

THE STATE OF SOUTH CAROLINA

In the Supreme Court

APPEAL FROM THE COUNTY OF Georgetown

Court of Common Pleas

The Honorable Circuit Court Judge, William H. Seals, Jr.

Case No. 2015-CP-22-00437

James R. Glisson Sr., SCDC # 285319..... Petitioner,

v.

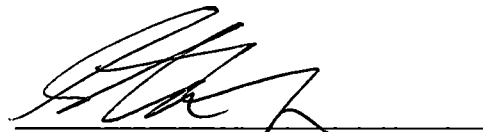
State of South Carolina, .....Respondent.

**NOTICE OF APPEAL**

The Petitioner appeal the Honorable William H. Seals Jr.'s Order filed on March 13, 2018, 2018, denying post conviction relief to the Petitioner.

The Order was received by the undersigned counsel on March 21, 2018. A copy of the said Order on appeal is attached to this Notice.

This is the 24th day of March, 2018.



Steven W. Fowler  
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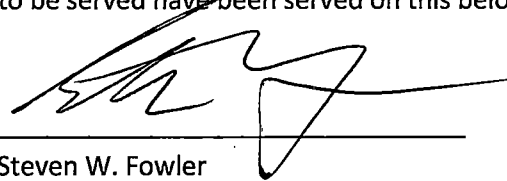
**PROOF OF SERVICE**

I, Steven W. Fowler, court- appointed attorney for Petitioner, certify that I have today served within Notice of Appeal and Copy of the Order signed by the presiding Judge upon the Respondent by depositing a copy of it in the United States Mail, postage prepaid, addressed to the following:

- 1) Assistant Attorney General, PO Box 11549, Columbia, SC 29211 and
- 2) Clerk of the South Carolina Supreme Court , 1231 Gervais St, Columbia, SC 29201

I further certify that all parties required by Rule to be served have been served on this below named date.

This is the 24th day of March, 2018.



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STATE OF SOUTH CAROLINA  
COUNTY OF GEORGETOWN

) IN THE COURT OF COMMON PLEAS  
) FOR THE FIFTEENTH JUDICIAL CIRCUIT  
)

James R. Glisson, Jr.,  
S.C.D.C. No. 285319,

) Case No.: 2015-CP-22-00437  
)

Applicant,

) **ORDER OF DISMISSAL**  
)

v.

State of South Carolina,

Respondent.

FILED  
GEORGETOWN COUNTY, S.C.  
2018 MAR 13 AM 10:23  
ALMA Y. WHITE  
CLERK OF COURT

This matter comes before the Court by way of an application for post-conviction relief filed by James R. Glisson, Jr. ("Applicant") on April 24, 2015. Respondent made its return on or about February 17, 2017. The Court convened an evidentiary hearing into the matter on Wednesday, November 29, 2017, at the Horry County Courthouse in Conway, South Carolina. Applicant was present at the hearing and represented by Steven W. Fowler, Esq. Johnny Ellis James Jr., of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's plea counsel, Ronald W. Hazzard, Esq. ("Counsel") also testified. The Court had before it Applicant's records from the South Carolina Department of Corrections, a copy of the original trial transcript, the records of the Georgetown County Clerk of Court regarding the subject convictions, and the pleadings. The Court finds as follows:

**I. PROCEDURAL HISTORY**

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Georgetown County Clerk of Court. Applicant was indicted at the May 2011 term of the Georgetown County Grand Jury for burglary, second degree, non-violent

(2011-GS-22-00493); at the June 2011 term for three additional counts of burglary, second degree, non-violent (2011-GS-22-00532, -00535, -00539); at the July 2011 term for another additional count of burglary, second degree, non-violent (2011-GS-22-00702); at the November 2012 term for two counts of burglary, first degree (2012-GS-22-00917, -00918); and at the August 2014 term for burglary, second degree, violent (2014-GS-22-00802). Ronald W. Hazzard, Esq. represented Applicant, and Alicia Richardson, of the Fifteenth Circuit Solicitor's Office, prosecuted the case.

On September 30, 2014, Applicant pled guilty to five counts of burglary, second degree, non-violent, and three counts of burglary, second degree, violent.<sup>1</sup> The Honorable R. Knox McMahon sentenced Applicant to imprisonment for concurrent terms totaling 15 years. Applicant did not appeal his plea or sentence.

#### Present Application

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

1. Incorrect sentence enhancement
  - a. "I was charged with 2<sup>nd</sup> and 3<sup>rd</sup> strike on same charges that I was charged at the same time. I had one prior burglary 3 from 1992. I pled to 1 charge and the others were enhanced."
2. Ineffective assistance of counsel, in that:
  - a. "I'm also not getting my jail time from Georgetown county. When the burglary occurred I only had 1 prior from 1992. My attorney told me that he was taking care of all charges. This should be a burglary 2<sup>nd</sup> max 10 years sentence. I'm doing a 4 year that I maxed out and now a 15 year sentence."

At the evidentiary hearing, Applicant proceeded forward *only* on his belief that he did not receive his proper credit for time served, and that Counsel was ineffective in correcting the matter.

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<sup>1</sup> As to the indictments for burglary, first degree, Applicant pled to burglary, second degree, violent as a lesser-included.

## II. 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 records submitted to it by the parties and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented.

### A. Ineffective Assistance of Counsel

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she must prove “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.” Butler at 442, 334 S.E.2d 441 (quoting Strickland v. Washington, 466 U.S. 668, 686 (1984)). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Id.

“[C]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Butler at 442, 334 S.E.2d 441 (quoting Strickland at 690). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989). “Judicial scrutiny of counsel’s performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel’s assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel’s defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable.” Strickland, 466 U.S. at

689; Edwards v. State, 392 S.C. 449, 456-57, 710 S.E.2d 60, 64 (2011). “[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel.” Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under professional norms.” Cherry at 117, 386 S.E.2d at 625 (citing Strickland 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 at 117-18, 386 S.E.2d at 625 (citing Strickland at 694). 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, 59 (1985).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. Strickland at 696. A court need not first determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. at 696-97.

### ***1. Failure to Obtain Credit for Time Served***

Applicant, in no uncertain terms, indicated that he only wished to received what he believed to be his proper credit for time served. Post-conviction relief is only proper when the

application collaterally attacks the validity of the conviction or sentence. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). Claims that affect only the duration of the sentence or quality of the inmate's confinement do not affect the validity of the conviction or sentence and therefore are considered non-collateral attacks on the conviction. Cooper v. State, 338 S.C. 202, 525 S.E.2d 886 (2000). A claim for time served is a non-collateral attack of a conviction and may only be pursued under the Administrative Procedures Act (S.C. Code Ann. §§ 1-23-10 to -160, 1-23-310 to -400, 1-23-500 to -660). Id.

At the evidentiary hearing, Applicant argued the Court's grant of 1,113 days of time served shorted him by 449 days. Counsel testified he explained how credit for time served is calculated to Applicant both before and after Applicant's plea in two long letters. Counsel observed that Applicant was actually receiving credit for more time than he was entitled to, as S.C.D.C. had backdated Applicant in the sum of 1,120 days. Counsel, in responding to Applicant's numerous letters on the subject, told Applicant to avail himself of procedures within S.C.D.C. Counsel noted Applicant had been facing 18 different burglary charges, and the prosecution gave Applicant credit for time served on charges to which Applicant did not plead guilty.

The Court finds Applicant's sole allegation is not cognizable in an action for post-conviction relief, but constitutes a non-collateral attack on the conviction affecting only the duration of the sentence. Furthermore, Applicant expresses no desire to overturn his guilty plea. Finally, Counsel demonstrated a familiarity and command of Applicant's due credits well beyond the scope of competence typically expected of attorneys. For all these reasons, Applicant's application is without merit both as a matter of law and as a matter of fact, and his request for relief is **DENIED**.

### III. CONCLUSION


Based on all the foregoing, this Court finds and concludes that 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 notifies the Applicant that he must file and serve a notice of appeal within thirty (30) 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), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED:**

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 6 day of March, 2018.

  
WILLIAM H. SEALS, JR.  
Presiding Judge  
Fifteenth Judicial Circuit

Marion, South Carolina

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

---

JAMES R. GLISSON, JR., #285319,

Applicant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

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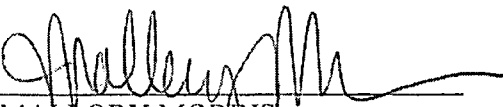
**CERTIFICATE OF SERVICE**

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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:

Steven W. Fowler, Esquire  
Fowler Law Firm  
730 Main Street, Unit 237  
North Myrtle Beach, SC 29582

This 16<sup>th</sup> day of March, 2018.

  
MALLORY MORRIS  
LEGAL ASSISTANT FOR RESPONDENT

SWORN to before me this 16<sup>th</sup> day of March, 2018.

  
\_\_\_\_\_  
Notary Public for South Carolina.

My Commission Expires: 5/20/2025



ALAN WILSON  
ATTORNEY GENERAL

March 16, 2018

Steven W. Fowler, Esquire  
Fowler Law Firm  
730 Main Street, Unit 237  
North Myrtle Beach, SC 29582

**Re: James R. Glisson, Jr., #285319 v. State of South Carolina  
2015-CP-22-0437**

Dear Mr. Fowler:

Enclosed please find a copy of the **Order of Dismissal** for the above-captioned post-conviction relief application; signed by the Honorable William H. Seals, Jr., Presiding Judge for the Fifteenth Judicial Circuit.

Sincerely,

Johnny E. James Jr.  
Assistant Attorney General

JEJ/mm  
Enclosure

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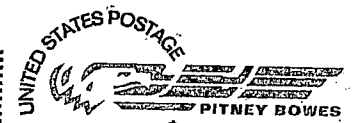
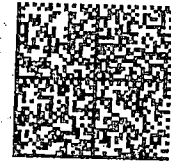


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To → Clerk Astle Thompson  
SC Supreme Court  
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