

# 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)

December 13, 2016

**RECEIVED**

DEC 16 2016

S.C. SUPREME COURT

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

The Honorable Sharon W. Staggers  
Clerk of Court  
125 W Main St.  
Kingstree, SC 29556

**RE: Sentrell McCullough, #362851, v. State of South Carolina  
2015-CP-45-544**

Dear Mr. Shearouse and Ms. Staggers:

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

Yours very truly,



Lance S. Boozer

Enclosures

cc: Julie Coleman, AAG  
Loriene French, OAD  
Sentrell McCullough, #362851

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

RECEIVED

DEC 16 2016

S.C. SUPREME COURT

---

APPEAL FROM WILLIAMSBURG COUNTY  
Court of Common Pleas

The Honorable Jocelyn Newman, Circuit Court Judge

---

Case No. 2015-CP-45-544

---

Sentrell McCullough, #362851, .....Petitioner,

v.

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

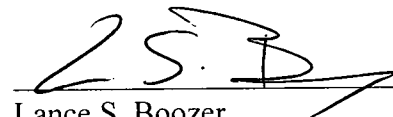
---

**NOTICE OF APPEAL**

---

The Petitioner appeals the Honorable Jocelyn Newman's Order dated November 30, 2016, denying post-conviction relief to the Petitioner and received by undersigned counsel on December 10, 2016. 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

December 13, 2016

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

RECEIVED

DEC 16 2016

S.C. SUPREME COURT

---

APPEAL FROM WILLIAMSBURG COUNTY  
Court of Common Pleas

The Honorable Jocelyn Newman, Circuit Court Judge

---

Case No. 2015-CP-45-544

---

Sentrell McCullough, #362851, .....Petitioner,

v.

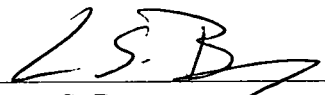
State of South Carolina,.....Respondent.

---

**PROOF OF SERVICE**

---

I, Lance S. Boozer, 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 13th day of December, 2016.

  
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 WILLIAMSBURG )  
)   
Sentrell McCullough, #362851, )  
)   
Applicant, )  
)   
v. )  
)   
State of South Carolina, )  
)   
Respondent. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
THIRD JUDICIAL CIRCUIT

2015-CP-45-544

FILED  
DEC -5 PM 12:19

ORDER OF DISMISSAL

A CERTIFIED TRUE COPY  
*Sharon W. Stagers*  
SHARON W. STAGGERS  
CLERK OF COURT  
WILLIAMSBURG COUNTY

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on November 9, 2015. Respondent submitted its return on April 8, 2016. An evidentiary hearing was convened on July 26, 2016, at the Sumter County Courthouse. Applicant was present at the hearing and was represented by Lance Boozer, Esquire. Respondent was represented by Assistant Attorney General Julie A. Coleman of the South Carolina Attorney General's Office.

**I. PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Williamsburg County Clerk of Court. Applicant waived presentment to the September 2014 term of the Williamsburg County Grand Jury for criminal sexual conduct – first degree (2014-GS-45-0283). William LeGrand Carraway, Esquire represented Applicant. On January 27, 2015, Applicant pled guilty before the Honorable George C. James, Jr. Judge James sentenced Applicant pursuant to negotiations to a twenty year term of imprisonment for criminal sexual conduct – first degree. Applicant did not appeal his guilty plea 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
  - a. Failure to investigate
  - b. Originally charged for CSC-3<sup>rd</sup> degree and never dismissed.
2. Excessive time
  - a. "excessive time, being that was my 1<sup>st</sup> major offense and I should have gotten that much time and the courts should've recommend me to see a doctor or any such person in that field to counsel me."
3. Subject matter jurisdiction
  - a. "Subject matter jurisdiction, due to the fact that the CSC in the 3<sup>rd</sup> degree was never dismiss, so therefore the courts shouldn't have heard the CSC in the 1<sup>st</sup> degree."
4. Due Process Violation
  - a. "Due process violation, being that when I was first arrested was charge with CSC 3<sup>rd</sup> degree and later on after the investigators talk to me they upgraded the charge to CSC 1<sup>st</sup> degree. Which they never took me to the preliminary hearing to get the CSC in the 3<sup>rd</sup> degree dismiss (sic) like the judge order them to."

## 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, 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 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).

#### IV. 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 raises several allegations arguing that 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)). This Court finds that the testimony presented at the PCR hearing satisfies neither prong of the Strickland test; Applicant can show neither ineffectiveness nor prejudice, thus these allegations should be denied and dismissed with prejudice.

This Court finds that Plea Counsel's representation did not fall below the standard of reasonableness under professional norms set out in Strickland. Plea Counsel acted competently in Applicant's best interest throughout the course of his representation and went above and beyond what was required of him.

At the hearing, Plea Counsel credibly testified that he and Applicant always knew that he was going to plead guilty and Applicant never wanted to go to trial. He stated that there was an eyewitness that saw Applicant with his pants down behind the victim after he heard the bed shaking in the bedroom. He further stated that Applicant had given law enforcement a statement confessing to his guilt, and he could find no legal reason to move to suppress the statement.

Based on this testimony, this Court finds that Plea Counsel was not ineffective for failing to investigate Applicant's case because it was reasonable to pursue plea negotiations rather than investigate to prepare for trial. This Court further finds that Applicant has failed to prove that Plea Counsel was ineffective in any way regarding his charges or indictments.

Because Applicant has failed to meet his burden in proving that Plea Counsel was ineffective and that his ineffectiveness prejudiced him, these allegations are denied and dismissed with prejudice.

#### EXCESSIVE TIME

Applicant's second allegation that he was given excessive time should be summarily dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C.

Code Ann. § 17-27-10 to -160. An applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy....

S.C. Code Ann. § 17-27-20 (1976).

Even if the facts alleged by Applicant are true, these facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. The allegations presented by Applicant raises direct appeal issues that are procedurally barred by S.C. Code Ann. § 17-27-20(b) (1985). 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). Therefore, this allegation is denied and dismissed as it is not proper in a post-conviction relief action.

### SUBJECT MATTER JURISDICTION

Applicant has claimed that the trial court lacked subject matter jurisdiction. Defects in the indictment do not affect subject matter jurisdiction. Subject matter jurisdiction is the power of a court to hear a particular class of cases. See State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005); Dove v. Gold Kist, Inc., 314 S.C. 235, 442 S.E.2d 598 (1994).

An applicant may still challenge the subject matter jurisdiction of the trial court, and such a claim is one that may be raised at any time. See Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001), overruled in part by Gentry, supra. However, “[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters.” Gentry, supra, 610 S.E.2d at 499; See also S.C. Const. Art. V, § 7. Thus, to meet his burden, Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. Applicant’s conviction involved a criminal charge in General Sessions Court. Thus, the circuit court had subject matter jurisdiction. Therefore, because Applicant has failed to meet his burden in proving that the court lacked subject matter jurisdiction, this allegation is denied and dismissed with prejudice.

### DUE PROCESS VIOLATION

Applicant alleges that he was denied due process of law. Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina (1976).



This Court finds that Applicant did not present any meritorious evidence of a due process violation and thus has failed to meet his burden of proof, and this allegation is denied and dismissed with prejudice.

ALL OTHER ALLEGATIONS

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

**V. 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.

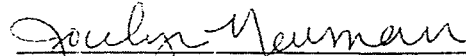
This Court notes that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an 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. The Applicant must be remanded to the custody of the Respondent.

**AND IT IS SO ORDERED** this 30<sup>th</sup> day of November, 2016.



JOELYN NEWMAN

Presiding Judge

Third Judicial Circuit

Columbia, South Carolina

STATE OF SOUTH CAROLINA )

County of Williamsburg )

Sentrell Lee McCullough )

Petitioner )

vs. )

STATE OF SOUTH CAROLINA )

Defendant )

IN THE COURT OF  
COMMON PLEAS

3rd Judicial Circuit

NOTICE OF APPOINTMENT  
FOR LEGAL COUNSEL

Case Number 2015-CP-45- 544

To: Boozer, Attorney at Law

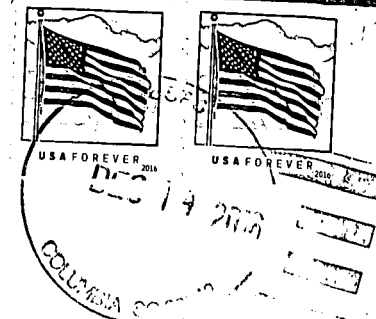
By order of the Chief Administrative Judge and pursuant to Rule 608, SCACR, you are hereby appointed to act as attorney for Sentrell, the Petitioner, in this action.

This 1st day of February, 2015.

Sharon W. Skaggs  
Judge/Clerk of Court

**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**

**DEC 16 2016**

**S.C. SUPREME COURT**