

# THE BOOZER LAW FIRM, LLC

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**Lance S. Boozer, Esq.\***

\*Also admitted in Florida

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October 23, 2017

RECEIVED

OCT 24 2017

S.C. SUPREME COURT

The Honorable Daniel E. Shearouse  
Clerk, Supreme Court of South Carolina  
P.O. Box 11330  
Columbia, SC 29211

The Honorable Robert J. Harte  
Clerk of Court  
P.O. Box 583  
Aiken, SC 29802-0583

**RE: Suzanne Cook, #369011, v. State of South Carolina  
2016-CP-02-2156**

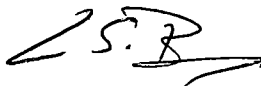
Dear Mr. Shearouse and Mr. Harte:

Enclosed for filing is a Notice of Appeal in the above-referenced case. Also enclosed are the following:

- (1) Proof of Service of the Notice of Appeal;
- (2) A copy of the Order which is to be challenged on appeal; and
- (3) Prior Order of Appointment of Counsel.

As I was appointed to represent Ms. Cook in her PCR proceeding, I anticipate that the Office of Appellate Defense will represent Ms. Cook in this appeal.

Yours very truly,



Lance S. Boozer

cc: Julie Coleman, AAG  
Office of Appellate Defense  
Suzanne Cook, #369011

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

RECEIVED

OCT 24 2017

S.C. SUPREME COURT

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APPEAL FROM AIKEN COUNTY  
Court of Common Pleas

The Honorable J. Mark Hayes, Circuit Court Judge

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Case No. 2016-CP-02-2156

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Suzanne Cook, #369011, .....Petitioner,

v.

State of South Carolina,.....Respondent.

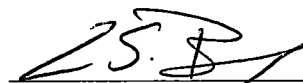
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**NOTICE OF APPEAL**

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The Petitioner appeals the Honorable J. Mark Hayes's Order dated October 16, 2017, denying post-conviction relief to the Petitioner. The Order was received by undersigned counsel on October 23, 2017. A copy of the Order on appeal is attached to this notice.

Respectfully submitted,



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October 23, 2017

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

RECEIVED

APPEAL FROM AIKEN COUNTY  
Court of Common Pleas

OCT 24 2017

S.C. SUPREME COURT

The Honorable J. Mark Hayes, Circuit Court Judge

Case No. 2016-CP-02-2156

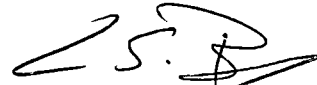
Suzanne Cook, #369011, .....Petitioner,

v.

State of South Carolina,.....Respondent.

**PROOF OF SERVICE**

I, Lance S. Boozer, appointed attorney for Petitioner, certify that I have today served within Notice of Appeal upon the Respondent by depositing a copy of it in the United States Mail, postage prepaid, addressed to Assistant Attorney General Julie Coleman, P.O. Box 11549, Columbia, SC 29211. I further certify that all parties required by Rule to be served have been served this 23rd day of October, 2017.



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Tele: 803-608-5543

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	SECOND JUDICIAL CIRCUIT
	)	
Suzanne Cook, #369011,	)	2016-CP-02-2156
	)	
Applicant,	)	
	)	
v.	)	<b>ORDER OF DISMISSAL</b>
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on September 26, 2016. Respondent submitted its Return on June 12, 2017. An evidentiary hearing was convened on September 21, 2017, at the Aiken County Courthouse. Applicant was present at the hearing and was represented by Lance S. Boozer, Esquire. Respondent was represented by Assistant Attorney General Julie A. Coleman of the South Carolina Attorney General's Office.

Applicant testified on her own behalf at the evidentiary hearing. Respondent presented testimony from Elmer W. Hatcher, Jr., Esquire ("Plea Counsel"). The Court had before it a copy of the guilty plea transcript, the records of the Aiken County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, and the pleadings. The Court finds as follows:

**I. PROCEDURAL HISTORY**

The records before this Court indicate Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. Applicant was indicted at the March 2016 term of the Aiken County Grand Jury for felony driving under the influence, death results (2016-GS-02-0393). Elmer W. Hatcher, Jr.,

Esquire, represented Applicant. On July 13, 2016, Applicant pled guilty as indicted before the Honorable G. Thomas Cooper, Jr. Judge Cooper sentenced Applicant to imprisonment for eighteen years. Applicant did not appeal her conviction or sentence.

## II. ALLEGATIONS

In his current application, Applicant alleges that he is being held in custody unlawfully based on the following allegations:

1. Ineffective Assistance of Counsel
  - i. "My attorney told me to plead guilty w/out explaining."
  - ii. "Attorney did not explain my charges."
  - iii. "Attorney did not make sure I understood."
2. Involuntary Guilty Plea

## III. APPLICABLE LAW

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their 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, (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. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of 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, courts measure an attorney's performance by its "reasonableness



under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any 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 pleas, 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 (1985).

## V. SUMMARY OF RELEVANT TESTIMONY

### *Applicant's testimony*

Applicant testified that her boyfriend retained Plea Counsel for her after she was arrested. She stated she did not meet with Plea Counsel very many times before the plea, and she does not remember what they discussed. She stated she does not remember much because she has done a lot of chemotherapy and her memory is not very good. Applicant testified she just wants to prove that she had a seizure at the time of the accident, which caused the car wreck. She stated that she did take a life, but it was an accident. She stated that she was on methamphetamines at the time of the accident.

### *Plea Counsel's testimony*

Plea Counsel testified he has been practicing law for forty years, and he had done one or two felony DUI cases before this case. He stated he met with Applicant between twenty and thirty times before her guilty plea. Plea Counsel stated he believed the evidence against Applicant was overwhelming. He stated they discussed possible defenses, including the theory that she had a seizure which caused the accident. He testified that this could have been a viable defense, but he needed medical support to prove it to the jury, and he did not have any. He stated



there were no doctors and no records of medication to show that she had a history of seizures. He further stated that Applicant only had seizures when she did drugs, which was the case here. He stated Applicant's blood tested positive for methamphetamine after the accident.

Plea Counsel testified he never got to the point of preparing for trial because Applicant had no viable defense. He stated he entered into plea negotiations with the State and was able to get them to dismiss the other charges in exchange for her guilty plea. At the plea, he explained in mitigation Applicant's exceedingly bad background, with no education, abusive parents, the fact that she was married at age fourteen, had a child at age seventeen, and was left by her husband at age eighteen. He stated he explained Applicant had many physical problems, and was also receiving treatment for cancer. He explained that Applicant's sister started offering her drugs to help ease her the pain of her cancer, and that's how she got involved with meth. Plea Counsel testified that though Applicant was not very bright, he believes that she fully understood what she was doing when she pled guilty. He stated it was her decision to plead guilty, and he agreed and still agrees with that decision.

#### **VI. 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 at the post-conviction relief 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. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

As a matter of general impression, this Court finds Plea Counsel's testimony to be credible and persuasive. These credibility findings have been applied to the Court's findings and conclusions set forth below.

INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant alleges Plea Counsel was ineffective in his representation surrounding her guilty plea. 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)). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the applicant would not have pled guilty and 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).

Applicant has failed to meet her burden in proving Plea Counsel was ineffective in any regard. This Court finds that Plea Counsel properly relayed the State's plea negotiations and went over the discovery with Applicant, as well as fully explained the possible outcomes in sentencing. This Court finds Plea Counsel did explain the charges to Applicant as well as her option to plead guilty rather than going to trial. Plea Counsel credibly testified that Applicant fully understood what she was doing when she pled guilty. The transcript of the plea hearing shows that the plea court fully explained the rights she was waiving and the consequences of pleading guilty to Applicant. This Court further finds that Applicant's assertion that the accident was caused by a seizure is only based on speculation. This Court finds that Applicant has not shown that she was prejudiced by any of Plea Counsel's actions as she has failed to show that she

would not have pled guilty but would have gone to trial but for Plea Counsel's actions. Accordingly this allegation must be dismissed.

#### INVOLUNTARY GUILTY PLEA

Applicant argues her plea was not given freely and voluntarily. This Court finds otherwise and concludes that Applicant's plea was entered freely and voluntarily. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709, 23 L.Ed.2d 274 (1969). 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 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) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 97 S. Ct. 1621, 52 L.Ed.2d 136 (1977)). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. United States, 519 F.2d 347 (4th Cir.1975).

Applicant claims her plea was given involuntarily because her attorney did not explain the charges or understand what she was doing. The guilty plea transcript shows Applicant was fully advised on her rights and the consequences of pleading guilty. Furthermore, Trial Counsel credibly testified Applicant fully understood what she was doing when she pled guilty. This Court finds that there was no coercion affecting Applicant's decision to plead guilty, the record



reflects that Applicant was fully advised of the rights she was giving up by pleading guilty, and that her plea was entered into knowingly and intelligently. Applicant presented no credible evidence as to why she should be able to depart from her statements at the plea hearing. This Court finds very credible Plea Counsel's testimony that Applicant understood everything at the plea and that it was solely Applicant's decision to plead guilty. Applicant has failed to present any probative or credible evidence that she was coerced into pleading guilty. As a result, she has failed to meet her burden, and this allegation is denied and dismissed.

#### VII. CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this court to grant her application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

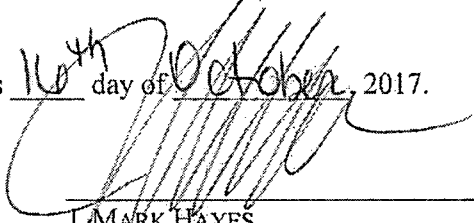
This Court notes that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

*[signature page to follow]*

**IT IS THEREFORE ORDERED:**

1. That the application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. That Applicant must be remanded to the custody of the Respondent.

**AND IT IS SO ORDERED** this 16<sup>th</sup> day of October, 2017.

  
\_\_\_\_\_  
J. MARK HAYES  
Presiding Judge  
Second Judicial Circuit

Aiken, South Carolina

STATE OF SOUTH CAROLINA )  
COUNTY OF AIKEN )  
Suzanne Cook, )  
Plaintiff(s), )  
-vs- )  
South Carolina State Of, )  
Defendant(s). )

IN THE COURT OF COMMON PLEAS  
2nd JUDICIAL CIRCUIT  
CASE NO.: 2016CP0202156  
APPOINTMENT OF COUNSEL OR GAL  
(Select one.)

ORDER  
 AMENDED ORDER

TYPE OF CASE/PROCEEDING: (Check one.)

- Post-Conviction Relief (PCR)/habeas case     Adoption     Juvenile  
 SVP case     Custody and/or Visitation     Abuse and Neglect  
 Minor Name Change     Other: Post Convict Rel 500

It appears Suzanne Cook, who is a litigant in this case, is entitled to court-appointed counsel or a guardian ad litem.

It further appears that: (Select only one.)

- counsel/guardian ad litem has not yet been appointed by the court; therefore, an appointment for counsel/guardian ad litem is necessary.  
 counsel or a guardian ad litem was previously appointed by the court but has indicated either a possible conflict of interest, an entitlement to exemption, or other good cause warranting the appointment of new counsel or guardian ad litem based on:  
 counsel was previously appointed by the court but has not indicated that the litigant has retained private counsel and is no longer entitled to appointed counsel.  
 court appointed counsel has obtained, Esquire as substitute counsel pursuant to Rule 608(h)(2); provided, however, only the member who originally received the appointment and who sought substitute counsel shall receive credit.  
 Other:

Therefore, it is ordered that Lance Boozer hereby is appointed as (Select one.)

counsel     lead counsel (if capital PCR case)     guardian ad litem  
for the above-named person. Any counsel or GAL previously appointed is/are hereby relieved.

(If Death Penalty PCR Case) It is further ordered that, Esquire, is hereby appointed as second counsel in this capital PCR case.

The clerk of court is directed to forward a copy of this order to all persons entitled to notice.

IT IS SO ORDERED  
October 27, 2016

*Liz Goodbyrd by Amanda M. Payne*  
 Circuit Judge     Clerk of Court

Plaintiff Attorney:	
Lance Boozer	Suzanne Cook # 369011
807 gervais St Ste 2013	CGGC1
Columbia, SC 29201	4450 Broad River Road
	Columbia, SC 29210

Defendant Attorney:	
Julia Amanda Coleman	
PO Box 11549	
Columbia, SC 29211	

NOTICE: SC Supreme Court Order of September 29, 2006, requires appointed counsel entitled to payment from the Office of Indigent Defense (OID) to register the case online with OID within fifteen (15) days of this appointment at [www.sccid.sc.gov](http://www.sccid.sc.gov). Further, direct that reimbursement vouchers be submitted directly to SCCID and not to the trial judge or clerk of court. See SCCID website for further details.

CP20 (08/08)  
SCCA/267 (03/07)

*Amanda M. Payne*  
12:45

**THE BOOZER LAW FIRM, LLC**

1400 Laurel Street, Suite 4A  
Columbia, SC 29201

COLUMBIA SC 290

23 OCT 2017 PM 2.1



The Honorable Daniel E. Shearouse  
Clerk, Supreme Court of South Carolina  
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Columbia, SC 29211

29211-133030

