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WALLER LAW GROUP

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OCT 12 2017

S.C. SUPREME COURT

October 10, 2017

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

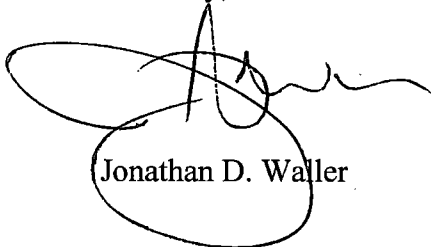
Re: James E. Murphy vs. State of South Carolina
C/A No: 2013-CP-21-1889

Dear Mr. Shearouse:

Please find enclosed one (1) original and one (1) copy each of Applicant's Notice of Appeal and Certificate of Service in the above referenced case. I would appreciate you filing the original and returning the clocked copies in the enclosed envelope.

I was appointed to represent Mr. Murphy in this matter and am also enclosing a copy of the Order of Dismissal. If you have any questions, please do not hesitate to ask. My telephone number is 803-520-7278.

Sincerely,



Jonathan D. Waller

Cc: Lindsey A. McCallister, South Carolina Office of Attorney General

Enclosures

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM FLORENCE COUNTY
Paul M. Burch, Circuit Court Judge

2013-CP-21-1889

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OCT 12 2017

S.C. SUPREME COURT

James E. Murphy, #354373,

Appellant,

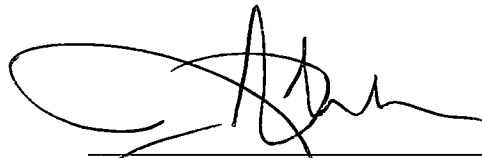
v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

James E. Murphy, #354373, appeals the Order of Dismissal denying his Application for Post-Conviction Relief filed September 11, 2017 and served on counsel by letter dated September 25, 2017, issued by the Honorable Paul M. Burch, Presiding Judge, Twelfth Judicial Circuit.



Jonathan D. Waller

Waller Law Group
SC Bar No.: 76290
1116 Blanding Street
Suite 2B
Columbia, SC 29201
803-520-7278 (phone)
jonathan@wallergroupsc.com
ATTORNEY FOR PETITIONER

This 10 day of October, 2017.

Other Counsel of Record:
Lindsey A. McCallister, Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3319

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM FLORENCE COUNTY
Paul M. Burch, Circuit Court Judge

2013-CP-21-1889

RECEIVED

OCT 12 2017

S.C. SUPREME COURT

James E. Murphy, #354373,

Appellant,

v.

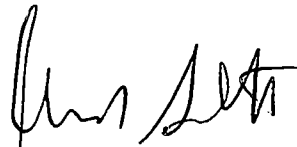
STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the Appellant's Notice of Appeal in the above-entitled case has been served upon opposing counsel, Lindsey A.

McCallister, Assistant Attorney General, by mailing in an envelope properly addressed with postage prepaid on this 10th day of October 2017, to her office located at P.O. Box 11549, Columbia, SC 29211.



M. David Scott

FILED FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP2101889

2017 SEP 13 PM 2:44

James E Murphy II

South Carolina State Of

DORIS POULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: Plaintiff Defendant
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

9/13/2017

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

CERTIFIED: A TRUE COPY
Doris Poulos O'Hara
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

This judgment was entered on **September 11, 2017**, and a copy mailed first class or placed in the appropriate attorney's box on **September 14, 2017**, to attorneys of record or to parties (when appearing pro se) as follows:

Jonathan D Waller 1116 Blanding Street Suite 2B
Columbia, SC 29201

Lindsey Ann McCallister PO Box 11549 Columbia, SC
29211-1549

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Doris P. O'Hara

Court Reporter

Doris Poulos O'Hara - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)
 COUNTY OF FLORENCE)
)
 James E. Murphy, # 354373,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 OF THE TWELFTH JUDICIAL CIRCUIT

Case No.: 2013-CP-21-1889

ORDER OF DISMISSAL

2017 SEP 11 PM 3:20
 DORIS POULOS O'HARA
 C.C.P. & G.S.
 FLORENCE COUNTY, SC

FILED

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed July 19, 2013. Respondent made its Return on May 6, 2014. An evidentiary hearing into the matter was convened on March 15, 2017, at the Florence County Courthouse before the Honorable Paul M. Burch. Jonathan Waller, Esquire, represented Applicant. Lindsey McCallister, Esquire, of the South Carolina Attorney General's Office, represented Respondent. At the hearing, Applicant testified on his own behalf. Michael Miller, Esquire, also testified via Skype videoconference. This Court had before it a copy of the records of the Florence County Clerk of Court, records from the South Carolina Department of Corrections, the application, the State's Return, and the guilty plea transcript.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. In June 2012, the Florence County Grand Jury indicted Applicant for armed robbery, kidnapping, conspiracy, and possession of a weapon during the commission of a violent crime (2012-GS-21-788). Michael T. Miller, Esquire, represented Applicant. On February 15, 2013, Applicant pleaded guilty to armed robbery and kidnapping. In exchange for his plea, the State dismissed the remaining

CERTIFIED: A TRUE COPY
Doris Poulos O'Hara
 CLERK OF COURT C.P. & G.S.
 FLORENCE COUNTY, S.C.

charges. The Honorable William H. Seals, Jr., sentenced Applicant to concurrent terms of twenty-eight years for armed robbery and kidnapping. On February 21, 2013, Applicant made a motion to reconsider his sentence. Judge Seals convened a hearing on the motion on May 22, 2013 and denied the motion by written order filed June 11, 2013. Applicant did not further appeal his guilty plea or sentence.

ALLEGATIONS

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

- a. Involuntary guilty plea, in that Counsel gave erroneous advice as to the details and content of the plea agreement.

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 conclusion of law as required by S.C. Code Ann. Sec. 17-27-80 (2003).

Involuntary Guilty Plea

In a post-conviction relief action, the 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). 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, 286 S.C. at 443, 334 S.E.2d at 814. 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. at 689. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove that counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Id. (quoting Strickland v. Washington, 466 at 688). 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 pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 (1985).

In PCR cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citations omitted). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Lockhart, 474 U.S. at 56. Further, "[t]hat a guilty plea must be intelligently made is not a requirement that all advice offered by the defendant's lawyer withstand retrospective examination in a post-conviction hearing." McMann v. Richardson, 397 U.S. 759, 770 (1970). Rather, "whether a plea of guilty is unintelligent . . . depends as an initial

matter, not on whether a court would retrospectively consider counsel's advice to be right or wrong, but on whether that advice was within the range of competence demanded of attorneys in criminal cases." Id. at 771.

The record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Dalton v. State, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Boykin v. Alabama, 395 U.S. 238, 242 (1969)). A 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 the court and defendant, between the 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)). Further, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant; thus, an applicant's right to contest the validity of such a plea is usually foreclosed. Dalton, at 137-38, 654 S.E.2d at 874 (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Therefore, admissions "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." Id. (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)). "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." Id. at 138-39, 654 S.E.2d at 874 (citing Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997)).

Applicant testified he spoke with Counsel three times before his guilty plea – once at his preliminary hearing and twice after that. Applicant testified Counsel did not discuss his right to

a jury trial, his right to remain silent, or his right to obtain his codefendants statements against him. Applicant further testified Counsel never discussed the contents of those statements with him. Applicant testified he received a copy of the discovery in his case after his plea, but he never had a chance to review it beforehand. Applicant testified Counsel did not discuss possible defenses with him, and Counsel did not ask him to provide any witnesses. Applicant acknowledged Counsel conveyed a plea offer of twenty-five years, and they discussed the possibility of taking the plea in Marion County. However, Applicant testified he told Counsel he wanted to go to trial rather than accept that offer, and Counsel told Applicant that was Applicant's decision to make. Applicant further testified he thought the agreement in Marion County was for ten to fifteen years, and Counsel only told him it was an open plea when they were already there to take the plea. Applicant testified he would have gone to trial if he had known he could still get twenty-five years. Applicant also testified he asked Counsel to file a motion after the plea, and Counsel did file a motion for reconsideration, but Counsel did not file a notice of appeal. Applicant testified he did not feel Counsel was prepared for trial, and Counsel wanted Applicant to plead guilty. Applicant testified he ultimately pleaded guilty because he did not feel Counsel could get prepared for trial in the timeframe of a few weeks.

Counsel testified Applicant had charges in Florence, Dillon, and Marlboro Counties all related to the same incident. Counsel only represented him on the Florence County charges. Counsel testified he had five years of experience and was on the criminal appointment list at the time. Counsel testified he rarely handled more than a few criminal cases at a time, but typically did have more than one. Counsel testified he first met with Applicant at the preliminary hearing on May 10, 2012, then they met four times at the Florence County Detention Center and twice more for court appearances at the initial plea and the hearing on Applicant's motion for

reconsideration. Counsel testified after he reviewed the State's evidence, his conclusion was Applicant was unlikely to be acquitted at trial, and his focus was on obtaining the lightest possible sentence. Counsel testified Applicant wrote the solicitor a letter detailing his involvement in the crime, and Applicant's codefendants gave statements naming Applicant as the ringleader. Counsel testified his defense theory was that Applicant had deliberately missed when firing the gun at the victim. Counsel further testified he received discovery pursuant to his Rule 5 request in May 2012, and it included a plea offer to drop the remaining charges if Applicant would plead guilty to the kidnapping and armed robbery. Counsel testified the offer was a negotiated twenty-five year sentence. Counsel further testified Applicant did not like that it was a negotiated plea and felt the sentence was excessive, so Counsel approached the solicitor about pleading with no negotiation. Counsel testified the solicitor indicated he would not be as flexible with Applicant as the other codefendants because Applicant was the shooter. Counsel testified his strategy at the plea was to argue Applicant should not receive more time than his codefendants and that Applicant deliberately missed shooting the victim based on the position of the bullets and bullet holes found at the scene.

Counsel testified he had a meeting with Applicant specifically to discuss pleading guilty without negotiation and told Applicant he had four options: accept the twenty-five year offer, try to get the solicitor to agree to twenty-five years as a recommendation rather than a negotiation, plead guilty to all four charges and make the best argument they could, or try the case. Counsel testified Applicant initially wanted him to pursue the option of a recommendation of twenty-five years rather than a negotiated sentence. Counsel further testified he began preparing the case for trial and met with Applicant in December 2012, January 2013, and February 2013, and he felt he had plenty of time to prepare the case. Counsel testified the visits in December 2012 and

January 2013 were lengthy because he was concerned a guilty verdict was likely, and he was trying to prepare mitigation arguments. Counsel testified the defense would be to argue Applicant was not the ringleader, he intentionally missed the victim, and the focus would be on mitigation.

Counsel also testified the case was placed on the trial roster in February or March 2013 before Judge Brown, and Applicant specifically requested not to appear in front of Judge Brown because he had a reputation in the jail for being extremely tough. Counsel testified Applicant told him he would rather plead guilty to all four charges in front of another judge than go to trial in front of Judge Brown, so the solicitor agreed to get Applicant's case on the plea docket in Marion County before Judge Seals. Counsel testified he and Applicant did not discuss Judge Seals' reputation among criminal defendants, and Counsel did not know if there were other judges available between the time they were notified of the trial date in mid-January and the time of the plea in March. Counsel testified he did not make Applicant any promises as to how much time he would get, and Applicant was aware he was pleading all four charges without negotiation. Counsel further testified his approach was to try to get Applicant a sentence less than the twenty-five years. Counsel testified he spent a considerable amount of time discussing Applicant's options with him before the plea, and Counsel was planning for and prepared for trial. Counsel testified it was Applicant's decision to plead guilty because Applicant did not want to go to trial. Counsel testified the plea lasted over thirty minutes, and the victim was present and gave an impassioned statement. Counsel testified he believed both the victim and the solicitor were unaware Applicant deliberately shot to miss the victim, and Counsel further stated he believed the victim's presentation influenced the sentence Applicant received.

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Counsel testified he filed the motion for reconsideration because he was surprised the plea judge did not allow Applicant to speak at the plea. Counsel testified when the plea judge asked if there was anything further and Counsel answered "no," Counsel thought the judge was asking if Counsel had any further argument, and he did not understand the judge was asking if Applicant wished to speak. Counsel testified the rehearing occurred on May 22, 2013, and both Applicant and his mother were present and had a chance to speak to the judge. The victim was also present. Counsel further testified he received the order denying the motion and sent it to Applicant the same day, June 14, 2013. Counsel testified Applicant did send him a letter after the first plea hearing asking about an appeal because he did not get the opportunity to speak. Counsel further testified he did not see any legal errors or issues for appeal other than Applicant not being allowed to speak, and he felt the hearing on the motion for reconsideration remedied the issue.

Regarding Applicant's claim his guilty plea was induced by ineffective assistance of counsel, this Court finds Applicant has failed to meet his burden of proof. This Court finds Applicant's testimony regarding Counsel's ineffectiveness is not credible, while also finding Counsel's testimony is credible. This Court finds Counsel provided effective assistance in this case and Applicant's decision to plead guilty was made freely and voluntarily. Counsel is a trial practitioner who had experience in the trial of criminal offenses. Counsel conferred with Applicant on multiple occasions, during which Counsel discussed the pending charges, the State's evidence, possible defenses and courses of action, and answered all of Applicant's questions. Additionally, Counsel conveyed the State's negotiated plea offer to Applicant, who rejected it because he felt the sentence was too harsh. This Court finds credible Counsel's testimony as to why he felt he had no grounds to support an appeal when the only meritorious

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issue Counsel identified was the plea judge's failure to allow Applicant to speak in his own defense, and that issue was completely and timely addressed by the hearing on Applicant's motion for reconsideration. This Court finds Applicant presented no evidence he asked for an appeal after the rehearing, and Counsel was not deficient for failing to file a notice of appeal because the issue raised by Applicant had been addressed.

This Court finds the record reflects Applicant's plea was entered freely, voluntarily, knowingly, and intelligently. The plea judge explained the charges to Applicant, including the maximum penalties for each. The plea judge also went through Applicant's constitutional rights and questioned Applicant as to whether he understood those rights and wished to give them up to plead guilty. Applicant agreed that he did. Applicant admitted he was guilty of these offenses and did not challenge the facts presented by the State at the plea. Applicant told the plea judge that he was satisfied with his attorney, that Counsel had done everything Applicant had asked of him, and he did not need any more time to discuss this matter with Counsel. Applicant further told the plea judge no one had threatened him or made him any promises to get him to plead guilty, and he was doing so of his own accord. Additionally, Applicant told the plea judge he did not have any physical or mental issues which would prevent him from understanding the proceeding, and Applicant indicated he understood all of the plea judge's questions and had answered them honestly. This Court therefore finds that Applicant understood the terms of the plea and the possible sentences he could receive.

Therefore, 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 compelling evidence that Counsel committed either errors or omissions in his representation of Applicant. This Court also finds Applicant has failed to prove

the second prong of Strickland – that he was prejudiced by Counsel’s performance. This Court also finds that the record fully supports the knowing and voluntary nature of Applicant’s guilty plea. See Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (holding defendant’s knowing and voluntary waiver of statutory or constitutional rights in a guilty plea “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.”). In addition, Applicant has presented no evidence or valid reasons why he should be allowed to depart from the truth of his statements made at the plea. See Dalton, 376 S.C. at 137, 654 S.E.2d at 874 (“[Admissions] made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements.”). This Court concludes Applicant has not met his burden of proving Counsel failed to render reasonably effective assistance. The allegation is denied and dismissed.

CONCLUSION

Based on all the forgoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations before or during his plea and sentencing proceedings. Counsel was not deficient, nor was Applicant prejudiced by Counsel’s representation. Therefore, this PCR application must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty 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,

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Applicant must serve and file a notice of appeal on his own behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. The application for post-conviction relief be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 1st day of September, 2017.



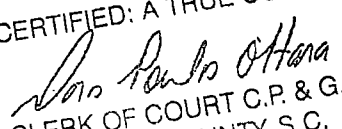
THE HONORABLE PAUL M. BURCH
Presiding Judge
Twelfth Judicial Circuit

Christy, South Carolina.

FILED

2017 SEP 11 PM 3:21

DORIS POULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

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CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.



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Clerk of Court
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