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April 10, 2018

Daniel E. Shearouse  
Clerk of Court – SC Supreme Court  
Supreme Court  
P.O. Box 11330  
Columbia, SC 29211

RECEIVED

APR 12 2018

S.C. SUPREME COURT

Re: Thomas Tiedemann, SCDC #: 364050 v. State of South Carolina  
2015-CP-26-08055

Dear Mr. Shearouse:

Enclosed please find the original Notice of Appeal in the above-entitled action and one copy. Please file and return the copy to me in the self addressed stamped envelope enclosed.

If you should have any questions or concerns, please do not hesitate to contact me.

Sincerely,

Daniel A. Selwa, II

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

RECEIVED

APPEAL FROM HORRY COUNTY  
Court of Common Pleas

APR 12 2018

Honorable William H. Seals, Jr., Circuit Court Judge S.C. SUPREME COURT

Case No.: 2015-CP-26-8055

Thomas Tiedemann #364050, ..... Petitioner,

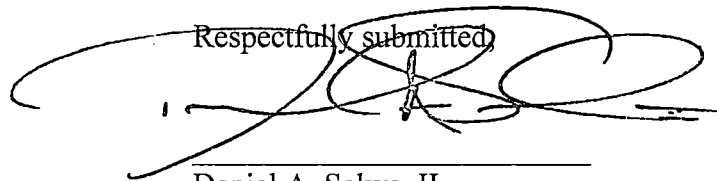
v.

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

**NOTICE OF APPEAL**

The Petitioner appeals the Honorable William H. Seals, Jr., December, order, denying the Applicant's Petition for post-conviction relief. Undersigned counsel received notice of entry of the order on March 20, 2018. A copy of the order on appeal is attached to this notice.

Respectfully submitted,



Daniel A. Selwa, II  
516 29<sup>th</sup> Avenue North  
Myrtle Beach, SC 29577  
*Attorney for the PCR Applicant*

April 10, 2018

*Other counsel of record:*

Alan Wilson, Attorney General

Joshua L. Thomas, Assistant Attorney General

Post Office Box 11549

Columbia, SC 29211-1549

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

RECEIVED

APR 12 2018

APPEAL FROM Horry COUNTY  
Honorable William H. Seals, Jr., Circuit Court Judge

S.C. SUPREME COURT

Case No.: 2015-CP-26-8055

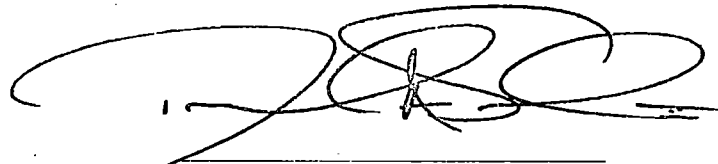
Thomas Tiedemann #364050, ..... Petitioner,

v.

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

**PROOF OF SERVICE**

I, Daniel A. Selwa, II, certify that I have served the within Notice of Appeal on the Respondent, the State of South Carolina, by depositing a copy of the same in the United States Mail, postage prepaid, addressed to his attorney of record, Alan Wilson, Attorney General, Post Office Box 11549, Columbia, SC 29211-1549. I further certify that all parties required by Rule to be served have been served this 10<sup>th</sup> day of April 2018.



Daniel A. Selwa, II  
516 29<sup>th</sup> Avenue North  
Myrtle Beach, SC 29577  
*Attorney for the PCR Applicant*

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF HORRY ) FOR THE FIFTEENTH JUDICIAL CIRCUIT

Thomas Tiedemann, ) Case No.: 2015-CP-26-08055  
S.C.D.C. No. 364050, )

Applicant, )

ORDER OF DISMISSAL

v. )

State of South Carolina, )

Respondent. )

2018 MAR 13 PM 1:02  
Horry County  
CLERK OF COURT  
HORRY COUNTY, SC

This matter comes before the Court by way of an application for post-conviction relief filed by Thomas Tiedemann ("Applicant") on November 6, 2015. Respondent made its return on or about January 10, 2017. The Court convened an evidentiary hearing into the matter on Thursday, November 30, 2017, at the Horry County Courthouse in Conway, South Carolina. Applicant was present at the hearing and represented by Daniel A. Selwa, II, 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, Russell B. Long, Esq. ("Counsel") also testified. The Court had before it Applicant's records from the South Carolina Department of Corrections, a copy of the original plea and sentencing transcripts, the records of the Horry 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 Horry County Clerk of Court. Applicant was indicted at the December 2013 term of the Horry County Grand Jury for felony DUI resulting in great bodily injury (2013-

GS-26-05398). Russell Long, Esq. represented Applicant, and Scott Hucks, of the Fifteenth Circuit Solicitor's Office, prosecuted the case. On March 23, 2015, Applicant pled guilty as indicted before the Honorable Larry B. Hyman, Jr. Sentencing was deferred at Applicant's request until May 19, 2015, at which time the Honorable Benjamin H. Culbertson sentenced Applicant to imprisonment for a term of seven 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. "Violation of 4<sup>th</sup> Amendment illegal search and seizure."
  - a. "Ofc. Demiren collected a blood sample without a proper warrant."
2. "Ineffective assistance of counsel, no search warrant for blood."
  - a. "Mr. Long did not challenge the blood test that was taken w/o my consent"

## **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 Challenge Blood Draw***

Applicant alleges Counsel was ineffective for failing to challenge the validity of law enforcement's collection of a blood sample after his collision and arrest. "A law enforcement officer can order a person suspected of Felony DUI to submit to any chemical test without first offering a breath test." State v. Long, 363 S.C. 360, 364, 610 S.E.2d 809, 812 (2005); see also S.C. Code Ann. § 56-5-2946.

At the evidentiary hearing, Applicant testified he never looked at his discovery with Counsel and that Counsel never brought up the subject. Rather, Applicant recalled Counsel simply told Applicant to cooperate with the victim's "dram shop" case in order to gain the victim's support for favorable sentencing. Applicant testified he found a police report mentioning a warrant for the blood draw, but that he could not find the warrant. Applicant also testified the warrant did not list his name. Applicant admitted he told law enforcement at the hospital that he'd had some wine, and recalled he was under arrest at the hospital. Nonetheless, Applicant stood by his belief the blood test could have been suppressed.

Counsel testified he met with Applicant numerous times, went over discovery with Applicant, and provided a copy. Counsel recalled Applicant faced a *bad* case, with a bad set of facts, but that Applicant rejected an initial plea offer of five years. Counsel was of the opinion the State had a statutory right to draw Applicant's blood after his collision and arrest. Additionally, Counsel recalled that a law enforcement witness would have testified Applicant smelled of alcohol and that the Multi-disciplinary Accident Investigation Team ("MAIT") report was damning. Counsel confirmed he tried to leverage cooperation with the victim's dram shop case in order to secure a more favorable deal, as well as have Applicant pay restitution, but the sentence was harsher than expected.

The Court finds no deficiency on the part of counsel, nor prejudice therefrom. Applicant failed to offer any compelling argument that Counsel could have advanced to challenge the validity of the blood draw and subsequent blood test, which confirmed Applicant was under the influence of not only alcohol, but "morphine, Valium, and diazepam." (March 23, 2015, Tr. 13, ll. 10-12.) Applicant's testimony, as well as the plea transcript, show that Applicant was in custody at the hospital. As such, law enforcement unquestionably had the right to draw Applicant's blood, and Counsel did not err. Accordingly, Applicant's 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), SCRCR 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 HORRY  
IN THE COURT OF COMMON PLEAS

---

THOMAS TIEDEMANN, #364050,

Applicant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

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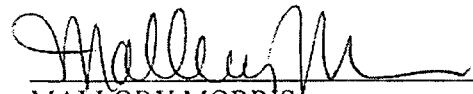
**CERTIFICATE OF SERVICE**

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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:

Daniel A. Selwa, II, Esquire  
516 29<sup>th</sup> Avenue North  
Myrtle Beach, SC 29577

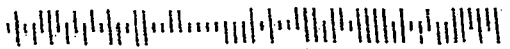
This 15<sup>th</sup> day of March, 2018.

  
MALLORY MORRIS  
LEGAL ASSISTANT FOR RESPONDENT

SWORN to before me this 15<sup>th</sup> day of March, 2018

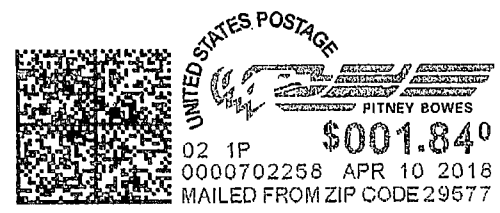
  
Notary Public for South Carolina.  
My Commission Expires: 5/14/2024

2015-CP-26-8055



**DANIEL A. SELWA, II**  
ATTORNEY AT LAW, L.L.C.

516 29th Avenue North  
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