

R. MILLS ARIAIL, JR.
ATTORNEY AT LAW

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November 30, 2016

RECEIVED

DEC -5 2016

S.C. SUPREME COURT

Via US Mail

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

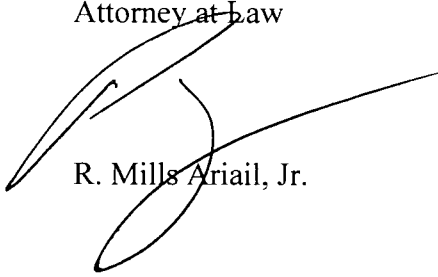
Re: *Notice of Intent to Appeal from State of South Carolina vs. Brandon Barksdale*
C.A. No.: 2016-CP-23-1296

Dear Mr. Shearouse:

I was Court Appointed in the above referenced matter, and I expect that appellate defense will handle the appeal and petition for certiorari. On behalf of my client, enclosed for filing please find the Notice of Appeal and proof of service. I've enclosed a copy of the Honorable John C. Hayes III's Order of Dismissal to be challenged on appeal. By copy of this letter, I am also serving my client, counsel for the State of South Carolina, the South Carolina Commission of Indigent Defense - Appellate Defense Division and the Greenville County Clerk's Office.

Thank you for your assistance in this matter and if you have any questions, please feel free to contact me.

Sincerely,
LAW OFFICE OF R. MILLS ARIAIL, JR.
Attorney at Law


R. Mills Ariail, Jr.

RMAjr/dl
Enclosures (as stated)

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

RECEIVED

John C. Hayes, III, Circuit Court Judge

DEC -5 2016

Case No. 2016-DR-23-01296

S.C. SUPREME COURT

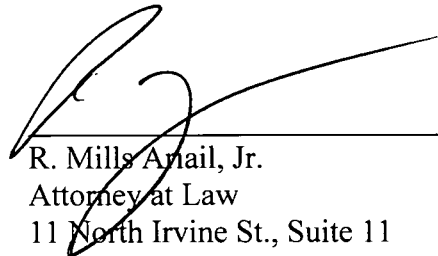
Brandon Barksdale,..... Appellant,

v.

State of South Carolina Respondent.

NOTICE OF APPEAL

Appellant appeals the Honorable John C. Hayes, III's Order of Dismissal dismissing Appellant's application for post-conviction relief. On November 18, 2016, the Honorable John C. Hayes, III's Order of Dismissal was filed. Appellant, through counsel, received written notice of entry of this order on November 23, 2016. A copy of the Honorable John C. Hayes, III's Order of Dismissal is attached.



R. Mills Arail, Jr.
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Telephone (864) 232-9390
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Attorney for Brandon Barksdale

Greenville, South Carolina
November 30, 2016

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

RECEIVED

John C. Hayes, III, Circuit Court Judge

DEC -5 2016

Case No.2016-DR-23-01296

S.C. SUPREME COURT

Brandon Barksdale,..... Appellant,

v.

State of South Carolina Respondent.

CERTIFICATE OF SERVICE

I, Denise Tanner LaBeck, paralegal to R. Mills Ariail, Jr., do hereby certify that on this November 30, 2016, I served upon the below named Respondents copies of the **NOTICE OF APPEAL** by depositing copies of the same via U.S. Mail, postage prepaid, Registered Mail in an envelope addressed as set forth herein below:

Patrick Schmeckpeper, Esq.
Assistant Attorney General
PO Box 11549
Columbia, SC 29211
Attorney for the State of South Carolina

Greenville County Clerk's Office
Greenville County Courthouse
305 East North Street
Greenville, SC 29601

Brandon Barksdale SCDC# 365114
Broad River Correctional Institution
4460 Broad River Road
Columbia, South Carolina 29210-4012

SC Commission of Indigent Defense
Division of Appellate Defense
PO Box 11433
Columbia, SC 29211-1433

Denise Tanner LaBeck
Denise Tanner LaBeck

November 30, 2016

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

JUDGMENT IN A CIVIL CASE

CASE NO: 2016CP2301296

FILED
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2016 NOV 18 AM 11:38

Brandon Barksdale vs. South Carolina State Of

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.
- 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: _____
- 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; Statement of Judgment by the Court:

Dated at Greenville, South Carolina, this .

Court Reporter: _____

PRESIDING JUDGE - John C Hayes, III

This judgment was entered on the , and a copy mailed first class this , to attorneys of record or to parties (when appearing pro se) as follows:

R. Mills Ariail Jr. 11 North Irvine Street, Suite 11
Greenville, SC 29601

ATTORNEY(S) FOR THE PLAINTIFF(S)

Patrick Schmeckpeper Assisitant Attorney
General

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court
- Clerk of Court

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Brandon R. Barksdale,)
 #365114,)
)
 Applicant,)
)
 vs.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 THIRTEENTH JUDICIAL CIRCUIT

C.A. No.: 2016-CP-23-1296

FILED IN COURT
 GREENVILLE CO. S.C.
 PAUL B. WICKENSIMMER
 2016 NOV 18 AM 11 33

ORDER

ENTERED COMPUTER

Applicant filed this application for Post-Conviction Relief February 29, 2016. This matter was heard October 27, 2016. Applicant was represented by Mills Arial, Esquire. The State was represented by Valerie Giovanoli, Esquire.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Greenville County Clerk of Court. Applicant was indicted at the August 2014 term of the Greenville County Grand Jury for conspiracy (2013-GS-23-9806); attempted murder (2013-GS-23-9811; -9812; -9813; -9814; -9815; -9816); armed robbery and possession of a weapon during the commission of a violent crime (2013-GS-23-9817; 2014-GS-23-3814); and carjacking (2014-GS-23-3804). Applicant was represented by Ivan Toney, Esquire. On August 12, 2015, Applicant pled guilty as indicted. The Honorable D. Garrison Hill sentenced Applicant to twenty (20) years for each attempted murder; twenty (20) years for each armed robbery; twenty (20) years for carjacking; and five (5) years for conspiracy. Applicant did not appeal.

In his current application, Applicant alleged he is being held in custody unlawfully for several reasons. Below, the Court will address the issues presented at the hearing. All allegations not presented at the hearing are deemed abandoned.

Applicant alleges his trial counsel was ineffective. In a PCR action, the applicant bears the burden of proving the allegations in their application. *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing *Griffin v. Martin*, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of trial counsel as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process" that the plea proceedings "cannot be relied upon as having produced a just result." *Id* (citing *Strickland v. Washington*, 466 U.S. 668, 686, 104 S. Ct. 2052, 2066 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Id* (citing *Strickland*, 466 U.S. at 687; *Turner v. Bass*, 753 F.2d 342 (4th Cir. 1985); *Marzullo v. Maryland*, 561 F.2d 540 (4th Cir. 1977)). The court strongly presumes trial counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Id* (citing *Strickland*, 466 U.S. at 690, 104 S. Ct. at 2066). The 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-prong test in evaluating ineffective assistance of counsel. *Id* at 117, 386 S.E.2d at 625. First, the Applicant must prove counsel's performance was deficient. *Id*. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Id* (citing *Strickland*, 466 U.S. at 688, 104 S. Ct. 2066). 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.” *Id* at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the 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 S. Ct. 366 (1985).

Applicant alleges that his guilty plea was involuntary. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. *See Al-Shabazz v. State*, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (1999) (citing *Drayton v. Evatt*, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993)). “A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of a 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.” *Roscoe v. State*, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citations omitted). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove that counsel’s advice was not “within the range of competence demanded of attorneys in criminal cases.” *Hill v. Lockhart*, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985); *Bennett v. State*, 371 S.E. 198, 204, 638 S.E.2d 673, 675 (2006).

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. *See Boykin v. Alabama* 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969). In *Boykin*, the United States Supreme Court held that before a court can accept a guilty plea, a criminal defendant must be advised of the constitutional rights he is waiving. *Id* at 243, 89 S. Ct. at 1712. Specifically, the accused must be aware of the privilege against self-incrimination, the right to a jury trial, and the right to confront one’s accusers. *Id*. Moreover, a criminal defendant entering a guilty plea “must

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be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." *Pittman v. State*, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citation omitted). A criminal 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." *Roddy v. State*, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. *Anderson v. State*, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000).

Applicant's testimony, while couched as two claims hereinabove, actually boils down to one claim. That claim is that he was to receive a sentence of ten years at his plea.

Pertinent to his claim, Applicant testified to his interaction with trial counsel. He acknowledged he was visited three or four times by trial counsel while in jail and was provided discovery. Applicant testified he was told what the State had to prove as to the charges against him and what evidence the State had to support the charges. Applicant testified he believed he would receive a sentence of ten years and that he would not have pled to twenty years. He further testified that trial counsel told him he would get no more than ten years if found guilty.

Applicant testified, in essence, that trial counsel forced him to plead guilty by telling him he would receive life without parole if he did not. He admitted that he was never told by trial counsel that there was any deal regarding the plea with the solicitor.

Applicant testified that he wanted trial counsel to talk to his co-defendant, Zachary.

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Trial counsel testified that he met with Applicant two or three times prior to being retained and eight to ten times after he was retained. Trial counsel testified he gave hard copies of all discovery material to Applicant. He testified that he discussed the elements of the charges with Applicant and the evidence the State had to support these elements. The latter was his co-defendant's incriminating statements.¹ He also testified he told Applicant the maximum and minimum penalties Applicant was facing.

Trial counsel testified that he could not talk with the co-defendants as Applicant requested as they were represented by counsel. Trial counsel testified that Applicant's belief that the surviving co-defendant had changed his story had no evidentiary support. Trial counsel testified he knew of no witness who would testify that Applicant did not match the description of the suspect.

Trial counsel testified that there was no video, but corrected himself when shown that there was (Plea Trial Record p. 9, ll. 13-15). Upon recall, trial counsel testified that the video was not definite as to the robbers as they had their faces covered with bandanas.

Trial counsel testified there was no plea offer from the State and he does not know where Applicant's idea he would only get a ten year sentence comes from. Trial counsel did argue for a ten year sentence (Plea Trial Record p. 18, ll. 11-13).

Trial counsel testified that he advised Applicant of his right to trial and his right to confront the witnesses against him. He further testified that prior to the entry of the plea, Applicant was aware that the State was going to ask for a twenty year sentence, which it did (Plea Trial Record p. 13, ll. 10-14).

¹ One of the co-defendants was killed prior to Applicant's plea.

I find trial counsel's testimony credible. I find Applicant's testimony regarding his being told he would receive a ten year sentence lacking in credibility.

I find trial counsel's representation of Applicant was well above any objective standard of reasonableness and was well within the range of competence demanded of attorneys in criminal cases.

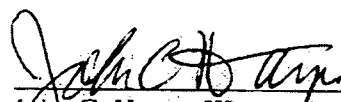
Wherefore, Applicant has failed to carry his burden of proof and has failed to prove he received ineffective assistance of counsel as to the plea which is the subject of the Post-Conviction Relief Application.


Therefore, Applicant's Application for Post-Conviction Relief is denied and dismissed with prejudice.

This Court hereby advises Applicant that he must file and serve a Petition for Writ of Certiorari within thirty (30) days of the service of this Order to secure appellate review. See Rules 203 and 243, South Carolina Appellate Court Rules (SCACR). The Applicant's attention is directed to Rule 243, SCACR, for the procedures following the filing and service of the Petition.

IT IS SO ORDERED.

November 3rd, 2016
Greenville, South Carolina



John C. Hayes, III
Presiding Judge 

R. MILLS ARIAIL, JR.

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GREENVILLE, SC 29601

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