

LAW OFFICE OF WILLIAM G. YARBOROUGH, III

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522 North Church Street
Greenville, SC 29601

May 8, 2018

The Honorable Daniel E. Shearouse, Clerk of Court
Clerk of Court of the S.C. Supreme Court
1231 Gervais Street
Columbia, SC 29201

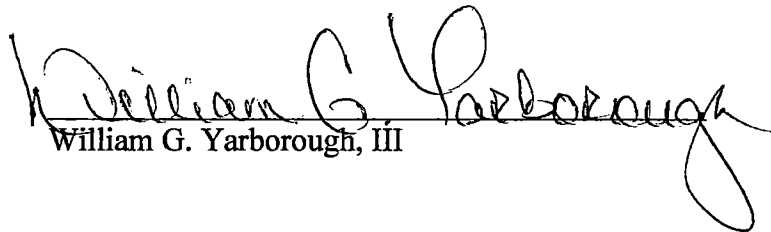
Re: Jonquay Rakee McCombs v. State of South Carolina
Case No.: 2017-CP-46-01608

Your Honor,

I hope this letter finds you well. Please find enclosed copy of the Notice of Appeal, Proof of Service and clocked copy of the Order of Dismissal in regards to the above-captioned case.

If I could be of any assistance or you have any questions or concerns, please feel free to contact my office.

Kindest Regards,


William G. Yarborough, III

WGY/cr

RECEIVED

MAY 14 2018

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM YORK COUNTY
Court of Common Pleas

Honorable J. Mark Hayes, II, Circuit Court Judge

Case No. 2017CP4601608

Jonquay Rakee McCombs # 00342963.....Petitioner

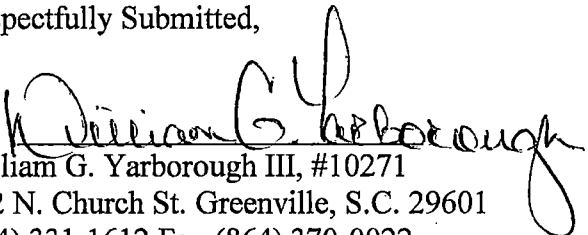
v.

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

NOTICE OF APPEAL

Petitioner, Jonquay Rakee McCombs, by and through undersigned counsel, William G. Yarborough III, appeals the Honorable J. Mark Hayes, II Order, dated April 20, 2018 and filed May 3, 2018, dismissing Petitioner's application for post-conviction relief in the above captioned case. The Petitioner received notice of entry of the Order on May 7, 2018. A copy of the Order of Dismissal is attached to this notice.

Respectfully Submitted,

By: 
William G. Yarborough III, #10271
522 N. Church St. Greenville, S.C. 29601
(864) 331-1612 Fax (864) 370-0022

Greenville, SC
May 8, 2018

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM YORK COUNTY
Court of Common Pleas

Honorable J. Mark Hayes, II, Circuit Court Judge

Case No. 2017CP4601608

Jonquay Rakee McCombs # 00342963.....Petitioner

v.

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

PROOF OF SERVICE

I, Christie Reeves, paralegal to counsel for Petitioner, William G. Yarborough III, certify that I have today mailed for filing the Notice of Appeal and attached documents to the Honorable Daniel E. Shearouse, Clerk of Court, by depositing it in the U.S. Mail with sufficient postage attached, addressed to:

The Honorable Daniel E. Shearouse, Clerk of Court
Clerk of Court of the S.C. Supreme Court
1231 Gervais Street
Columbia, South Carolina 29201

I further certify that I have today I served the enclosed Notice of Appeal upon Respondent, Assistant Attorney General Justin J. Hunter, by depositing it in the U.S. Mail with sufficient postage attached, addressed to:

Assistant Attorney General, Justin J. Hunter
South Carolina Attorney General, The Honorable Alan Wilson
P.O. Box 11549
Columbia, South Carolina 29211.

Sworn to before me this 8
day of May, 2018

Maal Daulty
Notary Public for South Carolina

My commission expires: 10/19/23

Cherish Shoney

STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)
)
 JONQUAY RAKEE MCCOMBS, #342963)
 Plaintiff,)
 vs.)
)
 STATE OF SOUTH CAROLINA)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 SIXTEENTH JUDICIAL CIRCUIT
 CASE NO.: 2017-CP-46-1608

**MOTION AND ORDER INFORMATION
 FORM AND COVERSHEET**

FILED
 2018 MAY -3 PM 12:55
 CLERK OF COURT
 YORK COUNTY, SC

Plaintiff's Attorney: William G. Yarborough, III, Bar No. _____ Address: 522 North Church Street Greenville, South Carolina 29601 Phone: _____ Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: Justin J. Hunter, Bar No. _____ Address: Post Office Box 11549 Columbia, South Carolina 29211 Phone: _____ Fax _____ E-mail: _____ Other: _____
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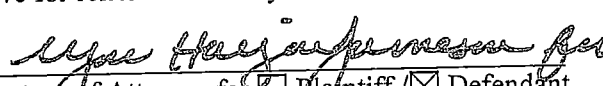
MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
 PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: _____
 Estimated Time Needed: _____ Court Reporter Needed: YES / NO

SECTION II: Motion/Order Type

Written motion attached
 Form Motion/Order
 I hereby move for relief or action by the court as set forth in the attached proposed order.


 Signature of Attorney for Plaintiff / Defendant

April 18, 2018
 Date submitted

SECTION III: Motion Fee

PAID - AMOUNT: \$ _____
 EXEMPT: (check reason)

- Rule to Show Cause in Child or Spousal Support
- Domestic Abuse or Abuse and Neglect
- Indigent Status State Agency v. Indigent Party
- Sexually Violent Predator Act Post-Conviction Relief
- Motion for Stay in Bankruptcy
- Motion for Publication Motion for Execution (Rule 69, SCRCP)
- Proposed order submitted at request of the court; or,
 reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____
 Other: _____

JUDGE'S SECTION

<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE CODE _____ Date: _____
--	---------------------------------

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____
 MOTION FEE COLLECTED: \$ _____
 CONTESTED - AMOUNT DUE: \$ _____

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2017CP4601608

Jonquay Rakee Mccombs	342963	South Carolina State Of	
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PLAINTIFF(S)	DEFENDANT(S)
Submitted by: The Court	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER OF DISMISSAL

This order ends does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

S/J. Mark Hayes
Circuit Court Judge

2132
Judge Code

4/20/2018
Date

For Clerk of Court Office Use Only

This judgment was entered on **May 3, 2018**, and a copy mailed first class or placed in the appropriate attorney's box on **May 3, 2018**, to attorneys of record or to parties (when appearing pro se) as follows:

William G. Yarborough III 522 North Church Street
Greenville, SC 29601

Megan Harrigan Jameson PO Box 11549 Columbia, SC
29211
Jonquay R. Mccombs Kershaw Correctional Institute, 4848
Goldmine Highway, Kershaw, SC 29067

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

Court Reporter

David Hamilton - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)
 COUNTY OF YORK)
)
 Jonquay Rakee McCombs,)
 S.C.D.C. No. 342963,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 OF THE SIXTEENTH JUDICIAL CIRCUIT

2017-CP-46-1608

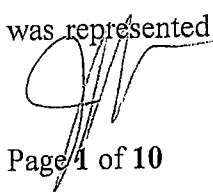
ORDER OF DISMISSAL

FILED
 2018 MAY -3 PM 12:52
 CLERK OF COURT
 YORK COUNTY, SC

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed May 31, 2017. An evidentiary hearing into the matter was convened on Thursday, February 1, 2018, at the Moss Justice Center in York, South Carolina before the Honorable J. Mark Hayes, II. Applicant was present at the hearing and represented by William Yarborough, III, Esquire. Justin Hunter, Esquire, of the South Carolina Attorney General’s Office represented Respondent. At the hearing, Applicant testified on his own behalf. Jessica Russo, Esquire, also testified. This Court also had before it a copy of Applicant’s PCR application and Response to Motion for a More Definite Statement, the records of the York County Clerk of Court regarding the subject convictions, Applicant’s records from the South Carolina Department of Corrections, Respondent’s Return, and the plea transcript.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. Applicant was indicted by the July 2016 term of the York County Grand Jury for first degree assault and battery (2016-GS-461942), unlawful carrying of a pistol (2016-GS-46-1943), and possession of crack with intent to distribute (2016-GS-46-1944). Applicant was represented by Jessica Russo, Esquire. Applicant



appeared before the Honorable John C. Hayes, III, on July 15, 2016 and pled guilty as indicted to first degree assault and battery, as indicted to unlawful carrying of a pistol, and to PWID crack second offense as a lesser included offense of PWID crack third offense. Pursuant to a negotiation, he was sentenced to imprisonment for ten years for PWID crack second offense, ten years for first degree assault and battery, and one year for unlawful carrying of a pistol. The sentences were to run concurrently. He did not appeal his plea or sentence.

Allegations

In his current application for post-conviction relief, and the Response to Motion for a More Definite Statement filed thereto, Applicant alleges he is being held unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
2. "Applicant's plea was involuntary and made in ignorance"
3. Counsel was ineffective for failing to adequately investigate and consequently advise Applicant on the availability of relevant defenses or opportunities to suppress evidence, rendering Applicant's guilty plea not knowingly or intelligently made.
 - a. A more thorough review of the discovery would have revealed that grounds existed to challenge the searches of Applicant's vehicle on October 16, 2015 and February 6, 2016. Had Applicant been fully advised on the nature and strength of the State's evidence, as well as the opportunity to suppress the evidence seized from two illegal searches, he would not have pled guilty and instead would have proceeded to trial.
 - b. Applicant learned that another individual housed in the same jail for murder, who looked very much like Applicant, was responsible for the gunshots that led to Applicant's arrest for assault and battery first. Applicant had communicated this to counsel but counsel failed to investigate. Had Applicant known that evidence may have existed to support a third-party defense at trial, he would not have pleaded guilty and instead have proceeded to trial.
4. Counsel failed to spend adequate time with Applicant explaining the nature of the charges, the evidence against him, and the possible penalties, thus rendering Applicant's guilty plea not knowingly or intelligently made.
 - a. At the time of his guilty plea, Applicant did not understand the elements to each charge. Counsel had also failed to thoroughly review all of the State's

evidence with him. Counsel also failed to discuss with Applicant the full range of possible sentences.

- b. Particularly, Counsel had advised Applicant that he would only have to serve three (3) to six and half (6.5) years in prison. Had Applicant known that he would be sentenced to upwards of ten (10) years, he would not have pleaded guilty and instead would have proceeded to trial.

II. APPLICABLE LAW

In a post-conviction relief action, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order 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. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel’s performance was deficient. Id. Under this prong, courts measure an attorney’s performance by its “reasonableness under prevailing professional norms.” Id. (citing Strickland, 466 U.S. at 688). Second, any 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.” Id. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show 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, 59 (1985).

III. 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 Clerk of Court records regarding the subject convictions, the plea transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief and amendment, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

Ineffective Assistance of Counsel

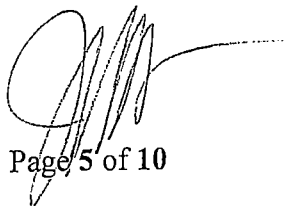
Counsel failed to investigate or challenge search

Applicant alleged Counsel was ineffective for failing to investigate and advise Applicant on the availability of relevant defenses or opportunities to suppress evidence. He alleged a more thorough review of the discovery would have revealed that grounds existed to challenge the searches of Applicant's vehicle on October 16, 2015 and February 6, 2016. Applicant further alleges had he been fully advised on the nature and strength of the State's evidence, as well as the opportunity to suppress the evidence seized from two illegal searches, he would not have pled guilty and instead would have proceeded to trial. Applicant testified Counsel should have filed a suppression motion for the drugs found in Applicant's car because he did not give consent to search and they did not have a warrant.

Counsel testified the officers were investigating 911 hangups and went to Applicant's girlfriend's apartment. She testified the officers said they smelled marijuana coming from her apartment and also saw Applicant's illegally parked car. She testified Applicant did not give

consent to search and the officers said they could get a warrant. She testified Applicant kept talking to the officers and said there were drugs in the car, and ultimately Applicant unlocked the car for the officers and consented to a search. She testified he told officers crack cocaine was in his bag and let officers retrieve the bag. Counsel testified she considered a suppression motion but if she did it would have to be at trial and all plea offers would be off the table. She testified Applicant wanted plea offers. Counsel testified Applicant wanted a plea and he faced a potential life sentence if he had proceeded to trial.

This Court finds Applicant has failed to meet his burden of proving Counsel was ineffective for failing to properly investigate and advise Applicant about the challenge to the search. This Court finds challenging the search at trial would have lost Applicant the ability to plead to the lesser charge and he would have been facing a sentence of life without the possibility of parole if convicted. The transcript before this Court contains no details about the search. All the information related to the search came from witnesses who testified at the present PCR hearing. Based on the testimony at the PCR hearing, this Court most probably would have not granted the motion to suppress. One significant factor was that the Applicant eventually gave his consent for the search. This Court finds Counsel discussed with Applicant his trial rights, the defenses to the search, and the fact that he could only challenge the search at trial. This Court finds Applicant has failed to meet his burden of proving Counsel's advice was deficient or that she did not fully investigate the circumstances around the search. Furthermore, Applicant has failed to meet his burden of proving he would not have pled guilty but would have proceeded to trial but for Counsel's actions. This Court finds Applicant gave no indication he would rather face life without parole at a trial than plead to his ten year negotiated sentence. Accordingly, this allegation must be dismissed.



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Failed to investigate third party guilt

Applicant alleged Counsel was ineffective for failing to investigate a possible third party who admitted to the crime. Applicant alleged he learned that another individual housed in the same jail for murder, who looked very much like Applicant, was responsible for the gunshots that led to Applicant's arrest for assault and battery. Applicant alleged he had communicated this to Counsel but Counsel failed to investigate. Applicant asserted that had he known that evidence may have existed to support a third-party defense at trial, he would not have pleaded guilty and instead have proceeded to trial. Counsel testified Applicant never gave her the name of an alibi witness for the assault and battery case. She testified an eyewitness said Applicant had fired a weapon. She testified she did not recall Applicant saying he was with someone else that night.

This Court finds Applicant has failed to meet his burden of proving Counsel's actions were deficient in this regard. First, Applicant has failed to show exactly who this individual is and how exactly he was involved on the night in question. This Court finds Counsel's testimony to be credible that she did not receive this tip or any alibi witnesses. This Court will not speculate as to what this individual would say had he testified at trial. Furthermore, the record shows the guilty plea was a package deal to clear up all the charges outstanding against Applicant. The plea arrangement dropped the PWID charge from a 3rd offense to a 2nd offense and Applicant avoided a LWOP sentence. Even though he contends Counsel did not interview the alibi witness on the assault and battery charge, even if true, no prejudice has been shown given the terms of the plea deal. The assault and battery charge did not affect the ultimate ten year sentence. The solicitor was not going to go forward with the plea if the assault and battery charge was not included. Applicant has failed to show he would have proceeded to trial but for Counsel's actions in this regard. Accordingly, this allegation must be dismissed.

Involuntary Guilty Plea

Applicant alleges that his plea was given involuntarily. Applicant alleged he did not know the nature of the charges, the evidence against him, or the possible penalties. Applicant alleged Counsel had advised him that he would only have to serve three to six and one-half years in prison. He alleged that had he known that he would be sentenced to upwards of ten years, he would not have pleaded guilty and instead would have proceeded to trial.

Counsel testified she went over the charges, the State's evidence, and Applicant's version of events. She testified she met with him three times and talked on the phone prior to trial. She testified she went over his trial rights and the possible challenge to the evidence. Counsel testified she went over Applicant's plea waiver form with him, which described the rights he was giving up and the consequences of the current charges. She testified she asked the solicitor for a plea of five or eight years but the solicitor declined. She testified the solicitor would not drop the assault and battery charge. She testified Applicant faced a third offense PWID charge before and knew the sentencing range. Counsel further testified she discussed with Applicant the sentencing ranges for each charge and it was ultimately his decision to plead guilty.

This Court finds that Applicant's allegation must be dismissed. 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).

“A guilty plea constitutes a waiver of nonjurisdictional defects and claims of violations of constitutional rights.” Jamison v. State, 410 S.C. 456, 467, 765 S.E.2d 123, 129 (2014) (citing State v. Rice, 401 S.C. 330, 331-32, 737 S.E.2d 485, 485-86 (2013); Hyman v. State, 397 S.C. 35, 44, 723 S.E.2d 375, 379 (2012)). 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).

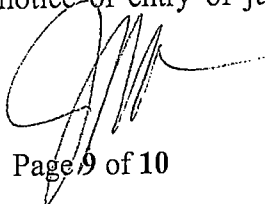
This Court finds, and the record reflects, Applicant was fully advised that he was pleading guilty and therefore waiving any challenges to the evidence against him. The plea waiver form reveals Applicant acknowledged he understood the potential sentences for the charges he was facing, the negotiated plea, his rights, and that he was entering the plea freely and voluntarily. The plea court's thorough colloquy with Applicant demonstrates that he understood the consequences of pleading guilty and the potential sentences he could receive. Applicant advised the plea court that no one had promised him anything in order to get him to plead guilty.

Applicant also advised the plea court that he was pleading guilty freely and voluntarily. The record also reflects that Applicant fully admitted his guilt to the plea court and agreed with the State's version of the facts. Applicant presented no credible evidence at the PCR hearing as to why he should be able to depart from his statements at the plea hearing. This Court finds credible Counsel's testimony regarding his preparation and advice to Applicant prior to the guilty plea. After a full review of the guilty plea transcript, this Court finds the plea judge correctly found Applicant's plea was freely, voluntary, and intelligently made. This Court also finds that Applicant has presented no evidence that he did not understand the plea proceeding or that his plea was not freely, voluntarily, or intelligently made. This Court finds Applicant has failed to meet his burden of proving he was promised a plea of three to six and one-half years. The plea waiver form listed out the potential sentences he faced and showed the plea was for a negotiated ten year sentence. During the plea hearing, the plea judge told him the potential sentences, he acknowledged he understood the negotiation, and he acknowledged no one had promised him anything to plead guilty. Accordingly, this allegation must be dismissed.

IV. CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Applicant failed to demonstrate either counsels' performances were unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate



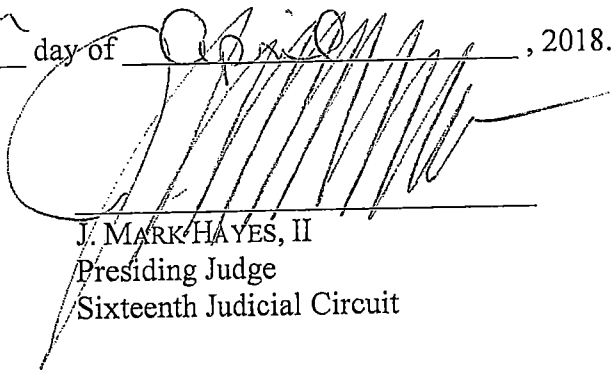
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appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCR, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant will remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 20th day of October, 2018.



J. MARK HAYES, II
Presiding Judge
Sixteenth Judicial Circuit

York, South Carolina