

MAC | VANCE ATTORNEYS, LLC

January 7, 2018

RECEIVED

JAN 10 2018

S.C. SUPREME COURT

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

RE: Richard F. V. Bowman, III, #369067 v. State of South Carolina
2016-CP-36-00576

Dear Mr. Shearouse:

Please find enclosed a Notice of Appeal along with the accompanying Order for the above-referenced matter. By way of this letter I am copying the Office of Appellate of Defense, as I was appointed to represent Mr. Bowman.

Best regards,

ASHLEY A. MCMAHAN
ATTORNEY AT LAW

AAM
Enclosures

cc: Richard F. V. Bowman, III
Justin J. Hunter, Asst. Attorney General
Newberry County Clerk of Court
Office of Appellate Offense

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas

RECEIVED

JAN 10 2018

The Honorable R. Scott Sprouse, Circuit Court Judge
S.C. SUPREME COURT

Case No. 2016-CP-36-00576

Richard F. V. Bowman, III, #369067,..... Petitioner,

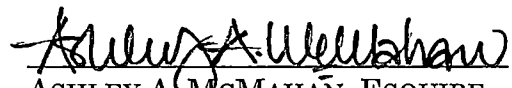
v.

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

NOTICE OF APPEAL

Applicant, Richard F. V. Bowman, III, #369067, appeals the order of the Honorable R. Scott Sprouse, dated December 21, 2017, and filed December 29, 2017.

January 7, 2018


ASHLEY A. MCMAHAN, ESQUIRE
MAC | VANCE ATTORNEYS, LLC
PO Box 5501
West Columbia, SC 29171
803-219-1110
ashley@macvance.com
SC Bar No. 71676
ATTORNEY FOR APPLICANT

Opposing Counsel:
Justin J. Hunter, Asst, Attorney General
S.C. Attorney General's Office
PO Box 11549
Columbia, SC 29211-1549

STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

JAN 10 2018

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas

S.C. SUPREME COURT

The Honorable R. Scott Sprouse, Circuit Court Judge

Case No. 2016-CP-36-00576

Richard F. V. Bowman, III, #369067, Petitioner,

v.

State of South Carolina, Respondent.

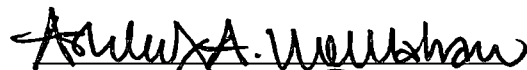
PROOF OF SERVICE

I, Ashley A. McMahan, certify that I have served the within Notice of Appeal on Respondent by depositing a copy of the same in the United States mail, postage prepaid, addressed to:

Justin J. Hunter, Asst. Attorney General
S.C. Attorney General's Office
PO Box 11549
Columbia, SC 29211-1549

I further certify that all parties required by Rule to be served have been served.

January 7, 2018


ASHLEY A. MCMAHAN, ESQUIRE
MAC | VANCE ATTORNEYS, LLC
PO Box 5501
West Columbia, SC 29171
803-219-1110

FORM 4

STATE OF SOUTH CAROLINA
 COUNTY OF NEWBERRY
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2016CP3600576

Richard F V Bowman III		South Carolina State Of	
------------------------	--	-------------------------	--

PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.
 Additional Information for the Clerk:

ORDER OF DISMISSAL

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

S/R SCOTT SPROUSE
 Circuit Court Judge

2752
 Judge Code

12/21/2017
 Date

For Clerk of Court Office Use Only

This judgment was entered on **DECEMBER 29 2017**, and a copy mailed first class or placed in the appropriate attorney's box on **DECEMBER 29 2017**, to attorneys of record or to parties (when appearing pro se) as follows:

Ashley A. McMahan PO Box 5501 West Columbia, SC
29169

Justin James Hunter PO Box 11549 Columbia, SC
29211-1549

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

ELIZABETH P FOLK (MRV)

Court Reporter

Elizabeth P. Folk - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF NEWBERRY)
)
 Richard F. V. Bowman, III,)
 S.C.D.C. No. 369067,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 OF THE EIGHTH JUDICIAL CIRCUIT

2016-CP-36-576

ORDER OF DISMISSAL

FILED
 NEWBERRY COUNTY
 2017 DEC 29 AM 10:14
 ELIZABETH P. POPE
 CLERK OF COURT

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed December 22, 2016. An evidentiary hearing into the matter was convened on Tuesday, October 10, 2017, at the Laurens County Courthouse in Laurens, South Carolina before the Honorable R. Scott Sprouse. Applicant was present at the hearing and represented by Ashley A. McMahan, Esquire. Assistant Attorney General Justin Hunter represented Respondent. At the hearing, Applicant testified on his own behalf. Russell Brown, Esquire, also testified. This Court also had before it a copy of Applicant's PCR application and amendment, Applicant's testimony from his codefendant's trial, the records of the Laurens County Clerk of Court regarding the subject convictions, Respondent's Return, and the plea transcript.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Newberry County Clerk of Court. Applicant was indicted at the May 2016 term of the Newberry County Grand Jury for aiding and abetting homicide by child abuse (2016-GS-36-0305). Applicant was represented by Russell Brown, Esquire. On July 18, 2016, Applicant appeared before the Honorable Frank R. Addy, Jr., and pled guilty as indicted.

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Applicant was sentenced to imprisonment for fifteen years. Applicant did not file a direct appeal.

Allegations

In his current application for post-conviction relief, and the amendment filed thereto, Applicant alleges he is being held unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
2. Unconstitutional Guilty Plea
 - a. "I was denied key witnesses that could and would have shed the truth to the fact that I'm not guilty of this crime..."
 - b. "My 5th and 6th Amendment rights were violated because my defense team wasn't allowed a respectable doctor to look over the child's body and determine that the bruises and other marks on the child's body happened weeks or days prior. Or to correctly determine the child's cause of death."
 - c. "My lawyer failed to inquiry about my competency to stand trial or if I wanted to stand trial. That being stated I was not offered or sent to a competency to stand trial evaluation. I should have been offered that due to my history as a US Army War Veteran."

On September 13, 2017, Applicant submitted an amended application, adding the following grounds for relief:

1. Ineffective Assistance of Counsel as to Russell O. Brown, Esquire:
 - a. "Counsel was ineffective because Applicant detrimentally relied on a plea agreement from the Solicitor, wherein the Applicant would testify for the State relying on the Solicitor's statement that he 'would help him' if the Applicant testified. See attached, Excerpts of transcript of trial of State v. Theia McArdle, April 7, 2016. See also Custodio v. State, 373 SC 4, (2009). Plea counsel was ineffective in failing to have plea agreement between defendant and solicitor's office enforced based on detrimental reliance and memorialized into writing."
 - b. "Counsel failed to use Applicant's VA records as mitigation during sentencing."
 - d. "Counsel failed to move to have the charges dismissed and/or appeal the guilty plea arguing the charges should be dismissed for lack of accomplice liability. See State v. Lewis, 403 SC 345 (2013). 'Under accomplice liability theory, a person must personally commit the crime or be present at the scene of the crime and intentionally, or through a common design, aid, abet, or assist in the commission of the crime through some overt act.' Id. at 354."

II. 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).

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III. 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 plea transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief and amendment, 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.

Ineffective Assistance of Counsel

"I was denied key witnesses that could and would have shed the truth to the fact that I'm not guilty of this crime"

At the outset of the PCR hearing, Applicant informed the Court that he was striking this allegation for relief. As such, this allegation is dismissed.

"My 5th and 6th Amendment rights were violated because my defense team wasn't allowed a respectable doctor to look over the child's body and determine that the bruises and other marks on the child's body happened weeks or days prior. Or to correctly determine the child's cause of death."

Applicant alleged that Mr. Brown was ineffective for failing to get a respectable doctor to review the victim's body to determine when the bruises occurred and the cause of death. Applicant alleged that there was evidence that the victim could have died as the result of blunt force trauma or vomit in the lungs. He testified that he wanted to get a second opinion from another doctor but was told he could not do so because the victim's body had already been cremated. Applicant testified that he was originally represented by Joseph St. Pierre, Esquire, but Applicant relieved him as counsel in August 2015. He testified that he told Mr. Brown about getting a second medical opinion, but the victim's body was cremated.

Mr. Brown testified that he met with Applicant numerous times and went over the

discovery, including photos and videos. He testified that he viewed the autopsy report that explained the cause of death as blunt force trauma. Mr. Brown testified that it was impossible for him to get a second opinion because the victim was cremated by the time he assumed representation.

This Court finds Applicant has failed to meet his burden of proving that Mr. Brown was deficient for failing to have a doctor look over the victim's body to determine the origin of his bruises and the cause of death. "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)). This Court finds Applicant has failed to show that there is a reasonable likelihood a second opinion would provide a more favorable result than that of the autopsy. Most importantly, this Court finds that Mr. Brown's actions were not deficient given that the victim's body had already been cremated by the time Mr. Brown assumed representation. As such, it was impossible for Mr. Brown to get a second opinion and he cannot be deficient for failing to do so.

This Court further finds Applicant has failed to meet his burden of proving he was prejudiced by Mr. Brown's actions. Applicant has failed to show that but for Mr. Brown's actions, Applicant would not have pled guilty but would have proceeded to trial. Accordingly, this allegation must be dismissed.

"My lawyer failed to inquire about my competency to stand trial or if I wanted to stand trial. That being stated I was not offered or sent to a competency to stand trial evaluation. I should have been offered that due to my history as a US Army War Veteran." "Counsel failed to use Applicant's VA records as mitigation during sentencing."

Applicant testified that Mr. Brown should have inquired into Applicant's competency to stand trial. He testified that his military records showed that he had post-traumatic stress disorder

and combat stress disorder. Applicant testified that Mr. Brown should have had him evaluated for competency to stand trial. He testified that his mother was trying to get his military records to give to Mr. Brown. Applicant testified that Mr. Brown told him that these records would not affect his case. He further testified that he did not bring any of his competency issues to the plea judge's attention.

Mr. Brown testified that he had no issues with Applicant's competency to stand trial and Applicant had no manifestations of competency issues. He testified that he could not get Applicant's VA medical records due to HIPAA restrictions. Mr. Brown further testified that he did not need Applicant's medical records for the guilty plea.

This Court finds Applicant has not met his burden of proving that Mr. Brown's actions were deficient for failing to inquire about Applicant's competency to stand trial or whether Applicant wanted to stand trial. This Court finds Mr. Brown provided persuasive testimony that he did not recognize any issues concerning Applicant's competency and did not notice any manifestations of competency issues in Applicant. Applicant has failed to show that he was not competent to stand trial or plead guilty. He has also failed to provide evidence that he wanted to stand trial on the charges, and this Court notes Applicant's testimony during the guilty plea shows that he wanted to plead guilty and gave up his right to a jury trial. Furthermore, this Court would note that the plea judge asked Applicant, "Have you ever been treated for any mental illness issues, problems understanding what's going on or were you in special education when you were in school?" and Applicant replied, "No, Your Honor." Guilty Plea transcript p. 4, ll. 14-18. This Court finds Applicant's current testimony contradicts his testimony before the plea judge. As such, this Court finds Mr. Brown's performance was not deficient for failing to inquire about Applicant's competency and desire to stand trial.

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This Court further finds Applicant has failed to meet his burden of proving that he was prejudiced by Mr. Brown's performance. This Court finds Applicant has failed to show that he was prejudiced by pleading guilty when he was not competent to do so, as Applicant has failed to show that he was incompetent or that his competency may have been called into question at the time of his guilty plea. Regarding Applicant's assertion that Mr. Brown failed to ask if Applicant wanted a trial, this Court finds Applicant has failed to show resulting prejudice as he has failed to provide evidence that he would not have pled guilty but would have proceeded to trial but for Mr. Brown's actions.

This Court finds Mr. Brown was not deficient for failing to provide Applicant's VA records in mitigation. This Court also finds Mr. Brown testified that he attempted to access Applicant's VA records but was unable to do so due to HIPAA restrictions. This Court finds that Mr. Brown's performance was not deficient in this regard. "Strickland does not require counsel investigate every conceivable line of mitigating evidence or require the submission of such evidence in every case." Wiggins v. Smith, 539 U.S. 510, 533 (2003). This Court finds Mr. Brown's actions were reasonable and that he was not deficient for failing to present Applicant's VA records in mitigation. This Court finds there is nothing in the record below from Applicant to indicate that he had competency issues and that the VA records would be necessary. This Court finds Applicant has failed to meet his burden of showing he was prejudiced by Mr. Brown's actions. Applicant has failed to produce his VA records to this Court and this Court will not speculate as to its contents and whether the records would have been beneficial. This Court finds Applicant has failed to show that the outcome of his plea and sentence would have been different had Mr. Brown utilized Applicant's VA records during sentencing.

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“Counsel was ineffective because Applicant detrimentally relied on a plea agreement from the Solicitor, wherein the Applicant would testify for the State relying on the Solicitor’s statement that he ‘would help him’ if the Applicant testified. See attached, Excerpts of transcript of trial of State v. Theia McArdle, April 7, 2016. See also Custodio v. State, 373 SC 4, (2009). Plea counsel was ineffective in failing to have plea agreement between defendant and Solicitor’s Office enforced based on detrimental reliance and memorialized into writing.”

Applicant testified that Mr. Brown was ineffective for failing to have Applicant’s plea agreement memorialized in writing. He testified that he detrimentally relied on a plea agreement where the Solicitor stated that he “would help” Applicant if Applicant testified against his codefendant, Theia McArdle. Applicant testified that the solicitor told him that he needed Applicant to testify against Ms. McArdle because he knew that Applicant did not commit the crime. Applicant testified that the solicitor told him that they could not put a plea agreement in writing. He further testified that he testified against his codefendant because of the assistant solicitor’s promise to help him.

Mr. Brown testified that he met with Deputy Solicitor Dale Scott, Assistant Solicitor Taylor Daniel, and law enforcement to discuss plea deals. He testified that the State could not offer him a plea deal and the plea ultimately proceeded without an offer. Mr. Brown testified that Applicant testified against his codefendant but there were never any verbal or written promises made to Applicant by the State. Mr. Brown testified that he Applicant wanted to talk to the solicitors and he believed this helped Applicant, because if Applicant had proceeded to a jury trial on homicide by child abuse, he probably would have been sentenced to more time similar to his codefendant. He testified that he asked the solicitor to consider a lesser offense, such as misprision of a felony, but the State declined.

This Court finds Applicant has failed to meet his burden of proving Mr. Brown was deficient for failing to have Applicant’s plea agreement with the solicitor memorialized in writing and enforced at the plea. This Court finds Mr. Brown testified there were never any

verbal or written promises or plea deals made to the State, despite Mr. Brown's meetings with law enforcement and the Solicitor's Office to negotiate a plea deal. This Court finds the guilty plea record reveals the plea was a "straight up" plea to aiding and abetting homicide by child abuse and Applicant acknowledged that no one had made any promises to get him to plead guilty other than reducing the charge of homicide by child abuse to aiding and abetting homicide by child abuse. Guilty Plea transcript p. 3, ll. 3-7; 13, ll. 8-13. Furthermore, this Court would note that Applicant's testimony at his codefendant's hearing also indicated that he was not promised anything from the State to testify against his codefendant:

Solicitor: You're testifying today as a witness one of the State's witnesses, correct?

Applicant: Yes, sir.

Solicitor: Have you been offered anything in exchange for your testimony today, such as a plea bargain?

Applicant: No, sir. None whatsoever.

Solicitor: No offers of leniency have been extended to you?

Applicant: No, sir.

Trial Transcript of *State v. Theia McCardle*, p. 421, ll. 13-20. Based on these facts, including Applicant's own testimony from the plea hearing and his codefendant's trial, this Court finds that Applicant has failed to show that a plea offer or promise from the solicitor did in fact exist and that he detrimentally relied on an offer or promise. As such, Applicant has failed to meet his burden of proving that Mr. Brown's conduct was deficient in this regard.

Furthermore, this Court finds that Applicant has failed to prove that he was prejudiced by Mr. Brown's actions. He has failed to show that a plea offer or promise from the State existed and has failed to show that he would have accepted this plea offer or that the outcome of his plea would have been different but for Mr. Brown's actions. Accordingly, this allegation must be dismissed.

“Counsel failed to move to have the charges dismissed and/or appeal the guilty plea arguing the charges should be dismissed for lack of accomplice liability. See State v. Lewis, 403 SC 345 (2013). ‘Under accomplice liability theory, a person must personally commit the crime or be present at the scene of the crime and intentionally, or through a common design, aid, abet, or assist in the commission of the crime through some overt act.’ Id. at 354.”

Applicant alleged that Mr. Brown was ineffective for failing to have Applicant’s charges dismissed and failing to file a notice of appeal on the grounds that the State failed to prove Applicant’s guilt by accomplice liability. Applicant testified that he thinks the State prosecuted him because he did not call the police.

Mr. Brown testified that he did not move to have the charges dismissed and did not appeal Applicant’s guilty plea. He testified that the State believed Applicant had more involvement in the victim’s physical abuse. Mr. Brown testified that Applicant admitted to striking the victim and causing the victim to hit his head on the bathtub. He also testified that Applicant’s codefendant implicated him as well.

This Court finds that Applicant has failed to meet his burden of proving that Mr. Brown was deficient for failing to have the charges dismissed for lack of accomplice liability. Mr. Brown testified, and Applicant’s testimony from his codefendant’s trial would reveal, that the Applicant admitted to striking the victim and causing the victim to hit his head on the bathtub. See Trial Transcript of *State v. Theia McCardle*, p. 452. This Court would note that the plea judge recognized Applicant’s liability when, having heard Applicant’s testimony from his codefendant’s trial, told Applicant:

“...from your testimony at [the codefendant’s] trial, Mr. Bowman, based on how you testified, the jury easily could have found you guilty of homicide by child abuse had you moved forward just on your own testimony at trial which pretty much indicated that you were guilty of the principal offense involved in this.”

Guilty Plea transcript, p. 17, l. 19 – p. 18, l. 2. This Court finds Mr. Brown’s failure to file a motion to dismiss the charge was not unreasonable given Applicant’s testimony and the evidence

against him. This Court further finds Applicant has failed to show that he was prejudiced by Mr. Brown's failure to file a motion to dismiss as Applicant has failed to show that such a motion would have been successful.

This Court finds Applicant has failed to meet his burden of proving that Mr. Brown was deficient for failing to file a notice of appeal on the grounds of lack of accomplice liability. "[C]ounsel has a constitutionally imposed duty to consult with the defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing." Roe v. Flores-Ortega, 528 U.S. 470, 480, 120 S. Ct. 1029, 1036, 145 L. Ed. 2d 985 (2000). Here, Applicant provided no testimony that he asked Mr. Brown to file an appeal following his guilty plea. This Court finds the guilty plea transcript shows that the meticulous colloquy between Applicant and the plea judge ensured Applicant was apprised of his rights and fully admitted his guilt. Applicant has provided no evidence that he expressed his desire to appeal and Mr. Brown disregarded his request. As such, Applicant has failed to meet his burden of proving Mr. Brown's testimony was deficient. This Court also finds Applicant failed to present any evidence showing how he may be prejudiced by this alleged deficiency.

IV. 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 Mr. Brown'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

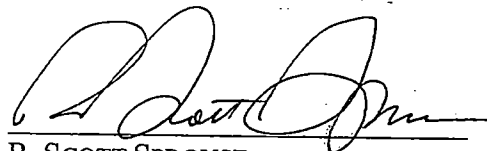
denied and dismissed with prejudice.

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 21 day of December, 2017.



R. SCOTT SPROUSE
Presiding Judge
Eighth Judicial Circuit

Waltham, South Carolina



State of South Carolina
The Circuit Court of the Tenth Judicial Circuit

Ford H. Thrift
Law Clerk to the Hon. R. Scott Sprouse

Oconee County Courthouse
Post Office Box 1277
Walhalla, SC 29691
Phone: (864) 638-4266
Fax: (864) 638-4267
rssprouselc@sccourts.org

December 27, 2017

Elizabeth P. Folk
Clerk of Court, Newberry County
P.O. Drawer 10
Newberry, S.C. 29108

Re: *Richard F. Bowman, III, v. State of South Carolina*, 2016CP3600576

Dear Ms. Folk:

Judge Sprouse presided over a term of Post-Conviction Relief hearings in Laurens County during the week of October 2, 2017. During that term, Judge Sprouse heard the above-captioned matter, which originated in Newberry County, and has since dismissed the application for PCR. I have enclosed with this letter the signed Order of Dismissal for filing with your office. Please let me know if there is anything more I can do regarding this matter.

Best Regards,

A handwritten signature in cursive script that reads "Ford".

Ford H. Thrift

Enclosure:

- (1) Order of Dismissal

FILED
NEWBERRY COUNTY
2017 DEC 29 AM 10:42
ELIZABETH P. FOLK
CLERK OF COURT



MAC | VANCE ATTORNEYS, LLC

PO Box 5501

West Columbia, SC

29171

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

