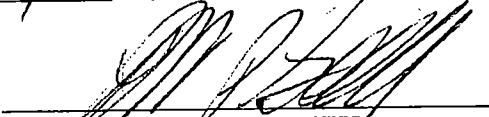
This Court notifies Applicant that he must file and serve a notice of appeal within thirty (30) days from receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. *See* Rule 203, SCACR. An applicant has a right to an appellate counsel's assistance when they are seeking review of the denial of PCR. Austin v. State, 305 S.C. 453 (1991). If an applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. See Rule 71.1 (g), SCRPC. Refer to Rule 243 of the South Carolina Appellate Court Rules for appropriate procedures for appeal.



**IT IS THEREFORE ORDERED THAT:**

1. The application for Post-Conviction Relief is denied and dismissed with prejudice;
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

**AND IT IS SO ORDERED** this 17 day of July, 2017.

  
\_\_\_\_\_  
BROOKS P. GOLDSMITH  
Presiding Judge  
Thirteenth Judicial Circuit

\_\_\_\_\_, South Carolina

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USA

NON-MACHINEABLE SURCHARGE 2016



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The Honorable Daniel E. Shearouse  
The Supreme Court of South Carolina  
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Columbia, SC 29211

