

# THE BOOZER LAW FIRM, LLC

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November 15, 2017

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

**RECEIVED**

NOV 17 2017

The Honorable Mary Brown  
Clerk, Berkeley County  
300 California Dr.  
Moncks Corner, SC 29461

**S.C. SUPREME COURT**

**RE: Brandon Jenkins, #360373, v. State of South Carolina**  
**2015-CP-08-1201**

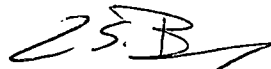
Dear Mr. Shearouse and Ms. Brown:

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

Yours very truly,



Lance S. Boozer

cc: Megan Jameson, AAG  
Office of Appellate Defense  
Brandon Jenkins, #360373

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

RECEIVED

APPEAL FROM BERKELEY COUNTY  
Court of Common Pleas

NOV 17 2017

Justice Jean H. Toal, Presiding Circuit Court Judge

S.C. SUPREME COURT

Case No. 2015-CP-08-1201

Brandon Jenkins, #360373,.....Petitioner,

v.

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

**NOTICE OF APPEAL**

The Petitioner appeals the Honorable Justice Jean H. Toal's Order dated October 10, 2017, denying post-conviction relief to the Petitioner. Undersigned counsel received notice of entry of the Order on November 14, 2017. A copy of the Order on appeal is attached to this notice.

Respectfully submitted,



Lance S. Boozer  
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November 15, 2017

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

RECEIVED

NOV 17 2017

APPEAL FROM BERKELEY COUNTY  
Court of Common Pleas

S.C. SUPREME COURT

Justice Jean H. Toal, Presiding Circuit Court Judge

Case No. 2015-CP-08-1201

Brandon Jenkins, #360373,.....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 Megan Jameson, P.O. Box 11549, Columbia, SC 29211. I further certify that all parties required by Rule to be served have been served this 15th day of November, 2017.



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The Boozer Law Firm, LLC  
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**PROCEDURAL  
HISTORY**

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Berkeley County Clerk of Court. The Applicant was indicted at the May 2012 term of the Berkeley County Grand Jury for murder (2012-GS-08-0817), Attempted Murder (2012-GS-08-0818), and Attempted Armed Robbery (2012-GS-08-0819). The Applicant was represented by Chad Shelton, Esquire. On June 16, 2014, the Applicant pled guilty to the lesser included offense of voluntary manslaughter and attempted murder. The Applicant was sentenced by the Honorable R. Markley Dennis to confinement for a period of twenty-four (24) years. The Applicant did not appeal his conviction or sentence.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
2. Involuntary guilty plea.

At the hearing, the Applicant proceeded on his claims of ineffective assistance of plea counsel and involuntary guilty plea.

## SUMMARY OF TESTIMONY

At the evidentiary hearing, Applicant testified that he pled guilty to the lesser included offense of voluntary manslaughter and attempted murder. Applicant stated that he was represented by Chad Shelton and that they met "a good many times." He testified that he understood the charges and that he could get more time but that he believed that he would be sentenced to no more than twenty (20) years. The Applicant stated that one of his co-defendants received twenty-three (23) years and the other received fifteen (15) years. He testified that he believed he would receive a lesser sentence because he did not "pull the trigger." Applicant also stated he thought Counsel should have "fought harder" on his behalf and that he wanted to "crank it up" when discussing proceeding to trial.

#3  
JMS  
Applicant testified that he was scared and that his attorney did "not really" discuss possible defenses. He stated that he did not meet with Counsel and his family at the same time. Applicant stated that he did not want to plead and that he only accepted the plea because Counsel made him feel like there was no hope. Therefore, he went along with Counsel's advice. Applicant also stated that Counsel told him how to answer the judge's questions during the plea. The Applicant testified that if Counsel had done more, he would have proceeded to trial. Applicant stated that he attempted to have Counsel relieved but that it didn't work because he never went before a judge. He stated that he told Counsel that he was going to hire another attorney.

On cross-examination, Applicant qualified his "good many times" to mean that he met with his attorney ten (10) to fifteen (15) times prior to pleading guilty. The Applicant

further testified that he was not threatened or promised anything in exchange for pleading guilty and that it was his decision to plead guilty. The Applicant stated that he understood the charges and the possible negotiated punishment of between fifteen (15) and thirty (30) years imprisonment. He also stated that he understood that if he did not accept the negotiated plea, he would be facing thirty (30) years to life. The Applicant stated that his guilty plea was voluntarily given. Furthermore, upon questioning from the Court, the Applicant stated that he told Counsel that he wanted to go to trial and that he was only the driver of the car. The Applicant admitted that Counsel explained the concept of the hand of one is the hand of all.

*Handwritten initials: H4 and SMS*

Counsel testified that he was appointed to the case and that he had documented that he had met with the Applicant twenty-two (22) times leading up to the guilty plea. Counsel stated that he explained the charges and the consequences. Counsel also stated that the Applicant understood and made the decision to plead guilty after the explanation. Counsel testified that he had the Applicant submit to a mental evaluation and that it showed the Applicant to be competent. Counsel stated that he believed that the Applicant had knowingly and voluntarily entered the guilty plea and that he did not force or threaten the Applicant to do so.

On cross examination, Counsel stated that he and the Applicant's mother, had concerns about the Applicant's mental health and that the Applicant may not totally understand everything. Counsel stated that he was diligent in explaining everything and that if he felt the Applicant did not fully understand, he would explain further. Counsel testified that he had negotiated a guilty plea with a sentencing range of between fifteen (15) and thirty (30) years. Counsel also stated that he explained to the Applicant that he had hoped to receive a similar

sentence as the co-defendants, but that the judge had the power to sentence between fifteen (15) and thirty (30) years. Counsel further testified that he explained to the Applicant that the original murder charge carried a thirty (30) years to life sentence and that sentence would be carried out on a day-for-day basis. Counsel testified that the Applicant initially stated that he was not present at the scene. However, police statements confirmed that the Applicant was indeed present at the scene. Counsel stated that the Applicant admitted to being at the scene, but that he was merely the driver of the car. Counsel stated that he explained the concept of the hand of one is the hand of all to the Applicant. Counsel testified that he had received a notice that the Applicant wanted to relieve him as counsel. After a meeting with the Applicant, it was determined that the notice was not in the Applicant's handwriting and was submitted by a co-defendant.

On re-direct examination, Counsel testified he did not promise the Applicant a specific amount of time he would receive from the Court.

#### **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 (2003)

### Ineffective Assistance of Counsel

Applicant alleges he received ineffective assistance of counsel. In a PCR action, “[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRPC). Where ineffective assistance of counsel is alleged 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 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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, 106 S.Ct. 366 (1985). This Court finds the Applicant's testimony regarding Counsel's ineffectiveness is not credible while also finding Counsel's testimony is credible.

This Court also finds Counsel provided effective assistance of counsel in this case. Counsel advised Applicant of all of the charges and the sentence each charge carried. Specifically, Counsel testified he discussed all of the elements of murder, voluntary manslaughter, involuntary manslaughter, self-defense and accident with Applicant. Counsel also negotiated with the State in Applicant's best interest. Specifically, Counsel negotiated a plea to a lesser included offense of murder to a cap of 30 years and a plea of guilty to attempted murder with a cap of 30 years. The charges were to run concurrent. This Court finds Applicant made the decision to plead guilty on his own accord with the help of learned counsel. Additionally, this Court finds Applicant made this decision freely and voluntarily without any threats or promises from anyone else. Furthermore, this Court finds that it was ultimately the Applicant's decision to plead guilty.

This Court finds the Applicant has failed to meet his burden of proving counsel's performance was deficient or that he was prejudiced thereby. Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in his representation of the Applicant.

This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel’s performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. Therefore, these allegations are denied.

### CONCLUSION

Based on all the foregoing, this Court finds and concludes that the 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 also finds as to all other allegations that Applicant failed to present evidence of such claims and thus, this Court deems them abandoned.

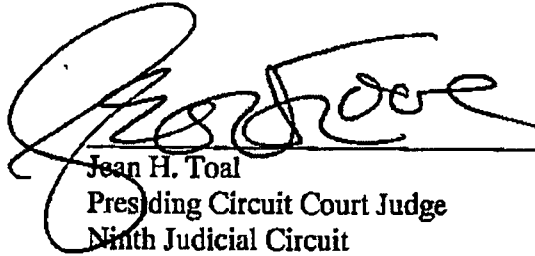
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This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to 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), SCRPC, 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 Respondent.

**AND IT IS SO ORDERED!**



Jean H. Toal  
Presiding Circuit Court Judge  
Ninth Judicial Circuit

#9

Oct 10, 2017  
Columbia, South Carolina

2758

2015-CP-08-1201

STATE OF SOUTH CAROLINA )  
 COUNTY OF BERKELEY )  
 Brandon A. Jenkins #360373, )  
 Plaintiff(s), )  
 -vs- )  
 State of South Carolina, )  
 Defendant(s). )

IN THE COURT OF COMMON PLEAS  
 Ninth JUDICIAL CIRCUIT  
 CASE NO.: 2015CP0801201  
 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 Brandon A. Jenkins #360373, 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  
 July 30, 2015

*Mary P Brown*  
 Circuit Judge     Clerk of Court

Plaintiff Attorney:

Lance Boozer	
807 Gervais Street, Ste 203	
Columbia, SC 29201	

Defendant Attorney:

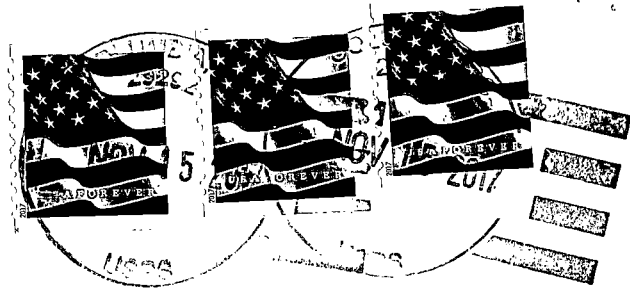
James Rutledge Johnson	
PO Box 11549	
Columbia, SC 29211	

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.

MAINTENANCE  
 CLERK OF COURT  
 BERKELEY COUNTY, SC  
 2015 JUL 30 AM 11:07  
 FILED

**THE BOOZER LAW FIRM, LLC**

1400 Laurel Street, Suite 4A  
Columbia, SC 29201



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