

Lowcountry Law Office

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October 25, 2017

RECEIVED

NOV 06 2017

S.C. SUPREME COURT

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

RE: Antavius Gadsden v. State of South Carolina; Case #: 2015-CP-10-0419

Dear Mr. Shearhouse:

Enclosed for filing is the Notice of Appeal (original and clocked copy) in the above Post-Conviction Relief (PCR) case. Also enclosed are the following:

- (1) Proof of service of the Notice of Appeal on the Respondent;
- (2) The Order of Dismissal &
- (3) A Request for Representation on Appeal.

The Applicant - Appellant was represented by me as indigent, pursuant to my contract with the South Carolina Commission on Indigent Defense (SCCID) to handle PCR cases. By copy of this letter, I am forwarding a duplicate set of documents to the SCCID.

The Request for Representation on Appeal and the Affidavit in Support, thereof, are signed by me as attorney for Applicant - Appellant. Should you need anything further, do not hesitate to contact me.

Thank you for your time and attention to this matter.

Sincerely,



Rodney D. Davis  
South Carolina Bar #: 12396  
4000 Faber Place Drive, Suite 300  
Charleston, SC 29405  
(843) 323-4353  
[Davis@LowcountryLawOffice.com](mailto:Davis@LowcountryLawOffice.com)

~~Enclosures, As stated above.~~

RDD/mmt

cc: Megan H. Jameson, Assistant Attorney General  
Kimberly McCall, Appellate Division, SCCID

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NOV 06 2017

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

The Honorable William H. Seals, Jr.

Case #: 2015-CP-10-0419

Antavius Gadsden,

Appellant.

v.

State of South Carolina,

Respondent.

NOTICE OF APPEAL

Antavius Gadsden appeals the denial of his Post Conviction Relief (PCR) application in this case. The application for relief was denied following an evidentiary hearing before the Honorable William H. Seals, Jr., on January 12, 2017. Counsel for the Appellant received a copy of the filed Order of Dismissal on or about October 2, 2017.

October 19, 2017



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Rodney D. Davis

Attorney for Appellant

4000 Faber Place Drive, Suite 300

Charleston, SC 29405

Davis@LowcountryLawOffice.com

(843) 323-4353

Other Counsel of Record:  
Alicia Olive, Assistant Attorney General  
State of South Carolina  
P.O. Box 11549  
Columbia, SC 29211-1549  
Attorney for Respondent

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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

The Honorable William H. Seals, Jr.

Case #: 2015-CP-10-0419

Antavius Gadsden,

Appellant.

v.

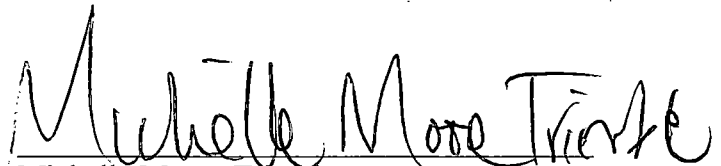
State of South Carolina,

Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the State by mailing a copy, via US Mail, to the address of record, Megan H. Jameson, P.O. Box 11549, Columbia, South Carolina 29211-1549, on October 19, 2017.

October 19, 2017



Michelle Moore Trimble  
Paralegal to Rodney D. Davis  
4000 Faber Place Drive, Suite 300  
Charleston, SC 29405  
(843) 323-4353  
Davis@LowcountryLawOffice.com  
Attorney for Appellant

Other Counsel of Record:  
Alicia A. Olive, Assistant Attorney General  
Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211-1549  
Attorney for Respondent

ce  
AG  
AT  
ES  
SC

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )  
Antavius Gadsden, SCDC No. 253537, )  
Applicant, )  
v. )  
State of South Carolina, )  
Respondent. )

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT

Case No.: 2015-CP-10-0419

**ORDER OF DISMISSAL**

2017 SEP 20 PM 3:35  
JULIE J. JAMES  
CLERK OF COURT

This matter comes before the Court by way of an application for post-conviction relief filed January 21, 2015, by Antavius Gadsden (Applicant), alleging ineffective assistance of counsel and involuntary guilty plea. Respondent made its Return on July 28, 2015, requesting an evidentiary hearing be held. An evidentiary hearing into the matter was convened January 12, 2017, at the Charleston County Courthouse. Applicant was present at the hearing and represented by Rodney D. Davis, Esquire. Assistant Attorney General Alicia Olive from the South Carolina Attorney General's Office appeared on behalf of the State. Following the hearing, this Court denied the application. This order follows.

**PROCEDURAL HISTORY**

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. During its March 2014 term of court, the Charleston County Grand Jury indicted Applicant for strong arm robbery (2014-GS-10-1212) and first-degree assault and battery (2014-GS-10-1213). Robert G. Howe, Esquire, represented him. Assistant Solicitor Lindsey McClain Byrd prosecuted the case on behalf of the State.

On May 5, 2014, Applicant appeared in the Charleston County Court of General Sessions before the Honorable R. Markley Dennis, circuit court judge, and pled guilty as indicted to strong arm robbery and to the lesser-included offense of second-degree assault and battery. Applicant told the plea court he understood he could receive a sentence of up to fifteen years for strong arm robbery and up to three years for second-degree assault and battery. (Plea Tr. 2-3). The State and counsel informed the plea court the plea was without any negotiations or recommendations as to sentencing. (Plea Tr. 3). Applicant told the court he was satisfied with counsel's services. (Plea Tr. 3). Counsel informed the plea court that he and Applicant had fully discussed the case, the results of counsel's investigation, the rights he was waiving by pleading guilty, and his decision to plead guilty; Applicant informed the plea court he agreed and wanted to give up his constitutional rights and plead guilty. (Plea Tr. 4-5). Applicant told the plea court he had not been threatened or coerced to plead guilty. (Plea Tr. 5). He told the plea court he was pleading guilty because he was guilty and it was solely his decision to plead guilty. (Plea Tr. 5).

The plea court sentenced Applicant to ten years imprisonment for strong arm robbery and a consecutive three years imprisonment suspended upon the service of five years of probation for second-degree assault and battery. Applicant did not appeal his guilty plea or sentence.

#### **FACTUAL HISTORY**

These charges arise from the attack and robbery of a female victim at a storage facility in Charleston County on November 16, 2013. Applicant spent the morning monitoring the facility and eventually approached the victim, struck her in the face, told her to shut up, and threatened to kill her. The victim fell to the ground and Applicant continued to strike the victim in the face and began choking her with both hands until she nearly lost consciousness. Applicant then went

through the victim's pockets and purse, eventually fleeing with her iPhone, cash, and credit cards. The victim provided a detailed description of Applicant, including a tattoo on his forearm, and identified him from a six-pack lineup. Applicant was also identified on surveillance footage from the storage facility and when confronted with the video, acknowledged it was him. (Plea Tr. 5-7, 9).

#### **ALLEGATIONS RAISED**

In his application, Applicant alleged he is being held in custody unlawfully based on allegations of ineffective assistance of counsel for failure to file an appeal and involuntary guilty plea for "counsel fail[ing] to abide by plea agreement discussed with client."

#### **SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING**

At the evidentiary hearing, Applicant testified on his own behalf. Applicant testified he is 34 years old, previously worked in construction, and has two daughters. (PCR Tr. 7). He testified he was arrested for strong arm robbery and first-degree assault and battery and was originally appointed Benjamin Lewis, Esquire, from the Charleston County Public Defender's Office, to represent him. (PCR Tr. 8). He testified his family retained Robert Howe, Esquire ("counsel"), to represent him because he was "facing a bunch of time" and it would be better to get a "paid lawyer." (PCR Tr. 8-9). He testified counsel was retained approximately three months before his guilty plea and they met once. (PCR Tr. 9). He testified counsel never discussed a trial with him and advised him to plead guilty because he would get a probationary sentence. (PCR Tr. 10). Applicant testified he had already received a copy of his discovery materials from former counsel Lewis. (PCR Tr. 10-11, 23-24). He testified counsel only showed him paperwork and never showed him the surveillance video from the storage facility. (PCR Tr. 10-11, 24). He

testified counsel never reviewed the elements of the offenses, possible defenses, or what would occur during a trial. (PCR Tr. 11-13). He testified he did review potential sentences and the victim's statement, including inconsistencies with it, with counsel. (PCR Tr. 13). He testified he pled guilty because counsel advised him he would get a probationary sentence and go home. (PCR Tr. 14-15, 18). Applicant testified counsel promised he was good friends with the solicitor and he would only get probation if he pled guilty. (PCR Tr. 15). He testified he does not think counsel did anything to prepare to challenge the charges. (PCR Tr. 15). He testified he would have gone to trial if counsel had explained what the State would have to prove at trial, reviewed the evidence with him, and not promised him a probationary sentence. (PCR Tr. 15-16).

Applicant acknowledged the plea court reviewed the charges and potential punishments with him. (PCR Tr. 17). He also acknowledged the State told the plea court there was no negotiation or recommendation other than reducing the first-degree assault and battery to the lesser-included offense of second-degree assault and battery. (PCR Tr. 17-18). He testified despite counsel guaranteeing him probation, he heard the plea court advise him he could receive a sentence of up to fifteen years for strong arm robbery. (PCR Tr. 18-19). He denied hearing the plea court or solicitor say there was no negotiation or agreement for sentencing. (PCR Tr. 19). He acknowledged counsel told the plea court he had advised Applicant of all of his rights and that he agreed with counsel's statements to the plea court. (PCR Tr. 20). He also acknowledged he agreed with the solicitor's recitation of facts. (PCR Tr. 21). He testified he told counsel he wanted to go to trial and only entered a guilty plea because he was promised probation. (PCR Tr. 22). He testified he only apologized at the end of his plea because counsel advised him to do so. (PCR Tr. 22, 26). He also acknowledged he told the plea court he was satisfied without counsel's

representation. (PCR Tr. 23). He testified counsel never advised him he could stop the plea at any time during the proceeding. (PCR Tr. 26). He testified he was surprised by his sentence. (PCR Tr. 27). He testified counsel never visited following his plea. (PCR Tr. 27).

Assistant Solicitor Lindsey McClain Byrd also testified. She testified she provided four different discs with discovery to Applicant's initial counsel Lewis and also provided the discovery to counsel when he was retained. (PCR Tr. 29-30). She testified she made a plea offer to allow Applicant to plead to the lesser-included offense of second-degree assault and battery early on and it was the best plea offer she was going to make. (PCR Tr. 31-32). She elaborated she told counsel she was not going to be able to make a recommendation or negotiation to a lower sentence based on Applicant's criminal record. (PCR Tr. 32-33). She testified this was a "very strong case" and the evidence she would have presented at trial included surveillance footage from the storage facility, the victim's testimony, statement, and identification of Applicant, and Applicant's identification of himself on the surveillance footage. (PCR Tr. 33).

#### **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 hearings. 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).

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or

she must prove "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. 441, 334 S.E.2d 813. The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813. The applicant must overcome this presumption 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. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 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 (1985).

"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.” Holden v. State, 393 S.C. 565, 572, 713 S.E.2d 611, 615 (2011) (citing Rolen v. State, 384 S.C. 409, 413, 683 S.E.2d 471, 474 (2009)). “In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing.” Holden, 393 S.C. at 573, 713 S.E.2d at 615 (citing Suber, 371 S.C. at 558, 640 S.E.2d at 886). The post-conviction relief court must consider both the transcripts from a guilty plea and testimony provided at an evidentiary hearing when determining if a guilty plea was voluntarily entered. Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. 668.

After careful review of the entire record, including the testimony presented at the evidentiary hearings, based on the standard discussed above, this Court finds Applicant has failed to carry his burden in this action regarding any of his allegations of ineffective assistance of counsel.

Applicant alleges counsel was ineffective for failing to file an appeal on his behalf. However, Applicant failed to present any testimony or evidence that he wanted an appeal following his guilty plea or that he ever requested counsel file one on his behalf. Therefore, Applicant has failed to meet his requisite burden of proof and this allegation is denied and dismissed with prejudice.

Applicant also alleges trial counsel failed to “abide by plea agreement.” At the evidentiary hearing, Applicant testified counsel assured him he would receive a probationary sentence if he entered a guilty plea. He testified he was surprised by his sentence and would not have pled guilty if he had known he would receive anything more than a probationary sentence. However, this allegation is refuted by the record from the plea colloquy, including where Applicant told the plea court he understood he could receive up eighteen years total for these two offenses and that he was guilty and wanted to plead guilty. This Court finds this allegation must be denied and dismissed with prejudice.

Ultimately, this Court finds plea counsel was competent in his representation of Applicant and in his advice to Applicant that a guilty plea was in his best interest. Therefore, this application for post-conviction relief is denied and dismissed with prejudice.

#### CONCLUSION

Based on all 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 is denied and dismissed with prejudice.


This Court notes Applicant must file and serve a notice of appeal within thirty days from the receipt of this Order by counsel of record 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 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.

**IT IS THEREFORE ORDERED:**

1. This application for post-conviction relief must be denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the State.

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

  
\_\_\_\_\_  
WILLIAM H. SEALS, JR.  
Presiding Judge  
Ninth Judicial Circuit

Marron, South Carolina


STATE OF SOUTH CAROLINA ) IN THE SUPREME COURT OF SOUTH CAROLINA  
 )  
 COUNTY OF CHARLESTON ) Case #: 2015-CP-10-0419  
 )  
 )  
 ANTAVIUS GADSDEN, )  
 )  
 Applicant. ) REQUEST FOR REPRESENTATION ON APPEAL  
 )  
 -versus- )  
 )  
 STATE OF SOUTH CAROLINA, )  
 )  
 Respondent. )

On behalf of the request of the above-named Applicant, to be represented by the South Carolina Commission of Indigent Defense, Appellate Division (SCCID), the undersigned attorney would show unto this Honorable Court that:

1. He is the attorney for the Applicant-Appellant in the above-captioned case. The Applicant-Appellant was in custody during and taken into custody immediately following the Post Conviction Relief (PCR) hearing and was not available to personally sign this request;
2. The Applicant-Appellant was represented by the undersigned attorney as an indigent, pursuant to a contract with the SCCID;
3. The Applicant-Appellant has been informed that he may request assistance from the SCCID Appellate Division in perfecting his appeal;
4. A timely Notice of Intent to Appeal has been filed on the Applicant-Appellant's behalf;
5. The Applicant-Appellant has been informed that nothing requires SCCID Appellate Division to pursue this appeal unless that office's Chief Attorney is satisfied that there is arguable merit to this appeal and that he cannot afford to hire an attorney.

At this time, the Applicant-Appellant requests the aid of the SCCID Appellate Division in perfecting his appeal to the South Carolina Court of Appeals.

Respectfully Submitted,

  
 Rodney D. Davis  
 South Carolina Bar #: 12396

Charleston, South Carolina.  
 October 19, 2017

STATE OF SOUTH CAROLINA )

CASE #: 2015-CP-10-0419

COUNTY OF CHARLESTON )

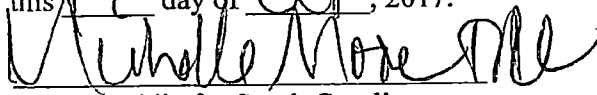
VERIFICATION

PERSONALLY appeared before me, Rodney D. Davis, being first duly sworn, deposes and says that he has read the foregoing *Request for Representation on Appeal* to be filed on behalf of the Applicant-Appellant, **Antavius Gadsden**, and the same is true of his knowledge except those matters alleged on information and belief, and as to those matters, he believes them to be true.



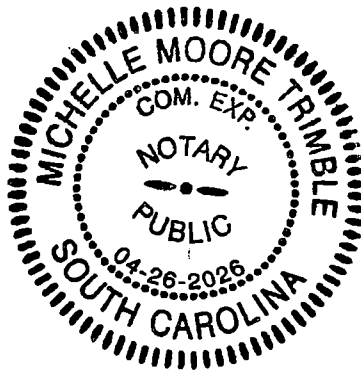
Rodney D. Davis  
South Carolina Bar #: 12396

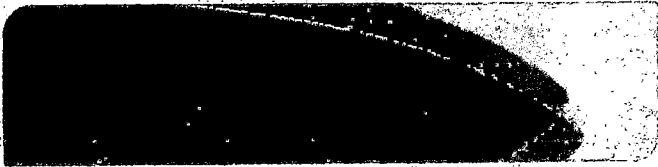
SWORN to and subscribed to me  
this 19 day of Oct, 2017.



Notary Public for South Carolina

My Commission expires 4/26/2026





## Lowcountry Law Office

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**October 25, 2017**

Kimberly McCall  
South Carolina Commission on Indigent Defense  
PO Box 11433  
Columbia, SC 29211-1433

RE: Antavius Gadsden v. State of South Carolina; Case #: 2015-CP-10-0419

Dear Ms. McCall:

Enclosed is a duplicate set of Appeal documents that I have forwarded to the Clerk of the Supreme Court of South Carolina concerning the above-listed Post Conviction Relief (PCR) case. I was appointed to the PCR cases pursuant to a contract that I have with your office. I have requested that your office assume the appeal of this case.

Should you have any questions, please do not hesitate to contact me.

Thank you for your assistance with this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Rodney D. Davis".

Rodney D. Davis  
South Carolina Bar # 12396  
4000 Faber Place Drive, Suite 300  
Charleston, SC 29405  
[Davis@LowCountryLawOffice.com](mailto:Davis@LowCountryLawOffice.com)

Enclosure(s). As stated above.  
RDD/mmt