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January 11, 2018

The Supreme Court of South Carolina
ATTN: Daniel Shearouse, Clerk of Court
PO Box 11330
Columbia, SC 29211

RECEIVED

JAN 12 2018

S.C. SUPREME COURT

Re: Notice of Intent to Appeal from:
Elijah Hudson, #363316, v. State of South Carolina;
Case Number: 2016-CP-40-00577

Dear Sir or Madam:

I was Court Appointed, and I expect appellate defense will probably handle the appeal. Enclosed please find a Notice of Appeal along with a Proof of Service and a copy of the Order being appealed. Also enclosed is a copy which I request you stamp as "filed" and return to me in the enclosed stamped envelope.

Thank you for your assistance.

Sincerely:

David K. Allen

DKA/idi
Enclosures

cc: Mr. Elijah Hudson
Jessica E. Kinard, Esq.

THE SOUTH CAROLINA SUPREME COURT

ORIGINAL

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge

RECEIVED

JAN 12 2018

S.C. SUPREME COURT

Case No.
(2016-CP-40-0577)

Elijah Hudson,..... Appellant

v.

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

NOTICE OF INTENT TO APPEAL

Appellant appeals the Order of Dismissal denying his Application for Post-Conviction Relief filed December 19, 2017, sent by Assistant Attorney General Jessica E. Kinard on December 21, 2017, and received by Counsel on December 23, 2017. Appellant hereby files and serves this Notice of Intent to Appeal by regular mail today, January 11, 2017.

THE ALLEN LAW FIRM, P.A.



David K. Allen
Attorney for Applicant
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Jessica E. Kinard, Esquire
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211



ALAN WILSON
ATTORNEY GENERAL

December 21, 2017

David K. Allen, Esquire
The Allen Law Firm, P.A.
P.O. Box 3241
West Columbia, South Carolina 29171

RECEIVED
JAN 12 2018
S.C. SUPREME COURT

Re: Elijah Hudson, #363316 v. State of South Carolina
2016-CP-40-00577

Dear Mr. Allen:

Enclosed is a copy of the Order of Dismissal in the above-captioned case signed by The Honorable Jocelyn Newman and filed with the Richland County Clerk of Court.

Sincerely,

Jessica E. Kinard
Assistant Attorney General

JEK/fvh

Enclosure(s)

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2016- CP-40-0577

ELIJAH HUDSON (SCDC #363316)

STATE OF SOUTH CAROLINA

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: NEWMAN, J.

Attorney for : Plaintiff Defendant
or
 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
- 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 :

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.


Circuit Court Judge

2757

Judge Code

December 19,
2017

Date

2017 DEC 19 PM 12:25
RICHLAND COUNTY
FILED

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
Elijah Hudson (SCDC #363316),

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT
Civil Action No. 2016-CP-40-0577

ORDER OF DISMISSAL

RICHLAND COUNTY
FILED
2017 DEC 19 PM 12:25
CLERK OF COURT

This matter comes before the Court upon Application for Post-Conviction Relief filed by Applicant Elijah Hudson ("Applicant") on January 25, 2016. Respondent filed its return on October 28, 2016. On March 29, 2017, an evidentiary hearing was conducted at the Richland County Judicial Center. Applicant was present along with his counsel, David Kellum Allen, Esquire. The State was represented by Jessica Kinard, Esquire.

For the reasons set forth below, the Application for Post-Conviction Relief is DENIED, and this matter is DISMISSED.

FINDINGS OF FACT

In 2015, Applicant was charged with two counts of criminal sexual conduct with a minor in the first degree and one count of assault with intent to commit criminal sexual conduct with a minor in the first degree, arising from incidents occurring in 2011 and 2014 with Applicant's niece ("the victim"). Alicia Dyar Goode, Esquire ("plea counsel") and Tracy Pinnock, Esquire, were appointed to represent him. On March 16, 2015, Applicant waived his right to grand jury presentment on these charges pled guilty to two lesser charges – 2 counts of criminal sexual conduct with a minor in the second degree. The plea was made pursuant to a negotiated plea agreement with the State in which Applicant would be incarcerated for ten to twenty years. The



Court accepted the negotiated plea and imposed a sentence of nineteen years' imprisonment on each charge, with the sentences to be served concurrently.

Applicant appealed his conviction to the South Carolina Court of Appeals. However, his appeal was dismissed by Order dated June 25, 2015, due to Applicant's failure to provide sufficient explanation for its filing. The Remittitur was issued on August 6, 2015.

Applicant subsequently filed the instant Application for Post-Conviction Relief ("PCR"). In it, Applicant alleges that he is being unlawfully detained due to "(a) 5th Amendment due process [,] (b) 6th Amendment ineffective assistance of counsel [, and] (c) 14th equal protection under due process clause."

At the evidentiary hearing on March 29, 2017, Applicant testified on his own behalf and expounded on his written allegations. He contended that he provided plea counsel with evidence of his innocence, but she ignored it; that plea counsel hid information from him and failed to review discovery with him; that plea counsel failed to investigate his alibi defense; and that plea counsel did not meet with him often enough. Applicant testified that plea counsel coerced him to enter a guilty plea by suggesting that if he did not, his parents would testify against him at trial.

The Court also reviewed the transcript of Applicant's guilty plea and considered the testimony of Applicant's plea counsel, Alicia Dyar Goode. Ms. Goode testified that she did, in fact, thoroughly investigate Applicant's case. Specifically, she stated that she was aware that the victim of the crime had named other suspects in addition to Applicant; that she retained a DNA expert from New Mexico who was willing to testify at trial on Applicant's behalf; and that she engaged in "extensive" preparation for trial. Ms. Goode also testified that she knew of a related investigation by the South Carolina Department of Social Services in 2011 in which there was "some sort of admission of sexual conduct between [Applicant] Elijah and the victim."



Nevertheless, her trial strategy was to attack the victim's credibility regarding the 2011 allegations and to attack both the science and the victim's credibility with respect to the 2014 allegations. Instead, on the day his trial was set to begin, she received a plea offer from the State, which Applicant accepted.

CONCLUSIONS OF LAW

In a PCR action, “[t]he applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence.” Rule 71.1(e), SCRCP. Specifically, “[a] defendant 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 defendant would not have pled guilty.” *Johnson v. Catoe*, 336 S.C. 354, 358, 520 S.E.2d 617, 619 (1999) (citing *Wolfe v. State*, 326 S.C. 158, 485 S.E.2d 367 (1997) and *Satterwhite v. State*, 325 S.C. 254, 481 S.E.2d 709 (1997)).

I. Fifth Amendment and Fourteenth Amendment Claims

In his PCR application, Applicant alleged as grounds for relief “(a) 5th Amendment due process ... [and] ... 14th equal protection under due process clause.” However, at the evidentiary hearing, Applicant presented no evidence regarding either of these issues. Based on the review of the records and testimony in this action, the Court deems these issues to be abandoned by Applicant and, therefore, denies relief on these grounds.

II. Ineffective Assistance of Counsel

“The benchmark for judging any claim of ineffectiveness must be whether counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result.” *Strickland v. Washington*, 466 U.S. 668, 686 (1984). “[A] guilty plea cannot be attacked as based on inadequate legal advice unless counsel was not ‘a



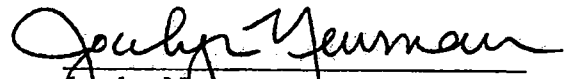
reasonably competent attorney' and the advice was not 'within the range of competence demanded of attorneys in criminal cases.'" *Id.* at 687 (quoting *McMann v. Richardson*, 397 U.S. 759, 770 (1970)). "When a convicted defendant complains of the ineffectiveness of counsel's assistance, the defendant must show that counsel's representation fell below an objective standard of reasonableness." *Id.* at 687-88.

"Because of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action 'might be considered sound trial strategy.'" *Id.* at 689 (citation omitted). Applicant has not done that here. In fact, having weighed the credibility of the testifying witnesses and having considered the admissions and explanations offered, the Court cannot find that plea counsel was not "a reasonably competent attorney" or that her advice was not "within the range of competence demanded of attorneys in criminal cases." Further, because the Court finds no professional errors on the part of plea counsel, no prejudice could have resulted from plea counsel's representation. Therefore, the PCR application is denied on this allegation as well.

IT IS THEREFORE ORDERED that the Application for Post-Conviction relief is DENIED and DISMISSED with prejudice.

IT IS FURTHER ORDERED that Applicant Elijah Hudson be REMANDED to the custody of the State of South Carolina.

AND IT IS SO ORDERED.


Jocelyn Newman
Presiding Judge

December 19, 2017
Columbia, South Carolina.

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

ELIJAH HUDSON, #363316,

Applicant,

v.

STATE OF SOUTH CAROLINA,

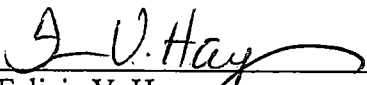
Respondent.

AFFIDAVIT OF SERVICE

The undersigned hereby certifies that a true copy of the **Order of Dismissal** has been served upon the applicant by mailing one (1) copy in the United States mail, postage prepaid, addressed to:

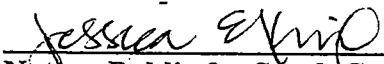
**David K. Allen, Esquire
The Allen Law Firm, P.A.
P.O. Box 3241
West Columbia, SC 29171**

This 21st day of December, 2017.



Felicia V. Hayes
Legal Assistant for Respondent

SWORN to before me this 21st day of December, 2017.



Notary Public for South Carolina.

My Commission Expires: 4/27/19

THE SOUTH CAROLINA SUPREME COURT

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge

Case No.
(2016-CP-40-00577)

RECEIVED
JAN 12 2018
S.C. SUPREME COURT

Elijah Hudson,.....Appellant

v.


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

PROOF OF SERVICE

- **Notice of Appeal (with attached Order)**

I certify that the foregoing was served on the persons listed below by placing same in the U.S. Mail postage prepaid this day, January 11, 2018.

THE ALLEN LAW FIRM, P.A.



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