

# THE BOOZER LAW FIRM, LLC

---

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

1400 Laurel Street, Suite 4A  
Columbia, SC 29201

Telephone: 803-608-5543  
Fax: 803-926-3463

Email: [lsb@boozerlawfirm.com](mailto:lsb@boozerlawfirm.com)  
Website: [www.boozerlawfirm.com](http://www.boozerlawfirm.com)

November 20, 2017

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

**RECEIVED**

**NOV 22 2017**

The Honorable Beulah G. Roberts  
Clerk of Court  
P.O. Box 136  
Manning, SC 29102

**S.C. SUPREME COURT**

**RE: Antonio Romeo, #336726, v. State of South Carolina  
206-CP-14-273**

Dear Mr. Shearouse and Ms. Roberts:

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

Yours very truly,



Lance S. Boozer

**Enclosures**

cc: Julie Coleman, AAG  
Loriene French, OAD  
Antonio Romeo, #336726

**RECEIVED**

NOV 22 2017

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

---

APPEAL FROM CLARENDON COUNTY  
Court of Common Pleas

The Honorable D. Craig Brown, Circuit Court Judge

---

Case No. 2016-CP-14-273

---

Antonio Romeo, #336726, .....Petitioner,

v.

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

---

**NOTICE OF APPEAL**

---

The Petitioner appeals the Honorable D. Craig Brown's Order dated August 29, 2017, denying post-conviction relief to the Petitioner. The Order was received by undersigned counsel on November 20, 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  
Columbia, SC 29201  
Tele: 803-608-5543

November 20, 2017

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

**RECEIVED**

NOV 22 2017

S.C. SUPREME COURT

---

APPEAL FROM CLARENDON COUNTY  
Court of Common Pleas

The Honorable D. Craig Brown, Circuit Court Judge

---

Case No. 2016-CP-14-273

---

Antonio Romeo, #336726, .....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 20th day of November, 2017.



---

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

STATE OF SOUTH CAROLINA )  
COUNTY OF CLARENDON )  
Antonio T. Romeo, #336726, )  
Applicant, )  
v. )  
State of South Carolina, )  
Respondent. )

IN THE COURT OF COMMON PLEAS  
THIRD JUDICIAL CIRCUIT

2016-CP-14-273

**ORDER OF DISMISSAL**

SEP 16 4 41  
CLARENDON COUNTY, SC

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on July 5, 2016. Respondent submitted its Return on May 17, 2017. An evidentiary hearing into the matter was convened on July 24, 2017, at the Sumter 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.

At the hearing, this Court had before it a copy of the guilty plea transcript, the records of the Clarendon County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, and the pleadings.

**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 Clerk of Court for Clarendon County. Applicant was indicted by the January 2016 term of the Grand Jury for Clarendon County for two counts of second degree criminal sexual conduct with a minor (2015-GS-14-0224). Applicant was represented by Scott Lamar Robinson, Esquire. Assistant Solicitor Warren S. Anderson, Esquire prosecuted the case. Applicant pled guilty as indicted to both

*PCR  
p. 10/10*

charges and was sentenced on April 7, 2016. Pursuant to a negotiated sentence, Applicant was sentenced to ten years imprisonment suspended upon the service of five years with probation for five years by the Honorable Howard P. King. Applicant did not appeal his conviction or sentence.

## II. ALLEGATIONS

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

1. Ineffective Assistance of Counsel
  - a. "I didn't see my [discovery] until after the trial."
  - b. "I was not adequately represented, that's where the plea came in."
2. Involuntary Guilty Plea
  - a. "I was not adequately represented, that's where the plea came in."
3. "Errors in the Warrants and Indictments"
  - a. "The indictments are defective and faulty. I am being held on fraudulent and illegal indictment. These matters should have been addressed before any other arraignments, or proceedings."
4. "I never confessed to putting my penis in her vagina or molesting her in any manner what so ever."

## III. SUMMARY OF RELEVANT TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. The State presented testimony from Scott Lamar Robinson, Esquire (hereinafter "Plea Counsel"). This Court also had before it a copy of the Clarendon County Clerk of Court records, Applicant's South Carolina Department of Correction records, the guilty plea transcript, and the PCR application.

DCA  
P. 2/9/10

### *Applicant's Testimony*

Applicant testified that he pled guilty to criminal sexual conduct with a minor and got a ten year sentence suspended to five years and five years' probation. He stated Plea Counsel was appointed to represent him, and they met three times over the course of four months. Applicant stated the State originally offered him a two year sentence for assault and battery of a high and aggravated nature (ABHAN), but he did not want to take it, and he does not know what happened to the offer. He stated he made bond after he rejected this offer and then went by Plea Counsel's office every month to see the discovery.

Applicant testified the State then offered him a seven year sentence, but he did not accept it because he did not do anything, so he did not want to plead guilty. He stated he eventually pled guilty because he did not have a defense. Applicant stated that Plea Counsel never gave him a copy of his discovery until after the guilty plea. He stated he never saw the statements or any discovery before the plea. Applicant admitted as Applicant's Exhibit #1 a letter to him from Plea Counsel mentioning two CD/DVDs in his discovery that he did not send to him, but would send if Applicant asked for them. He stated this letter was not sent to him until after the guilty plea.

Applicant testified he did not see the indictments until after he pled guilty, and he then realized that they were incorrect. He stated that his birthday was incorrect on the indictment. Applicant testified that he never confessed to the crime or to molesting anybody. He stated that he told Plea Counsel that the victim was lying in her statements about him and he wanted Plea Counsel to challenge her statements.

### *Plea Counsel's Testimony*

Plea Counsel testified that Applicant's account of their number of meetings was accurate; Applicant was persistent about coming by his office every month to discuss his case. He stated

DCB  
p. 307/10

he reviewed the discovery with Applicant, which included a hand-written statement by Applicant confessing to the sexual activity, 60 or 70 pages of forensic interview information from the victim, and DSS records of the victim. He stated he reviewed the CD/DVDs in the discovery with Applicant and the victim's forensic interview tape. He stated he reviewed Applicant's constitutional rights a number of times and Applicant knew his rights before he pled guilty. Plea Counsel testified that Applicant argued with him about his defenses, because he believed he had a viable defense, but Plea Counsel explained to him that his defense would not be successful. He stated it was Applicant's decision to plead guilty, but Plea Counsel agrees with that decision and encouraged him to plead.

Plea Counsel testified that Applicant's statement was very similar to the victim's statement, but he claimed that *he* was molested by the victim. He stated Applicant did not report the event to anyone. He stated Applicant knew he was "in a bad situation" because there was no denying the allegation. Plea Counsel noted that Applicant had submitted to taking a polygraph examination before he was appointed as counsel. He stated Applicant wanted him to challenge the victim's testimony against him by raising the behavioral problems she had, but all of her problems were protected by the rape shield statute and were inadmissible at trial.

Plea Counsel testified that he does not recall a plea offer for ABHAN—he did not dispute it, but simply did not recall it—but if there had been such an offer, he would have explained it to Applicant, but Applicant was adamant about refusing the offer. Plea Counsel stated that they had picked a jury for trial when Applicant decided to plead guilty. Plea Counsel testified he does not know what his trial strategy would have been because Applicant admitted to the crime, but he was prepared to go forward with trial when they picked a jury. He stated Applicant faced forty

DCB  
8-4-10

years' imprisonment if convicted at trial because he had two charges of criminal sexual conduct, which both carry up to 20 years.

#### IV. 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, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (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 plea counsel, the Applicant must show there is a reasonable probability that, but for counsel's alleged errors, he

DOB  
11/5/10

would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

## V. 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).

### INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant alleges Counsel was ineffective in his representation surrounding his 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 his 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 risks and outcomes in

sentencing. Plea Counsel credibly testified he reviewed the discovery with Applicant, including the recording of the victim's forensic interview and the CD/DVDs that were included in the discovery file. Applicant was well aware of the evidence against him, and admitted to Plea Counsel and to law enforcement in a written statement that he committed the crime. This Court finds that Applicant has not shown that he was prejudiced by any of Plea Counsel's actions as he has failed to show that he 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 his 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).

PCF  
7/9/10  
P

Applicant claims his plea was given involuntarily because Plea Counsel was ineffective in his representation. This Court finds Plea Counsel was not ineffective, and there were no representation defects affecting Applicant's decision to plead guilty. The record reflects that Applicant was fully advised of the rights he was giving up by pleading guilty, and that his plea was entered into knowingly and intelligently. Applicant presented no credible evidence as to why he should be able to depart from his 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 he was coerced into pleading guilty. As a result, he has failed to meet his burden, and this allegation is denied and dismissed.

#### INSUFFICIENT WARRANTS AND INDICTMENTS

Applicant alleges that his indictment is defective. This allegation is improper for post-conviction relief. The sufficiency of an indictment is not a matter of subject matter jurisdiction, and thus cannot be raised at any time. State v. Gentry, 363 S.C. 93, 101, 610 S.E.2d 494, 499 (2005) (“[S]ubject matter jurisdiction of the circuit court and the sufficiency of the indictment are two distinct concepts.”) Furthermore, in order to challenge the sufficiency of an indictment, an objection must be made before the jury is sworn in. S.C. Code Ann. §17-19-90 (2003). Applicant waived his right to challenge the sufficiency of the indictments when he pled guilty to the charges against him, thus he can no longer raise this issue.

In post-conviction relief, an applicant wishing to raise challenges to the sufficiency of an indictment must do so in the context of ineffective assistance of counsel, basically alleging that his trial counsel failed to properly move to quash the indictment in accordance with S.C. Code Ann. § 17-19-90 (2003). Indictments are sufficient when they allege time and place, as required

DM  
3/10

by law, and charge the crime substantially in the language of the statute or the common law which prohibits the crime or so plainly that the offense charged may be easily understood and, if the offense is statutory, that the offense is contrary to the statute involved. S.C. Code Ann. § 17-19-20 (2003). All indictments must be viewed with a “practical eye” to determine whether they fulfill their function to notify the accused of the charge he must answer, notify the court of what judgment and sentence to pronounce, and present a bar to subsequent prosecution. See State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). Moreover, “an indictment passes legal muster when it charges the crime substantially in the language of the statute prohibiting the crime or so plainly that the nature of the offense charged may be easily understood.” Id. at 63, 700 S.E.2d at 443 (citing State v. Tumbleston, 376 S.C. 90, 98, 654 S.E.2d 849, 853 (Ct. App. 2007).)

Even if Applicant had properly raised this issue as one of ineffective assistance of counsel, this Court finds no merit to the claim. The indictment is clearly valid on its face, and Plea Counsel was not deficient for failing to challenge it. Furthermore, there is no resulting prejudice from any possible error in the indictment because Applicant pled guilty to the crime, solemnly admitting his guilt in open court. Therefore, since neither prong of the Strickland test is met, this allegation is denied and dismissed with prejudice.

#### DIRECT APPEAL ISSUE

Applicant’s allegation challenging the credibility of the victim’s statements raises a direct appeal issue that is procedurally barred by S.C. Code Ann. §17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). Applicant

DCB  
1. 7. 10

could have raised this issue at trial or on appeal. His failure to do so has waived this allegation as a ground for relief. Therefore, this allegation is denied and dismissed.

## VI. 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 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 Applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on Applicant's behalf. Applicant 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. Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 29 day of August, 2017.

  
D. CRAIG BROWN  
Presiding Judge  
Third Judicial Circuit

V. Lounce, South Carolina

STATE OF SOUTH CAROLINA )  
COUNTY OF CLARENDON )

IN THE COURT OF (Select one.)

COMMON PLEAS  FAMILY COURT  
THIRD JUDICIAL CIRCUIT

ANTONIO ROMEO,

) CASE NO.: 2016-CP-14-273

Plaintiff(s),

) APPOINTMENT OF COUNSEL OR GAL

-vs-

(Select one.)

STATE OF SOUTH CAROLINA,

)  ORDER

Defendant(s).

)  AMENDED ORDER

TYPE OF CASE/PROCEEDING: (Check one.)

- |  |  |  |
|--|--|--|
| <input checked="" type="checkbox"/> Post-Conviction Relief (PCR)/habeas case | <input type="checkbox"/> Adoption                  | <input type="checkbox"/> Juvenile          |
| <input type="checkbox"/> SVP case  | <input type="checkbox"/> Custody and/or Visitation | <input type="checkbox"/> Abuse and Neglect |
| <input type="checkbox"/> Minor Name Change                                   | <input type="checkbox"/> Other:                    |  |

It appears that ANTONIO ROMEO, 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 THIS 9TH DAY OF JANUARY, 2017.

Brenda M. Roberts  
 Circuit Judge  Clerk of Court

CERTIFIED TRUE COPY  
OF ORIGINAL FILED IN THIS OFFICE  
DATE 5/19/2017  
Brenda M. Roberts  
CLERK OF COURT  
CLARENDON COUNTY, SC

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, 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.

**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

**RECEIVED**  
NOV 22 2017  
S.C. SUPREME COURT