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April 12, 2016

The Honorable Daniel E. Shearouse  
Clerk of South Carolina Supreme Court  
Supreme Court Building  
1231 Gervais Street  
Columbia, South Carolina 29201

Re: *Keeon Butler, #243002 v. State of South Carolina*  
Case No.: 2014-CP-10-4993

Dear Mr. Shearouse:

Enclosed for filing, please find an original and two copies of Appellant's Notice of Appeal of the denial of his application for Post-Conviction Relief. If you find everything in order, please file the original and return the clocked in copies in the enclosed self-addressed envelope.

Please note I was appointed and copy the Office of Appellate Defense who will handle the appeal. Please call if you have any questions.

With kindest regards, I am

Sincerely,



Christopher L. Murphy

CLM:jh  
Enclosures

cc (w/ encls.): Mr. Keeon Butler  
Robert M. Dudek, Esq.  
PO Box 11433  
Columbia, SC 29211-1433  
Rutledge Johnson, Esquire, SC Asst. AG  
The Honorable Perry H. Gravely  
The Honorable Julie J. Armstrong

**RECEIVED**  
APR 14 2016  
S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge

Case Nos.: 2014-CP-10-4993

Keeon Butler .....  
Appellant

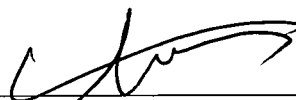
v.

State of South Carolina .....  
Respondent

NOTICE OF APPEAL

Appellant appeals the Court's denial of her application for post-conviction relief. Attached is the order from the Court dated March 15, 2016 and received April 8, 2016.

April 12, 2016



**CHRISTOPHER L. MURPHY**  
MURPHY LAW OFFICES, LLC  
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Other Counsel of Record

Rutledge Johnson, Esquire  
Assistant Attorney General  
South Carolina Office of the Attorney General  
1000 Assembly Street  
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(803) 734-3737  
[rjohnson@scag.gov](mailto:rjohnson@scag.gov)

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APR 14 2016

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY  
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Keeon Butler .....  
Appellant

v.

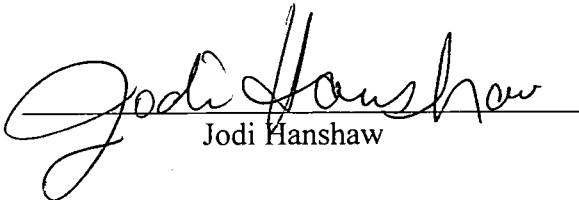
State of South Carolina .....  
Respondent

PROOF OF SERVICE

I CERTIFY that I have served PROOF OF SERVICE on counsel of record for Respondent by delivering a copy via U.S. Mail First-Class postage prepaid on the 12th day of April, 2016, addressed as follows:

<b>Rutledge Johnson, Esquire</b> Assistant Attorney General South Carolina Office of the Attorney General 1000 Assembly Street Columbia, SC 29201 (803) 734-3737 <a href="mailto:rjohnson@scag.gov">rjohnson@scag.gov</a>	

Attorney for Respondent

  
Jodi Hanshaw

CR  
AG  
AT  
GS  
SR

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )  
)  
)  
Keeon Butler, #243002, )  
)  
Applicant, )  
)  
v. )  
)  
State of South Carolina, )  
)  
Respondent. )

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT

2014-CP-10-4993

**ORDER OF DISMISSAL**

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CLERK OF COURT

This matter comes before the Court by way of an Application for Post-Conviction Relief filed August 18, 2014. Respondent made its Return on November 5, 2015. An evidentiary hearing into the matter was convened on January 20, 2016 at the Charleston County Courthouse. Christopher L. Murphy, Esquire, represented Applicant. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

At the hearing, Applicant testified on his own behalf. This Court had before it a copy of the records of the Charleston County Clerk of Court, records from the South Carolina Department of Corrections, the application, the State's Return, and the trial/plea transcript.

**PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. Applicant was indicted at the August 2012 term of the Charleston County Grand Jury for Armed Robbery (2012-GS-10-4586) and Possession of a Firearm during the Commission of a Violent Crime (2012-GS-10-3824). Guy Vitetta, Esquire, represented Applicant at trial. On April 23, 2014, Applicant proceeded to trial, where he

*PLR*

eventually pled nolo contendere (hereinafter referred to as the “plea”) before the Honorable Roger M. Young, Sr. after the State had rested and Applicant’s motion for a directed verdict was denied. Applicant was sentenced to consecutive terms of thirty (30) years imprisonment for Armed Robbery and five (5) years imprisonment for Possession of a Firearm During the Commission of a Violent Crime.<sup>1</sup>

Applicant served a pro se notice of appeal on August 3, 2014. The Respondent then filed a motion to dismiss the appeal based on Applicant’s failure to file a timely notice of appeal. By Order filed on November 19, 2014, the South Carolina Court of Appeals granted the Respondent’s Motion and dismissed the appeal. The Remittitur was issued on December 5, 2014.

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

1. “Ineffective Assistance of Counsel”
2. “Involuntary Guilty Plea”
3. “Counsel failed to file for direct appeal”

#### **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).

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<sup>1</sup> The Applicant is also serving a thirteen (13) month sentence from Greenville County for threatening the life of a public official (2011-GS-23-0767), aff’d, Op. No. 2014-UP-467(S.C. Ct. App. filed December 17, 2014).

### Ineffective Assistance of Counsel/Involuntary Guilty Plea

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). When there has been a guilty plea or plea nolo contendere, 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 and would have insisted on going to trial. See Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

Applicant testified that he was not sworn prior to his trial or plea. Applicant also stated that he did not understand the proceedings that day.

On cross-examination, Applicant admitted that he pled to a negotiated thirty-five year sentence in exchange for the State removing a Life Without Parole notice. Applicant admitted that he gave up his right to a trial by pleading nolo contendere. In addition, Applicant admitted that he did not stop the plea judge at any time to ask for an explanation or to say that he did not understand the proceedings.

This Court finds Applicant failed to meet his burden of proving ineffective assistance of counsel. Applicant failed to provide any testimony of alleged actions or inactions on the part of plea

*DWR*

counsel at all. Applicant did not call any other witnesses or provide any evidence of plea counsel's ineffectiveness. This Court finds that the plea transcript refutes Applicant's claims. According to the plea transcript, plea counsel advised Applicant of all of the charges and the sentences the charges carried. Applicant admitted nobody threatened him to plead nolo contendere, and there were no promises other than the negotiations to entice him to plead nolo contendere. Additionally, this Court finds Applicant made this decision freely and voluntarily without any threats or promises from anyone. Furthermore, this Court finds that it was ultimately Applicant's decision to plead nolo contendere.

Applicant alleges that his plea was defective because he was not sworn prior to his plea. While the transcript seems to be absent of a notation that Applicant was sworn prior to questioning by the plea court, this Court finds no authority which would make Applicant's plea defective. "In the absence of evidence to the contrary, the regularity of the proceedings of a court of general jurisdiction will be assumed." Pringle v. State, 287 S.C. 409, 410-11, 339 S.E.2d 127, 128 (1986). Applicant provided no credible evidence that his guilty plea was unconstitutionally accepted. Applicant admitted that he, at no time, stopped the plea judge to state that he did not understand the proceedings. Further, this Court finds Applicant's guilty plea to be in compliance with Boykin v. Alabama, 395 U.S. 238 (1969).

Accordingly, this Court finds Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present specific and compelling evidence that plea counsel committed either errors or omissions in his representation of Applicant.

PKZ

This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by plea counsel’s performance. This Court concludes Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. Therefore, these allegations are denied.

**All Other Allegations**

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds Applicant has abandoned any such allegations.

**CONCLUSION**

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

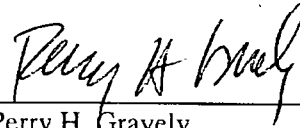
This Court advises Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate 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 must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.



AND IT IS SO ORDERED!



Perry H. Gravely  
Presiding Circuit Court Judge  
Ninth Judicial Circuit

March 15, 2016

Charleston, South Carolina

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APR 14 2016

**S.C. SUPREME COURT**

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON  
IN THE COURT OF COMMON PLEAS

\_\_\_\_\_

KEEON BUTLER, #243002,

Applicant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

\_\_\_\_\_

**CERTIFICATE OF SERVICE**

\_\_\_\_\_

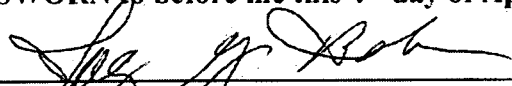
The undersigned hereby certifies that a true copy of the **Order of Dismissal** has been served upon the applicant by mailing one (1) copy in the United States mail, postage prepaid, addressed to:

**Christopher L. Murphy, Esquire  
Murphy Law Offices, LLC  
PO Box 2008  
Mt. Pleasant, SC 29465**

This 4<sup>th</sup> day of April, 2016.

  
\_\_\_\_\_  
J. RUTLEDGE JOHNSON  
ATTORNEY FOR RESPONDENT

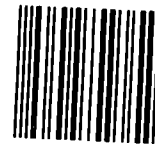
SWORN to before me this 4<sup>th</sup> day of April, 2016.

  
\_\_\_\_\_  
Notary Public for South Carolina.

My Commission Expires: 12/16/2024



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Christopher L. Murphy  
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Mt. Pleasant, SC 29465

The Honorable Daniel E. Shearouse  
Clerk of South Carolina Supreme Court  
Supreme Court Building  
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