

## Lowcountry Law Office

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December 16, 2016

RECEIVED

DEC 22 2016

S.C. SUPREME COURT

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

RE: Michael Glen Evans v. State of South Carolina; Case #: 2015-CP-18-0269

Dear Mr. Shearhouse:

Enclosed for filing is the Notice of Appeal (original and clocked copy) in the above Post Conviction Relief (PCR) case. Also enclosed are the following:

- (1) Proof of service of the Notice of Appeal on the Respondent;
- (2) The Order of Dismissal &
- (3) A Request for Representation on Appeal.

The Applicant-Appellant was represented by me as an indigent pursuant to my contract with the South Carolina Commission on Indigent Defense (SCCID) to handle PCR cases. By copy of this letter, I am forwarding a duplicate set of documents to the SCCID.

The Request for Representation on Appeal and the Affidavit in Support thereof are signed by me as attorney for Applicant-Appellant. If you need anything further, do not hesitate to contact me. Thank you for your time and attention to this matter.

Sincerely,

Rodney D. Davis

South Carolina Bar #: 12396

4000 Faber Place Drive, Suite 300

Charleston, SC 29405

(843) 323-4353

[Davis@LowcountryLawOffice.com](mailto:Davis@LowcountryLawOffice.com)

Enclosure(s). As stated above.

RDD/mmt

cc: Ruston Wesley Neely, Assistant Attorney General  
Kimberly McCall, Appellate Division, SCCID

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DEC 22 2016

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM DORCHESTER COUNTY  
Court of Common Pleas

The Honorable Benjamin H. Culbertson

Case #: 2015-CP-18-0269

Michael Glen Evans,

Appellant,

v.


State of South Carolina,

Respondent.

NOTICE OF APPEAL

MICHAEL GLEN EVANS appeals the denial of his Post Conviction Relief (PCR) application in this case. The application for relief was denied following an evidentiary hearing before the Honorable Benjamin T. Culbertson on May 19, 2016.

December 2, 2016.

  
Rodney D. Davis  
400 Faber Place Drive, Suite 300  
Charleston, SC 29405  
Attorney for Appellant

Other Counsel of Record:  
J. Clayton Mitchell, Assistant Attorney General  
Office of the Attorney General, State of South Carolina  
P.O. Box 11549  
Columbia, SC 29211-1549  
Attorney for Respondent

RECEIVED

DEC 22 2016

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM DORCHESTER COUNTY  
Court of Common Pleas

The Honorable Benjamin H. Culbertson

Case #: 2015-CP-18-0269

Michael Glen Evans,

Appellant,

v.


State of South Carolina,

Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the State by mailing a copy of it to the address of record, Ruston Wesley Neely, P.O. Box 11549, Columbia, South Carolina 29211-1549, on December 5 2016.

December 5 2016



Michelle Moore Trimble  
Paralegal to Rodney D. Davis  
Lowcountry Law Office  
400 Faber Place Drive, Suite 300  
Charleston, SC 29405  
Attorney for Appellant

Other Counsel of Record:  
Assistant Attorney General  
J. Clayton Mitchell, Assistant Attorney General  
State of South Carolina  
P.O. Box 11549  
Columbia, SC 29211-1549  
Attorney for Respondent

CERTIFIED COPY

2016 DEC -9 PM 4:26

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

*Cheryl Graham*  
CLERK OF COURT  
DORCHESTER COUNTY

APPEAL FROM DORCHESTER COUNTY  
Court of Common Pleas

The Honorable Benjamin H. Culbertson

Case #: 2015-CP-18-0269

Michael Glen Evans, Appellant,


v.

State of South Carolina, Respondent.

NOTICE OF APPEAL

**MICHAEL GLEN EVANS** appeals the denial of his Post Conviction Relief (PCR) application in this case. The application for relief was denied following an evidentiary hearing before the Honorable Benjamin T. Culbertson on May 19, 2016.

December 2, 2016.

  
Rodney D. Davis  
400 Faber Place Drive, Suite 300  
Charleston, SC 29405  
Attorney for Appellant

Other Counsel of Record:  
J. Clayton Mitchell, Assistant Attorney General  
Office of the Attorney General, State of South Carolina  
P.O. Box 11549  
Columbia, SC 29211-1549  
Attorney for Respondent

CERTIFIED COPY

THE STATE OF SOUTH CAROLINA 2016 DEC -9 PM 4:26  
In The Supreme Court

APPEAL FROM DORCHESTER COUNTY CLERK OF COURT  
Court of Common Pleas DORCHESTER COUNTY

The Honorable Benjamin H. Culbertson

Case #: 2015-CP-18-0269

Michael Glen Evans,

Appellant,

v.

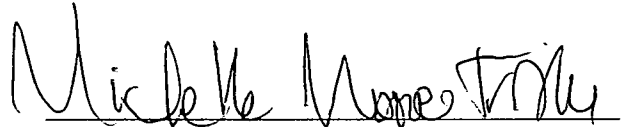
State of South Carolina,

Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the State by mailing a copy of it to the address of record, Ruston Wesley Neely, P.O. Box 11549, Columbia, South Carolina 29211-1549, on December 5 2016.

December 5 2016



Michelle Moore Trimble  
Paralegal to Rodney D. Davis  
Lowcountry Law Office  
400 Faber Place Drive, Suite 300  
Charleston, SC 29405  
Attorney for Appellant

Other Counsel of Record:

Assistant Attorney General  
J. Clayton Mitchell, Assistant Attorney General  
State of South Carolina  
P.O. Box 11549  
Columbia, SC 29211-1549  
Attorney for Respondent

STATE OF SOUTH CAROLINA  
COUNTY OF DORCHESTER

Michael Glen Evans, #359479,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS  
FIRST JUDICIAL CIRCUIT

2015-CP-18-0269

ORDER OF DISMISSAL

CHERYL BRANNAN  
CLERK OF COURT  
DORCHESTER COUNTY

2016 NOV 14 AM 11:21

FILED - RECORDED

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed January 30, 2015. Respondent filed a Return and Motion to Dismiss requesting that the action be dismissed because Applicant failed to complete the allegations section of the application. Rodney D. Davis, Esquire, was appointed by the Dorchester County Clerk of Court to represent Applicant. The Honorable Edgar W. Dickson issued a Conditional Order of Dismissal on December 14, 2015. Applicant then filed an amended application setting forth numerous allegations of ineffective assistance of counsel. An evidentiary hearing was held on May 19, 2016, at the Dorchester County Courthouse. Applicant was present and represented by Counsel Davis. J. Clayton Mitchell, of the South Carolina Attorney General's Office, represented Respondent.

At the PCR hearing, Applicant testified on his own behalf. Also testifying was Applicant's plea counsel, Ashley D. Chisholm, Esquire. This Court had before it the Dorchester County Clerk of Court records, Applicant's South Carolina Department of Corrections records, the PCR application, the Return, and the guilty plea transcript.

## I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Dorchester County Clerk of Court. In March 2013, the Dorchester County Grand Jury indicted Applicant for kidnapping (2013-GS-18-0349), criminal sexual conduct, first degree (2013-GS-18-0348) and for violation of a firearms provision (2013-GS-18-0350). Ashley D. Chisholm, Esquire, represented Applicant. On April 9, 2014, Applicant pleaded guilty as indicted. The Honorable Maite Murphy sentenced Applicant to ten (10) years' imprisonment for kidnapping, thirty (30) years' imprisonment for criminal sexual conduct, first degree, and five (5) years' imprisonment for the firearms provision, to be served consecutively. Applicant did not appeal his plea or sentence.

In this action, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Plea not knowingly and voluntarily entered because
  - a. Counsel failed to properly investigate the case and failed to explore possible defenses to the charges;
  - b. Counsel failed to meet with Applicant a sufficient amount of times to explain to him the nature and elements of the charges; and
  - c. Counsel failed to appeal the guilty plea.

## II. APPLICABLE LAW

In a post-conviction relief action, Applicant bears the burden of proving the allegations in the 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, 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, 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 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 guilty plea transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, 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.

As a matter of general impression, this Court finds Applicant's testimony and assertions to be not credible. In contrast, this Court finds Counsel's testimony to be credible and persuasive. These credibility findings have been applied to the Court's findings and conclusions set forth below.

Applicant has made various allegations to ineffective assistance of counsel and argues that then he would not have pleaded guilty had he been properly advised. This Court addresses these allegations in turn.

#### **Failure to Investigate and Failure to Advice of Defenses**

Applicant alleges Counsel was ineffective for failing to investigate the case and to advise him of possible defenses to the charges. Applicant testified that he was evaluated by Dr. Donna Schwartz-Watts and was found competent. Counsel testified that he discussed Applicant's mental health with Applicant and his family. Counsel decided to seek a mental evaluation, and it was determined that Applicant was competent to stand trial. "Criminal 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." Edwards v. State, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011) (internal citations omitted).

This Court finds Applicant failed to meet his burden in proving Counsel was ineffective for failing to investigate. Applicant has failed to show that any aspect of the case was overlooked by Counsel. Counsel's credibly testified that he investigated Applicant's competency, reviewed and discussed the State's evidence with Applicant, and met and advised Applicant's family of the strengths and weaknesses of the case. Counsel thoroughly looked into the DNA evidence, which was very incriminating. Applicant's testimony to the contrary is not credible.

Applicant was unable to provide this Court with any evidence to support the allegation, so it rests entirely on speculation. See Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998) (“failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result.”).

Applicant also failed to meet his burden in proving that a meritorious defense to the charges existed. Although he was unable to identify a specific defense to the charges, Applicant testified that Counsel did not advise him of the defenses available to him. Applicant did testify that Counsel advised him that the admission of his statement could be challenged through a pre-trial hearing. Counsel testified that he could have challenged all of the State’s evidence if the case had gone to trial but explained that it was not likely those challenges would have been successful. Counsel concluded that it was in Applicant’s best interests to plead guilty and advised him accordingly. Applicant has failed to present a meritorious defense that should have been asserted. To establish counsel was inadequately prepared, an Applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel been more fully prepared. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998). These allegations are denied and dismissed.

#### **Understanding of the Plea and Counsel’s Diligence**

Applicant alleges he did not plead guilty knowingly and voluntarily. Specifically, Applicant argues that Counsel failed to meet with him an adequate amount of times and that he was not advised of the nature and elements of each charge. This Court finds Applicant’s guilty plea was entered freely and voluntarily entered. 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 claims Counsel did not meet with him an appropriate amount of times. This contention is without merit. See Moody v. Polk, 408 F.3d 141, 148 (4th Cir. 2005) ("As to Moody's claim that his counsel did not meet with him frequently enough, there is no established 'minimum number of meetings between counsel and client prior to trial necessary to prepare an attorney to provide effective assistance of counsel.'" (citing United States v. Olson, 846 F.2d 1103 (7th Cir. 1988))). Applicant must present the Court with evidence of specific instances of ineffectiveness rather than vaguely assert that Counsel did not spend enough time reviewing the matter with him.

Applicant also makes a general allegation of ineffective assistance of counsel in that Counsel failed to review the facts and circumstances of the case thus rendering his plea involuntary and unintelligent. This Court finds these contentions meritless. This Court finds the record reflects Applicant was fully advised of the State's evidence. The plea court's thorough

colloquy with Applicant demonstrates that he understood the charges, penalties, and the waiver of his rights. The record further reflects Applicant fully admitted his guilt to the plea court. Applicant presented no credible evidence as to why he should be able to depart from his statements at the plea hearing that he understood his rights and had reviewed the evidence and did not need more time to discuss matters with Counsel. (Plea Tr. p. 13-17). This Court finds very credible Counsel's testimony regarding his preparation and advice concerning the case, specifically that he reviewed the evidence with Applicant and discussed with him that it would be in his best interests to plead guilty. Considering this all, Counsel acted reasonably and within the professional norms in advising Applicant to plead guilty. Therefore, this Court finds Applicant's plea was freely, voluntary, and intelligently made.

#### **Notice of Appeal**

Finally, Applicant alleged in his amended application that Counsel was ineffective in failing to file a notice of appeal. Applicant has failed to carry his burden to prove Counsel was ineffective in failing to file a notice of appeal. Applicant did not argue these grounds during his testimony and did not indicate that he requested Counsel to file either. Accordingly, no evidence was submitted to support these allegations, so they are abandoned. Furthermore, upon a full review of the record, the Court finds that no grounds existed for an appeal, so any appeal would have been futile.

#### **All Other Allegations**

As to any and all allegations that were raised in the application and not specifically addressed in this order, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

#### 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 counsel's performance was 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 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), SCRCP, 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 shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 27 day of October, 2016.

  
BENJAMIN H. CULBERTSON  
Presiding Judge

Conway, South Carolina

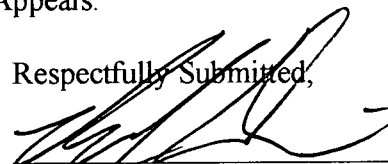
STATE OF SOUTH CAROLINA	)	IN THE SUPREME COURT OF SOUTH CAROLINA
	)	
COUNTY OF DORCHESTER	)	Case #: 2015-CP-18-0269
	)	
	)	
MICHAEL GLEN EVANS,	)	
	)	
Applicant.	)	REQUEST FOR REPRESENTATION ON APPEAL
	)	
-versus-	)	
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

On behalf of the request of the above-named Applicant, to be represented by the South Carolina Commission of Indigent Defense, Appellate Division (SCCID), the undersigned attorney would show unto this Honorable Court that:

1. He is the attorney for the Applicant-Appellant in the above captioned case. The Applicant-Appellant was in custody during and taken into custody immediately following the Post Conviction Relief (PCR) hearing and was not available to personally sign this request;
2. The Applicant-Appellant was represented by the undersigned attorney as an indigent, pursuant to a contract with the SCCID;
3. The Applicant-Appellant has been informed that he may request assistance from the SCCID Appellate Division in perfecting his appeal;
4. A timely Notice of Intent to Appeal has been filed on the Applicant-Appellant's behalf;
5. The Applicant-Appellant has been informed that nothing requires SCCID Appellate Division to pursue this appeal unless that office's Chief Attorney is satisfied that there is arguable merit to this appeal and that he cannot afford to hire an attorney.

At this time, the Applicant-Appellant requests the aid of the SCCID Appellate Division in perfecting his appeal to the South Carolina Court of Appeals.

Respectfully Submitted,




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Rodney D. Davis  
South Carolina Bar #: 12396

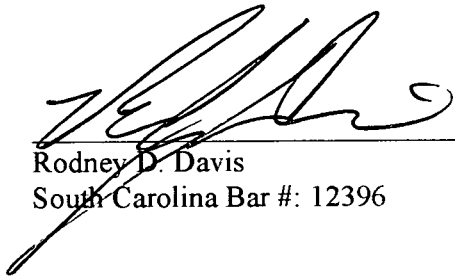
Charleston, South Carolina  
December 2, 2016.

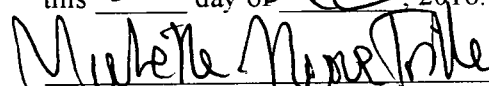
STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF DORCHESTER )

CASE #: 2015-CP-18-0269

VERIFICATION

PERSONALLY appeared before me, Rodney D. Davis, being first duly sworn, deposes and says that he has read the foregoing *Request for Representation on Appeal* to be filed on behalf of the Applicant-Appellant, **Michael Glen Evans**, and the same is true of his knowledge except those matters alleged on information and belief, and as to those matters, he believes them to be true.

  
\_\_\_\_\_  
Rodney D. Davis  
South Carolina Bar #: 12396

SWORN to and subscribed to me  
this 2 day of Dec, 2016.  
  
\_\_\_\_\_  
Notary Public for South Carolina  
My Commission expires 4/26/2026



## Lowcountry Law Office

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Charleston, SC 29405

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RECEIVED

DEC 22 2016

December 16, 2016

Kimberly McCall  
South Carolina Commission on Indigent Defense  
P.O. Box 11433  
Columbia, SC 29211-1433

S.C. SUPREME COURT

RE: Samuel Brown v. State of South Carolina; Case #: 2014-CP-08-2566  
Michael Glen Evans v. State of South Carolina; Case #: 2015-CP-18-0269

Dear Ms. McCall:

Enclosed is a duplicate set of Appeal documents that I have forwarded to the Clerk of the Supreme Court of South Carolina concerning the above-listed Post Conviction Relief (PCR) cases. I was appointed to the PCR(s) pursuant to a contract that I have with your office. I have requested that your office assume the appeal of these cases.

Should you need anything further, do not hesitate to contact me. Thank you for your time and attention to this matter.

Sincerely,

Rodney D. Davis  
South Carolina Bar #: 12396  
4000 Faber Place Drive, Suite 300  
Charleston, SC 29405  
(843) 323-4353  
[Davis@LowcountryLawOffice.com](mailto:Davis@LowcountryLawOffice.com)

Enclosure(s). As stated above.  
RDD/mmt

cc: Alicia A. Olive, Assistant Attorney General  
Ruston Wesley Neely, Assistant Attorney General

Lowcountry Law Office

Rodney D. Davis  
4000 Faber Place Drive, Suite 300  
Charleston, SC 29405



The Honorable Daniel E. Shearhouse  
Clerk, Supreme Court of South Carolina  
PO Box 11330  
Columbia, SC 29211

NON-MACHINABLE

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