

THE



LAW FIRM, LLC

August 1, 2016

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

Re: Shaquille Burgess vs. State of South Carolina  
C/A No: 2013-CP-21-1639

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. Burgess 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 803-708-6767.

Sincerely,

Jonathan D. Waller

Cc: J. Croom Hunter, South Carolina Office of Attorney General

Enclosures

RECEIVED

AUG 03 2016

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM FLORENCE COUNTY  
Jocelyn Newman, Circuit Court Judge

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2013-CP-21-1639

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**RECEIVED**

AUG 03 2016

**S.C. SUPREME COURT**

Shaquille Burgess, #354554,

Appellant,

v.

STATE OF SOUTH CAROLINA,

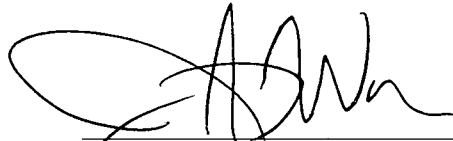
Respondent.

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NOTICE OF APPEAL

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Shaquille Burgess, #354554, appeals the Order of Dismissal denying his Application for Post-Conviction Relief filed July 22, 2016 issued by the Honorable Jocelyn Newman, Presiding Judge, Twelfth Judicial Circuit.



Jonathan D. Waller

Giese Law Firm

SC Bar No.: 76290

1315 Blanding Street

Columbia, SC 29201

803-708-6767 (phone)

803-708-6769 (fax)

jonathanwallerlaw@gmail.com

ATTORNEY FOR PETITIONER

This 1 day of August, 2016.

Other Counsel of Record:  
J. Croom Hunter, Assistant Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3319

STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM FLORENCE COUNTY  
Jocelyn Newman, Circuit Court Judge

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2013-CP-21-1639

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**RECEIVED**

AUG 03 2016

Shaquille Burgess, #354554,

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Respondent.

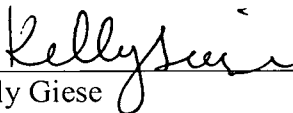
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S.C. SUPREME COURT

CERTIFICATE OF SERVICE

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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, J. Croom Hunter, Assistant Attorney General, by mailing in an envelope properly addressed with postage prepaid on this 15 day of August 2016, to his office located at P.O. Box 11549, Columbia, SC 29211.

  
\_\_\_\_\_  
Kelly Giese

FILED

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

JUDGMENT IN A CIVIL CASE  
CASE NUMBER 2013CP2101639

2016 JUL 25 PM 3:56

Shaquille Burgess

South Carolina State Of

PLAINTIFF(S)

DEFENDANT(S)

CORRIE REEL SHEARIN  
CCCP & GS  
FLORENCE COUNTY, SC

Attorney for:  Plaintiff  Defendant  
 Self-Represented Litigant

Submitted by:

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: \_\_\_\_\_
- 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.

Circuit Court Judge

Judge Code

7/25/2016

Date

For Clerk of Court Office Use Only

This judgment was entered on July 25, 2016, and a copy mailed first class or placed in the appropriate attorney's box on July 26, 2016, to attorneys of record or to parties (when appearing pro se) as follows:

CERTIFIED TRUE COPY  
 DEPT. OF COURT CLERK  
 FLORENCE COUNTY, S.C.  
 Corrie Reel Shearin  
 CCCP & GS

Jonathan D Waller 1315 Blanding Street Columbia, SC  
29201

John Croom Colvin Hunter PO Box 607 Lancaster, SC  
29721

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ATTORNEY(S) FOR THE PLAINTIFF(S)

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ATTORNEY(S) FOR THE DEFENDANT(S)

*Connie Reel Shearin*

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Court Reporter

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Connie Reel-Shearin - Clerk of Court

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**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.

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STATE OF SOUTH CAROLINA  
COUNTY OF FLORENCE

Shaquille Burgess, #354554,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS  
TWELFTH JUDICIAL CIRCUIT

Case No. 2013-CP-21-1639

**ORDER OF DISMISSAL**

2016 JUL 22 PM 3:03  
CORNIE REEL-SHEARER  
CCCP & GS  
FLORENCE COUNTY, SC

FILED

This matter comes before this Court by way of a post-conviction relief (PCR) application filed on June 20, 2013. Respondent made its return on December 10, 2013. An evidentiary hearing into the matter was convened on June 1, 2016, at the Florence County Courthouse. Applicant was present at the hearing and was represented by Jonathan D. Waller, Esquire. Respondent was represented by Assistant Attorney General J. Croom Hunter of the South Carolina Attorney General's Office.

**PROCEDURAL HISTORY**

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to orders of commitment from the Florence County Clerk of Court. Applicant was indicted at the November 2012 term of the Florence County Grand Jury for armed robbery and possession of a weapon during the commission of a violent crime (2012-GS-21-1654). Joshua A. Bailey, Esquire, represented Applicant. On March 4, 2013, Applicant entered a negotiated plea of guilty to armed robbery. The Honorable D. Craig Brown accepted the negotiation and sentenced Applicant to ten (10) years imprisonment. Applicant did not appeal his plea or sentence.

**ALLEGATIONS**

Page 1 of 8



2016 JUL 22 PM 3:03  
CORNIE REEL-SHEARER  
CCCP & GS  
FLORENCE COUNTY, SC

At the post-conviction relief hearing, Applicant argued his confinement is unlawful based upon the following grounds:

1. Ineffective assistance of counsel.
  - a. Plea counsel did not go over discovery materials with Applicant and adequately prepare for the possibility of a trial.
  - b. Plea counsel failed to have Applicant evaluated prior to his guilty plea.
2. Involuntary guilty plea.

At the evidentiary hearing, Applicant testified on his own behalf. This Court also heard testimony from plea counsel, Joshua Bailey, Esquire. This Court also had before it a copy of the plea transcript, the Florence County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, the return, and Applicant's mental evaluation. Notably, upon motion of PCR counsel, Applicant was evaluated by the Department of Mental Health prior to his evidentiary hearing. The evaluation concluded Applicant was competent.

### **INEFFECTIVE ASSISTANCE OF COUNSEL**

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, 334 S.E.2d 813 (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, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

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. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 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, the 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, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

This Court finds Applicant failed to demonstrate that Counsel's performance was deficient in any way. This Court further finds that Applicant presented no evidence to show any prejudice resulting from Counsel's representation. Additionally, this Court finds Counsel's testimony credible and Applicant's testimony not credible.

#### **1. Failure to Prepare**

Applicant alleges Counsel did not thoroughly prepare his case for trial, nor did Counsel review the evidence with Applicant. The Court finds this allegation is without merit. At the PCR hearing, Counsel testified he has been practicing law for nine years, with at least half of his work devoted to criminal defense. Counsel testified he filed the appropriate Rule 5 and Brady motions, received discovery materials from the State, and went over the evidence with Applicant. Counsel testified he went over the elements of the charges Applicant was facing with the Applicant as



well as the possible penalties he was facing. Additionally, Counsel testified he went over the constitutional rights Applicant was waiving prior to his guilty plea. Counsel testified he did not review the video of the confidential informant in Applicant's presence because it is the policy of the solicitor's office not to let defendant's see videos containing confidential informants until the case goes to trial. However, Counsel testified he did review the video, and Applicant was clearly shown on the film robbing the informant. Counsel testified that while there was no written statement given to law enforcement, Applicant did verbally confess to the officers, and that would have greatly harmed Applicant's chances at trial. Counsel refuted Applicant's testimony that he was coached how to answer the judge's questions during the guilty plea, and that it was Applicant's decision to plead guilty. Although Counsel could not recall with specificity how many times he met with Applicant, he testified he met with Applicant on multiple occasions.

This Court finds Counsel's performance was within the range required under Strickland and its progeny. Counsel's testimony indicated he was well informed regarding the facts of Applicant's case and extremely knowledgeable with respect to the relevant legal issues. Because this Court finds Counsel thoroughly investigated and prepared Applicant's case, it finds Applicant has failed to meet his obligations under Strickland, and the allegation is without merit.

## **2. Failure to Have Applicant Evaluated Prior to the Plea**

Applicant argues Counsel was ineffective for failing to have Applicant evaluated prior to his guilty plea. The Court finds this allegation is without merit.

Due process prohibits the conviction of an incompetent defendant, and this right may not be waived by a guilty plea." Matthews v. State, 358 S.C. 456, 458, 596 S.E.2d 49, 50 (2004). "The test of competency to enter a plea is the same as required to stand trial." Jeter v. State, 308 S.C. 230, 232, 417 S.E.2d 594, 596 (1992). "The accused must have sufficient capability to



consult with his lawyer with a reasonable degree of rational understanding and have a rational as well as factual understanding of the proceedings against him.” Id. “To show prejudice within the context of [plea] counsel’s failure to fully investigate [a PCR applicant’s] mental capacity, the [applicant] need only show a reasonable probability that he was either insane at the time [the crime was committed] or incompetent at the time of the plea.” Lee v. State, 396 S.C. 314, 320, 721 S.E.2d 442, 445–46 (Ct.App.2011) (fourth alteration by court) (internal quotation marks omitted). “[T]he [applicant] bears the burden of proof and is required to show by a preponderance of the evidence he was incompetent at the time of his plea.” Jeter, 308 S.C. at 232, 417 S.E.2d at 596. Ramirez v. State, 413 S.C. 351, 366-67, 776 S.E.2d 101, 110 (Ct. App. 2015), reh’g denied (Sept. 3, 2015).

This Court finds Applicant has failed to meet his burden of showing by a preponderance of the evidence presented at the PCR hearing that he was incompetent at the time of his plea. Counsel’s testimony indicated he obtained Applicant’s records from the Department of Juvenile Justice, the Boys’ Home where lived at one point, and his prior mental evaluations. Counsel testified that he went over those records and did not believe Applicant had any competency issues at the time of his plea. Counsel testified he did not have trouble communicating with Applicant or explaining the evidence and the law in regard to Applicant’s defense. Additionally, Counsel testified that Applicant was able to calculate what 85% of his potential sentence would be. Counsel testified that while Applicant certainly had a below average IQ, he had no concerns that Applicant was not competent to go forward, or that Applicant did not understand the circumstances surrounding his plea. This Court can find no reason to doubt Counsel’s testimony. Additionally, this Court notes that the plea judge made a finding on the record that he observed Applicant throughout the plea and had no doubt that Applicant was competent and fully



understood what was happening. As Applicant has failed to meet his burden, this Court finds the allegation without merit.

### INVOLUNTARY GUILTY PLEA

The voluntariness of a guilty plea is determined in light of the entire record before the court. Hyman v. State, 397 S.C. 35, 44, 723 S.E.2d 375, 379 (2012) (citing Roddy v. State, 339 S.C. 29, 528 S.E.2d 418 (2000)). “To knowingly and voluntarily enter a plea of guilty, all that is required is that a defendant have a full understanding of the consequences of his plea and of the charges against him.” Simpson v. State, 317 S.C. 506, 508, 455 S.E.2d 175, 176 (1995) (citing Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991)). Furthermore, a defendant must only be informed of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers. Roddy, 339 S.C. at 33, 528 S.E.2d at 421 (citing Boykin v. Alabama, 395 U.S. 238 (1969)). “When attempting to determine the voluntary and intelligent nature of a plea, the plea colloquy ordinarily serves as confirmation that a criminal defendant is waiving the right to raise certain constitutional claims by pleading guilty.” Hyman, 397 S.C. at 44, 723 S.E.2d at 379 (citing Rivers v. Strickland, 264 S.C. 121, 213 S.E.2d 97, 98 (1975)). However, the plea judge need not provide an “enumeration of specific rights waived ... where the record otherwise reveals affirmative awareness of the consequences of a guilty plea.” State v. Lambert, 266 S.C. 574, 579, 225 S.E.2d 340, 342 (1976) (citing Stinson v. Turner, 473 F.2d 913 (10th Cir. 1973)). Furthermore, “[a] guilty plea is a solemn, judicial admission of the truth of the charges” against the applicant. Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63 (1977)). 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. at 137-38, 654 S.E.2d at 874 (citing



Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)). Pleading guilty to avoid a possibly greater sentence, without more, does not render a guilty plea involuntary. Brady v. United States, 397 U.S. 742, 90 S.Ct. 1463, 25 L.Ed. 2d 747 (1970); Wicker v. State, 310 S.C. 8, 12, 425 S.E.2d 25, 27 (1992).

The record before this Court clearly shows that Applicant was fully informed of the consequences of entering his guilty plea. The record shows Applicant's plea was not coerced, and it was Applicant's decision to plead guilty. Additionally, this Court finds Applicant's testimony not credible. Applicant was advised that by pleading guilty he gave up his right to challenge the evidence the State had against him, as well as his right to put up any affirmative defenses. Applicant has failed to present any valid reasons why he should be allowed to depart from his valid plea of guilty. Accordingly, this Court finds Applicant's plea was knowingly, intelligently, and voluntarily entered.

#### **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 sufficient evidence regarding such allegations. Accordingly, this Court finds Applicant has abandoned any such allegations.

#### **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. Plea counsel rendered effective assistance in regard to the claims raised by Applicant. 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 PCR counsel's 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), SCRCR, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**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 this 18<sup>th</sup> day of July 2016.

*Joelyn Newman*  
THE HONORABLE JOCELYN NEWMAN  
Presiding Judge  
Twelfth Judicial Circuit

2016 JUL 22 PM 3:03  
ANNIE F. BELMONT  
COURT REPORTER  
FLORENCE COUNTY, SC

FILED

Columbia, South Carolina

COPIES  
*Carrie Ann Smith*  
CLERK  
FLORENCE COUNTY, SC  
OFFICE OF THE CLERK OF THE COURT  
FLORENCE COUNTY, SC

THE

**GIESE**

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