

# FALK LAW FIRM, LLC.

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October 2, 2017

Clerk of Court  
Supreme Court of South Carolina  
P.O. Box 11330  
Columbia, SC 29211

RECEIVED

OCT 04 2017

S.C. SUPREME COURT

Re: Sherman Myers 300067

Dear Clerk Shearouse:

Please find the enclosed Notice of Appeal, Proof of Service, and Order of Dismissal in the above Horry County PCR action. Please return a clocked copy of the Notice of Appeal and Proof of Service in the enclosed SASE.

Should you have any additional questions please do not hesitate to contact my office.

With best regards, I am,



James K Falk

Thank you for your assistance.

Cc: Ruston Neely, Sherman Myers 300067.

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

RECEIVED

OCT 04 2017

S.C. SUPREME COURT

APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

Honorable R. Scott Sprouse , Circuit Judge

Case No.: 2015-CP-07-00859

Sherman Myers 300067.....PETITIONER

V.

State of South Carolina.....RESPONDENT

NOTICE OF APPEAL

The Petitioner Sherman Myers appeals the Honorable R. Scott Sprouse's, September 14, 2017 Order of Dismissal. Undersigned counsel received notice of entry of the order on September 29, 2017. A copy of the order on appeal is attached hereto.



James K Falk  
Falk Law Firm  
PO Box 1058  
Charleston, SC 29402

September 30, 2017

Ruston Neely Esq.  
Office of S.C. Attorney General  
PO Box 11549  
Columbia, SC 29211-1549

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

RECEIVED  
OCT 04 2017

APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

S.C. SUPREME COURT

Honorable R. Scott Sprouse., Circuit Judge

Case No.: 2015-CP-07-0859

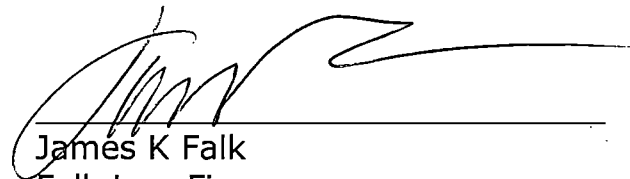
Sherman Myers 30067.....PETITIONER

V.

State of South Carolina.....RESPONDENT

PROOF OF SERVICE

I, James Falk, certify that I have today served the within notice of appeal upon the Respondent by depositing a copy of it in the U.S. Mail, postage prepaid, addressed to its attorney of record, Ruston Neely, Esq. Office of the S.C. Attorney General, PO Box 11549, Columbia, SC 29211-1549. I further certify that all parties required by Rule to be served have been served this October 2, 2017.



James K Falk  
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Charleston, SC 29402

STATE OF SOUTH CAROLINA )  
COUNTY OF BEAUFORT )

IN THE COURT OF COMMON PLEAS  
THE FOURTEENTH JUDICIAL CIRCUIT

Case No. 2015-CP-07-0859

2017 SEP 22 PM 12:20  
JESSICA SAXON, BEAU  
BEAUFORT COUNTY, S.C.  
CLERK OF COURT

Sherman Myers, #300067, )  
Applicant, )

v. )

State of South Carolina, )

Respondent. )

**ORDER OF DISMISSAL**

This Court convened an evidentiary hearing into this post-conviction relief (PCR) matter on February 13, 2017 at the Beaufort County Courthouse. Applicant was present at the hearing and represented by James K. Falk, Esquire. Ruston W. Neely, Esquire, of the South Carolina Attorney General's Office, represented Respondent. Applicant's plea counsel was Jessica Saxon (Counsel), Esquire, who was present and testified. This Court had the opportunity to listen to the testimony of Applicant and Counsel. This Court had before it the records of the Beaufort County Clerk of Court regarding the subject conviction, the guilty plea transcript, Applicant's records from the South Carolina Department of Corrections, and the pleadings in this matter. This Court finds as follows:

**I. PROCEDURAL HISTORY**

Applicant was indicted at the May 2011 term of the Beaufort County Grand Jury for one (1) count of Burglary, 1<sup>st</sup> Degree (2013-GS-07-0925). Applicant pleaded guilty and was sentenced by the Honorable Thomas W. Cooper to incarceration for fifteen (15) years for Burglary, 1<sup>st</sup> Degree. Applicant did not appeal his conviction or sentence.

RSS

## **II. ALLEGATIONS**

In his post-conviction relief application, Applicant alleged he is being held unlawfully for the following reasons:

1. Ineffective Assistance of Counsel:
  - a. "Defense counsel failed to advise Applicant prior to trial that he could proceed to trial and challenge Officer J. Goebel's false statements in the Affidavit for which second degree burglary warrant was sought to the effect that Sherman Myers did on 3/30/2011 at approximately 13:30, enter the residence of the victim through the attached garage."
2. Due Process Violations
  - a. "Unreasonable Seizure"

## **III. SUMMARY OF TESTIMONY**

Applicant claimed Counsel never explained the elements of burglary to him. He also claimed he didn't go inside the garage and didn't realize that was an element of burglary. Counsel saw him three or four times and didn't give him his evidence. He never heard about a five year plea deal.

Counsel testified she spoke with him on numerous occasions. Applicant was given a plea offer of five years on a burglary third degree charge. After the deadline ran on that offer, the offer became five years on a burglary second violent. After the deadline ran on the second offer, there was no offer as his trial date approached and the State would not renew his second offer. Counsel testified she discussed the elements of burglary third, second, and first to him. Counsel advised him strongly to take the plea offer to burglary third degree and five years. Applicant did not take Counsel's advice. Counsel testified she did provide Applicant with a copy of his discovery and reviewed it with him.

This Court finds Counsel's testimony was credible and Applicant's testimony lacked credibility.

#### IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court reviewed the record in its entirety, listened to the testimony given, and heard the arguments presented at the evidentiary 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. This Court finds Counsel's testimony was credible and persuasive and Applicant's testimony lacked credibility. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Therefore, this Court dismisses Applicant's application for the reasons set out below:

##### A. Ineffective Assistance of Plea Counsel

This Court finds the record fully supports the knowing and voluntary nature of Applicant's guilty plea. Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). "A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Thus, an applicant must show both error and prejudice to win relief in a PCR proceeding." Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001).

The court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). The proper measure of performance is whether the attorney provided representation within the range of

competence required in criminal cases. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. 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 (1969). For the reasons set out below, this Court finds the record and credible testimony support Applicant had a full understanding of the charges and consequences of his guilty plea:

1. Counsel did not advise Applicant a necessary element of burglary first is the entering of a dwelling.

Applicant confessed to the crime on two different occasions to law enforcement and the burglary was witnessed by a neighbor. One of Applicant’s confessions was taped and contained audio and video.

At his guilty plea, Applicant admitted entering the dwelling with the intent to commit a crime therein. A guilty plea is a solemn, judicial admission of the truth of the charges against an individual, a criminal inmate’s right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge, 431 U.S. at 97. In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris, 282 S.C. at 318 S.E.2d at 360. Applicant’s admission proves he was aware that entering a dwelling was part of the charge against him:

THE COURT: The indictment says that you did, here in Beaufort County, on our about March the 30th of 2011, enter a dwelling of Douglas Moss on Vaux Road, without his consent, and with the intent to commit a crime while you were there. And that you have at least two prior convictions of burglary on your record, making this a burglary in the first degree, because of your prior record. Do you understand that?

DEFENDANT MYERS: Yes, sir.

THE COURT: How do you plead to that charge?

DEFENDANT MYERS: Guilty.

Tr. 7.

The defendant went to the victim's home, Keith – Douglas Keith Moss, and took a – on the side of the victim's garage, and took a power washer that was sitting in the garage. The defendant put it in the back of the car he was driving.

Tr. 9.

Here, the record reflects the plea court clearly went over the elements of the offense to which Applicant plead. Any error of Counsel to properly advise Applicant an element of burglary first degree requires entrance into a dwelling was cured by the plea judge's colloquy. Further, the State clearly indicated Applicant went into the garage to steal the power washer. In considering an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing. See Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997). Applicant clearly understood the State's allegation he went into the garage when he pleaded guilty.

Therefore, this Court finds Applicant failed to prove Counsel was deficient or that he was prejudiced by any deficiency. This Court finds the record clearly reflects Applicant's plea of guilty was knowingly, intelligently, and voluntarily entered into. Accordingly, this allegation is denied and dismissed.

**B. Unreasonable Seizure**

Applicant failed to present any evidence of an illegal seizure at the PCR hearing. Further, Applicant waived his right to present any defenses by pleading guilty. Accordingly, this allegation is denied and dismissed.

#### IV. CONCLUSION


Based on 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 (30) days from receipt 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, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, his post-conviction relief attorney must serve and file a notice of appeal on Applicant's behalf. Applicant and his attorney are directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

#### **IT IS THEREFORE ORDERED THAT:**

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 14 day of September, 2017.

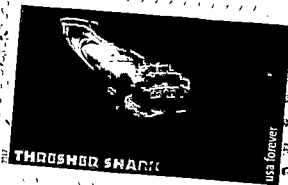
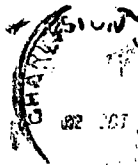
  
R. SCOTT SPROUSE  
Presiding Judge  
14<sup>th</sup> Judicial Circuit

Walhalla, South Carolina

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Supreme Court of South Carolina  
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