

# THE BOOZER LAW FIRM, LLC

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

\*Also admitted in Florida

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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 Bannister, #355440, v. State of South Carolina  
2014-CP-08-1153**

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

Yours very truly,



Lance S. Boozer

cc: Megan Jameson, AAG  
Office of Appellate Defense  
Brandon Bannister, #355440

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

**RECEIVED**

NOV 17 2017

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APPEAL FROM BERKELEY COUNTY  
Court of Common Pleas

**S.C. SUPREME COURT**

Justice Jean H. Toal, Presiding Circuit Court Judge

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Case No. 2014-CP-08-1153

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Brandon Bannister, #355440,.....Petitioner,

v.

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

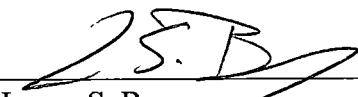
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**NOTICE OF APPEAL**

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The Petitioner appeals the Honorable 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  
The Boozer Law Firm, LLC  
1400 Laurel St., Suite 4A  
Columbia, SC 29201  
Tele: 803-608-5543

November 15, 2017

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM BERKELEY COUNTY  
Court of Common Pleas

**S.C. SUPREME COURT**

Justice Jean H. Toal, Presiding Circuit Court Judge

Case No. 2014-CP-08-1153

Brandon Bannister, #355440,.....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.



Lance S. Boozer  
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Tele: 803-608-5543

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT

Brandon Bannister, #355440,

2014-CP-08-1153

Applicant

ORDER OF DISMISSAL

v.

State of South Carolina,

Respondent

MARY P. BROWN  
CLERK OF COURT  
BERKELEY COUNTY S.C.

2017 NOV -9 PM 2:05

FILED

This matter comes before the Court by way of an Application for Post-Conviction Relief filed May 19, 2014. Respondent made its Return on September 3, 2015. An evidentiary hearing into the matter was convened on September 16, 2016 at the Berkeley County Courthouse. Lance Boozer, Esquire represented Applicant. Kelly Kanapaux, a third-year law student at the Charleston School of Law pursuant to South Carolina Supreme Court Rule 401 (Student Practice Rule), supervised by J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

At the hearing, the applicant ("Applicant") testified on his own behalf. Keshia White, Esquire ("Counsel") also testified. This Court had before it a copy of the records of the Berkeley County Clerk of Court, records from the South Carolina Department of Corrections, the Application, the State's Return and the guilty plea transcript.

**PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Berkeley County Clerk of Court. Applicant was indicted at the April 2012 term of the Berkeley County Grand Jury for burglary, first degree (2012-GS-08-

0587) and criminal sexual conduct, first degree (2012-GS-08-0588). Applicant was represented by Keshia White, Esquire.

Applicant pled guilty as indicted. On May 20, 2013, the Honorable J.C. Nicholson, Jr. sentenced Applicant to terms of confinement for twenty-five (25) years each for both charges. These were to run concurrently. Applicant did not appeal his sentence or plea.

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

1. "Ineffective Assistance of Counsel"
  - a. "My attorney provided no defense strategy at all"
2. "Conflict of interest"
  - a. "I asked to be relieved of counsel and was denied"

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At the hearing, Applicant proceeded on his claims of ineffective assistance of plea counsel, conflict of interest, and introduced a claim of involuntary guilty plea.

#### SUMMARY OF TESTIMONY

At the evidentiary hearing, Applicant testified he met with Counsel approximately five times. Applicant claimed Counsel did not put together a defense. Applicant stated no rape kit was performed on the Victim. He claimed he did not believe Counsel was prepared for trial. Applicant stated Counsel did discuss evidence against him, and discussed what might be said at trial during a cross-examination of the Victim.

Applicant stated he understood a plea offer from the Solicitor's office to be for twenty five (25) years. He rejected this offer. Applicant testified he made statements because he wanted a sentence close to fifteen (15) years. Applicant claimed he entered a guilty plea because he felt Counsel was not prepared for trial, and Applicant did not want the maximum sentence. Applicant stated he knew it was an open plea, and he did not know if the Solicitor's office made any other offer.

When questioned about the "conflict of interest", Applicant claimed that he made it known to Counsel that he requested relief of Counsel. Applicant testified Counsel did not appear to lose interest in his case.

On cross-examination, Applicant admitted full responsibility for the actions leading to the charges. He admitted there were no threats or promises made in the course of his decision to enter a guilty plea. He testified that he pled guilty because he was guilty. He admitted he had no complaints about Counsel and was provided the chance to complain to the Court. Applicant also testified he gave Counsel a hug after the guilty plea and thanked Counsel for her work on his case.

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[Signature]  
Counsel testified she works in the Berkeley County Public Defender's office and has been practicing criminal law for eighteen (18) years. Counsel stated she has participated hundreds of guilty pleas. Counsel stated she was appointed as Applicant's counsel in March or April of 2011.

Counsel testified she met with Applicant and discussed the charges against him. She testified she met with Applicant twenty two (22) times for approximately thirty (30) minutes each. She stated she went over the definitions of Burglary, first degree, and Criminal Sexual Conduct, first degree. Counsel testified she went over each indictment with the Applicant and all the elements of each offense. Counsel stated she discussed possible punishments for each offence as well.

Counsel testified she explained the State's burden of proving guilt beyond a reasonable doubt if the case were to go to trial. Counsel stated she discussed Applicant's version of facts with him. Counsel testified she did not believe there were any competency issues with Applicant. Counsel testified she reviewed all discovery with Applicant and discussed possible

defenses with him. Counsel further stated she talked to Applicant about the defenses' likelihood of success. Counsel testified Applicant stated he did not wish to pursue a trial and he wanted to plead guilty. When Counsel was asked whether she developed an opinion regarding the State's ability to prove guilt beyond a reasonable doubt, Counsel testified the evidence was strong and felt the State could prove guilt beyond a reasonable doubt.

Counsel then testified she had sufficient time to prepare Applicant's case. Counsel stated Applicant wanted to plead guilty and that his decision came down to the length of his sentence. Counsel testified Applicant wanted a plea bargain for a fifteen (15) year sentence, which the Solicitor did not agree to. Counsel stated she felt a plea would be in Applicant's best interest. Counsel testified Applicant took the opportunity to discuss his decision to take a plea bargain with his mother on August 8, 2012. Counsel stated ultimately it was Applicant's decision to plead guilty. Counsel testified she would have proceeded to trial if Applicant had insisted. Counsel stated she agreed with Applicant's decision to plead guilty.

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Further, Counsel testified she was aware Applicant filed a motion for relief of counsel, but this did not change her desire or ability to represent Applicant. Lastly, Counsel testified she discussed the plea after the proceedings with Applicant and he expressed no discontent, only appreciation.

On cross-examination, Counsel admitted Applicant struggled with the definition of Criminal Sexual Conduct, first degree and she mailed him a copy of the statute defining this offense. Counsel stated Applicant thought he did not meet the elements of Criminal Sexual Conduct, first degree, because there was no penile penetration, and she further educated him that digital penetration fit the definition. Counsel then testified she reviewed what the evidence revealed with Applicant. Counsel stated Applicant gave two confessions after being read his

Miranda warnings and wrote a letter of apology to the victim. Counsel testified she discussed the lack of defense with Applicant. Counsel testified the Solicitor made a plea offer on March 28, 2012 for a twenty (20) to thirty (30) year sentence range and Applicant rejected the offer.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court reviewed the record in its entirety and heard the testimony at the post-conviction relief hearing. This Court has 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(3), SCRPC).

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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 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 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 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 the two charges and the sentences that each charge carried. Specifically, Counsel testified she discussed all of the elements of Burglary, first degree and Criminal Sexual Conduct, first degree with Applicant. Counsel testified she discussed the discovery materials with Applicant, including the two confessions and the fact Applicant wrote an apology letter to the victim. Counsel also negotiated with the State in Applicant's best interest. 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.

### *Lack of Defense Strategy*

This Court also finds Counsel discussed possible defenses with Applicant. Counsel stated she discussed the Applicant's version of facts with him. Counsel testified she reviewed all of the discovery with Applicant and discussed possible defenses with him. Counsel further stated she talked to Applicant about the defenses' likelihood of success. Counsel testified Applicant stated he did not want to go to trial and he wanted to plead guilty. When Counsel was asked whether she developed an opinion regarding the State's ability to prove guilt beyond a reasonable doubt, Counsel testified the evidence was strong and felt the State could prove guilt beyond a reasonable doubt.

### *Conflict of Interest*

 This Court further finds Applicant's allegation the Court's denial of relief of counsel caused a conflict of interest with his Counsel without merit. This is not an issue for post-conviction relief. Rather, this allegation is a direct appeal issue that is procedurally barred by S.C. Code Ann. § 17-27-20(b). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 882, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). Applicant could have raised the issue of a conflict of interest on appeal. The failure to do so has waived this allegation as grounds for relief. Further, Applicant claimed that he made it known to Counsel he requested relief of Counsel. Applicant testified Counsel did not appear to lose interest in his case. Counsel testified she was aware Applicant filed a motion for relief of counsel, and this did not change her desire or ability to represent Applicant.

This Court finds Applicant has failed to meet his burden of proving Counsel's performance was deficient or that he was prejudiced thereby.

Accordingly, this Court finds Applicant has failed to prove the first prong of the Strickland test - that Counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in her representation of Applicant.

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

#### **Involuntary Guilty Plea**

AS  
JBY  
Applicant further alleges his guilty plea was not voluntarily made. This Court finds Applicant's allegation his guilty plea was involuntary is without merit. In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant 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 defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless

the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4<sup>th</sup> Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4<sup>th</sup> Cir. 1976). This Court finds the record fully supports the knowing and voluntary nature of Applicant's plea.

### CONCLUSION

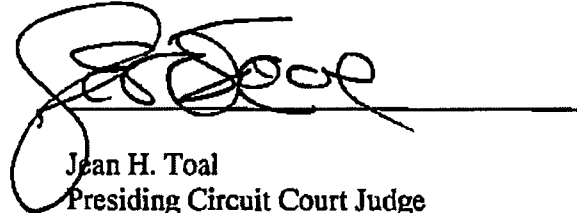
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice. This Court also finds as to all other allegations that the 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), SCRCP, 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

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Oct 10, 2016 <sup>2017</sup>

Columbia, South Carolina

2014-CP-08-1153

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

IN THE COURT OF COMMON PLEAS  
9th JUDICIAL CIRCUIT  
CASE NO.: 2014CP0801153  
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 Bannister, 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 3, 2014

*Mary P Brown / gw*

Circuit Judge     Clerk of Court

Plaintiff Attorney:

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

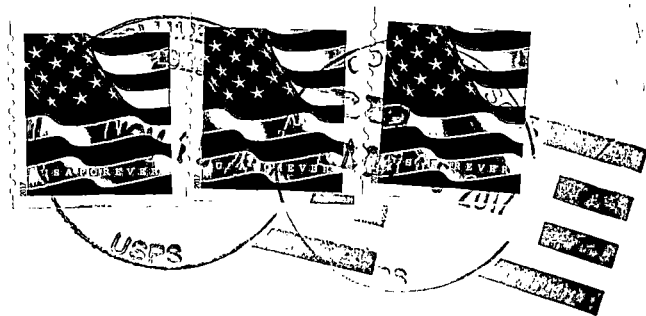
Defendant Attorney:

Ashleigh Rayanna Wilson	
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.

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