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**RECEIVED**

July 26, 2016

JUL 28 2016

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

**S.C. SUPREME COURT**

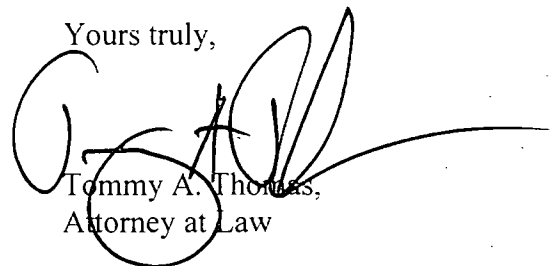
RE: Joshua Brookins #362351 v. State of South Carolina  
Case No.: 2015-GS-46-00585

Dear Mr. Shearouse:

Enclosed please find for filing a Notice of Appeal and Certificate of Service.

Please return a clocked copy to me in the enclosed envelope. Thank you.

Yours truly,



Tommy A. Thomas,  
Attorney at Law

TAT/jem  
cc: Justin Hunter, Esq.  
Joshua Brookins #362351

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM YORK COUNTY  
Court of Common Pleas  
Post-Conviction Relief  
Frank R. Addy, Jr. - Presiding Judge

**RECEIVED**

JUL 28 2016

**S.C. SUPREME COURT**

Case No.: 2015-CP-46-00585


Joshua Brookins #362351 .....Petitioner,

vs.

State of South Carolina .....Respondent.

NOTICE OF APPEAL

Joshua Brookins #362351 appeals the Amended Order of Dismissal of the Honorable Frank R. Addy, Jr. signed on June 14, 2016, filed on June 22, 2016 and received by Counsel for Applicant on June 27, 2016.



TOMMY A. THOMAS  
Attorney for Petitioner  
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Other Counsel of Record:  
Justin Hunter, Esq.  
Assistant Attorney General  
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Columbia, SC 29211  
Attorney for Respondent

Irmo, South Carolina  
July 26, 2016

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM YORK COUNTY  
Court of Common Pleas  
Post-Conviction Relief  
Frank R. Addy, Jr. - Presiding Judge

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**S.C. SUPREME COURT**

Case No.: 2015-CP-46-00585

Joshua Brookins #362351 .....Petitioner,

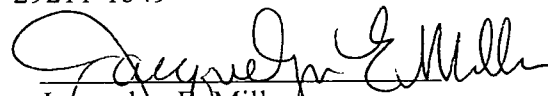
vs.

State of South Carolina .....Respondent.

CERTIFICATE OF SERVICE

I, Jacquelyn E. Miller, secretary to Tommy A. Thomas, Attorney for the Applicant hereby certify that I placed in the United States Mail, a copy of a Notice of Appeal, with postage prepaid and the return address clearly shown on said envelope to Justin Hunter, Esq. of the Attorney General's Office, at:

Justin Hunter, Esq.  
Attorney General's Office  
P.O. Box 11549  
Columbia, SC 29211-1549



Jacquelyn E. Miller  
Secretary to Tommy A. Thomas  
Attorney for Appellant  
P.O. Box 88  
Irmo, SC 29063  
(803) 732-5507

Irmo, SC  
July 26, 2016

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF YORK )  
 )  
 Joshua Brookins, )  
 S.C.D.C. #362351 )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 OF THE SIXTEENTH JUDICIAL CIRCUIT

2015-CP-46-585

AMENDED ORDER OF DISMISSAL

FILED-RECEIVED  
 2016 JUN 22 PM 2:34  
 DAVID HAMILTON  
 C.C.C.P. & G.S.  
 YORK COUNTY S.C.

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed February 24, 2015. Respondent made its Return on or about December 22, 2015. An evidentiary hearing into the matter was convened on April 19, 2016, at the Moss Justice Center in York, South Carolina. Applicant was present at the hearing and represented by Tommy Thomas, Esquire. Justin J. Hunter, Esquire, of the South Carolina Attorney General's Office represented the Respondent. At the hearing, Applicant testified on his own behalf. Melissa Inzerillo, Esquire, also testified. This Court also had before it a copy of the records of the York County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the Return, and the plea transcript.

**I. PROCEDURAL HISTORY**

Applicant is presently confined with the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. Applicant was indicted at the October 2014 term of the York County Grand Jury for Possession With Intent to Distribute Methamphetamine (2014-GS-46-2999), Trafficking in Methamphetamine (2014-GS-46-3000), Distribution of Methamphetamine (2014-GS-46-3001), and Distribution of Methamphetamine

(2014-GS-46-3002). Applicant was indicted at the December 2014 term of the York County Grand Jury for Distribution of Methamphetamine (2014-GS-46-3819). Applicant was represented by Melissa Inzerillo, Esquire (hereinafter "Counsel"). On December 4, 2014, Applicant pled guilty before the Honorable Alexander Macaulay as indicted and was sentenced to concurrent terms as follows:

(2014-GS-46-2999) Possession With Intent to Distribute Methamphetamine, 1st offense	Fifteen years imprisonment provided upon the service of ten years the balance is suspended with probation for five years,
(2014-GS-46-3000) Trafficking in Methamphetamine, 1st offense	Ten years imprisonment
(2014-GS-46-3001) Distribution of Methamphetamine, 1st offense	Fifteen years imprisonment provided upon the service of ten years the balance is suspended with probation for five years
(2014-GS-46-3002) Distribution of Methamphetamine, 1st offense	Fifteen years imprisonment provided upon the service of ten years the balance is suspended with probation for five years
(2014-GS-46-3819) Distribution of Methamphetamine, 1st offense	Fifteen years imprisonment provided upon the service of ten years the balance is suspended with probation for five years

Applicant's counsel filed a notice of appeal and notified the Court of Appeals pursuant to Rule 203(B) SCACR that she did not believe there was a good faith basis for the appeal. By Order filed February 13, 2015, the South Carolina Court of Appeals dismissed the appeal. The Remittitur was sent March 10, 2015.

### Allegations

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

1. Ineffective Assistance of Counsel
2. Involuntary Guilty Plea

## II. SUMMARY AND EVIDENCE PRESENTED AT PCR HEARING

### Applicant's Testimony

Applicant testified that he met with Counsel three times prior to his guilty plea and never saw any of the evidence against him. He testified that he was originally charged with distribution of methamphetamine second offenses but these were later changed to first offenses at the plea. Applicant testified that the only evidence against him was a video of him smoking a cigarette. He further testified that he and Counsel looked at the disc of evidence but this disc only had audio and video from one of the confidential informant's buys.

Applicant testified that he was willing to plead guilty, but not to a fifteen year sentence. He testified that although he waived his right to see discovery on one count of distribution of methamphetamine, he did not fully realize that all of the discovery had not been produced until he later read the transcript. Applicant was also made aware from Counsel that she did not receive discovery on one count of distribution of methamphetamine. He testified that he did not know what he was doing at the guilty plea but Counsel told him that it was in his best interest to plead guilty. Applicant further testified that he decided to plead guilty because he wanted a lesser offense than his original second offense charges. He testified that he thought he would get a minimum sentence even though the State asked for fifteen years. He testified that he expected a different result from the plea and does not believe that his plea was intelligently and knowingly made. Applicant testified that he felt he was guilty but also questioned why he was the only person involved who got active time.

### Counsel's Testimony

Counsel testified that Applicant's charges all stemmed from buys made on Applicant by the State's confidential informant. She testified that the State initially offered a fifteen year plea



offer but Applicant did not like the offer. She testified that Applicant wanted to plead guilty if the charges would be first offenses instead of second offenses. Counsel testified that Applicant was very upfront about his involvement in the crimes from the beginning. She testified that she tried to sign Applicant up for Drug Court but he was rejected.

Concerning the discovery, Counsel testified that video evidence was not initially produced because of the State's rule to protect the identity of the confidential informant, but picture stills of the video were produced. She testified that she received more information as trial approached on one of the buys but Applicant wanted to plead to everything. Counsel also testified that she did not receive discovery on one of the counts of distribution of methamphetamine. Counsel testified that the State's plea deal was a package deal and she believed Applicant was benefitting by wrapping up all of his cases at one time even without seeing the full videos. She testified that she had no concerns that would have been answered by more discovery.

### 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 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).

#### IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the guilty plea transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

As a matter of general impression, this Court finds Counsel's testimony to be credible and persuasive on all matters. These credibility findings have been applied to the Court's findings and conclusions set forth below.



### Ineffective Assistance of Counsel

Applicant alleges Counsel was ineffective in her advice 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 Counsel was ineffective in any regard. This Court finds that Counsel properly relayed the State's plea negotiations and went over the discovery with Applicant. This Court finds that Counsel was not ineffective for allowing Applicant to waive viewing discovery on one distribution charge because the plea court made sure Applicant was well aware of the consequences of waiving presentment on this charge. This Court also finds that Applicant benefitted from pleading guilty to all of his charges as first offenses at one time, especially when Applicant admitted his involvement to Counsel.

Applicant testified that he wished to plead guilty to all first offense crimes despite being charged with second offense crimes, which is exactly how he pled. This Court finds that Applicant has not shown that he was prejudiced by any of Counsel's actions as he has failed to

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show that he would not have pled guilty but would have gone to trial but for Counsel's actions. Accordingly this allegation must be dismissed.

### Involuntary Guilty Plea

Applicant further 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).

Applicant claims his plea was given involuntarily because he did not get to see all of the discovery against him. This Court finds that the record reflects that Applicant was fully advised of the rights he was giving up by pleading guilty, including challenging the evidence against him. 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 Counsel's testimony regarding her



preparation and advice concerning the case, and that she did not believe any concerns would be resolved by seeing discovery on the last controlled buy. The record reflects Applicant fully admitted his guilt to the plea court. "A guilty plea constitutes a waiver of nonjurisdictional defects and claims of violations of constitutional rights." Jamison v. State, 410 S.C. 456, 467, 765 S.E.2d 123, 129 (2014) (citing State v. Rice, 401 S.C. 330, 331-32, 737 S.E.2d 485, 485-86 (2013); Hyman v. State, 397 S.C. 35, 44, 723 S.E.2d 375, 379 (2012)). Notably the South Carolina Supreme Court has held "[a] guilty plea represents a break in the chain of events which has preceded it in the criminal process." Id. (citations omitted). "When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea." Id. (citing Rice, 401 S.C. at 332, 737 S.E.2d at 486). Therefore, this Court finds the plea judge correctly found Applicant's plea was freely, voluntary, and intelligently made. Accordingly, this allegation must be dismissed

#### **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 Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds Applicant has abandoned any such allegations.

#### **V. CONCLUSION**

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Applicant failed to demonstrate Counsel's performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559,



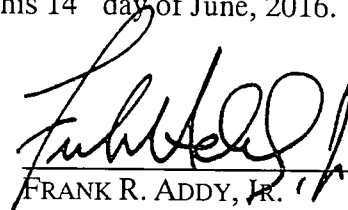
563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt 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, 409 S.E.2d 395 (1991), Applicant has a right to 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, PCR 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 THAT:**

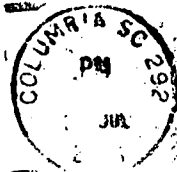
1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant will remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

**AND IT IS SO ORDERED** this 14<sup>th</sup> day of June, 2016.

  
FRANK R. ADDY, JR.  
Presiding Judge  
Sixteenth Judicial Circuit

Greenwood, South Carolina

Tommy A. Thomas, P.C.  
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ADDITIONAL  
OUNCE

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