



WALLER LAW GROUP

February 6, 2018

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

RECEIVED

FEB 09 2018

S.C. SUPREME COURT

Re: Jamaad Dreqwan Thomas vs. State of South Carolina  
C/A No: 2015-CP-21-0708

Dear Mr. Shearouse:

Please find enclosed one (1) original and one (1) copy each of Applicant's Notice of Appeal and Certificate of Service in the above referenced case. I would appreciate you filing the original and returning the clocked copies in the enclosed envelope.

I was appointed to represent Mr. Thomas in this matter and am also enclosing a copy of the Order of Dismissal. If you have any questions, please do not hesitate to ask. My telephone number is 803-520-7278.

Sincerely,

Jonathan D. Waller

Cc: Lindsey A. McCallister, South Carolina Office of Attorney General

Enclosures

STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM FLORENCE COUNTY  
Thomas A. Russo, Circuit Court Judge

2015-CP-21-0708

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FEB 09 2018

S.C. SUPREME COURT

Jamaad Dreqwan Thomas, # 359532,

Appellant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Jamaad Dreqwan Thomas, # 359532, appeals the Order of Dismissal denying his Application for Post-Conviction Relief filed January 29, 2018, issued by the Honorable Thomas A. Russo, Presiding Judge, Twelfth Judicial Circuit.



Jonathan D. Waller

Waller Law Group  
SC Bar No.: 76290  
1116 Blanding Street  
Suite 2B  
Columbia, SC 29201  
803-520-7278 (phone)  
jonathan@wallergroupsc.com  
ATTORNEY FOR PETITIONER

February 6, 2018

Other Counsel of Record:

Lindsey A. McCallister, Assistant Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3319

STATE OF SOUTH CAROLINA  
In The Supreme Court

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FEB 09 2018

APPEAL FROM FLORENCE COUNTY  
Thomas A. Russo, Circuit Court Judge

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S.C. SUPREME COURT

2015-CP-21-0708

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Jamaad Dreqwan Thomas, # 359532,

Appellant,

v.

STATE OF SOUTH CAROLINA,

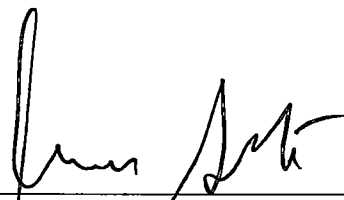
Respondent.

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CERTIFICATE OF SERVICE

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The undersigned hereby certifies that one copy of the Appellant's Notice of Appeal in the above-entitled case has been served upon opposing counsel, Lindsey A. McCallister, Assistant Attorney General, by mailing in an envelope properly addressed with postage prepaid on this day, to her office located at P.O. Box 11549, Columbia, SC 29211.

  
\_\_\_\_\_  
M. David Scott

February 6, 2018

FILED

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

JUDGMENT IN A CIVIL CASE  
CASE NUMBER 2015CP2100708

Jamaad Dreqwan Thomas

2018 JAN 30 AM 9:53

South Carolina State Of

DORIS POULOS O'HARA  
CCCP & GS  
FLORENCE COUNTY, SC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for:  Plaintiff  Defendant  
 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: \_\_\_\_\_

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<br>(List name(s) below) | Judgment Against<br>(List name(s) below) | Judgment Amount To be Enrolled<br>(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

Judge Code

1/30/2018

Date

For Clerk of Court Office Use Only

This judgment was entered on **January 29, 2018**, and a copy mailed first class or placed in the appropriate attorney's box on **January 30, 2018**, to attorneys of record or to parties (when appearing pro se) as follows:

CERTIFIED: A TRUE COPY  
*Doris Poulos O'Hara*  
CLERK OF COURT C.P. & G.S.  
FLORENCE COUNTY, S.C.

Jonathan D Waller 1116 Blanding Street Suite 2B  
Columbia, SC 29201

Lindsey Ann McCallister PO Box 11549 Columbia, SC  
29211-1549

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ATTORNEY(S) FOR THE PLAINTIFF(S)

---

ATTORNEY(S) FOR THE DEFENDANT(S)

*Doris P. O'Hara*

---

Court Reporter

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Doris Poulos O'Hara - 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.

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**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.

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STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF FLORENCE )  
 )  
 Jamaad Dreqwan Thomas, #359532, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 TWELFTH JUDICIAL CIRCUIT

C.A. No. 2015-CP-21-0708

**ORDER OF DISMISSAL**

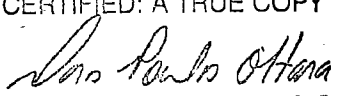
2018 JAN 29 AM 11:02  
 DORIS POULOS O'HARA  
 CCCP & GS  
 FLORENCE COUNTY, SC

**FILED**

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed March 9, 2015. Respondent made its Return on January 19, 2017. An evidentiary hearing into the matter was convened on August 31, 2017, at the Florence County Courthouse before the Honorable Thomas A. Russo. Jonathan Waller, Esquire, represented Applicant. Lindsey McCallister, Esquire, of the South Carolina Attorney General's Office, represented Respondent. At the hearing, Applicant testified on his own behalf. Joshua A. Bailey, Esquire, testified for the State. This Court had before it a copy of the records of the Florence County Clerk of Court, records from the South Carolina Department of Corrections, the application, the State's Return, and the guilty plea transcript.

**PROCEDURAL HISTORY**

Applicant is currently incarcerated with the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. Applicant was indicted at the July 2012 term of the Florence County Grand Jury for one count of murder (2012-GS-21-00881). Applicant was represented by Joshua Bailey (Counsel). On April 11, 2014, Applicant pleaded guilty pursuant to Alford v. North Carolina, 400 U.S. 25 (1970), to the lesser-

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 CLERK OF COURT C.P. & G.S.  
 FLORENCE COUNTY, S.C.

included offense of voluntary manslaughter, and the Honorable D. Craig Brown sentenced him to a term of imprisonment for twenty-eight years, with credit for time served. Applicant did not appeal this conviction or sentence.

### **ALLEGATIONS**

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

1. Brady<sup>1</sup> Violation
  - a. "See SCR Crim P. Rule 5 and Brady violation"
2. Ineffective Assistance of Counsel
  - a. "Counsel fail[ed] to object."
3. Violation of Due Process
  - a. "Involuntary and Unknowingly plea"

### **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 and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusion of law as required by S.C. Code Ann. Sec. 17-27-80 (2003).

#### **Brady Violation**

This Court finds Applicant failed to present any testimony, argument, or evidence at the hearing regarding the allegation in his application that the State violated the disclosure rules of either SCRCRP Rule 5 or Brady. Instead, it appears Applicant's contention is Counsel did not fully and appropriately share discovery with Applicant, such that his guilty plea was rendered involuntary. That allegation is addressed below. This Court deems the allegation regarding a

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<sup>1</sup> Brady v. Maryland, 373 U.S. 83 (1963).

Brady violation to be abandoned, and the allegation is dismissed.

**Ineffective Assistance of Counsel/Involuntary Guilty Plea**

In a PCR action, the 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). 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.” Id. at 443, 334 S.E.2d at 814. 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 v. Washington, 466 U.S. 668, 689 (1984). 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 reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove that counsel’s performance was deficient. Id. Under this prong, the court measures an attorney’s performance by its “reasonableness under professional norms.” Id. (quoting Strickland, 466 U.S. at 688). Second, counsel’s 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.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that 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).

In PCR cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citations omitted). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Lockhart, 474 U.S. at 56. Further, "[t]hat a guilty plea must be intelligently made is not a requirement that all advice offered by the defendant's lawyer withstand retrospective examination in a post-conviction hearing." McMann v. Richardson, 397 U.S. 759, 770 (1970). Rather, "whether a plea of guilty is unintelligent . . . depends as an initial matter, not on whether a court would retrospectively consider counsel's advice to be right or wrong, but on whether that advice was within the range of competence demanded of attorneys in criminal cases." Id. at 771.

The record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Dalton v. State, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Boykin v. Alabama, 395 U.S. 238, 242 (1969)). A 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 the court and defendant, between the 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)). Further, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant; thus, an applicant's right to contest the validity of such a plea is usually foreclosed. Dalton, at 137-38, 654 S.E.2d at 874 (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Therefore, admissions

“made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements.” Id. (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)). Additionally, “the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing.” Id. at 138–39, 654 S.E.2d at 874 (citing Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997)).

Applicant testified he was arrested for murder, and Counsel was appointed to represent him. Applicant testified he met with Counsel a short time later, and they discussed the charges, possible sentences, and evidence against him. Applicant testified he did not discuss possible defenses with Counsel, and he was not sure if he had any viable defense. Applicant testified he gave one name of a potential witness to Counsel, and he believed Counsel’s investigator talked to that person. Applicant testified there were several videotaped witness statements he never reviewed or received a transcript for, although Counsel watched the tapes, and they discussed the contents.

Applicant testified he told Counsel he wanted a trial every time they met, and he also told the judge he wanted a trial rather than to continue with a guilty plea. Applicant testified the judge allowed him to take a break to confer with Counsel about how to proceed, and the Solicitor was also involved in the meeting. Applicant testified he ultimately pleaded guilty because of the statements he had not seen. Applicant testified he could have made a better decision about whether to plead guilty or proceed with a trial if he had seen the statements, but he was not certain he would have changed his mind and gone to trial. Applicant further testified he still had not seen the statements, though he had requested them from Counsel. Applicant testified his

decision would depend on the content of the statements. However, Applicant acknowledged on cross-examination, after the break to confer with Counsel, he never informed the plea judge he had not seen the statements, and instead averred he was satisfied with Counsel and did not have any more questions.

Counsel testified he did not recall the specific number of meetings he had with Applicant, but his practice is to have the initial meeting within thirty days. Counsel testified he generally meets with his clients once a month or once every two months, with longer and more frequent meetings as trial approaches. Counsel testified he usually does not have discovery available at the first meeting, but he sends it to the client as it is received.

Counsel testified there were a significant number of witnesses in the case, mostly people who had seen Applicant and his codefendant in the neighborhood and several witnesses who were inside the house where the shooting took place. Counsel testified the witnesses could place Applicant at various points around the neighborhood both to and from the shooting location. Counsel further testified he went over every statement with Applicant, although he did not have the ability to play the videos for Applicant in jail. Counsel testified some of the statements had been transcribed by the Solicitor's Office, which he received in discovery, and he reviewed the remaining interviews and decided not to have them transcribed. Counsel also testified he took detailed notes of the non-transcribed interviews and went over them with Applicant to determine if Applicant knew the witnesses or had any information to offer in response to the statements. Counsel testified, in total, he received one CD with eight statements, one CD with five statements, and one CD containing Applicant's statement; he estimated he received three to four transcripts.

Counsel testified <sup>that</sup> at first, Applicant wanted to plead guilty, later decided he wanted a trial, then changed back to wanting to plead guilty. Counsel testified <sup>that</sup> when they arrived for the guilty plea, Applicant was given the choice to plead guilty that day or begin trial the following Monday. Counsel testified he was prepared for trial. Counsel testified he had not uncovered anything in his review of the discovery that would lead him to call defense witnesses, but he had prepared questions for cross-examination of all of the State's witnesses.

Counsel also testified, in the days leading up to trial, Applicant indicated he would accept an offer of ten years, but Solicitor Clements would not agree. Counsel testified he instead negotiated a reduced charge of voluntary manslaughter with no sentencing recommendation so the defense could argue for whatever they felt was appropriate. Counsel testified the State's theory was the shooting was done as part of a gang initiation, and the Solicitor was really after the gang leaders, but Applicant would not cooperate. Counsel testified it was Applicant's decision to proceed with the guilty plea. Counsel testified he advised Applicant a conviction was likely at trial, but the ultimate decision was up to Applicant. Counsel testified <sup>that</sup> although he felt he could attack some points in the State's case, mitigation was difficult because there was no way to get around the fact that two kids on bikes had done the shooting, and Applicant had been identified as one of them.

Counsel testified Applicant requested a trial during the guilty plea colloquy, and they were able to take a break to meet with Applicant and his family before resuming the plea. Counsel testified the Solicitor was only present to see what Applicant's decision was, and he did not participate in the meeting. Counsel testified Applicant wanted to talk to his family and was able to do so. Counsel also testified he fully explained the plea, including the import of Alford.

Regarding Applicant's claim <sup>that</sup> his guilty plea was induced by ineffective assistance of counsel, this Court finds Applicant has failed to meet his burden of proof. This Court finds Applicant's testimony regarding Counsel's ineffectiveness is not credible, while also finding Counsel's testimony is credible. This Court finds Counsel provided effective assistance in this case and Applicant's decision to plead guilty was made freely and voluntarily. Counsel conferred with Applicant on multiple occasions, during which Counsel discussed the pending charges, the State's evidence, possible defenses and courses of action, and answered all of Applicant's questions. Additionally, Counsel conveyed the State's plea offer to Applicant, who had ample time to confer with Counsel and his family before making a decision. This Court further finds credible Counsel's testimony <sup>that</sup> he discussed all witness statements with Applicant and made Applicant aware of the contents of those statements, even if Applicant did not personally view the videos. See, e.g., Hyman v. State, 397 U.S. 35, 723 S.E.2d 375 (2012) (finding defense counsel was not deficient, nor was defendant prejudiced, where the State allowed defense counsel to view a videotape of the controlled drug buy prior to the plea, but refused to allow defendant himself to watch it). Further, Applicant testified he could not say for certain if viewing the videos would have changed his decision to plead guilty.

This Court finds the record reflects Applicant's plea was entered freely, voluntarily, knowingly, and intelligently. Applicant was aware there were witness statements he had not seen when he entered his guilty plea, and the plea waived his right to challenge those statements. Additionally, this Court finds Applicant was not subject to any time constraints, as his trial would not have started until the following week. The plea judge explained the charge to Applicant, including the maximum penalty. Tr. pp. 7, 19. The plea judge also went through Applicant's constitutional rights multiple times and questioned Applicant as to whether he

understood those rights and wished to give them up to plead guilty. Tr. pp. 9-10, 20-21. Applicant agreed that he did. Tr. p. 21. Importantly, even after stopping his guilty plea to reconsider, Applicant told the plea judge he was satisfied with his attorney, that Counsel had done everything Applicant had asked of him, and he did not need any more time to discuss this matter with Counsel. Tr. pp. 21-22. Applicant further told the plea judge no one had threatened him or made him any promises to get him to plead guilty, and he was doing so of his own accord. Tr. pp. 22-23. This Court therefore finds Applicant understood the terms of the plea and entered into it freely and voluntarily.

Therefore, this Court finds Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present compelling evidence that Counsel committed either errors or omissions in his representation of Applicant. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel’s performance. This Court also finds that the record fully supports the knowing and voluntary nature of Applicant’s guilty plea. See Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (holding defendant’s knowing and voluntary waiver of statutory or constitutional rights in a guilty plea “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.”). In addition, Applicant has presented no evidence or valid reasons why he should be allowed to depart from the truth of his statements made at the plea. See Dalton, 376 S.C. at 137, 654 S.E.2d at 874 (“[Admissions] made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements.”). This Court concludes Applicant has not met his burden of proving Counsel failed to render reasonably

effective assistance such that his guilty plea was rendered involuntary. The allegation is hereby denied and dismissed.

**CONCLUSION**

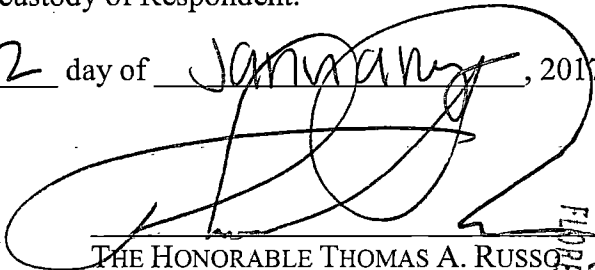
Based on all the forgoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations before or during his plea and sentencing proceedings. Counsel was not deficient, nor was Applicant prejudiced by Counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty days from 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, Applicant must serve and file a notice of appeal on his own 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 be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 22 day of January, 2017.



THE HONORABLE THOMAS A. RUSSO  
Presiding Judge  
Twelfth Judicial Circuit

Florence, South Carolina.

2018 JAN 29 AM 11:02  
DORIS POULOS O'HARA  
C.C.C.P. & G.S.  
FLORENCE COUNTY, SC

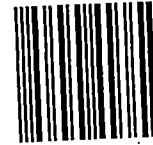
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GERTIFIED: A TRUE COPY  
*Doris Poulos O'Hara*  
CLERK OF COURT C.P. & G.S.  
FLORENCE COUNTY, S.C.

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IA, SC 29201



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Supreme Court of South Carolina  
Post Office Box 11330  
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