

# THE BOOZER LAW FIRM, LLC

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November 27, 2017

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

The Honorable James B. Hiers  
Clerk of Court  
P.O. Box 150  
Bamberg, SC 29003

**RECEIVED**

NOV 29 2017

S.C. SUPREME COURT

**RE: Lewis Garvin, #272550, v. State of South Carolina  
2016-CP-05-160**

Dear Mr. Shearouse and Mr. Hiers:

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

Yours very truly,



Lance S. Boozer

cc: Julie Coleman, AAG  
Office of Appellate Defense  
Lewis Garvin, #272550

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

**RECEIVED**

NOV 29 2017

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APPEAL FROM BAMBERG COUNTY  
Court of Common Pleas

S.C. SUPREME COURT

The Honorable J. Mark Hayes, Circuit Court Judge

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Case No. 2016-CP-05-160

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Lewis Garvin, #272550, .....Petitioner,

v.

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

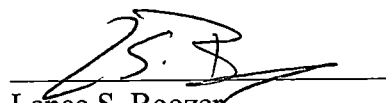
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**NOTICE OF APPEAL**

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The Petitioner appeals the Honorable J. Mark Hayes's Order dated October 19, 2017, denying post-conviction relief to the Petitioner. The Order was received by undersigned counsel on November 27, 2017. A copy of the Order on appeal is attached to this notice.

Respectfully submitted,

  
Lance S. Boozer  
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Tele: 803-608-5543

November 27, 2017

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

**RECEIVED**

NOV 29 2017

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APPEAL FROM BAMBERG COUNTY  
Court of Common Pleas

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Case No. 2016-CP-05-160

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Lewis Garvin, #272550, .....Petitioner,

v.

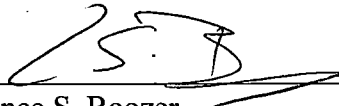
State of South Carolina,.....Respondent.

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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 27th 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 BAMBERG )

Lewis Garvin, #272550, )

Applicant, )

v. )

State of South Carolina, )

Respondent. )

IN THE COURT OF COMMON PLEAS )  
SECOND JUDICIAL CIRCUIT )

2016-CP-05-0160 )

**ORDER OF DISMISSAL**

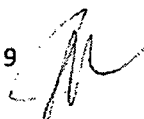
This matter comes before the Court by way of a post-conviction relief (PCR) application filed on August 29, 2016. Respondent submitted its Return on May 25, 2017. An evidentiary hearing was convened on September 19, 2017, at the Aiken County Courthouse. Applicant was present at the hearing and was represented by Lance S. Boozer, Esquire. Respondent was represented by Assistant Attorney General Julie A. Coleman of the South Carolina Attorney General's Office.

Applicant testified on his own behalf at the evidentiary hearing. Respondent presented testimony from Jason M. Price, Esquire ("Plea Counsel").<sup>1</sup> The Court had before it a copy of the guilty plea transcript, the records of the Bamberg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, and the pleadings. The Court finds as follows:

**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 Bamberg County Clerk of Court. Applicant was indicted at the October 2014 term of the Bamberg County Grand

<sup>1</sup> This Court allowed Mr. Price to testify via telephone, as he had moved out-of-state and was unavailable to attend the hearing.



FILED  
BAMBERG COUNTY  
2017 NOV 7 AM 8:44  
CLERK OF COURT  
BAMBERG, SC

Jury for armed robbery (2014-GS-05-0192), criminal conspiracy (2014-GS-05-0193), possession of a weapon during the commission of a violent crime (2014-GS-05-0194) and entering a bank with intent to steal (2014-GS-05-0195). Jason M. Price, Esquire, represented Applicant. On November 30, 2015, Applicant pled guilty as indicted before the Honorable Roger M. Young, Sr., to armed robbery, criminal conspiracy and entering a bank with intent to steal. On December 3, 2015, Judge Young sentenced Applicant to credit time served for criminal conspiracy, thirty years' imprisonment for armed robbery and ten years' imprisonment for entering a bank with intent to steal, to run consecutively to the armed robbery sentence. Applicant did not appeal his conviction or sentence.

## II. ALLEGATIONS

In his current application, Applicant alleges that he is being held in custody unlawfully based on the following allegations:

1. Ineffective assistance of counsel, in that:
  - i. "Counsel failed to investigate and prepare for trial and/or hearing" including Miranda hearing and Jackson v. Deno hearing.
  - ii. "Applicant was denied the right to seek appellate review of the denial of his P.C.R. application and denial of motion of reconsideration by his lawyer."
2. Denial of Due Process.

On August 29, 2017, Applicant filed an amended application, adding the following allegation:

- (a) Counsel failed to file a Motion to Reconsider Sentence.

## III. 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, (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 pleas, 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).

## V. SUMMARY OF RELEVANT TESTIMONY

### *Applicant's testimony*

Applicant testified that he was arrested on June 7, 2014, and Plea Counsel was appointed to represent him later that year. He stated he pled guilty to these charges because he was trying to get a sentence that was less than life without parole, which he faced if convicted at trial. Applicant testified that he pled guilty, and he did the crime. He stated he did not confess, but he

told law enforcement officers that he was involved with the crime. He testified that when he pled guilty, sentencing was deferred until after the trial of his codefendants. He stated he was given the opportunity to testify against his codefendants at trial in exchange for a plea deal for a lighter sentence, but after he testified, the Solicitor believed Applicant did not cooperate, so they did not offer a lower recommended sentence.

Applicant stated he wrote to Plea Counsel after he pled guilty because he wanted to see if they could reduce his sentence. He stated Plea Counsel did not file a motion to reconsider his sentence, and that if he had known that he could or what a motion to reconsider was, he probably would have asked Plea Counsel to file one on his behalf. He testified that Plea Counsel did not advise him of his right to file a motion to reconsider or his right to file an appeal.

*Plea Counsel's testimony*

Plea Counsel testified that he was appointed to this case and he met with Applicant somewhere between fifteen and twenty-five times before his guilty plea. He stated he was also dealing with Applicant's mental competency in this case. He testified he had Applicant evaluated for mental competency before the guilty plea because things were not normal, and he wanted to make sure Applicant understood what was happening and knew everyone's role. Plea Counsel testified that Applicant and two other men robbed a bank and fled the scene. He stated Applicant was not the lead man, but he was involved. He testified that Applicant told him multiple versions of the story, and he eventually told him he was part of the crime but was not the leader.

Plea Counsel testified he could not recall the possible defenses they discussed, but he stated that he was ready for trial. He stated the State's evidence against Applicant included video evidence, Applicant's statements to law enforcement, multiple witnesses who experienced the crime, and Applicant's clothing found at the crime scene. He stated Applicant gave a statement

to law enforcement implicating himself in this bank robbery. Plea Counsel testified Applicant was facing a life without parole sentence if convicted at trial.

Plea Counsel testified Applicant understood the charges and his rights, and he never told him that he did not understand anything before or during the guilty plea. He stated Applicant was going to plead guilty to get a sentence of forty years imprisonment, with an offer of possibly less time if he cooperated with the State to testify against his codefendants. Plea Counsel stated that Applicant understood the deal and knew that he needed to cooperate to get a lesser sentence, but he did not cooperate the way the State wanted him to.

Plea Counsel testified that Applicant asked him to file a motion to reconsider after he pled guilty but before he was sentenced, but Applicant changed his mind after his codefendants were found guilty at trial. He stated the plea judge's sentence was within his discretion and was properly within the statutory limits. He testified that, even if he had filed a motion to reconsider, he did not believe the plea judge would have granted the motion or reduced Applicant's sentence because he did not cooperate with the State and his codefendants were both convicted and he believes they got a life without parole sentence.

Plea Counsel stated Applicant asked him to file an appeal four or five weeks after his guilty plea, and he could not file it because it was past the ten-day deadline. He stated that he recommended to Applicant that he testify against his codefendants to get a lesser sentence rather than filing a motion to reconsider the guilty plea. He stated it was Applicant's decision to plead guilty, and he agreed with his decision.

## VI. 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 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 outcomes in sentencing. The transcript of the plea hearing shows Applicant was advised of the rights he was waiving by pleading guilty and proves the intelligent and voluntary nature of the plea. Although

the testimony presented at the evidentiary hearing raised a question of whether Applicant was fully advised of his rights to file a motion to reconsider or an appeal, Plea Counsel is presumed to have advised Applicant of these rights. See Strickland, 466 U.S. 668 (holding the courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment). Furthermore, even if Plea Counsel were deficient by failing to advise Applicant of these rights, this Court finds he has failed to prove prejudice because the record shows the plea court likely would not have reduced Applicant's sentence even if a motion to reconsider had been filed. The testimony presented shows Applicant requested an appeal well past the deadline to file the notice of appeal, and nothing in his testimony proves that he would have requested an appeal sooner had Plea Counsel advised him differently, so Applicant cannot meet his burden of proving prejudice.

This Court finds the factual basis of guilt is overwhelming and the sentence, while significant, is within the statutory parameters established by the legislature. Additionally, Plea Counsel presented an emotional appeal for mercy to the plea court that included a review of Applicant's mental health history. At the plea, the State contended Applicant failed to cooperate during the codefendant's trial, resulting in the lack of a lower recommended sentence. Still, the State withdrew its recommendation for life without parole, and Applicant was sentenced to forty years. 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.

## OVERWHELMING EVIDENCE

This Court further finds that Applicant cannot meet his burden to show that he was prejudiced by any alleged deficiencies by Trial Counsel because there is overwhelming evidence of his guilt. See Franklin v. Catoe, 346 S.C. 563, 570 n. 3, 552 S.E.2d 718, 722 n. 3 (2001), cert. denied, 535 U.S. 1114, 122 S.Ct. 2332, 153 L.Ed.2d 162 (2002) (finding overwhelming evidence of guilt negated any claim that counsel's deficient performance could have reasonably affected the result of the defendant's trial); Geter v. State, 305 S.C. 365, 367, 409 S.E.2d 344, 346 (1991) (concluding reasonable probability of a different result does not exist when there is overwhelming evidence of guilt); cf. Ford v. State, 314 S.C. 245, 248, 442 S.E.2d 604, 606 (1994) (holding respondent failed to prove prejudice from trial counsel's failure to request an alibi charge where there was overwhelming evidence of guilt).

Plea Counsel credibly testified at the evidentiary hearing that the State planned to introduce at trial several pieces of evidence including a statement Applicant gave to law enforcement implicating himself in the bank robbery, Applicant's clothing found at the scene of the crime, testimony from multiple witnesses who experienced the crime, and video evidence. Applicant did not dispute the evidence against him. This is clearly overwhelming evidence of Applicant's guilt. As a result, Applicant can show no prejudice from any of the allegations raised in his PCR application as no deficiency on behalf of trial counsel could have reasonably changed the outcome of trial, and these allegations are denied and dismissed with prejudice.

## VII. CONCLUSION

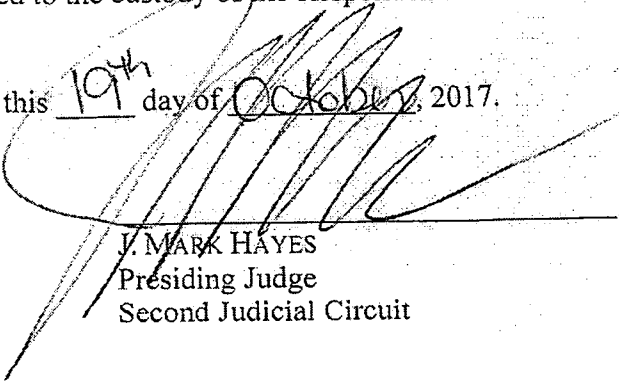
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

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 the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the 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 is denied and dismissed with prejudice; and
2. That Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 19<sup>th</sup> day of October, 2017.

  
\_\_\_\_\_  
J. MARK HAYES  
Presiding Judge  
Second Judicial Circuit

Bamberg, South Carolina

BAMBERG COUNTY  
OFFICE OF THE CLERK OF COURT  
POST OFFICE BOX 150  
BAMBERG, SOUTH CAROLINA 29003

JAMES B. HIERS  
CLERK OF COURT  
AND REGISTER OF  
MESNE CONVEYANCES

TELEPHONE  
803-245-3025  
FAX  
803-245-3088

Sept 20, 2016

TO: Lance Boozer

RE: ATTORNEY APPOINTMENT FOR THE PCR APPLICATION FOR

Lewis Garvin

2016-CR-05-160

PLEASE BE ADVISED THAT YOU HAVE BEEN APPOINTED TO REPRESENT THIS DEFENDANT IN HIS POST CONVICTION RELIEF HEARING. ATTACHED IS A COPY OF THE FILE.

IF YOU HAVE ANY QUESTIONS REGARDING THIS MATTER, PLEASE CONTACT ME AT THE CLERK'S OFFICE.

SINCERELY,

*Pedie*

JAMES "PEDIE" B. HIERS

**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  
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