

# THE BOOZER LAW FIRM, LLC

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November 20, 2017

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

The Honorable James C. Campbell  
Clerk, Sumter County  
215 N. Harvin Street  
Sumter, SC 29150

**RECEIVED**

NOV 22 2017

S.C. SUPREME COURT

**RE: Dikeem Dargan, #368191, v. State of South Carolina  
2016-CP-43-2128**

Dear Mr. Shearouse and Mr. Campbell:

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

Yours very truly,



Lance S. Boozer

Enclosures

cc: Julie Coleman, AAG  
Loriene French, OAD  
Dikeem Dargan, #368191

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM SUMTER COUNTY  
Court of Common Pleas

S.C. SUPREME COURT

The Honorable D. Craig Brown, Circuit Court Judge

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Case No. 2016-CP-43-2128

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Dikeem Dargan, #368191, .....Petitioner,

v.

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


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**NOTICE OF APPEAL**

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The Petitioner appeals the Honorable D. Craig Brown's Order dated September 7, 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

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NOV 22 2017

S.C. SUPREME COURT

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APPEAL FROM SUMTER COUNTY  
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The Honorable D. Craig Brown, Circuit Court Judge

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Case No. 2016-CP-43-2128

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Dikeem Dargan, #368191, .....Petitioner,

v.

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

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**PROOF OF SERVICE**

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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.



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Lance S. Boozer  
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STATE OF SOUTH CAROLINA  
COUNTY OF SUMTER

RECORDED  
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IN THE COURT OF COMMON PLEAS  
THIRD JUDICIAL CIRCUIT

Di'Keem Dargan, #368191,

JAMES C. CAMPBELL  
CLERK OF COURT  
SUMTER COUNTY, S.C.

2016-CP-43-2128

Applicant,

v.

State of South Carolina,

Respondent.

**ORDER OF DISMISSAL**

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on November 10, 2016. Respondent submitted its Return on June 13, 2017. An evidentiary hearing into the matter was convened on July 25, 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 Sumter 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 Sumter County Clerk of Court. In March 2015, the Sumter County Grand Jury indicted Applicant for murder, armed robbery, and criminal conspiracy (2015-GS-43-0331). Elaine Cook, Esquire, represented Applicant. Assistant Solicitor John P. Meadors, Esquire prosecuted the case. On May 16, 2016, Applicant pled guilty as indicted to murder before the Honorable W. Jeffrey Young. The other

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charges were dismissed in exchange for Applicant's guilty plea. Judge Young sentenced Applicant to imprisonment for thirty- one years. 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. "Counsel did not advise Applicant of the different plea arrangement"
  - b. "Counsel fail to investigate"
  - c. " Counsel failed to present Applicant with rule five"

## III. SUMMARY OF RELEVANT TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. The State presented testimony from Elaine Cooke, Esquire (hereinafter "Plea Counsel").

### *Applicant's Testimony*

Applicant testified that he pled guilty to murder and is currently serving a 31 year sentence. He stated he met Plea Counsel at his preliminary hearing and his bond hearing. He stated he wanted to see his discovery, and he did receive a copy of his discovery materials, but it was missing a lot of things. He testified that his PCR attorney sent him a copy of the discovery from his murder charge and it was more than what Plea Counsel had originally sent him. Applicant testified he met with Plea Counsel about five or six times total over the course of her representation. He stated that he rejected a 35 year plea offer from the State, but there were no other plea offers before he accepted the offer he took. Applicant stated he pled guilty because he was only eighteen years old and he would have gotten a life without parole sentence if he were

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convicted at trial. He stated he did not understand at the time he pled that he could have only gotten a thirty year sentence, and his lawyer did not tell him this.

*Plea Counsel's Testimony*

Plea Counsel testified that she was appointed to represent Applicant through the Public Defender's office. She stated she met with Applicant several times prior to his guilty plea, and she reviewed all the discovery material with him during their meetings. She stated she sent Applicant a letter on June 22, 2015, after he enquired about his discovery. In this letter, which was entered as Respondent's Exhibit #1, Plea Counsel explained to Applicant that she could not send him certain parts of the discovery, such as witness statements, which they were not entitled to view until after the witnesses testified at trial. Plea Counsel testified that the discovery included witness statements and NCIC reports containing sensitive personal information that she was not allowed to share with Applicant, and that is why she did not send those documents to him. She stated that she never got to share the witness statements with Applicant because he chose to plead guilty.

Plea Counsel testified she believed the State had overwhelming evidence of Applicant's guilt. She stated a codefendant was going to testify against Applicant at trial. She stated the State also planned to use a letter from Applicant that he wrote to the victim, apologizing. She stated Applicant turned himself into the police and that he had asked her for a plea from the beginning of her representation. Plea Counsel testified she informed Applicant that he would serve a mandatory minimum sentence of thirty years and possibly more in a letter she wrote him dated July 2, 2015, which was entered into evidence as Respondent's Exhibit #2. She stated she did not recall any prior plea offers from the State.

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Plea Counsel testified her trial strategy was going to be to argue that this killing was an accident, which might allow Applicant to receive a sentence for a lesser included offense rather than for murder. She stated Applicant accepted a plea offer for a 31 year sentence. She stated it was Applicant's decision to plead guilty.

#### 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 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 Plea Counsel was ineffective in her 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).

In the present case, this Court finds Applicant has failed to meet his burden in proving Plea Counsel was ineffective in any regard. First, Applicant has failed to produce any evidence

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that Plea Counsel failed to advise him of any other plea arrangement, or that any other plea offer existed. Plea Counsel credibly testified that she did not recall any other plea offer from the State. This Court finds Plea Counsel properly informed Applicant of all plea negotiations with the State and communicated and discussed with him the risks of pleading guilty and of going to trial. Plea Counsel properly reviewed and explained Applicant's constitutional rights before he pled guilty, and the record reflects Applicant was well aware of the rights he was waiving when he pled.

Applicant has further failed to prove Plea Counsel failed to investigate his charges. “[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case.” Walker v. State, 397 S.C. 226, 235, 723 S.E.2d 610, 615 (Ct. App. 2012). Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result. Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). Applicant has not produced any evidence that could have been investigated and discovered by Plea Counsel that would have changed his decision to plead guilty rather than go to trial.

Finally, this Court finds Plea Counsel was not ineffective for failing to present Applicant with his discovery materials. Plea Counsel credibly testified that she reviewed all the available discovery material with Applicant during one of their several meetings prior to his plea. When he asked her for his discovery, she sent him a copy of everything she was allowed to send him, and she explained to him that some documents were missing because she was not allowed to share them with him per the Solicitor's office policy. She excluded sensitive personal information, such as criminal background NCIC reports, which are private and secure, as enforced by the

CJIS federal agency. Applicant has failed to prove Plea Counsel did not review any piece of discovery with him that she was able to or that any of the evidence he did not see would have changed his decision to plead guilty. Therefore, this allegation is denied and dismissed with prejudice.

## VI. 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 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.

*[signature page to follow]*

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**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 7 day of Sept., 2017.



D. CRAIG BROWN  
Presiding Judge  
Third Judicial Circuit

Florence, South Carolina

STATE OF SOUTH CAROLINA ) IN THE COURT OF (Select one.)  
COUNTY OF )  COMMON PLEAS  FAMILY COURT  
2016 DEC 2 ) JUDICIAL CIRCUIT

*Di'Keem Dugan*

Plaintiff(s),

-vs-

*State of S.C.*

Defendant(s).

CASE NO.: *2016-CP-43-2128*  
APPOINTMENT OF COUNSEL OR GAL

(Select one.)

ORDER

AMENDED ORDER

TYPE OF CASE/PROCEEDING: (Check one.)

- Post-Conviction Relief (PCR)/habeas case
- SVP case
- Minor Name Change
- Adoption
- Custody and/or Visitation
- Other:
- Juvenile
- Abuse and Neglect

It appears that *Di'Keem Dugan*, 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: *Louise Boozer*  
*1400 Laurel St Suite 414*  
*Columbia SC 29201*

counsel  lead counsel (if capital PCR case)  guardian ad litem

Therefore, it is ordered that \_\_\_\_\_, hereby is appointed as (Select one.)  
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 *12<sup>th</sup>* DAY OF *Dec*, 20 *16*.

**THE BOOZER LAW FIRM, LLC**

1400 Laurel Street, Suite 4A  
Columbia, SC 29201

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

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S.C. SUPREME COURT