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OCT 06 2017

**THE BOOZER LAW FIRM, LLC**

**S.C. SUPREME COURT**

**Lance S. Boozer, Esq.\***  
\*Also admitted in Florida

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October 4, 2017

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

The Honorable Scott B. Suggs  
Clerk of Court  
1 Public Square  
Darlington, SC 29532

**RE: Cleveland McNeal, #322191, v. State of South Carolina**  
**2015-CP-16-863**

Dear Mr. Shearouse and Mr. Suggs:

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 Mr. McNeal in his PCR proceeding, I anticipate that the Office of Appellate Defense will represent Mr. McNeal in this appeal.

Yours very truly,



Lance S. Boozer

Enclosures

cc: Johnny E. James, Jr., AAG  
Loriene French, OAD  
Cleveland McNeal, #322191

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OCT 06 2017

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

**S.C. SUPREME COURT**

APPEAL FROM DARLINGTON COUNTY  
Court of Common Pleas

The Honorable Roger E. Henderson, Circuit Court Judge

Case No. 2015-CP-16-863

Cleveland McNeal, #322191, .....Petitioner,

v.

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

**NOTICE OF APPEAL**

The Petitioner appeals the Honorable Roger E. Henderson's Order dated August 23, 2017, denying post-conviction relief to the Petitioner. The Order was received by undersigned counsel on October 3, 2017. A copy of the Order on appeal is attached to this notice.

Respectfully submitted,



Lance S. Boozer  
The Boozer Law Firm, LLC  
1400 Laurel Street, Suite 4A  
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Tele: 803-608-5543

October 4, 2017

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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OCT 06 2017

APPEAL FROM DARLINGTON COUNTY  
Court of Common Pleas

**S.C. SUPREME COURT**

The Honorable Roger E. Henderson, Circuit Court Judge

Case No. 2015-CP-16-863


Cleveland McNeal, #322191, .....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 Johnny E. James, Jr., P.O. Box 11549, Columbia, SC 29211. I further certify that all parties required by Rule to be served have been served this 4th day of October, 2017.

  
Lance S. Boozer  
The Boozer Law Firm, LLC  
1400 Laurel Street, Suite 4A  
Columbia, SC 29201  
Tele: 803-608-5543

*JEM*  
*8/22*

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF DARLINGTON ) FOR THE FOURTH JUDICIAL CIRCUIT

Cleveland McNeal, ) Case No.: 2015-CP-16-00863  
S.C.D.C. No. 322191, )

Applicant, )

**ORDER OF DISMISSAL**

v. )

State of South Carolina, )

Respondent. )

SCOTT B. SUGGS  
CLERK OF COURT/R.O.D.  
DARLINGTON COUNTY, S.C.

2017 SEP - 1 PM 12:23

FILED

This matter comes before the Court by way of an application for post-conviction relief filed by Cleveland McNeal ("Applicant") on November 17, 2015, and amended July 10, 2017. Respondent made its return on or about June 1, 2017. The Court convened an evidentiary hearing into the matter on July 17, 2017, at the Dillon County Judicial Center in Dillon, South Carolina. Applicant was present at the hearing and represented by Lance S. Boozer, Esquire. Johnny Ellis James Jr., of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's plea counsel, Paul Neely, Esquire ("Counsel") also testified. The Court had before it Applicant's records from the South Carolina Department of Corrections, a copy of the original plea transcript, the records of the Dillon County Clerk of Court regarding the subject convictions, and the pleadings. The Court finds as follows:

**I. PROCEDURAL HISTORY**

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Darlington County Clerk of Court. Applicant was indicted at the April

*[Handwritten signature]*

2014 term of the Darlington County Grand Jury for possession of a weapon during the commission of a violent crime (2014-GS-16-00510), discharging a firearm into a vehicle (2014-GS-16-00511), and attempted murder (2014-GS-16-00512). Paul Neely, Esquire represented Applicant, and Adam M. Foard, of the Fourth Circuit Solicitor's Office, prosecuted the case. On July 20, 2015, Applicant pled guilty to the lesser-included charge of assault and battery of a high an aggravated nature; the charges for weapon possession and discharging were dismissed *nolle prosequi*. The Honorable Paul M. Burch accepted terms negotiated between Applicant and the State and sentenced Applicant to imprisonment for a term of 10 years. Applicant did not appeal his plea or sentence.

### **Present Application**

In his post-conviction relief application, Applicant alleges he is being held unlawfully for the following reasons:

1. Ineffective Assistance of Counsel and Involuntary Guilty Plea, in that:
  - a. "Counsel misadvised me on the nature of offense & possible defenses."
  - b. "Applicant believes the gun charge was supposed to have been dismissed upon accepting the plea."
  - c. "Applicant believes counsel failed to secure in writing a plea deal Applicant claims was offered by the State."
  - d. "Applicant believes his rights were violated by the State and the Solicitor abused his authority by forcing Applicant to plead to a violent offense."

At the evidentiary hearing, Applicant indicated that he did not want a new trial, but requested the modification of his sentence from that of a violent offense to a non-violent offense.

### **II. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the records submitted to it by the parties and the



legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented.

**A. Ineffective Assistance of Counsel and Involuntary Guilty Plea**

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.” Butler at 442, 334 S.E.2d 441 (quoting Strickland v. Washington, 466 U.S. 668, 686 (1984)). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Id.

“[C]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Butler at 442, 334 S.E.2d 441 (quoting Strickland at 690). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989). “Judicial scrutiny of counsel’s performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel’s assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel’s defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable.” Strickland, 466 U.S. at 689; Edwards v. State, 392 S.C. 449, 456-57, 710 S.E.2d 60, 64 (2011). “[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel.” Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)).



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 at 117, 386 S.E.2d at 625 (citing Strickland 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 at 117-18, 386 S.E.2d at 625 (citing Strickland at 694). 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. Strickland at 696. 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. at 696-97.

Applicant further claims his plea was not entered knowingly or voluntarily. To find a guilty plea is voluntarily and knowingly entered into, the record must establish 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 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. See Harris v. Leeke, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984).

Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. See Blackledge v. Allison, 431 U.S. 63, 73-74 (1977). Statements made



during a guilty plea should be considered conclusively, unless an Applicant presents valid reasons why he should be allowed to depart from the truth of his statements. See Crawford v. U.S., 519 F.2d 347, 350 (4th Cir. 1975) (overruled on other grounds by U.S. v. Whitley, 759 F.2d 327 (4th Cir.1985)). Applicant presented no reasons to show that he should be allowed to depart from the truth of the statements he made during his guilty plea hearing.

An applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness, and that there is a reasonable probability that, but for trial counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial instead. See Roscoe v. State, 345 S.C.16, 20, 546 S.E.2d 417, 419 (2001); see also Richardson v. State, 310 S.C. 360, 362 426 S.E.2d 795, 797 (1993). Given Applicant's burden of proof and the analysis to be applied to this claim, Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it will be treated as such.

***IAC Allegation #1 – Failure to Explain Offense and Defenses***

Applicant alleges that Counsel failed to adequately explain the terms of his plea offer to him. Assault and battery of a high and aggravated nature ("ABHAN") is statutorily defined as a violent crime. S.C. Code Ann. § 16-1-60. At the evidentiary hearing, Applicant testified that he believed he had accepted an offer to plead to assault and battery of a high and aggravated nature, non-violent, to serve a 10 year sentence. On cross-examination, Applicant testified that he met with Counsel several times, went over the elements of the crimes charged against him, and that Counsel explained that ABHAN was classified as a violent crime. Counsel testified that there was no discussion of a "non-violent" ABHAN and that he explained the violent classification of the offense with Applicant. Counsel affirmed that he discussed possible defenses with



Applicant, namely that the victim was a drug dealer and that self-defense could be an appropriate trial strategy.

ABHAN is indisputably a violent offense and Applicant's own testimony confirms he understood as much at the time he pled guilty. Based upon the clarity of Counsel's recollection of the facts and defenses available in Applicant's case, and based upon Counsel's courtroom demeanor, the Court finds credible Counsel's testimony that he explained the classification and potential defenses. Applicant has failed to show any deficiency or prejudice from Counsel's conduct, and thus has failed to carry his burden as to either prong of Strickland. Accordingly, Applicant's request for relief as to this allegation is **DENIED**.

***IAC Allegation #2 – Failure to Secure Dismissal of Gun Charges***

Applicant, in his amended application, alleges that "the gun charge was supposed to have been dismissed upon accepting the plea." Upon review of the records it appears that the indictments for possession of a weapon during the commission of a violent crime and discharging a firearm into a vehicle were dismissed as part of the plea arrangement. Therefore, Applicant is correct, the gun charges were supposed to have been dismissed—and they were. Accordingly, Applicant's request for relief as to this allegation is **DENIED**.

***IAC Allegation #3 – Failure to Secure Plea Offer to Non-Violent Offense***

Applicant, in his amended application, alleges that Counsel failed to secure in writing a plea deal in which Applicant would serve 10 years on a non-violent ABHAN offense. "A plea agreement is only an 'offer' until the defendant enters a court-approved guilty plea. A defendant accepts the 'offer' by pleading guilty. Thus, until formal acceptance of the plea by the court has occurred, the plea binds no one, not the defendant, the State, or the court." Reed v. Becka, 333 S.C. 676, 688, 511 S.E.2d 396, 402 (1999). "Absent a plea of guilt, a defendant may only



enforce an oral plea agreement upon a showing of detrimental reliance.” Id. “A defendant relies upon a solicitor’s plea offer by taking some substantial step or accepting serious risk of an adverse result following acceptance of the plea offer.” Id., 333 S.C. at 689, 511 S.E.2d at 403. As previously noted in Section II.A.1. above, ABHAN is statutorily defined as a violent crime. S.C. Code Ann. § 16-1-60.

At the evidentiary hearing, Applicant testified that Counsel and the State negotiated a 10-year, non-violent ABHAN deal at the Darlington County Detention Center. Applicant claims to have accepted that offer at that time, but that the State later informed him the deal was no longer on the table and would only permit a plea to 10 years for ABHAN, violent. Applicant testified he knew he was pleading to a violent offense at the time of the plea but that he did so under the duress of an impending trial. Counsel testified Applicant wanted a deal for five years, non-violent, but that such a deal was never offered. Counsel denied that there was ever any offer for 10 years, non-violent, and that no such meeting as described by Applicant ever occurred.

For the same reasons as set forth Section II.A.1. above, the Court finds Counsel’s testimony credible. Additionally, the Court finds Applicant’s testimony not credible as to the supposed meeting and offer of 10 years for ABHAN, non-violent. There is no non-violent form of ABHAN, so such an offer could not exist or even be accepted by a South Carolina court. In any event, Applicant testified the State withdrew the mythical offer, which was its right to do. Applicant has proven no deficiency on the part of plea counsel, nor prejudice therefrom, and thus has failed to meet his burden as to either prong of Strickland. Accordingly, Applicant’s request for relief based upon this allegation is **DENIED**.



***IAC Allegation #4 – Plea was Involuntary due to Duress***

Applicant alleges his plea was involuntary entered under duress from the State and the looming specter of an impending trial. Applicant testified that he never wanted a trial—he pled to avoid trial and even on post-conviction relief, rejects the possible relief of granting a new trial. Applicant contends that he was forced to plead guilty by the approaching trial date, and that the solicitor abused his authority thereby. The Court finds this ground is patently meritless—the clockwork approach of judicial process does not amount to duress absent some other clear deficiency on the part of counsel, however anxious a defendant may be. Accordingly, Applicant has failed to meet his burden as to either prong of Strickland, and his request for relief based upon this allegation is **DENIED**.

**III. 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 his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

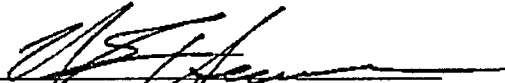
This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCR provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention 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 South Carolina Department of Corrections.

AND IT IS SO ORDERED this 23<sup>rd</sup> day of August, 2017.

  
\_\_\_\_\_  
ROGER E. HENDERSON  
Presiding Judge  
Fourth Judicial Circuit

Chesterfield, South Carolina

STATE OF SOUTH CAROLINA )  
COUNTY OF DARLINGTON )  
Cleveland McNeal #322191, )  
Plaintiff(s), )  
-vs- )  
South Carolina State Of, )  
Defendant(s). )

IN THE COURT OF COMMON PLEAS  
Fourth JUDICIAL CIRCUIT  
CASE NO.: 2015CP1600863  
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 Cleveland McNeal #322191, 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 S. 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  
November 25, 2015

  
 Circuit Judge     Clerk of Court

Plaintiff Attorney:

Lance S. Boozer	
807 Gervais Street Suite 203	
Columbia, SC 29201	

Defendant Attorney:

Jessica Elizabeth Kinard	
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) and further directs 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)

  
CLERK OF COURT/RMG  
DARLINGTON COUNTY, SC