THE BOOZER LAW FIRM, LLC

Lance S. Boozer, Esq.*
*Also admitted in Florida

1419 Pendleton Street
Columbia, SC 29201

Telephone: 803-608-5543
Fax: 803-926-3463

Email: lsb@boozerlawfirm.com
Website: www.boozerlawfirm.com

April 23, 2018

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

The Honorable James C. Campbell
Clerk, Sumter County
215 N. Harvin Street
Sumter, SC 29150

RE: Efrain Rivera, #369339, v. State of South Carolina
2016-CP-43-2097

Dear Mr. Shearouse and Mr. Campbell:

Enclosed for filing is a Notice of Appeal in the above-referenced case. Also enclosed are the following:

(1) Proof of Service of the Notice of Appeal;
(2) A copy of the Order which is to be challenged on appeal; and
(3) Prior Order of Appointment of Counsel.

As I was appointed to represent Mr. Rivera in his PCR proceeding, I anticipate that the Office of Appellate Defense will represent Mr. Rivera in this appeal.

Yours very truly,

Lance S. Boozer

Enclosures
cc: Julie Coleman, AAG
Loriene French, OAD
Efrain Rivera, #369339

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED
APR 25 2018
S.C. SUPREME COURT

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

The Honorable George M. McFaddin, Jr., Circuit Court Judge

Case No. 2016-CP-43-2097

Efrain Rivera, #369339, ...Petitioner,

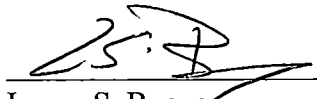
v.

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

NOTICE OF APPEAL

The Petitioner appeals the Honorable George M. McFaddin's Order dated March 9, 2018, denying post-conviction relief to the Petitioner. The Order was received by undersigned counsel on April 23, 2018. A copy of the Order on appeal is attached to this notice.

Respectfully submitted,



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Efrain Rivera, #369339, ...Petitioner,

v.

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

PROOF OF SERVICE

I, Lance S. Boozer, appointed attorney for Petitioner, certify that I have today served within Notice of Appeal upon the Respondent by depositing a copy of it in the United States Mail, postage prepaid, addressed to Assistant Attorney General Julie Coleman, P.O. Box 11549, Columbia, SC 29211. I further certify that all parties required by Rule to be served have been served this 23rd day of April, 2018.

Lance S. Boozer
The Boozer Law Firm, LLC
1419 Pendleton Street
Columbia, SC 29201
Tele: 803-608-5543

STATE OF SOUTH CAROLINA COUNTY OF SUMTER	)	IN THE COURT OF COMMON PLEAS THIRD JUDICIAL CIRCUIT
Efrain Matos Rivera, #369339, Applicant, v. State of South Carolina, Respondent.	)	2016-CP-43-2097 **ORDER OF DISMISSAL**

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on November 7, 2016. Respondent submitted its Return and Partial Motion to Dismiss on October 10, 2017. An evidentiary hearing into the matter was convened on November 16, 2017, at the Sumter County Courthouse. Applicant was present at the hearing and was represented by Lance S. Boozer, Esquire. Respondent was represented by Assistant Attorney General Julie A. Coleman of the South Carolina Attorney General's Office.

At the evidentiary hearing, Applicant testified on his own behalf. Respondent presented testimony from Garryl Deas, Esquire ("Plea Counsel")[1]. This Court had before it the records of the Sumter County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, appellate records, the plea transcript, and the pleadings. The Court finds as follows:

I. PROCEDURAL HISTORY

The records before this Court indicate Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. In February 2015, the Sumter County Grand Jury indicted Applicant for

[1] Prior counsel James T. Ervin, Esquire was unavailable to testify, as he was very recently deceased at the time of the hearing.

possession of a schedule I or II (narcotic) controlled substance and trafficking heroin, twenty-eight grams or more (2015-GS-43-0182). James T. Ervin, Esquire, represented Applicant prior to his guilty plea and was relieved as counsel on August 8, 2016. Garryl Deas, Esquire, represented Applicant at the guilty plea. Assistant Solicitor Bronwyn McElveen, Esquire, prosecuted the case.

On August 11, 2016, Applicant pled guilty to the lesser included offense of trafficking in heroin, more than four grams but less than fourteen grams, before the Honorable W. Jeffrey Young. During the plea hearing the State gave the following recitation of the facts:

> On October 13, 2010, around 9:00 a.m., an officer with the Sumter County Sheriff's Office conducted a traffic stop for a speeding violation in which Applicant was the driver of the vehicle. As the officer approached the vehicle, he smelled the distinct odor of marijuana and observed a pack of rolling papers in the center console. He immediately proceeded to call for backup. Once backup arrived, Applicant was asked to step out of the vehicle, and upon doing so, gave consent for the officer to search his person. The search revealed a black plastic bag containing hundreds of pieces of wax paper and rubber bands, which are commonly used to package illegal drugs, specifically heroin, as well as $534.00 in United States currency. Upon search of the passenger, officers found a plastic bag wrapped in duct tape around his person, which contained approximately 116 grams of suspect Molly (MDMA) in a rock form and a clear plastic bag containing marijuana. Both individuals were arrested and read their Miranda rights. Once the drugs were tested and positively identified as heroin, Applicant was charged with trafficking in heroin.

(Tr. 6-9). Applicant agreed to the Solicitor's recitation of the facts. (Tr. p. 9) Pursuant to a negotiated sentence, Judge Young sentenced Applicant to imprisonment for seven years.

Applicant filed a timely notice of appeal. The South Carolina Court of Appeals dismissed Applicant's appeal on October 31, 2016, for failure to provide a sufficient explanation for appealing, as required by Rule 203(d)(1)(B) of the South Carolina Appellate Court Rules (SCACR). State v. Rivera, Appellate Case No. 2016-1717 (S.C. Ct. App. filed October 31,

2016). The remittitur was issued on November 18, 2016.

II. ALLEGATIONS

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

1. "Ineffective Assistance of Counsel (James T. Ervin, Esquire)/Involuntary Guilty Plea"
   a. "Attorney James T. Ervin's performance in this present matter before this court fell far below the reason level of representation mandated by law, Counsel's lack of service to Applicant caused undo [sic] hardship and violated Applicant's Due Process Rights ..."
   b. Failure to investigate
   c. Failure to file motion for Rule 5 discovery materials
   d. Failure to prepare for trial
   e. Ervin "coerced Applicant into pleading guilty to accept a sentence that was unfair and unjust, even though Applicant's co-defendant received a fine by the court. On August 8, 2016, Attorney James T. Ervin was relieved by Applicant as counsel of record."
2. "Ineffective Assistance of Counsel (Garryl L. Deas, Esquire)/Involuntary Guilty Plea"
   a. "[After the court denied a motion for continuance the day before trial], Counsel then attempted to force Applicant and coerce Applicant to plead guilty outside of Applicant's will. Applicant began to state to counsel that he was not comfortable with going to trial this next day when counsel only had case one day and not prepared or ready for trial, but Counsel stated to Applicant "these people know me around here, don't worry about anything."
   b. "[After jury selection], Counsel told Applicant to plead guilty because it was clear that counsel was not prepared to go forward with trial. Applicant informed counsel of his intent and Counsel then began to tell Applicant that the government had threatened to give Applicant forty (40) years if he did not plead guilty and was found guilty of the charge."
3. "14th and 6th Amendment Violation (Due Process) (Trial Court)"
   a. "Trial court denied Counsel's motion [for continuance], stating that the case was two (2) years old and that Applicant only retained new counsel to prolong or intentionally tie the court system up."
   b. "Trial court ruling was erroneous as to his view of the intentions of the Applicant. Its ruling was prejudicial in nature and denied Applicant his due process rights afforded to him under the Constitution. Trial Court's ruling was bias [sic], based solely on Trial Court's assumptions and according to factual evidence. His ruling prejudice not only Applicant's right to a fair trial, a fair bite of this apple and force Applicant's counsel to all far below the reasonable representation to insure Applicant's United States Constitutional Right were nor violated. Trial Court was in error to speak or rule in regards to Applicant's intent, nor there was no constructive or circumstantial evidence to support Trial Court's assumptions or

allegations concerning its ruling which forced Applicant to plea to a charge which was not applicable to Applicant."

III. SUMMARY OF RELEVANT TESTIMONY PRESENTED

Applicant's testimony

At the evidentiary hearing, Applicant testified that the charges arose when he was stopped for speeding on I-95 and law enforcement searched his car. He stated the police found drugs on his co-defendant, and when Applicant was searched at the prison, they found drugs on him. He stated he hired James T. Ervin to represent him. He stated he got out on bond, and from 2015 to 2016 he went back home to Florida, where he lived. Applicant testified he spoke to Ervin on the phone and Ervin did not tell him about going to court until the week before he was scheduled to appear. He stated that Ervin did not appear in court on August 8th when he was supposed to.

Applicant testified his codefendant got a $2,500 fine. Applicant stated he rejected a seven year plea offer because he did not even know he had to go to trial. He stated his court appearance on August 8th was the first time he met Ervin. He testified that he went to Plea Counsel's office on August 8th and hired him that day, and he pled guilty with Plea Counsel on August 11th. Applicant testified he got the discovery from Ervin and gave it to Plea Counsel. He stated Plea Counsel told him that Ervin had "robbed him" and that he should relieve him. Applicant testified that Plea Counsel wanted a continuance, but the trial court denied his motion because the case was two years old. Applicant opined that he was not prepared for trial, and he pled guilty after they picked a jury.

Applicant testified he pled guilty because there was a lot of pressure on him and his family, because he would have gotten a longer sentence if convicted at trial, and because Plea Counsel was not prepared for trial after just one day. He stated he wanted a trial, but because

Plea Counsel was not prepared for trial, he felt he needed to plead guilty. He stated Ervin never prepared the case for trial, he just postponed it.

Plea Counsel's testimony

At the evidentiary hearing, Plea Counsel testified he had practiced criminal law since 1997. He stated he was retained to represent Applicant after Applicant came to his office and told him James T. Ervin represented him and he was set for trial, but he had not consulted Ervin about the discovery. Plea Counsel stated he spoke to Ervin about the case and discovered Ervin had not filed any pretrial motions in the case. He stated Ervin told him he was welcome to anything in the file. He stated that, although Applicant did not pay his retainer fee until August 10th, he and Applicant discussed the case on August 8th. He stated Applicant gave him the discovery that he obtained from Ervin. He testified that Applicant made the decision to relieve Ervin and hire him.

Plea Counsel stated that when he got the case, there was an offer on the table to plead guilty to a reduced trafficking charge, and Applicant ultimately accepted that offer and received the mandatory minimum sentence for that charge, seven years. He stated Applicant was facing a mandatory 25 years and up to a possible 40 years at trial, but he pled down and got a seven year sentence for trafficking four to fourteen grams. Plea Counsel testified that the evidence against Applicant included the drugs that were found on the co-defendant at the scene, the drugs found on Applicant during the pat down at the jail. Plea Counsel stated the drugs were found in Applicant's rectum, but he denied they were his. He stated he requested a continuance, and his motion was denied. Plea Counsel stated the day after the continuance request was denied he filed a motion to suppress the drugs based on the "fruit of the poisonous tree" doctrine because there

was no valid basis to arrest Applicant and his arrest was unlawful. He stated the motion was denied.

Plea Counsel testified that this was a tough situation for Applicant. He testified that he specifically told Applicant that he might not get a continuance just because he hired a new lawyer, and the trial court might not grant his motion to suppress. Plea Counsel testified that he explained to the trial judge that Applicant had very little conversation with Ervin. He stated the State withdrew their plea offer, but after he spoke with the solicitor, they agreed to reoffer the same deal. He stated Applicant could have been sentenced up to forty years if convicted at trial, and he was facing a mandatory minimum of twenty-five years if convicted of trafficking.

Plea Counsel testified that he was prepared to go to trial in this case. He stated he would have loved more time to prepare, but he has a lot of experience and could have handled a trial because it was a straight-forward trafficking charge. Plea Counsel testified that he told Applicant he should consider the plea offer, but he would advocate for him if he wanted to go to trial. He stated he explained Applicant's constitutional rights before the plea, and he believed Applicant fully understood the situation and chose to plead guilty.

IV. APPLICABLE LAW

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged 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 (1985).

The proper measure of performance is whether the 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 (1985). 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. With respect to guilty pleas, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart , 474 U.S. 52, 106 S.Ct. 366 (1985).

V. 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

Applicant alleges Plea Counsel was ineffective in his representation surrounding his guilty plea. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. See Al-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (1999) (citing Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993)). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the applicant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citations omitted). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985).

After considering the testimony, judging the credibility of the witnesses, and reviewing the materials presented to the court, this Court finds Applicant has failed to meet his burden in proving Plea Counsel was ineffective in any regard. Accordingly, post-conviction relief is denied. Specifically, the Court finds as follows:

James T. Ervin

Applicant alleges his prior attorney James T. Ervin was ineffective for failing to investigate, failing to file Rule 5 or Brady motions, and failing to prepare for trial. These allegations are meritless. "[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). 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)).

Here, Applicant has failed to prove Ervin failed to investigate his case. His speculative assertion is based only on his lack of communication with counsel, which this Court notes was in part due to the fact that Applicant bonded out of jail and chose to return home to Florida. Applicant has failed to present any evidence that any further investigation by Ervin would have been fruitful or affected the outcome of the case. Applicant was charged with trafficking heroin, and the evidence against him included the heroin that was found in his rectum during a search at the jail after his arrest. A motion to suppress this evidence was argued and denied. Applicant has failed to show how any further investigation would have affected the admissibility of this evidence, which was very harmful to his defense.

Applicant has further failed to prove Ervin did not file Rule 5 or Brady motions, and the testimony shows Applicant received, had a copy of, and reviewed all the discovery materials in his case. Plea Counsel credibly testified he received a copy of the discovery, and Applicant testified that he got the discovery from Ervin and took it to Plea Counsel on August 8th. Finally, although Applicant asserts Ervin failed to prepare for trial, he has failed to show how this affected the outcome of his case, even if true. Ervin did not represent Applicant at trial or at the plea. Applicant voluntarily relieved Ervin as counsel and hired a different attorney to represent him. Applicant failed to prove Ervin was not prepared for trial, and that any failure to prepare affected his case. Accordingly, he has shown no deficiency or prejudice under the Strickland test, and these allegations are denied and dismissed with prejudice.

Plea Counsel

Applicant alleges Plea Counsel was ineffective for failing to prepare for trial, which coerced him into pleading guilty. This allegation is meritless. Plea Counsel credibly testified he was prepared and willing to go to trial. Although he only had the case for a few days before the trial, Plea Counsel explained that it was a straight-forward trafficking case, and he could have handled the trial based on his years of criminal defense experience. Applicant has failed to prove Plea Counsel was ineffective in any manner. Plea Counsel requested a continuance, but his request was denied, and he credibly testified that he told Applicant when he was hired that the court might not grant a continuance. Plea Counsel filed and argued two motions before the trial, but both were denied. He also stated he explained to Applicant that there was no guarantee the motions would succeed. Plea Counsel reviewed the discovery with Applicant and credibly testified that Applicant fully understood the situation he was in.

This Court finds Plea Counsel was not deficient in his representation and none of his actions or inactions fell below reasonable professional norms. This Court further finds Applicant has failed to prove he would have gone to trial rather than plead guilty if Plea Counsel had not "coerced" him to plead. Although Applicant testified he wanted a trial, Plea Counsel credibly testified he told Applicant he was prepared for trial and would advocate for him if he wanted a trial. Applicant was given a seven year sentence, which is the mandatory minimum for the lesser-included offense to which he was allowed to plead. Applicant faced at least 25 and up to 40 years imprisonment if convicted at trial. The State also intended to introduce at trial evidence of more than twenty-eight grams of heroin that was found in Applicant's rectum, and Plea Counsel's motion to suppress the evidence was denied. Applicant was aware of these risks when he voluntarily chose to plead guilty and this Court finds he would not have chosen to proceed to

trial under the circumstances. Accordingly, Applicant has failed to prove either prong of the Strickland test, and this allegation is denied and dismissed with prejudice.

INVOLUNTARY GUILTY PLEA

To the extent Applicant alleges his guilty plea was not given freely and voluntarily, this Court finds otherwise and concludes Applicant's plea was entered freely and voluntarily. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709, 23 L.Ed.2d 274 (1969). 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 court and defendant, between 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)). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 97 S. Ct. 1621, 52 L.Ed.2d 136 (1977)). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. United States, 519 F.2d 347 (4th Cir.1975).

Applicant alleges he was coerced into pleading guilty "to accept a sentence that was unfair and unjust" because both attorneys who represented him were not prepared for trial and threatened him by telling him the State would give him a forty year sentence if he were convicted at trial. This Court finds Applicant was not coerced into pleading guilty, and the

sentence he received was reasonable and properly within the limits allowed in the statute. Applicant received a sentence for seven years' imprisonment, which is the mandatory minimum he would have received if convicted at trial. Plea Counsel's advice that Applicant would fact forty years if convicted at trial was correct; the trial court could have imposed a forty year sentence for his convictions after trial. The record and Plea Counsel's testimony clearly show Applicant was not threatened, forced, or coerced to plead guilty.

At the guilty plea, the plea court asked Applicant, "Has anybody threatened you in any way to get you to plea [sic] guilty?" Applicant responded, "Not really." The plea court continued, "Has anybody promised you anything other than the seven year negotiated plea to get you to plead guilty?" Applicant responded, "No, sir." Tr. 11, line 11-17. Plea Counsel credibly testified he was prepared for trial that day and advised Applicant he would advocate for him if he wanted to go to trial. Plea Counsel filed two pre-trial motions, and both were denied, which allowed the drugs to be used as evidence against Applicant at trial. Applicant faced a mandatory minimum of twenty-five years and up to forty years in prison but chose to plead to a lesser offense and got the mandatory minimum of seven years instead. Although the decision may have been difficult for him to make, this Court finds Applicant's decision was freely and voluntarily made. The record shows it was a family decision to plead guilty. Applicant has failed to prove he was coerced into pleading.

Notably the South Carolina Supreme Court has held "[a] guilty plea represents a break in the chain of events which has preceded it in the criminal process." Id. (citations omitted). "When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea." Id. (citing

Rice, 401 S.C. at 332, 737 S.E.2d at 486). Therefore, this Court finds the plea judge correctly found Applicant's plea was freely, voluntary, and intelligently made. Accordingly, this allegation must be denied and dismissed.

DUE PROCESS

At the outset of the evidentiary hearing, Respondent moved to dismiss Applicant's specific allegations of trial court error for failure to state a claim under the Uniform Post-Conviction Relief Act, S.C. Code Ann. § 17-27-10 to -160. Respondent asserted these allegations were direct appeal allegations that could have been raised at trial or on direct appeal. A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). This Court granted Respondent's motion.

Regardless, to any extent Applicant frames his allegations as the denial of due process and a violation of his constitutional rights, this Court finds Applicant has failed to prove any such violation. Applicant specifically alleges the trial court erred in denying his motion for a continuance, which resulted in his attorney's performance suffering because of a lack of time to prepare the case. "Reversals of refusal of a continuance are about as rare as the proverbial hens' teeth." State v. McMillian, 349 S.C. 17, 21, 561 S.E.2d 602, 604 (2002). Our courts have held the trial court's denial of a motion for a continuance will not be disturbed on appeal absent a clear abuse of discretion. State v. Morris, 376 S.C. 189, 208, 656 S.E.2d 359, 369 (2008) (citing State v. McMillian, 349 S.C. 17, 561 S.E.2d 602 (2002)). Even assuming the trial judge should have granted the motion for a continuance so that defense counsel would have had additional time to prepare for trial Applicant has failed to show what the additional preparations would have yielded. See Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997).

Accordingly, this Court finds Applicant has failed to prove his constitutional due process rights were denied, and this allegation is denied and dismissed with prejudice.

VI. 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 the application for Post-Conviction Relief is denied and dismissed with prejudice; and

2. Applicant must be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 9th day of March, 2018.

GEORGE M. MCFADDIN, JR.
Presiding Judge
Third Judicial Circuit

Sumter, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF)

IN THE COURT OF (*Select one.*)
☑ COMMON PLEAS ☐ FAMILY COURT
JUDICIAL CIRCUIT

2016 DEC 12 P 3:17

Efrain Matos Rivera
339334
Plaintiff(s),
-vs-
State of S.C.
Defendant(s).

CASE NO.: 2016-CP-43-2097

APPOINTMENT OF COUNSEL OR GAL
(*Select one.*)
☑ ORDER
☐ AMENDED ORDER

TYPE OF CASE/PROCEEDING: (*Check one.*)

☑ Post-Conviction Relief (PCR)/habeas case
☐ SVP case
☐ Minor Name Change
☐ Adoption
☐ Custody and/or Visitation
☐ Other:
☐ Juvenile
☐ Abuse and Neglect

It appears that Efrain Rivera, who is a litigant in this case, is entitled to court-appointed counsel or a guardian ad litem.

It further appears that: (*Select only one.*)

☐ counsel/guardian ad litem has not yet been appointed by the court; therefore, an appointment for counsel/guardian ad litem is necessary.

☐ counsel or a guardian ad litem was previously appointed by the court but has indicated either a possible conflict of interest, an entitlement to exemption, or other good cause warranting the appointment of new counsel or guardian ad litem based on: _____

☐ counsel was previously appointed by the court but has not indicated that the litigant has retained private counsel and is no longer entitled to appointed counsel.

☐ court appointed counsel has obtained , Esquire as substitute counsel pursuant to Rule 608(h)(2); provided, however, only the member who originally received the appointment and who sought substitute counsel shall receive credit.

☑ Other: Lance Boozer
1400 Laurel St.
Suite 41A
Columbia, SC 29201

☑ counsel ☐ lead counsel (*if capital PCR case*) ☐ guardian ad litem

Therefore, it is ordered that Boozer, hereby is appointed as (*Select one.*) for the above-named person. Any counsel or GAL previously appointed is/are hereby relieved.

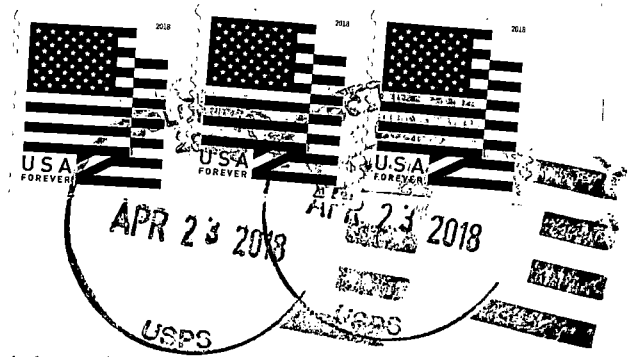
☐ (*If Death Penalty PCR Case*) It is further ordered that , Esquire, is hereby appointed as second counsel in this capital PCR case.

The clerk of court is directed to forward a copy of this order to all persons entitled to notice.

IT IS SO ORDERED THIS 12 DAY OF Dec, 20 16.

SCCA/267 (03/07)

THE BOOZER LAW FIRM, LLC
1419 Pendleton Street
Columbia, SC 29201



The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
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