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January 19, 2018

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

RECEIVED  
JAN 23 2018  
S.C. SUPREME COURT

Re: *Jerome J. Noone, Jr. v. State of South Carolina*  
Case No. 2017-CP-04-01012

Dear Mr. Shearouse:

Enclosed please find Ms. Noone's Notice of Appeal in the post-conviction relief case, along with a certificate of service. Also enclosed are the orders of the Honorable R. Scott Sprouse filed on November 27, 2017 and December 21, 2017.

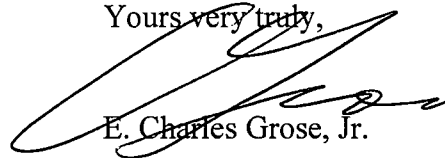
Also enclosed please find copies of my letter of this date ordering the transcript of the PCR evidentiary hearing.

Please note that I will be representing Mr. Noone on this appeal.

Thank you for your attention to this matter. If you have any questions or require additional information, please do not hesitate to contact me.

With kindest regards, I am

Yours very truly,



E. Charles Grose, Jr.

cc: Mr. Jerome J. Noone, Jr.  
Lindsey McCallister, Esquire  
Clerk of Court, Anderson County

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

RECEIVED

APPEAL FROM ANDERSON COUNTY  
Court of General Sessions  
R. Scott Sprouse, Circuit Court Judge

JAN 23 2018

S.C. SUPREME COURT

Case No. 2017-CP-04-01012

Jerome J. Noone, Jr,.....Petitioner,

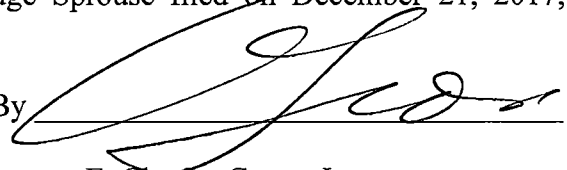
v.

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

**Notice of Appeal**

The petitioner, Jerome J. Noone, Jr., appeals the order of the Honorable R. Scott Sprouse, dated, November 20, 2017, dismissing his application for post-conviction relief. This appeal is taken from the order of Judge Sprouse filed on December 21, 2017, denying his Rule 59(e), SCRCP motion.

By



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*Attorney for Jennifer McSharry*

January 19, 2018  
Greenwood, South Carolina

Other Counsel of Record:

Lindsey McCallister, Esquire  
S.C. Attorney General's Office  
PO Box 11549  
Columbia, SC 29211-1549

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM ANDERSON COUNTY  
Court of General Sessions  
R. Scott Sprouse, Circuit Court Judge

Case No. 2017-CP-04-01012

RECEIVED  
JAN 23 2018  
S.C. SUPREME COURT

Jerome J. Noone, Jr, .....Petitioner,

v.

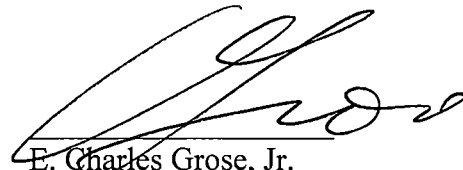
State of South Carolina, .....Respondent.

**Certificate of Service**

I certify that I have served a copy of this pleading on the State of South Carolina by placing a copy in the US Mail, postage prepaid, on the date reflected below, addressed to

Lindsey McCallister, Esquire  
S.C. Attorney General's Office  
PO Box 11549  
Columbia, SC 29211-1549

January 19, 2018



E. Charles Grose, Jr.  
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404 Main Street  
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STATE OF SOUTH CAROLINA )

COUNTY OF ANDERSON )

Jerome Joseph Noone, )

Applicant, )

v. )

State of South Carolina, )

Respondent. )

IN THE COURT OF COMMON PLEAS  
TENTH JUDICIAL CIRCUIT

CASE NO.: 2017-CP-04-1012

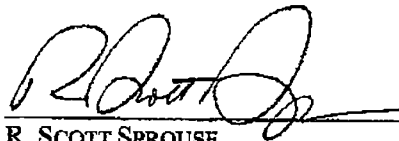
ORDER DENYING APPLICANT'S MOTION  
FOR RECONSIDERATION

PRESIDING JUDGE:  
DATE OF HEARING:  
PLAINTIFF'S ATTORNEY:  
DEFENDANT'S ATTORNEY:  
COURT REPORTER:

R. SCOTT SPROUSE  
OCTOBER 6, 2017  
LINDSEY MCCALLISTER  
E. CHARLES GROSE, JR.  
APRIL HERRON

After careful consideration of the able argument and filings of Counsel and review of the record, the Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or fact not appropriately considered. Accordingly, the Defendants' Motion pursuant to Rule 59, SCRPC,<sup>1</sup> is DENIED.

AND, IT IS SO ORDERED.



R. SCOTT SPROUSE  
Judge, Tenth Judicial Circuit

Walhalla, South Carolina

December 18, 2017

FILED-CLERK'S OFFICE  
ANDERSON SC  
2017 DEC 21 AM 10:49  
COMMON PLEAS AND  
GENERAL SESSIONS

<sup>1</sup> The Court, in its discretion, has determined this Motion on the filings, without oral argument, pursuant to Rule 59(f), SCRPC.

STATE OF SOUTH CAROLINA  
COUNTY OF ANDERSON

Jerome J. Noone, Jr.,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS  
TENTH JUDICIAL CIRCUIT

C. A. No. 2017-CP-04-1012

ORDER OF DISMISSAL

COMMON PLEAS AND  
GENERAL SESSIONS

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FILED-CLERK'S OFFICE  
ANDERSON SC

This matter comes before the Court by way of an application for post-conviction relief filed by Jerome J. Noone, Jr., (Applicant) on May 17, 2017. Respondent made its return and motion to dismiss on July 21, 2017.

An evidentiary hearing was convened on October 6, 2017, at the Anderson County Courthouse. Applicant was present at the hearing and was represented by E. Charles Grose, Jr., Esquire. Respondent was represented by Assistant Attorney General Lindsey A. McCallister of the South Carolina Attorney General's Office. At the evidentiary hearing, Applicant testified on his own behalf. Joseph R. Opperman, Esquire (Counsel), testified for the State. After reviewing all the evidence and testimony presented, this Court finds Applicant has failed to establish any constitutional deprivations or other grounds for relief and denies this application for post-conviction relief.

**I. PROCEDURAL HISTORY**

In May 2016, the Anderson County Grand Jury indicted Applicant for DUI – second offense. Scott Thomason, Esquire, and Joseph Oppermann, Esquire, represented Applicant. Assistant Solicitor Stephanie Looper, Esquire, prosecuted the case. On February 2, 2017, Applicant pleaded guilty in Anderson Summary Court to DUI – first offense before the

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Honorable Ronald W. Whitman.<sup>1</sup> Judge Whitman sentenced Applicant to pay a fine of \$400 plus court costs and fees in a total amount of \$1092.00. Applicant did not appeal his conviction or sentence.

## **II. ALLEGATIONS**

In his application for post-conviction relief, Applicant alleges he continues to suffer consequences from this conviction for the following reasons:

1. Applicant received ineffective assistance of counsel, in that:
  - a. Plea counsel affirmatively misadvised Applicant about the consequences to his driving privileges and Application would have elected to proceed to trial had he been properly advised.

## **III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the evidentiary hearing. The Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. The Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80.

### **Ineffective Assistance of Trial Counsel**

Applicant alleges Mr. Thomason gave him incorrect advice about the consequences to his driving record of accepting the plea agreement. Specifically, Applicant alleges Mr. Thomason told him he would have to pay a fine and receive a short suspension of his driver's license, when instead, the conviction resulted in a long-term suspension under South Carolina's Habitual Traffic Offender statute.

In this post-conviction relief action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin

<sup>1</sup> Because this case was heard in Summary Court, there is no transcript of the proceeding.

v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove his 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." Id. at 442, 334 S.E.2d at 814 (citing Strickland v. Washington, 466 U.S. 668 (1984)). The proper measure of performance is whether counsel provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The Court presumes counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The Court uses a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove his counsel's performance was deficient. Id. Under this prong, the Court measures defense counsel's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced 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, Applicant must show there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 (1985).

Applicant testified he is a self-employed auto restorer and transporter, and he was arrested for DUI – second offense on September 24, 2015. Applicant testified he applied for

public defender, and Scott Thomason was appointed to represent him. Applicant further testified he met with Mr. Thomason on or about July 12, 2016, at which time Mr. Thomason had received discovery from the State, as well as a plea offer. Applicant testified he and Mr. Thomason reviewed the discovery, including a video tape of the traffic stop and the incident report, and they discussed the plea offer from the State. Applicant testified he was concerned about what would happen to his driving privileges because his business is dependent on his being able to drive. Applicant testified his understanding from Mr. Thomason was that he would have to pay a fine, but his license would be restored after a short suspension. Applicant further testified he refused a <sup>BAC Detonator</sup> Breathalyzer test at the time of the incident, so he was aware his license would be suspended because of that, as well as for additional time as part of his sentence.

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Applicant also testified Mr. Thomason was deceased by the time of the plea hearing, so he was represented by Counsel on that day instead. Applicant testified he and Counsel only had one conversation wherein Counsel confirmed Applicant still wished to plead guilty and Applicant had money available to pay the fine. Applicant testified he never asked Counsel any questions concerning his driving privileges. Applicant testified he did not become aware of his status as a Habitual Traffic Offender until sometime after the hearing when he received a notice from the Department of Motor Vehicles (DMV). Applicant further testified if he had known he would lose his driving privileges as a result of this conviction, he would not have agreed to plead guilty, but would have proceeded to trial.

However, the State introduced documentation from the DMV showing Applicant was sent a letter, dated April 29, 2016, after his arrest on this charge but before his plea hearing, informing him of his status under the Habitual Traffic Offender statute. The letter reflects Applicant was informed he had accumulated two "major violations" under the statute, and if he

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received another major violation, he would be classified as a habitual offender, and his driving privileges would be revoked for five years. The letter also contains a list of offenses considered to be major violations under the statute, including DUI. Applicant testified he never received this letter, although he confirmed the address was correct and was his address at the time the letter was mailed. Further, Applicant testified he received other letters from the DMV at that address, namely the February 10, 2017, letter informing him of his Habitual Traffic Offender status and license suspension. Applicant testified he did not attempt to appeal his conviction or pursue an administrative appeal with the DMV, despite being informed of this option in the February 2017 letter.

Counsel testified he represented Applicant at his plea on February 2, 2017, during his first week of work with the Public Defender's Office. Counsel testified the plea offer had been extended, and Applicant had indicated his willingness to accept it before Counsel took over the case. Counsel testified he did not have a clear memory of the day of the plea, but he did recall speaking with Applicant by phone the day before simply to confirm Applicant still wished to proceed with the plea agreement. Counsel testified his review of the file showed Applicant made a statement to the arresting officer that he "had too much drink," the arresting officer noticed an odor of alcohol coming from Applicant, and the video tape of the stop showed Applicant behaving in a way that indicated impairment or intoxication. Counsel testified he did not recall Applicant asking questions or expressing concern about the effect of the conviction on Applicant's driving privileges, until Applicant called him upon receiving the February 2017 letter from the DMV. At that time, Counsel told him it was too late to file any motions, and Applicant should consult with an attorney.

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Based on this testimony and the record before the court, this Court finds neither Mr. Thomason's nor Counsel's representation was deficient in any regard. This Court finds Mr. Thomason conveyed the plea offer, and, by Applicant's own admission, they discussed the consequences to his driving record. At the time of the meeting with Mr. Thomason in July 2016, Applicant knew or should have known a DUI conviction would result in his classification as a Habitual Traffic Offender, along with suspension of his license for five years. This Court finds not credible Applicant's assertion he did not receive the April 2016 warning letter from the DMV, since Applicant testified the address on the letter was correct and reflected where he was living at the time. Applicant testified he received other letters from the DMV at the same address. Further, this Court finds Applicant has not shown he was prejudiced by accepting the plea offer, as he likely would have been convicted at trial. Counsel testified the video evidence showed Applicant behaving erratically, as if intoxicated; Applicant gave a spontaneous statement to the officer upon being stopped that he "had too much to drink;" and Applicant refused to submit to a <sup>Blood alcohol breath</sup> Breathalyzer test, which would have <sup>been used</sup> ~~resulted in a negative inference~~ against <sup>the</sup> Applicant at trial. Therefore, this allegation is denied and dismissed.

#### IV. CONCLUSION

Based upon all the foregoing, this Court finds and concludes 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.

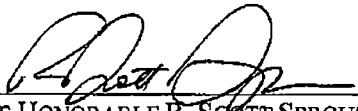
This Court notes Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), Applicant has

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, post-conviction relief 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:**

1. The application for Post-Conviction Relief is denied and dismissed with prejudice.

AND IT IS SO ORDERED this 20 day of November, 2017.

  
\_\_\_\_\_  
THE HONORABLE R. SCOTT SPROUSE  
Presiding Judge  
Tenth Judicial Circuit

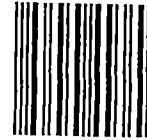
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The Honorable Daniel E. Shearouse  
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