

RICHEY AND RICHEY
ATTORNEYS AT LAW

A PROFESSIONAL ASSOCIATION

RODNEY W. RICHEY
LOLA S. RICHEY

POST OFFICE BOX 10916
GREENVILLE, SOUTH CAROLINA 29603

(864) 467-0503
(864) 467-0646 FAX

April 15, 2018

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

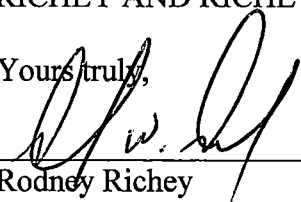
Re: Donnie Ray Gibson v. State of South Carolina
Case No: 2017-CP-04-0024

Dear Mr. Shearouse:

Please find enclosed a Notice of Appeal and an affidavit of service for the same. Also, I have enclosed a copy of the Order from which the appeal is taken. Please clock and file the copies and return them to me. Thank you for your help and if you should have any questions please feel free to call me.

RICHEY AND RICHEY, P.A.

Yours truly,



Rodney Richey

RWR/
enclosures

cc: Kelly Oppenheimer, Esquire

RECEIVED

APR 18 2018

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
APPEAL FROM ANDERSON COUNTY
Court of Common Pleas
HONORABLE T. CORDELL MADDOX, JR.

RECEIVED
APR 18 2018
S.C. SUPREME COURT

2017-CP-04-0024

DONNIE RAY GIBSON, SCDC# 82710

APPELLANT,

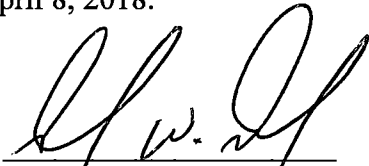
against

STATE OF SOUTH CAROLINA,

RESPONDENT.

NOTICE OF APPEAL

Donnie Ray Gibson appeals the denial of his Post Conviction Relief. The Post Conviction Relief Action was heard and denied by the Honorable T. Cordell Maddox, Jr, Circuit Judge on February 22, 2018 an Order issued on March 30, 2018 and filed on April 2, 2018. The Appellant received notice of the judgment on April 8, 2018.



Rodney W. Richey, Esquire
Attorney for the Appellant
33 Market Point Drive
Post Office Box 10916
Greenville, South Carolina 29603
(864) 467-0503
Attorney for Applicant

Other Counsel of Record:
Kelly Oppenheimer, Esquire
Office of Attorney General State of SC
Post Office Box 11549
Columbia, SC 29211-1549

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

HONORABLE T. CORDELL MADDOX, JR.

2017-CP-04-0024

RECEIVED

APR 18 2018

S.C. SUPREME COURT

DONNIE RAY GIBSON, SCDC# 82710

APPELLANT,

against

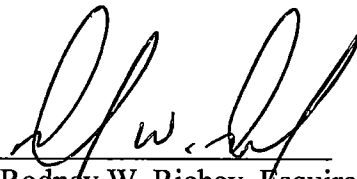
STATE OF SOUTH CAROLINA,

RESPONDENT.

AFFIDAVIT OF SERVICE

I certify that I have served the Notice of Appeal on the State of South Carolina by depositing copy of it in the United States Mail, postage prepaid, on April 15, 2018, addressed to their attorney of record, Kelly Oppenheimer, Office of Attorney General State of South Carolina, Post Office Box 11549, Columbia, SC 29211-1549.

Dated: April 15, 2018



Rodney W. Richey, Esquire
Attorney for the Appellant
33 Market Point Drive
Post Office Box 10916
Greenville, South Carolina 29603
(864) 467-0503
Attorney for Applicant

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

Donnie Ray Gibson, #82710,)

Applicant,)

v.)

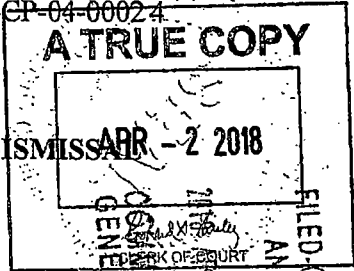
State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

Case No. 2017-CP-04-00024

ORDER OF DISMISSAL



PROCEDURAL HISTORY

This matter comes before the Court by way of an application for post-conviction relief filed January 5, 2017. Respondent made its Return and Motion for More Definite Statement on September 12, 2017, requesting an evidentiary hearing be held. An evidentiary hearing was convened on February 22, 2018, at the Anderson County Courthouse. Applicant was present at the hearing and was represented by Rodney W. Richey, Esquire. Respondent was represented by Assistant Attorney General Kelly Oppenheimer of the South Carolina Attorney General's Office.

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Anderson County Clerk of Court. During its August 2009 term, the Anderson County Grand Jury indicted Applicant for assault and battery with intent to kill and possession of a weapon during the commission of a violent crime (2009-GS-04-02046). M. Scott McElhannon, Esquire represented Applicant on these charges. On December 12-14, 2011, Applicant proceeded to a jury trial before the Honorable R. Lawton McIntosh. The jury convicted Applicant as indicted for assault and battery with intent to kill and acquitted him of possession of a weapon during the

commission of a violent crime. Judge McIntosh sentenced him to a term of imprisonment for life without the possibility of parole.

Applicant filed a timely notice of appeal, and then-Appellate Defender Benjamin J. Tripp perfected an appeal on Applicant's behalf. Following the submission of an *Anders*¹ brief, Applicant filed a *pro se* document entitled "Motion to respond to *Anders* Brief." By Order dated March 30, 2016, the South Carolina Court of Appeals dismissed Applicant's appeal and granted counsel's request to withdraw. *State v. Gibson*, Op. No. 2016-UP-142 (S.C. Ct. App. Filed March 30, 2016). The Remittitur was issued on April 18, 2016.

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

1. Ineffective Assistance of Counsel – Atty. Failed to move for mistrial.
 - a. Due to being acquitted [sic] of "Possession of a weapon during the Commission of a violent crime," and Convicted of "Assault and Battery of a High and aggravated [sic] Nature with the intent to kill " [and]
 - b. Failure to move for a mistrial due to Jury misconduct where the Jury failed to follow and apply the law regarding reasonable doubt, as instructed by the Court.
2. Ineffective Assistance of Counsel – for Atty. Failing to object to prosecutorial misconduct.
 - a. Failure to object to, Prosecutorial Misconduct and "Brady" Violation, for states withholding of material evidence, where the state failed to inform Defense Counsel that witness testimony had changed before trial.

At the hearing, Applicant proceeded forward on the claims of ineffective assistance of counsel in his original application, as well as additional claims of ineffective assistance of counsel for failure to investigate and for failure to convey a plea offer.

¹ *Anders v. California*, 386 U.S. 738 (1967).

STATEMENT OF FACTS ADDUCED AT TRIAL

On April 26, 2009, Damon Marcengill was at Hog Tails bar with his girlfriend, and his brother, Jason Marcengill. Tr. 38, 96, 97, 108. At some point in the evening, Damon and Applicant got into an altercation inside the bar. Tr. 40, 43, 50, 109, 117, 121, 147, 170, 181. During the fight inside, Jason also became involved. Tr. 97, 146-47, 170, 181. As a result, Applicant was escorted outside the bar. Tr. 99, 109, 122-23, 148, 161, 171. Employees at the bar described Applicant as being mad and stating “[he] would leave, but [he’ll] be back” when he was escorted out of the bar. Tr. 123, 148.

Later that night, Applicant came back to the bar with another individual, Scott. Tr. 51, 100, 101, 124, 149, 172-73. Applicant and Scott immediately proceeded to the back porch of the bar and approached Damon. Tr. 52, 110, 111, 124, 126. Applicant and Damon began arguing, at which point someone went to get Jason out of his truck. Tr. 100, 110, 126, 174. Jason arrived on the back deck from the parking lot and approached Applicant and Scott. Tr. 101, 110, 174. Upon seeing Jason, a physical altercation broke out on the back porch—specifically between Applicant and Damon and Scott and Jason. Tr. 52, 55, 86, 101-02, 110, 126-27, 153, 174. At some point, Applicant produced a knife and began slashing at Damon with it. Tr. 52-53, 86, 89, 92, 126, 176. Damon did not have a knife or any other type of weapon. Tr. 54, 87, 103, 128, 155, 179, 186. As a result of this altercation, Damon was cut on his side, arm, neck, and face. Tr. 41, 54, 111, 114-15, 154.

TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

At the evidentiary hearing, Applicant testified on his own behalf and presented the testimony of M. Scott McElhannon (hereinafter “Counsel”). This Court also had before it a copy

of Applicant's trial transcript, the records of the Anderson County Clerk of Court, Applicant's appellate records, and Applicant's records from the South Carolina Department of Corrections.

During the evidentiary hearing, Applicant testified he met with Counsel about four times before trial. He testified he and Counsel reviewed some of the discovery but did not review the statements of witnesses. Applicant further testified he and Counsel discussed defenses, including he did not have a knife, but someone else did. He testified he did not give Counsel any leads or witnesses to investigate. He further testified an investigation into a video at the bar, where this incident occurred, was never done. He testified he talked to Counsel about obtaining the video, but no one ever obtained it. Applicant further testified the video would have shown the inside of the bar and the cause of the fight inside the bar, which would have shown that he did not start this fight. He testified he has not seen this video and does not know its location.

Applicant also testified he was never offered a plea and believes Counsel was ineffective for failing to pursue a plea. He testified Counsel came to him with a deal, but it did not go through. He further testified something else should have been done to obtain a plea offer.

Applicant testified Counsel did not object to witness testimony at trial. He testified he was unaware that witness testimony had changed until the day of trial, and Counsel should have requested a continuance because of the change in testimony. He elaborated the solicitor led the witnesses at trial, which caused them to change their testimony.

Applicant also testified Counsel should have asked for a mistrial based on inconsistent verdict. He testified Counsel filed a motion to set aside the verdict, which should have been done immediately after trial. He elaborated he asked Counsel to file this motion, which Counsel did. Applicant further testified Counsel argued inconsistent verdict in his motion to reconsider.

Applicant testified Counsel is a very fine man and did everything he could have done. He elaborated Counsel did everything he asked of him.

Next, Applicant presented testimony from Counsel. Counsel testified he is now employed at the Tenth Circuit Solicitor's Office, but at the time of his representation of Applicant, he was in private practice. Counsel testified he was appointed to represent Applicant on March 1, 2010. He testified he met with Applicant approximately eight to ten times at the detention center. Counsel further testified he spent sufficient time with Applicant over the course of his representation, which was about two years, and was prepared for trial. He elaborated he had a good relationship with Applicant during his representation and did everything he could do for Applicant.

Counsel testified Derek Enderlin was Applicant's first attorney. He testified during Enderlin's representation of Applicant, there was an offer of ten years, with which Counsel was not involved, but Applicant did not go through with the plea. He testified on September 17, 2009, the State filed a notice of life without the possibility of parole based on his prior convictions². He further testified he did not get the case until March 1, 2010. Counsel testified thereafter, the solicitor withdrew the notice of life without the possibility of parole and offered twenty years, which was the only offer the State presented to him. He testified he took this offer to Applicant around October 11, 2011. Counsel further testified Applicant did not want to accept the plea because he was on parole at the time, which would have been violated had he accepted the offer. Counsel testified after Applicant rejected that plea offer, the State filed its second notice of life without the possibility of parole on October 18, 2011.

² Applicant has several previous convictions dating back to 1969. Notably, Applicant was convicted of murder in 1976 for which he received a life sentence. He escaped from prison in 1979; and while out, he was convicted of armed robbery. The 1976 and 1979 convictions were the bases for which the State sought life without the possibility of parole.

Counsel testified the State alleged Applicant and his nephew were at Hog Tails bar. Counsel further testified Applicant got into an altercation with the victim and was consequently thrown out of the bar. He elaborated Applicant and his nephew then went back to the bar some time later and started another fight with the victim on the back porch. He testified the State alleged Applicant had a knife, cut the victim's neck with it, and then fled.

Counsel testified he filed *Brady* and Rule 5, SCRCrimP, motions and reviewed the discovery with Applicant. He testified they reviewed witness statements and the DNA results found on the knife. He further testified the victim's blood was found on neither the knife nor Applicant's jacket. He elaborated the identity of the DNA on the knife was part of his defense. Counsel testified Applicant did not make a written statement to law enforcement but did talk to Detective Gebing on the phone, which resulted in an audio statement. Counsel testified his defense at trial was Applicant did not cut the victim, as well as self-defense because Applicant was being beaten while at the bar.

He testified the video at the bar could not be accessed because bar ownership had changed and the new owner did not have access to the video. Counsel testified the video was not available, as the State did not produce it. He elaborated there was testimony at trial as to why the video was not produced. He further testified the video would have only shown the inside of the bar and the front door, not the back porch, which is where this fight occurred. He elaborated there was no evidence of cameras on the back porch and would not have shown whether or not Applicant had a knife.

Counsel also testified the only evidence Applicant had a knife during the bar fight was from witness testimony. He testified his defense was self-defense because there was no dispute that Applicant was being beaten by a number of people. He elaborated the only question was

whether or not Applicant actually had a knife. Counsel testified he thought if Applicant did not have a knife, then he would have been acquitted, but that was not what happened.

Counsel also testified he cross-examined every witness and thought he had created reasonable doubt. He elaborated he highlighted inconsistencies in the witnesses' written statements and their testimony on direct during cross-examination. He further testified the State did not lead the witnesses to change their testimony, and he would have objected to leading if they had been.

He testified there were no grounds for a mistrial, as the procedure at trial was proper. He elaborated the verdict did not rise to the level of a mistrial, and he did not see any juror misconduct or anything of that nature. He further testified he did file a motion for a new trial six days after the verdict, as Applicant requested, which was within the ten day time period. He elaborated he filed this motion based on his belief that the verdict was incorrect for saying Applicant did not have a knife but yet convicting him of assault and battery with intent to kill. Counsel further testified at the time of his motion, *State v. Alexander* had been issued, which abolished the rule against inconsistent verdicts, but he filed the motion regardless. He testified the court denied his motion.

Counsel also testified Applicant contacted him twice by letter after the trial. In those letters, Applicant thanked Counsel for everything he did and indicated Counsel fought his case diligently.

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 at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh

their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Ineffective Assistance of Counsel

In a post-conviction relief action, an applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; *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, 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." *Strickland v. Washington*, 466 U.S. 668 (1984); *Butler*, 286 S.C. 441, 334 S.E.2d 813.

The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Butler*, 286 S.C. 441, 334 S.E.2d 813. The applicant must overcome this presumption to receive relief. *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 (1989).

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*, 300 S.C. at 117, 385 S.E.2d at 625 (citing *Strickland*). 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.

After careful review based on the standard discussed above, this Court finds that Applicant has failed to carry his burden in this action. Below are this Court's findings in regards to each of Applicant's allegations of ineffective assistance of counsel.

Counsel's alleged failure to move for mistrial when Applicant was acquitted of possession of a weapon during the commission of a violent crime and conviction of assault and battery with intent to kill

Applicant alleges Counsel was ineffective for failing to move for a mistrial when Applicant was convicted of assault and battery with intent to kill, yet acquitted of possession of a weapon during the commission of a violent crime. "A criminal defendant convicted by a jury on one count [cannot] attack that conviction because it was inconsistent with the jury's verdict of acquittal on another count." *United States v. Powell*, 469 U.S. 57, 58 (1984). Although such a verdict could be the result of compromise or mistake on the part of the jury, such verdicts "cannot be upset by speculation or inquiry into such matters." *Dunn v. United States*, 284 U.S. 390, 394 (1932). Similarly, South Carolina has abolished the rule prohibiting inconsistent verdicts. *State v. Alexander*, 303 S.C. 377, 401 S.E.2d 146 (1991).

Here, Applicant was charged with both assault and battery with intent to kill (ABWIK) and possession of a weapon during the commission of a violent crime. The jury convicted Applicant of ABWIK while simultaneously acquitting him of the possession charge. Counsel testified this verdict did not rise to the level of a mistrial, as everything procedurally during the trial was proper. However, Counsel did file a timely motion for a new trial even though the law permits inconsistent verdicts. Because Counsel filed the motion for a new trial based on inconsistent verdicts, this Court finds Counsel's performance was reasonable under professional norms. Furthermore, Applicant has failed to establish any resulting prejudice from this alleged

deficiency. Inconsistent verdicts are permitted and cannot be attacked on that basis. Therefore, there is no indication the result of the proceeding would have been different had Counsel moved for a mistrial on this ground. Still further, the denial of Counsel's motion for a new trial is indicative such a motion at trial would have also been unsuccessful. Based on the foregoing, this Court finds that this allegation must be denied and dismissed with prejudice.

*Counsel's alleged failure to move for a mistrial due to jury
misconduct*

Applicant alleges Counsel was ineffective for failing to move for a mistrial due to jury misconduct. Specifically, Applicant alleges Counsel was ineffective for failing to move for a mistrial when the jury "failed to follow and apply the law regarding reasonable doubt, as instructed by the court." Applicant wholly failed to present any testimony or argument regarding this claim at the evidentiary hearing, consequently abandoning this allegation. Therefore, this Court finds this allegation must be denied and dismissed with prejudice.

Counsel's alleged failure to object to prosecutorial misconduct and Brady³ violation

Applicant alleges Counsel was ineffective for failing to object to prosecutorial misconduct and a *Brady* violation for the State withholding material evidence. Specifically, Applicant alleges the State failed to inform Counsel witness testimony had changed before trial. "A *Brady* claim is based on the requirement of due process." *Gibson v. State*, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999). In order to be successful on a *Brady* claim, the applicant must demonstrate: (1) the evidence was favorable to the accused; (2) it was in the possession of or known to the prosecution; (3) it was suppressed by the prosecution; and (4) it was material to guilt or punishment. *Id.* (citing *Kyles v. Whitley*, 514 U.S. 419 (1995); *Brady v. Maryland*, 373 U.S. 83 (1963); *State v. Von Dohlen*, 322 S.C. 234, 471 S.E.2d 689 (1996)). This rule applies to

³ *Brady v. Maryland*, 373 U.S. 83 (1963).

not only exculpatory evidence but also impeachment evidence. *Id.* (citing *United States v. Bagley*, 473 U.S. 667 (1985)).

Counsel testified he filed *Brady* and Rule 5 motions and reviewed all discovery material with Applicant, including all of the witness statements. He further testified he was able to thoroughly cross-examine each witness on the inconsistencies between their statements to law enforcement and their testimony at trial. He explained he cross-examined each witness and believed he was able to create reasonable doubt through his cross-examination. Counsel's performance was reasonable under professional norms, as he was able to thoroughly highlight the differences in these witnesses' statements. In addition, there is no indication that any of the statements provided by these witnesses—either given to law enforcement or made at trial—were favorable to Applicant. Each witness put Applicant at the bar fighting with Damon. Furthermore, there is no indication the State suppressed any of these statements, as all eyewitness statements were provided to Counsel during discovery. Therefore, this Court finds Applicant has failed to establish any deficiency on the part of Counsel or any resulting prejudice. This allegation must be denied and dismissed with prejudice.

Counsel's alleged failure to investigate

Applicant alleges Counsel was ineffective for failing to investigate. Specifically, Applicant alleges Counsel was ineffective for failing to obtain a videotape of the bar on the night of the incident. “[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case.” *Walker v. State*, 397 S.C. 226, 235, 723 S.E.2d 610, 615 (Ct. App. 2012) (reversed on other grounds by *Walker v. State*, 407 S.C. 400, 756 S.E.2d 144 (2014)). Moreover, “failure to conduct an independent

investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result.” *Porter v. State*, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006) (citing *Moorehead v. State*, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). “In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel’s judgments.” *Wiggins v. Smith*, 539 U.S. 510, 521-22 (2003).

Here, Counsel testified the video at the bar could not be accessed because bar ownership had changed and the new owner did not have access to the video. Counsel testified the video was not available, as the State did not produce it. He elaborated there was testimony at trial as to why the video was not produced. Specifically, Detective Rob Gebing testified at trial he attempted to obtain videos from the bar, but he was unsuccessful. Tr. 228. He explained the bar had changed management, and new management was unaware of how to obtain the footage. Tr. 228. Detective Gebing further testified there was only one camera at the back door of the bar, and no evidence of any cameras outside. Tr. 228. Counsel also testified the video would have only shown the inside of the bar and the front door, not the back porch, which is where this fight occurred. He elaborated there was no evidence of cameras on the back porch and would not have shown whether or not Applicant had a knife. Therefore, this Court finds Counsel’s investigation into the video—or lack thereof—was reasonable under the circumstances.

Moreover, Applicant has wholly failed to provide this Court with these alleged videotapes, leaving this Court only to speculate as to what they may have shown on the night of this incident. Applicant alleges this video would have shown he did not start the fight on the back porch. However, Applicant also testified he has never seen this video and does not know of its location. Applicant’s bare assertions as to what these alleged videotapes showed, without

more, do not give rise to the level of proof required for Applicant to meet his burden. Based on the foregoing, this Court finds that this allegation must be denied and dismissed with prejudice.

Counsel's alleged failure to convey plea offer

Applicant alleges Counsel was ineffective for failing to convey a plea offer from the State. In order to prevail on a claim counsel was ineffective for failing to convey a plea offer, the applicant must show: (1) plea counsel's failure to communicate the State's initial plea offer constituted deficient performance and (2) the applicant was prejudiced by the deficient performance, in other words there was a reasonable probability that but for this deficient performance, the applicant would have accepted the original plea offer. *Davie v. State*, 381 S.C. 601, 675 S.E. 416 (2009).

Here, Counsel testified, the solicitor made a plea offer of twenty years imprisonment, which was the only offer with which Counsel was presented. He testified he presented this offer to Applicant around October 11, 2011, but Applicant did not want to accept the plea because he was on parole at the time, which would have been violated had he accepted the offer. Because Counsel did indeed present Applicant with the plea offer presented by the State, this Court finds Applicant has failed to establish any deficiency on the part of Counsel.

Furthermore, this Court finds Applicant has failed to establish any resulting prejudice from this alleged deficiency. Because Applicant was on parole at the time of this incident, Applicant indicated he would not have accepted any plea offers—which would have been a clear violation of his parole. Therefore, Applicant has wholly failed to establish despite Counsel's alleged deficiencies, he would have accepted the plea offer. This Court finds this allegation must be denied and dismissed with prejudice.

CONCLUSION

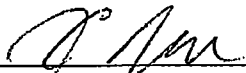
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that 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), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That this application for post-conviction relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to and remain in the custody of the State

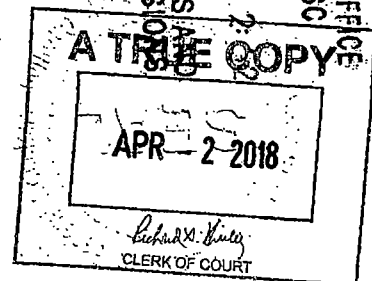
AND IT IS SO ORDERED this 30 day of March, 2018.



J. CORDELL MADDOX, JR.
Presiding Judge
Tenth Judicial Circuit

Anderson, South Carolina

FILED-CLERK'S OFFICE
ANDERSON SC
2018 APR - 2 PM 2:00
COMMON PLEAS
GENERAL SESSIONS



17
RICHEY AND RICHEY, P.A.
POST OFFICE BOX 10916
GREENVILLE, SC 29603

CPU



U.S. POSTAGE

\$1.63

R2305P151263

FCMF 0000
Orig: 29607
Dest: 29211 2S
04/16/18
11082435 06

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

2921131330 2093

