

Lowcountry Law Office

4000 Faber Place Drive, Suite 300
Charleston, SC 29405

Phone: 843-323-4353 Fax: 843-323-4101

E-Mail: Davis@LowcountryLawOffice.com

August 22, 2017

RECEIVED

AUG 28 2017

S.C. SUPREME COURT

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

RE: Robert McFadden v. State of SC; Case #: 2015-CP-08-1774

Dear Mr. Shearhouse:

Enclosed for filing is the Notice of Appeal (original and clocked copy) in the above Post Conviction Relief (PCR) cases. Also enclosed are the following:

- (1) Proof of service of the Notice of Appeal on the Respondent;
- (2) The Order of Dismissal &
- (3) A Request for Representation on Appeal.

The Applicant-Appellant(s) were represented by me as an indigent pursuant to my contract with the South Carolina Commission on Indigent Defense (SCCID) to handle PCR cases. By copy of this letter, I am forwarding a duplicate set of documents to the SCCID.

The Request for Representation on Appeal and the Affidavit in Support thereof are signed by me as attorney for Applicant-Appellant. Should you need anything further, do not hesitate to contact me. Thank you for your time and attention to this matter.

Sincerely,



Rodney D. Davis
South Carolina Bar #: 12396
4000 Faber Place Drive, Suite 300
Charleston, SC 29405
(843) 323-4353
Davis@LowcountryLawOffice.com

~~Enclosures: As stated above~~

RDD/mmt

cc: Ruston Wesley Neely, Assistant Attorney General
Kimberly McCall, Appellate Division, SCCID

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

AUG 28 2017

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

S.C. SUPREME COURT

The Honorable Brooks P. Goldsmith

Case #: 2015-CP-08-1774

Robert A. McFadden,

Appellant.

v.

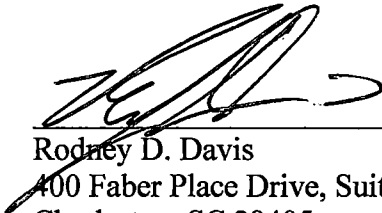
State of South Carolina,

Respondent.

NOTICE OF APPEAL

Robert A. McFadden appeals the denial of his Post Conviction Relief (PCR) application in this case. The application for relief was denied following an evidentiary hearing before the Honorable Brooks P. Goldsmith on September 14, 2016.

August 27, 2017


Rodney D. Davis
400 Faber Place Drive, Suite 300
Charleston, SC 29405
Attorney for Appellant

Other Counsel of Record:
Alicia Olive
Assistant Deputy Attorney General
State of South Carolina
P.O. Box 11549
Columbia, SC 29211-1549
Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

The Honorable Brooks P. Goldsmith

Case #: 2015-CP-08-1774

Robert A. McFadden,

Appellant.

v.

State of South Carolina,

Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the State by mailing a copy, via US Mail, to the address of record, Judah VanSyckel, P.O. Box 11549, Columbia, South Carolina 29211-1549, on August 9, 2017.

August 9, 2017



Michelle Moore Trimble
Paralegal to Rodney D. Davis
400 Faber Place Drive, Suite 300
Charleston, SC 29405
(843) 323-4353
Davis@LowcountryLawOffice.com
Attorney for Appellant

Other Counsel of Record:
Alicia Olive, Assistant Attorney General
Office of the Attorney General, State of South Carolina
P.O. Box 11549
Columbia, SC 29211-1549
Attorney for Respondent

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

Robert Andrew McFadden, #315301,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No.: 2015-CP-08-1774

ORDER OF DISMISSAL

MARY P. CROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

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FWD
BD

This matter comes before the Court by way of an application for post-conviction relief filed July 28, 2015, by Robert Andrew McFadden (Applicant) alleging plea counsel was ineffective. Respondent made its Return on May 13, 2016, requesting an evidentiary hearing be held. An evidentiary hearing into the matter was convened September 14, 2016, at the Berkeley County Courthouse. Applicant was present at the hearing and represented by Rodney D. Davis, Esquire. Assistant Attorney General Alicia Olive from the South Carolina Attorney General's Office appeared on behalf of the State. At the conclusion of the hearing, this Court denied the application from the bench. This order follows.

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Berkeley County Clerk of Court. During its September 2012 term of court, the Berkeley County Grand Jury indicted Applicant for murder (2012-GS-08-1693). During its February 2015 term of court, the Berkeley County Grand Jury indicted Applicant for first-degree burglary (2015-GS-08-0120).

On March 5, 2015, Applicant appeared in the Berkeley County Court of General Sessions before the Honorable Deadra Jefferson, circuit court judge. Applicant was represented by Grover C. Seaton, Esquire. Assistant Solicitor Anne Williams represented the State. At this hearing, Applicant pled guilty to first-degree burglary as indicted, and the lesser-included offense of voluntary manslaughter. Applicant also waived presented to the grand jury and pled guilty to grand larceny (more than \$10,000) (2015-GS-08-0391). Pursuant to negotiations between Applicant and the State, Judge Jefferson sentenced Applicant to thirty years imprisonment suspended upon the service of twenty years imprisonment for first-degree burglary and voluntary manslaughter, with both sentences to be served concurrently, and to ten years imprisonment suspended upon the service of time served followed by five years probation to be served *consecutively* to the other sentences. Pursuant to plea negotiations, the State dismissed Applicant's pending charges for receiving stolen goods (2012-GS-08-1906) and enhanced shoplifting (2012-GS-08-1512). Applicant did not appeal his guilty pleas or sentences.

FACTUAL HISTORY

These charges arise from the home invasion and subsequent murder of a seventy-one-year-old victim. Applicant and two co-defendants spent the evening of July 14, 2012, smoking crack cocaine in Applicant's motel room. When they ran out of crack cocaine and money, Applicant and his co-defendants decided to rob the victim, of whom they were aware through mutual friends and knew kept a large amount of money in his home. The three proceeded to a Wal-Mart, where they were seen on store surveillance footage purchasing duct tape, gloves, a backpack, and other items. Then they drove to the victim's home in Hannahan, where they tricked him and gained entry into his home. Once inside, they demanded access to his safe until

the victim eventually acquiesced. At some point, the victim recognized one of the co-defendant's voices and the three decide to kill him. They tie the victim's hands behind his back with duct tape, bind his legs, and secure a plastic bag over his head with duct tape; thereafter, the victim suffocated to death. Before the defendants leave the home, they attempted to stage a scene to implicate another acquaintance in the murder. The three then steal the victim's truck. (Plea Tr. p. 15-18).

ALLEGATIONS RAISED

In his application, Applicant alleged he is being held in custody unlawfully based on allegations of ineffective assistance of counsel for:

- 1) Failure to file several motions on Applicant's behalf, including a motion to suppress, a motion to vacate, and a motion for a bond hearing
- 2) Failure to inform Applicant of new charges
- 3) Refusal of a preliminary hearing without consulting with Applicant or receiving his consent
- 4) Failure to inform him of his right to appeal
- 5) Mislead Applicant by lying to procure his guilty plea
- 6) Due process violation which include his Fifth and Fourteenth Amendment rights

In its Return, the State moved to dismiss the due process allegation for failure to state a ground for relief with any specificity. At the start of the evidentiary hearing, Applicant stated he had no objection to the State's motion to dismiss and this Court dismissed this allegation.

SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

At the evidentiary hearing, Applicant testified on his own behalf. Applicant testified he was arrested on July 19, 2012, and charged with murder and possession of a stolen vehicle. (PCR Tr. p. 8). He testified he never had a bond hearing on his murder charge. (PCR Tr. p. 8). He

testified he pled nearly three years after his arrest. (PCR Tr. p. 8). Applicant testified he met with his attorney twice and met with his paralegal three times. (PCR Tr. p. 9). He testified he was not aware of the two additional charges (first-degree burglary and grand larceny) until the day of his plea when counsel presented him with sentencing sheets and asked him to sign them. (PCR Tr. p. 9-10). He testified the State allowed him to plead guilty to the lesser-included offense of voluntary manslaughter. (PCR Tr. p. 10). He testified counsel did not review the elements of any of the offenses with him. (PCR Tr. p. 10-11).

Applicant testified shortly before his plea, counsel told him about the State's plea offer in exchange for a twenty year sentence. (PCR Tr. p. 11-12). Applicant testified counsel advised him if he took the plea offer, he would have to serve eighty-five percent of his sentence, as opposed to forty years day-for-day up to life if convicted of murder. (PCR Tr. p. 12-13, 19). Applicant testified he discussed the plea offer with his family and they advised him to accept the offer. (PCR Tr. p. 12). He testified counsel also advised him to accept the State's plea offer and he would likely be convicted if he proceeded to trial. (PCR Tr. p. 12-13). He testified he had an evening to decide whether to accept the State's plea offer and he pled the next day. (PCR Tr. p. 18). Applicant testified he had been pushing counsel for a trial the entire time, but he elected to accept the State's plea offer because he did not think counsel was ready for trial. (PCR Tr. p. 19-20). He testified he would have gone to trial if counsel had discussed how to combat his co-defendants' statements, his identification, and other evidence that would likely come in at trial (PCR Tr. p. 20-21). He testified he pled guilty because he was scared, but acknowledged he also took the plea offer to get less time. (PCR Tr. p. 25, 26).

Applicant testified he never reviewed discovery with counsel, but that he did receive a copy of his discovery materials sixteen months after his arrest. (PCR Tr. p. 13). He testified he believes his discovery materials were incomplete because his co-defendants' discovery had additional materials his discovery did not, such as photographs. (PCR Tr. p. 13-14). He testified he and counsel never discussed possible defenses to any of his charges. (PCR Tr. p. 14). Applicant testified his co-defendant accepted a plea offer with six months of their arrests and agreed to cooperate with the State. (PCR Tr. p. 15). He testified he and counsel never discussed the possibility of his co-defendant testifying against him. (PCR Tr. p. 15-16). He also testified counsel and he never discussed his statement or who they could challenge its admission at trial. (PCR Tr. p. 16). Applicant testified he was aware of the surveillance video from inside the Wal-Mart, but that he and counsel did not discuss how to challenge its admission. (PCR Tr. p. 17). He testified he and counsel did not discuss how to challenge any possible identification evidence that might come in at trial either. (PCR Tr. p. 17).

Applicant testified he remembered telling the plea court he was satisfied with counsel's services and wanted to plead guilty. (PCR Tr. p. 22-23, 26-28). He testified at the time of his plea, those answers were honest and accurate, but now that he has had two years in the Department of Corrections to research the law and his case, he feels counsel did an inadequate job preparing and handling his case. (PCR Tr. p. 23, 26).

The State presented trial counsel Grover Seaton (Counsel). Counsel testified he has been practicing law for twenty-one years. (PCR Tr. p. 30). He testified he recalls meeting with Applicant more than two times, and additionally, that he met with Applicant's parents multiple times and his paralegal frequently met with Applicant. (PCR Tr. p. 30). He testified he reviewed

discovery with Applicant and that his paralegal delivered a copy to Applicant. (PCR Tr. p. 30-31). He testified both of Applicant's co-defendants were going to testify against him and that he discussed this with Applicant. (PCR Tr. p. 34). He elaborated one of the co-defendants had already provided a proffer for the State, and at the last minute, Applicant's other co-defendant decided he was willing to testify against Applicant. (PCR Tr. p. 34, 39-40). He testified this "absolutely" impacted his decision to advise Applicant to plead guilty because he thought Applicant would be convicted if he went to trial. (PCR Tr. p. 35-37). He testified there was no DNA or forensic evidence implicating Applicant. (PCR Tr. p. 41).

Counsel testified he entered into plea negotiations with the State at Applicant's request. (PCR Tr. p. 34). He testified he advised Applicant it was in his best interest to accept the State's plea offer that allowed him plead to the lesser-included offense of voluntary manslaughter. (PCR Tr. p. 34). He testified the State's plea offer was only available until the following day and he advised Applicant to discuss the offer with his parents over the evening before making his decision. (PCR Tr. p. 35-36). Counsel testified this was the first real offer the State made. (PCR Tr. p. 36). He testified he would have been prepared to go to trial if necessary and he would have fully prepared Applicant for trial. (PCR Tr. p. 37). He testified a trial was two weeks to a month off when Applicant pled guilty. (PCR Tr. p. 39). He testified he had not yet filed any motions on Applicant's behalf. (PCR Tr. p. 42).

He testified he reviewed the elements of all of Applicant's original charges and the lesser-included offense to which he pled. (PCR Tr. p. 32). Counsel testified he discussed possible defenses with Applicant, including a purported alibi defense that would not have been successful at trial. (PCR Tr. p. 32). Counsel elaborated the defense would not have been successful because

both of his co-defendants were going to testify against him and neighbors reported someone matching Applicant's description going into the victim's house. (PCR Tr. p. 33).

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 hearings. 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. Specifically, this Court finds trial counsel's testimony credible and finds Applicant's testimony not credible. 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).

Ineffective Assistance of Counsel

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she must prove "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, 286 S.C. 441, 334 S.E.2d 813. The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813. The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). Judicial scrutiny of counsel's performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel's assistance after

conviction or adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable. Strickland, 466 U.S. at 689. "[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's 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." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, 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 (1985).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. 668.

After careful review of the entire record, including the testimony presented at the evidentiary hearing, based on the standard discussed above, this Court finds Applicant has failed to carry his burden in this action in regards to all of his allegations of ineffective assistance of counsel. The Court finds plea counsel adequately conferred with Applicant, reviewed all pertinent discovery materials with Applicant, was prepared for trial when Applicant elected to forgo trial and enter a guilty plea, and fully advised Applicant of all aspects of his guilty plea. Ultimately, this Court finds plea counsel was thoroughly competent in his representation of Applicant and in his advice to Applicant that a guilty plea was in his best interest.

Allegation: Failure to File Motions on Applicant's Behalf

Applicant alleges plea counsel was ineffective for failing to file motions on his behalf, including a motion to suppress, motion to vacate, or a motion for a bond hearing. At the hearing, counsel testified he had not filed any motions on Applicant's behalf. However, counsel also testified Applicant's trial was likely at least two weeks to a month. This Court finds Applicant has failed to meet his burden of establishing counsel's deficiency regarding failure to file motions. As counsel testified, Applicant's trial was at least two weeks away, giving counsel ample time to research, draft, and file any appropriate pre-trial motions on Applicant's behalf. This court declines to find counsel deficient for failing to file motions on Applicant's behalf weeks before an anticipated trial date, particularly when Applicant asked counsel to negotiate a favorable plea offer on his behalf. Moreover, Applicant failed to establish any potential motions would have been successful and had any impact on Applicant's proceeding. Therefore, Applicant cannot establish any requisite prejudice necessary for relief.

Allegation: Failure to Inform Applicant of New Charges

Applicant alleges counsel was ineffective for failing to inform him of new charges. Applicant testified counsel did not advise him of the grand larceny of first-degree burglary charges until shortly before his guilty plea when he presented Applicant with the guilty plea sheets and asked him to sign them. To the contrary, Counsel testified he reviewed all charges with Applicant, including the new charges and lesser-included offenses. As mentioned above, this Court finds counsel's testimony to be credible and find counsel adequately conferred with Applicant regarding all of his charges. Therefore, this Court finds this allegation must be denied and dismissed.

Allegation: Refusal of Preliminary Hearing

Applicant alleges counsel was ineffective for refusing a preliminary hearing on his behalf without consulting with him or obtaining his consent. Applicant failed to present any testimony or evidence to support this allegation. Therefore, this Court finds Applicant has failed to meet his requisite burden of proof.

In a preliminary hearing, the State must show that there was "probable cause" to arrest the defendant for the commission of some crime. Absent this showing, the charge must be dismissed. State v. McClure, 277 S.C. 432, 434, 289 S.E.2d 158, 160 (1982) The defendant's right to request a preliminary hearing is provided solely by state statute; it is not required by either the State or Federal Constitution and is not necessary before a grand jury can indict a person for a crime. State v. Irby, 166 S.C. 430, 164 S.E. 912 (1932). South Carolina statutory law specifically provides that an accused may be brought to trial under indictment by a grand jury without a preliminary hearing in some cases. State v. Nesmith, 213 S.C. 60, 48 S.E.2d 595

(1948). The indictment itself constitutes a finding of probable cause and thus avoids the need for a preliminary hearing. United States v. Werbrouck, 589 F.2d 273 (7th Cir. 1978).

S.C. Code Ann. § 22-5-320, provides a right to preliminary hearing upon proper demand.

However, an accused can waive this right in several ways:

- (1) Failure to request a hearing;
- (2) Failure to comply with statutory requirements for the request;
- (3) Failure to appear, at least through an attorney, at the scheduled hearing; and
- (4) Plea negotiations and silence before the trial court regarding the desire for a preliminary hearing when entering a guilty plea.

O'Neil v. State, 277 S.C. 230, 231–32, 285 S.E.2d 352, 352–53 (1981) (internal citations omitted). In the post-conviction relief context, our courts have held an applicant waived his right to a preliminary hearing by entering into plea negotiations with the State and for failing to raise the issue when entering his or her guilty plea. Bonnette v. State, 277 S.C. 17, 282 S.E.2d 597 (1981); O'Neil, 277 S.C. at 231–32, 285 S.E.2d at 352–53.

In the present case, Applicant entered into plea negotiations with the State and did not voice any objections or otherwise request a preliminary hearing when entering his guilty plea. Therefore, this allegation must be denied and dismissed with prejudice.

Allegation: Failure to Inform of Right to Appeal

Applicant alleges counsel was ineffective for failing to inform him of his right to appeal. No testimony was presented on this issue at the evidentiary hearing. However, at the guilty plea proceeding, the plea court advised Applicant of his right to appeal, that an appeal must be filed in writing within ten days of the plea proceeding, and that an attorney would be appointed to

present him on his appeal if he could not afford one. (Plea Tr. p. 24-25). Applicant acknowledged this and told the plea court he understood his appellate rights. (Plea Tr. p. 24-25).

“In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing.” Suber v. State, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007). “Specifically, the voluntariness of a guilty plea is not determined by an examination of a specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea, and also from the record of the PCR hearing.” Roddy, 339 S.C. 29, 33, 528 S.E.2d 481, 420 (2000).

Based on the record from Applicant’s guilty plea proceeding, this Court finds Applicant was fully informed of and understood his appellate rights. Therefore, this allegation must be denied and dismissed with prejudice.

Allegation: Misled Applicant to Plead Guilty by Lying to Him

Applicant alleges counsel was ineffective by misleading him to plead guilty by lying to him. However, Applicant has failed to set forth how counsel lied to him to procure his guilty plea. Counsel testified he thoroughly advised Applicant of all of the State’s evidence and the entered into plea negotiations with the State at Applicant’s request. This Court finds Applicant has failed to meet his requisite burden of proof and must be denied and dismissed with prejudice.

CONCLUSION

Based on all the foregoing, this Court finds and concludes 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 Applicant must file and serve a notice of appeal within thirty days from the receipt of this Order by counsel of record 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 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. This application for post-conviction relief must be denied and dismissed with prejudice; and
2. The Applicant shall remain in the custody of the State.

AND IT IS SO ORDERED this 28 day of July 2017


BROOKS P. GOLDSMITH
Presiding Judge
Ninth Judicial Circuit

_____, South Carolina



ALAN WILSON
ATTORNEY GENERAL

August 1, 2017


The Honorable Mary P. Brown
Clerk of Court, Berkeley County
Post Office Box 219
Moncks Corner, South Carolina 29461-0219

Re: Robert Andrew McFadden, #315301v. State of South Carolina
2015-CP-08-1774

Dear Ms. Brown:

Enclosed please find the original **Order of Dismissal**, signed by the Honorable Brooks P. Goldsmith, in the above-captioned case for filing in your office. Please forward a **time-stamped copy** back to our office.

Sincerely,

 Megan Harrigan Jameson
Senior Assistant Deputy Attorney General

MHJ/cc
Enclosure(s)

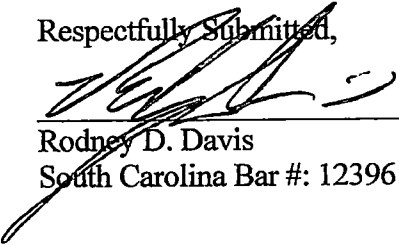
STATE OF SOUTH CAROLINA) IN THE SUPREME COURT OF SOUTH CAROLINA
)
 COUNTY OF BERKELEY) Case #: 2015-CP-08-1774
)
)
 ROBERT A. MCFADDEN,)
)
 Applicant.) REQUEST FOR REPRESENTATION ON APPEAL
)
 -versus-)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent.)

On behalf of the request of the above-named Applicant, to be represented by the South Carolina Commission of Indigent Defense, Appellate Division (SCCID), the undersigned attorney would show unto this Honorable Court that:

1. He is the attorney for the Applicant-Appellant in the above-captioned case. The Applicant-Appellant was in custody during and taken into custody immediately following the Post Conviction Relief (PCR) hearing and was not available to personally sign this request;
2. The Applicant-Appellant was represented by the undersigned attorney as an indigent, pursuant to a contract with the SCCID;
3. The Applicant-Appellant has been informed that he may request assistance from the SCCID Appellate Division in perfecting his appeal;
4. A timely Notice of Intent to Appeal has been filed on the Applicant-Appellant's behalf;
5. The Applicant-Appellant has been informed that nothing requires SCCID Appellate Division to pursue this appeal unless that office's Chief Attorney is satisfied that there is arguable merit to this appeal and that he cannot afford to hire an attorney.

At this time, the Applicant-Appellant requests the aid of the SCCID Appellate Division in perfecting his appeal to the South Carolina Court of Appeals.

Respectfully Submitted,


 Rodney D. Davis
 South Carolina Bar #: 12396

Charleston, South Carolina.
8/8, 2017

STATE OF SOUTH CAROLINA)

)

CASE #: 2015-CP-08-1774


COUNTY OF BERKELEY)

)

)


VERIFICATION

PERSONALLY appeared before me, Rodney D. Davis, being first duly sworn, deposes and says that he has read the foregoing *Request for Representation on Appeal* to be filed on behalf of the Applicant-Appellant, **Robert A. McFadden**, and the same is true of his knowledge except those matters alleged on information and belief, and as to those matters, he believes them to be true.

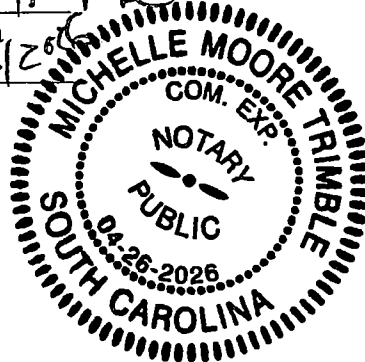


Rodney D. Davis
South Carolina Bar #: 12396

SWORN to and subscribed to me
this 26th day of August, 2017.



Notary Public for South Carolina
My Commission expires 8/26/2026





Lowcountry Law Office

4000 Faber Place Drive, Suite 300

Charleston, SC 29405

Phone: 843-323-4353 Fax: 843-323-4101

E-Mail: Davis@LowcountryLawOffice.com

August 22, 2017

Kimberly McCall
South Carolina Commission on Indigent Defense
P.O. Box 11433
Columbia, SC 29211-1433

RE: Robert McFadden v. State of SC; Case #: 2015-CP-08-1774

Dear Ms. McCall:

Enclosed is a duplicate set of Appeal documents that I have forwarded to the Clerk of the Supreme Court concerning the above-listed Post Conviction Relief (PCR) cases. I was appointed to the PCR cases pursuant to a contract that I have with your office. I have requested that your office assume the appeal of the above-listed cases.

Should you need anything further, please do not hesitate to contact me.

Thank you for your time and attention to this matter.

Sincerely,



Rodney D. Davis
South Carolina Bar #: 12396
4000 Faber Place Drive, Suite 300
Charleston, SC 29405
(843) 323-4353
Davis@LowcountryLawOffice.com

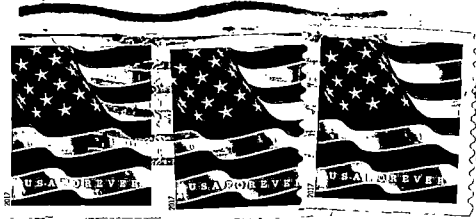
Enclosures. As stated above.

RDD/mmt

cc: Robert McFadden_(with enclosures)

Lowcountry Law Office

Rodney D. Davis
4000 Faber Place Drive, Suite 300
Charleston, SC 29405



**The Honorable Daniel E. Shearhouse
Clerk, Supreme Court of South Carolina
PO Box 11330
Columbia, SC 29211**

29211 0961 11330 5099

