

ROSS AND ENDERLIN, PA
ATTORNEYS AT LAW

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MAY 21 2018

S.C. SUPREME COURT

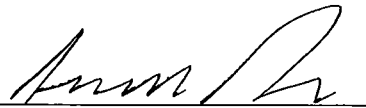
Mr. Daniel E. Shearouse
Clerk, The S.C. Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re: Edrick Perego v. State
2017-CP-04-1175

Dear Mr. Shearouse:

Enclosed you will find the original Notice of Appeal in the above matter along with Proof of Service upon the Respondent and the Order of Dismissal. These matters are being referred to the Office of Appellate Defense.

Sincerely,



Susannah Ross
Attorney at Law

enclosure

cc: Office of the Attorney General
Office of Appellate Defense
Anderson County Clerk of Court

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THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

MAY 21 2018

S.C. SUPREME COURT

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

J. Cordell Maddox, Jr., Circuit Court Judge

2017-CP-04-1175

Edrick Perego, Appellant,

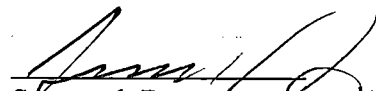
v.

The State, Respondent.

NOTICE OF APPEAL

Edrick Perego appeals the Honorable J. Cordell Maddox Jr.'s Order of Dismissal filed April 2, 2018, and Order Denying Applicant's "Motion to Alter or Amend the Judgment" filed May 9, 2018.

This 17 day of May, 2018.


Susannah Ross, Attorney at Law
330 E. Coffee St.
Greenville, SC 29601
(864) 242-0029
Attorney for Appellant

Other Counsel of Record:
DeShawn Mitchell, Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211
(803) 734-3970
Attorney for Respondent

STATE OF SOUTH CAROLINA)
 COUNTY OF ANDERSON)
)
 Edrick Perego, #368192,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE TENTH JUDICIAL CIRCUIT

Case No. 2017-CP-04-01175

A TRUE COPY
ORDER OF DISMISSAL
APR - 2 2018
 FILED CLERK'S OFFICE
 ANDERSON SC
 COMMON PLEAS AND
 GENERAL SESSIONS
 APR - 2 PM 2:02
 CLERK OF COURT

PROCEDURAL HISTORY

This matter comes before the Court by way of an application for post-conviction relief filed June 5, 2017. Respondent made its Return and Partial Motion to Dismiss on September 12, 2017, requesting all allegations arising from Applicant's 2012 guilty plea be summarily dismissed as time barred and requesting Applicant's allegation of improper medical care be summarily dismissed for failing to state a cognizable claim under the Uniform Post Conviction Procedure Act. Respondent requested an evidentiary hearing on all other claims. Thereafter, Applicant, through his counsel filed an amended application for post-conviction relief on February 15, 2018. An evidentiary hearing was convened on February 21, 2018, at the Anderson County Courthouse. Applicant was present at the hearing and was represented by Susannah C. Ross, Esquire. Respondent was represented by Assistant Attorney General Kelly Oppenheimer of the South Carolina Attorney General's Office.

The records before this Court indicate Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Anderson County Clerk of Court. The Anderson County Grand Jury indicted Applicant for two counts of third-degree arson during its September 2014 term (2014-GS-04-01598) and for two counts of

attempted murder during its October 2014 term (2014-GS-04-01834;-01835). Hervery Young, Esquire represented Applicant on these charges. On May 13, 2016, Applicant appeared before the Honorable R. Scott Sprouse, where he pled guilty as indicted to two counts of third-degree arson and to two counts of assault and battery of a high and aggravated nature as a lesser-included offense of attempted murder. Judge Sprouse sentenced Applicant to ten years imprisonment for each charge. At the time of this conviction and sentence, Applicant was serving a probationary sentence for solicitation to commit assault and battery and solicitation to commit kidnapping.¹ Consequently, Judge Sprouse revoked Applicant's probation in full, requiring him to serve ten years imprisonment for each Solicitation charge. All sentences were to run concurrently.

Applicant filed a timely notice of appeal, and Appellate Defender Laura R. Baer of the South Carolina Commission on Indigent Defense, Office of Appellate Defense represented Applicant. On December 15, 2016, the South Carolina Court of Appeals issued an Order indicating that Applicant, with full understanding of all possible consequences and with agreement of counsel, withdrew his appeal. The Remittitur was issued on January 3, 2017.

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

1. Guilty plea not knowingly, intelligently, and voluntarily entered;
 - a. No factual bases for plea;
 - b. Did not understand sentencing.
2. Ineffective assistance of plea counsel;
 - a. Failed to object to unconstitutional sentence;
 - b. Failed to appeal from probation cases;
 - c. Failure to investigate.
3. Ineffective assistance of appellate counsel; [and]

¹ On April 16, 2013, Applicant appeared before the Honorable Alexander S. Macaulay and pled guilty as indicted to one count of solicitation to commit assault and battery and one count of solicitation to commit kidnapping. Judge Macaulay sentenced Applicant to a term of imprisonment for ten years, suspended on the service of thirty-four days with five years' probation.

- a. Advised to drop direct appeal.
4. Unconstitutional sentence (violation of 8th Amdt).
 - a. De facto life sentence violates prohibition against cruel and unusual punishment and is disproportionate;
 - b. Failure to provide proper medical care.

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

1. Ineffective assistance of plea counsel for advising Mr. Perego to plead guilty, allowing victim testimony regarding unsubstantiated allegations of criminal acts by Mr. Perego after he was imprisoned, and failing to effectively use evidence of Mr. Perego's diagnosis of dementia as mitigation of his conduct; [and]
2. Due process violations due to the plea not being knowingly and voluntarily made, non-compliance with the ADA due to failure to accommodate Applicant's hearing loss, and no factual basis for ABHAN in the record.

At the hearing, Applicant proceeded forward on the claims in his amended application for post-conviction relief, as well as his allegations of ineffective assistance of counsel for failure to appeal from the probation cases and failure to investigate, which were raised in his original application.

STATEMENT OF FACTS ADDUCED AT THE PLEA

On June 5, 2014, Becky Lash was working inside the restaurant she owned, Tiger Cove Grill. Tr. 13. Katie Pigeon and Joseph Brushwood were also working. Tr. 14. Harold Flowers had just entered the restaurant as well. Tr. 14. During that time, the Anderson County Sheriff's Office was evicting Applicant from his home across the street from the restaurant. Tr. 13. Applicant was then seen setting some wood in the back of his truck on fire, starting the truck, and placing a stick of wood between the gas pedal and the seat, allowing the truck to move on its own. Tr. 14. Applicant proceeded to let the truck drive into the restaurant while Ms. Lash, Ms. Pigeon, Mr. Brushwood, and Mr. Flowers were inside. Tr. 14. Ms. Lash, who was in her office

at the time, was unable to get out of the building. Tr. 14. Mr. Flowers was then able to get into the truck, remove the stick of wood that Applicant placed between the gas pedal and the seat, and reversed the truck out of the restaurant. Tr. 14. In doing so, Mr. Flowers ran the truck into Applicant, who was driving his other truck at the time. Tr. 14. Applicant was subsequently arrested.

TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

At the evidentiary hearing, Applicant testified on his own behalf and presented the testimony of Janice Perego and Jessica Ford. Respondent presented testimony from plea counsel, Hervery Young, Esquire (hereinafter "Counsel"). This Court also had before it a copy of Applicant's plea 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 Counsel advised him to plead because he had talked to the solicitor and arranged for Applicant to be sentenced to monitored house arrest if he pled. He testified he talked to his wife about this, but ultimately that was not what happened. Applicant also testified he did not know to what he pled, and he cannot recall his plea proceeding. He also testified he did not remember going over his potential sentence with the plea court. He testified he neither hurt anyone nor planned to hurt anyone. He testified he does not know Ms. Lash personally, and he bears no ill will towards her and has not communicated with her. He testified he did not place a stick in his car to rig it to drive into the bar. He testified he was in his other truck at the time, hit his head on the door, and woke up at his doctor's office in Fair Play, where he was arrested.

He testified he could not hear what the witnesses were saying at his plea, and he did not know what was happening. He elaborated Counsel gave him a hearing aid, but it was not

working. He further testified he could hear a few words at the beginning of the plea but nothing else.

Applicant also testified he was taking blood thinners for atrial fibrillation (AFIB), and they did not agree with him and would cause him to black out. He elaborated he still suffers from side effects today even though he stopped taking these medications. He further testified his medications make him pass out, and he will not know anything that happened for eight to ten hours at a time. He testified his medication can be dangerous if not monitored and his were not monitored properly. He further testified he has chest pains and has a pacemaker. He elaborated his first pacemaker failed, so he had to undergo another operation.

Applicant testified he does not recall his evaluation at the Department of Mental Health. He testified, however, Counsel made arrangements for him to be evaluated, but he did not know what the evaluations were regarding. He testified his memory comes and goes. He did testify that Dr. Salas was not at the Department of Mental Health, but she had a lawyer with her when she evaluated him. He testified he did not think he could answer questions about his case at the Department of Mental Health, so he called Counsel to discuss it with him and because he did not believe anyone other than the psychiatrist could be present at his evaluation. He testified Counsel was not present at his meeting with Dr. Salas. He further testified he did not believe that faking his symptoms would exonerate him.

Applicant also testified Counsel was not prepared for trial, but Applicant wanted to proceed to trial. He elaborated he wanted the truth about his medications to come out at trial. He testified he met with Counsel approximately two or three times, but it could have been greater or fewer. He testified that during these meetings, Counsel brought pictures to review with him one time. He testified Counsel did not seem interested in his case, and he did not feel

Counsel would help him. He testified he gave Counsel leads to investigate, but, as far as he was aware, Counsel did not contact anyone. He testified he told Counsel he wanted to go to trial, but Counsel told him to plead guilty instead. He elaborated that despite his desire to proceed to trial, he pled guilty.

Applicant next presented testimony from Janice Perego, who was his wife for eighteen years. She testified at the time of this incident, she and Applicant were separated, and she was living somewhere else at the time. She elaborated that she was not there when this incident occurred, but she spoke to Applicant the day before. She elaborated she believed Applicant was suffering from the beginning stages of dementia. She elaborated at the time, Applicant would repeat himself and would stumble, which was not normal for him. She testified she has no medical training and cannot diagnose Applicant. She also testified she made the investigator aware of Applicant's unusual behavior, and she also told Counsel she thought something was wrong with Applicant. She testified she spoke at Applicant's plea and did not mention that he was acting strangely at the time because she was nervous and forgot. She further testified she would have been willing to testify at trial.

Next, Applicant presented testimony from Jessica Ford, his granddaughter. She testified Counsel did not ask her any questions about Applicant's behavior. She further testified she was with Applicant the night before this incident; and on that night, Applicant left the house and could not find his way home, so he slept in his truck at her grandmother's house. She elaborated that getting lost was not normal behavior of Applicant, and she noticed some changes in him. She also testified Applicant was forgetful and would call her by the wrong name. She testified she did not have any medical training. She also testified that she was not a witness to this incident. She testified she spoke at Applicant's plea and did not mention to the plea court that

Applicant's behavior had changed because she did not think it was important enough to mention. She elaborated that no one asked her about changes in Applicant's behavior.

Following Applicant's case, Respondent presented testimony from Counsel. Counsel testified he has been practicing law for approximately twenty years. He testified he is currently employed with the South Carolina Commission on Indigent Defense, but during the time of Applicant's plea, he was the Circuit Public Defender for the Tenth Judicial Circuit Public Defender's Office. He testified he worked as the Circuit Public Defender for approximately four years. He testified he was assigned to Applicant's case after his indigency screening, which would have been shortly after Applicant's arrest. He testified he met with Applicant approximately twenty to twenty-five times between Applicant's arrest and plea, which was over the course of two years. He further testified he reviewed the discovery with Applicant over the course of several visits, and he reviewed small amounts of discovery at a time with Applicant due to his age. He elaborated the State had videos and photographs from the night of the incident, statements of witnesses, as well as statements from the victims. He testified he reviewed the various statements with Applicant. He testified Applicant was very specific as to his version of the facts: Applicant was working on his other truck, hit his head on the doorjamb, had a scuffle with a renter who pushed him and started the fire, got into his truck, and woke up in the parking lot of his doctor's office. He further testified he hired an investigator to develop any support for Applicant's version of the facts, but this investigation did not produce anything that would have been helpful. He elaborated he attempted to find Applicant's tenant, who Applicant alleged started the fire, but was unable to locate him. He further testified he investigated a possible land dispute in the surrounding area, but he could not find any leases for the property. He also testified Ms. Perego provided him with the titles to the cabins in the surrounding area.

He further testified his investigator tracked down all of the possible witnesses and spoke to them. He testified from day one, he was preparing to go to trial.

Counsel testified Ms. Lash was not evicting Applicant, but Applicant's truck hit her bar. He further testified Applicant's truck went through the patio wall on the front of the bar and into the bar, which was occupied at the time. He explained pictures of the scene were taken after Applicant's truck had been removed so that the occupants inside the bar could get out. He elaborated whoever removed the truck from the bar hit Applicant, who was in his other truck, when reversing the truck out of the bar. Counsel testified he does not recall if any injury was mentioned at the plea.

Counsel testified he spoke to Ms. Perego and some other family members regarding Applicant's strange behavior. He elaborated he had some concern about Applicant's mental health because during their visits, Applicant would harp on his version of the facts, without discussing anything else. As a result, Counsel testified he had Applicant evaluated at the Department of Mental Health ("DMH"). He testified it is not in his practice to go to DMH with the client, but he would be available by phone if the client needed him. He testified Applicant did call him while he was at DMH. He elaborated that after this evaluation, Applicant was found to be competent and criminally responsible. Counsel testified in that report, DMH listed Applicant's discharge from the military incorrectly—listing it as a dishonorable discharge rather than an honorable discharge. Counsel elaborated because of Applicant's honorable discharge, he was eligible for serves from Veterans' Affairs. Counsel testified Applicant's criminal history in the DMH report indicated his criminal history began with his 2012 solicitation charges, when he was eight-five years old, and also indicated there were no convictions before then but there were arrests. Counsel elaborated he was able to correct this information in the DMH report at the

hearing and was able to provide the plea court with some records. Counsel further testified, however, he was still concerned with Applicant's mental health, so he decided to get a second opinion from Dr. Amanda Salas. Counsel testified he had Applicant evaluated by Dr. Salas after DMH evaluated him, which would have been a year or more after this incident. He testified Dr. Salas indicated Applicant was competent, but he was in the early or moderate stages of dementia. Counsel elaborated Dr. Salas did not indicate that Applicant's dementia could be a cause as to why he committed these crimes, but he never asked her if dementia could have caused behavior changes. Counsel also testified he is not personally aware of behavior changes that are caused by dementia, but he is aware that it could occur. He testified he does not recall discussing this with Dr. Salas, but if it were not in the record, he probably did not specifically ask her about this side effect. He further testified Dr. Salas indicated Applicant's dementia from CT scans, and she indicated the results of the scan could not be faked, which he brought out during the plea.

Counsel testified initially he had no concerns that Applicant might be malingering and assumed he was acting the way he was due to his age. He explained that due to Applicant's advanced age, he spent extra time explaining everything with Applicant and reviewing the discovery in pieces with Applicant to ensure he understood everything. Counsel further testified he changed his mind about whether or not Applicant was malingering. He elaborated as the trial or plea date approached, the State listened to phone calls between Applicant and his wife from jail, and those phone calls indicated some deception on the part of Applicant. He testified he was unaware if the first DMH report indicated malingering, but he knew the second DMH report did indicate Applicant was malingering. He elaborated DMH had concerns about Applicant's behavior in the evaluation, so they asked the jail to pull phone calls to get an indication of Applicant's behavior in a different environment. Counsel testified he did discuss malingering

with Dr. Salas, which explained why Dr. Salas stated at the plea hearing that a CT scan could not be faked. He further testified that Dr. Salas's initial diagnosis of Applicant with dementia was before any evidence of Applicant's malingering was discovered, which caused Dr. Salas to hold to her finding as to the CT scans but also to find some evidence of malingering behavior on the part of Applicant. Counsel testified ultimately Dr. Salas agreed with DMH.

Counsel also testified he explained the consequences of pleading guilty and the agreement with the State to a cap of ten years over the course of a few visits with Applicant. He testified had they proceeded to trial, Applicant was facing 120 years. He further testified he had these discussions with Applicant especially as related to the risk of the phone calls from jail. He elaborated he believed Applicant understood the offer and the consequences thereto. He explained his practice is to discuss any plea offers with the client and then allow the client to have time to discuss with their family and ask any questions they may have. Counsel testified he gave Applicant a copy of projected parole dates according to South Carolina Department of Corrections calculators, and it is his normal practice to do so. He expounded he explained to Applicant these were merely projections and other factors could affect parole eligibility. Counsel testified it was Applicant's decision to plead guilty, and he was prepared to proceed to trial if Applicant had indicated that was what he wanted to do. He further testified he would not have taken Applicant to a plea if Applicant did not understand what was happening.

Counsel testified his objective at the mitigation stage of the plea was to argue for home incarceration ("HIP") due to Applicant's age. He elaborated HIP would have been more cumbersome on Applicant because he would be required to pay for the monitoring system, would be responsible for his own medications, and would not be subject to early release. He further testified he argued this to the plea court.

Counsel testified he did appeal from the plea but not from the probation revocation. He explained that although this might have been an oversight on his part, he did not have any involvement in the probation cases, as they arose from a different county and he had no involvement in those cases. He further explained Applicant did not ask him to appeal from the probation revocation, only from the guilty plea, which he did. Counsel testified he did not see any appealable issue from the probation revocation, as the conviction was a clear violation of his probation.

Counsel testified he did not have Applicant evaluated by an audiologist. Counsel testified Applicant said he could not hear and Applicant did have some hearing problems at the bond hearing; so, in order to accommodate Applicant's hearing loss, he purchased a hearing magnifying device. He further testified Applicant had a hard time hearing at the plea, but he could hear what he wanted to hear. He elaborated Applicant was able to answer and respond to questions at the hearing. Counsel further testified Applicant would interrupt during the plea and would tell Counsel things pertaining to the plea as it was ongoing, which indicated to Counsel that Applicant could hear.

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), SCRCP; *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, 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 investigate

Applicant alleges Counsel was ineffective for failing to investigate. Specifically, Applicant alleges Counsel failed to investigate his version of the facts. “[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 he hired an investigator to develop any support for Applicant's version of the facts, but this investigation did not produce anything that would have been helpful. He elaborated he attempted to find Applicant's tenant, who Applicant alleged started the fire, but was unable to locate him. He further testified he investigated a possible land dispute in the surrounding area, but he could not find any leases for the property. He further testified his investigator tracked down all of the possible witnesses and spoke to them. Therefore, this Court finds Counsel conducted a reasonable investigation under the circumstances—he attempted to locate potential witnesses and spoke to all witnesses who could be located. This allegation must be denied and dismissed with prejudice.

Counsel's alleged failure to file an appeal

Applicant also alleges Counsel was ineffective for failing to file an appeal from his probation revocation. Counsel has a constitutionally-imposed duty to consult with a defendant about an appeal when there is reason to think either: (1) that a rational defendant would want to appeal or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. *Roe v. Flores-Ortega*, 528 U.S. 470 (2000). Absent extraordinary circumstances, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea. *Turner v. State*, 380 S.C. 223, 224, 670 S.E.2d 373, 374 (2008). For example, "one extraordinary circumstance which would require counsel to advise a defendant of the right to appeal from a guilty plea would arise when the defendant inquires about an appeal." *Weathers v. State*, 319 S.C. 59, 61, 459 S.E.2d 838, 839 (1995). Moreover, in order to establish he was prejudiced by counsel's failure to file an appeal, Applicant must show he would have appealed absent counsel's deficient performance. *See Roe*, 528 U.S. at 484.

Here, Counsel appealed from Applicant's guilty plea but did not appeal from his probation revocation. Moreover, Applicant only asked Counsel to appeal his guilty plea, not his probation revocation. Because Counsel did indeed file an appeal from the guilty plea as requested by Applicant and because there was no indication from Applicant he wanted Counsel to appeal his probation revocation, this Court finds Applicant has failed to establish any deficiency on the part of Counsel.

Furthermore, this Court finds Applicant has wholly failed to establish any resulting prejudice. There is no indication whatsoever Applicant would have appealed from his probation revocation. Furthermore, Counsel articulated he did not believe there were any appealable issues

arising from the probation revocation. Accordingly, this allegation must be denied and dismissed with prejudice.

Counsel's alleged failure for advising Applicant to plead guilty

Applicant alleges Counsel was ineffective for advising Applicant to plead guilty. In post-conviction relief cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant 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 defendant would not have pled guilty and would have insisted on going to trial. *Roscoe v. State*, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." *Hill v. Lockhart*, 474 U.S. 52, 56 (1985). Further, "[t]hat a guilty plea must be intelligently made is not a requirement that all advice offered by the defendant's lawyer withstand retrospective examination in a post-conviction hearing." *McMann v. Richardson*, 397 U.S. 759, 770 (1970). Rather, "whether a plea of guilty is unintelligent . . . depends as an initial matter, not on whether a court would retrospectively consider counsel's advice to be right or wrong, but on whether that advice was within the range of competence demanded of attorneys in criminal cases." *Id.* at 771. "In considering an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing." *Dalton*, 376 S.C. at 138-39, 654 S.E.2d at 874 (citing *Wolfe v. State*, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997)).

At the evidentiary hearing, Applicant testified Counsel advised him to plead because he had talked to the solicitor and arranged for Applicant to go home on a monitor if he pled. Applicant also testified he did not know to what he pled, and he cannot recall his plea proceeding. He testified he told Counsel he wanted to go to trial, but Counsel told him to plead guilty instead. He elaborated that despite this feeling, he pled guilty. Contrastingly, Counsel testified he explained the consequences of pleading guilty and the agreement with the State to a cap of ten years over the course of a few visits with Applicant. He testified had they proceeded to trial, Applicant was facing 120 years. He elaborated he believed Applicant understood the offer and the consequences thereto. He explained his practice is to discuss any plea offers with the client and then allow the client to have time to discuss with their family and ask any questions they may have. Counsel testified it was Applicant's decision to plead guilty, and he was prepared to proceed to trial if Applicant had indicated that was how he wanted to proceed. He further testified he would not have taken Applicant to a plea if Applicant did not understand what was happening. This Court finds Counsel's testimony regarding his advice to Applicant to plead guilty very credible while Applicant's testimony is not credible. Because Counsel conferred with Applicant on multiple occasions, during which Counsel discussed the pending charges, the State's evidence, possible defenses and courses of action, answered all of Applicant's questions, and explained the plea offer from the State, this Court finds Counsel's conduct was reasonable under professional norms.

Furthermore, Applicant cannot establish any resulting prejudice from this alleged deficiency. Had Applicant proceeded to a jury trial, he was facing a term of imprisonment of 120 years. By pleading guilty, however, he faced a cap of a term of imprisonment of ten years, thereby significantly reducing his sentence exposure. At the evidentiary hearing, Applicant

merely stated he wanted “the truth about his medications” to come out, but did not state with any specificity he would have insisted on going to trial. Therefore, this Court finds Applicant has failed to establish his burden, as there is no indication that despite this alleged deficiency Applicant would not have pled guilty but rather insisted on going to trial. Moreover, by pleading guilty, Applicant was able to get the benefit of the bargain and significantly reduce his potential sentence. This Court finds this allegation must be denied and dismissed with prejudice.

Counsel’s alleged failure for allowing victim testimony regarding unsubstantiated allegations of criminal acts by Applicant after he was imprisoned

Applicant alleges that Counsel was ineffective for allowing Ms. Lash to testify at the plea regarding unsubstantiated allegations of criminal acts by Applicant after he was imprisoned. Specifically, Applicant alleges counsel was ineffective for allowing Ms. Lash to testify she had received phone calls from an unknown individual on behalf of Applicant that he “would take care of [her] and [her] family and make sure that [they] were taken care of the bad way” if he was ever released from prison. Tr. 27-28. 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 effectively use evidence of Applicant’s diagnosis of dementia as mitigation of his conduct

Applicant alleges Counsel was ineffective for failing to effectively present evidence of Applicant’s dementia diagnosis as mitigation of his conduct. Defense counsel is not required to investigate “every conceivable line of mitigating evidence no matter how unlikely the effort would be to assist the defendant at sentencing.” *Wiggins v. Smith*, 539 U.S. 510, 533 (2003).

Furthermore, defense counsel is not required to present mitigating evidence at sentencing in every case. *Id.*

During mitigation, however, Counsel presented the testimony of Dr. Amanda B. Salas who diagnosed Applicant as having the beginning stages of dementia. Tr. 38. Dr. Salas met with Applicant twice, once in December of 2015 and once in February of 2016, for a total of approximately four hours. Tr. 39. She also reviewed medical records from the detention center, Applicant's family practice doctor, and Anderson AnMed Health Hospital, as well as the evaluation prepared by DMH. Tr. 39. Based on screening testing of Applicant for memory impairment, the results of a CT exam, which was performed in June of 2014, and physical exam findings, Dr. Salas indicated Applicant suffered from a dementing process and definitional criteria for neurocognitive disorder. Tr. 39-40. She described his dementia at a moderate stage. Tr. 40. She further indicated the CT scan showed mild generalized cortical atrophy. Tr. 40. Applicant's functional capacity, however, was higher than expected for a person with this atrophy but was consistent in the stability of his decline. Tr. 40-41. Additionally, Applicant demonstrated facial reflexes consistent with an individual suffering from dementia. Tr. 41-42. Dr. Salas testified to a reasonable degree of medical certainty that Applicant did meet the criteria of neurocognitive disorder, mild stage. Tr. 42. She further opined Applicant's vascular disease would impact not only his brain but also his heart, which would require adequate treatment to manage his symptoms, heart disease, and vascular problems, which would diminish the risk of a rapid decline as far as dementia was concerned. Tr. 42-43. Dr. Salas also testified it would be unlikely Applicant could continue to live alone or make decisions for himself. Tr. 43. Given Dr. Salas's extensive presentation of Applicant's dementia at the plea, this Court finds Counsel's performance was reasonable under prevailing professional norms.

This Court further finds Applicant has failed to establish any resulting prejudice from this alleged deficiency. Dr. Salas's testimony at sentencing concerning Applicant's diagnosis of dementia was extensive, and the plea court was able to hear exactly how Applicant's diagnosis currently affected him and how it could affect him in the future. Consequently, it is unlikely that the result of the proceeding would have been different had Counsel presented more evidence of Applicant's neurocognitive disorder. Therefore, this Court finds that this allegation must be denied and dismissed with prejudice.

Involuntary Guilty Plea

Applicant further alleges his guilty plea was not voluntarily made. This Court finds Applicant's guilty plea was freely and voluntarily made. In evaluating issues concerning guilty pleas, this Court will consider the entire record, including the transcript of the guilty pleas and the evidence presented at the post-conviction relief hearing. *Roddy v. State*, 339 S.C. 29, 528 S.E.2d 418 (2000). Voluntariness of a guilty plea is not merely determined by an examination of a specific inquiry by the plea court alone but rather is determined by the record of both the guilty plea proceeding and the post-conviction relief hearing. *Id.* In order to find a guilty plea was knowingly and voluntarily 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 (1969). Further, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant; thus, an applicant's right to contest the validity of such a plea is usually foreclosed. *Dalton v. State*, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (citing *Blackledge v. Allison*, 431 U.S. 63 (1977)). Therefore, admissions "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be

allowed to depart from the truth of his statements.” *Id.* (citing *Crawford v. United States*, 519 F.2d 347 (4th Cir. 1975)); *Edmonds v. Lewis*, 546 F.2d 566 (4th Cir. 1976).

This Court finds this allegation is without merit, and Applicant has failed to carry his burden of proving that his guilty plea was involuntarily made. This Court further finds Applicant’s plea was entered into freely and voluntarily. The record before this Court reflects that the plea court thoroughly reviewed all of Applicant’s constitutional rights with him, including his right to a jury trial. Upon explanation of each constitutional right, Applicant indicated he understood. Applicant further indicated he was pleading guilty of his own free will. Therefore, this Court finds Applicant had a full understanding of the consequences of his plea and the charges against him, and the plea court correctly found Applicant’s plea was freely, voluntarily, and intelligently made. Consequently, this allegation must be denied and dismissed with prejudice.

Factual basis for ABHAN

Applicant further alleges his guilty plea was not knowingly and voluntarily entered into, as there was no factual basis for ABHAN on the record. Specifically, Applicant alleges because he did not physically injure anyone, there was no factual basis for ABHAN. Before a guilty plea may be accepted, the court must be certain the defendant understands the charge and the consequences of the plea. *State v. Armstrong*, 263 S.C. 594, 211 S.E.2d 889 (1975). In addition, the record must indicate a factual basis for the plea. *Id.* However, “*Armstrong* does not mean that the state may not offer a defendant, charged with a greater offense, an opportunity to plead guilty to a lesser offense, notwithstanding the factual basis does not precisely comport with the lesser offense.” *Anderson v. State*, 342 S.C. 54, 57-58, 535 S.E.2d 649, 651 (2000). In fact, a plea to any lesser-included offense is sufficient as long as there is a sufficient factual basis to

support the crime for which the defendant is indicted. *Id.* at 58, 535 S.E.2d at 651. Moreover, the decision to accept a guilty plea to a lesser-included offense despite the lack of a factual element to support that offense can be interpreted as a “tactical maneuver to avoid the very real possibility that the jury might come back with a verdict of [the indicted charge].” *Id.*

“A person who, with intent to kill, attempts to kill another person with malice aforethought, either expressed or implied, commits the offense of attempted murder.” S.C. Code Ann. § 16-3-600(B)(1). On the other hand, ABHAN occurs when there is an unlawful injury to another person and either great bodily injury to another person results or the act is accomplished by means likely to produce death or great bodily injury. S.C. Code Ann. § 16-3-600(B)(1). ABHAN is a lesser-included offense of attempted murder. S.C. Code Ann. § 16-3-600(B)(3).

Here, the Anderson County Grand Jury indicted Applicant for two counts of attempted murder, and he pled guilty to two counts of the lesser-included offense ABHAN. Had Applicant proceeded to a jury trial for the two counts of attempted murder, Applicant faced a term of imprisonment of up to 120 years. By pleading guilty, however, Applicant significantly reduced his potential sentence exposure from up to 120 years imprisonment to an agreed cap of ten years imprisonment.

In addition, the State’s evidence against Applicant was significant. Various eyewitnesses saw Applicant set the wood in the truck on fire and manipulate it so that it would drive into Tiger Cove Grill. Applicant, enraged from being evicted from his home, decided to take his aggression out on the property both that he occupied and that was conveniently situated across the street. Applicant not only set his own house on fire but also manipulated a burning truck so that it would ram into the restaurant across the street. From this, the jury could infer Applicant wanted to take his aggression out on the closest possible source, Tiger Cove Grill across the street,

thereby inferring Applicant had the requisite intent to kill when he committed these acts. Moreover, it is from this very conduct, which shows a total disregard of the value of human life, from which a jury could have inferred malice. Therefore, this Court finds there was a factual basis at the plea to support the indicted charge. Furthermore, with the very real possibility of being convicted for attempted murder, this Court finds Applicant's decision to plead guilty to the lesser-included offense of ABHAN was a tactical maneuver. Therefore, this allegation must be denied and dismissed with prejudice.

Due Process

Applicant alleges a due process violation in that the plea did not comply with the requirements of the American Disabilities Act due to a failure to accommodate Applicant's hearing loss. "No state shall . . . deprive any person of life, liberty, or property without due process of law. U.S. Const. amend. XIV, § 1, S.C. Const. Art I, § 3. Specifically, substantive due process protects against the arbitrary infringement of "fundamental rights that are so 'implicit in the concept of ordered liberty' that 'neither liberty nor justice would exist if they were sacrificed.'" *State v. Dykes*, 398 S.C. 351, 357, 728 S.E.2d 455, 458 (2012) (quoting *Doe v. Moore*, 410 F.3d 1337, 1343 (11th Cir. 2005) (internal citations omitted)). Applicant testified he could not hear what the witnesses were saying at his plea and he did not know what was happening. He elaborated Counsel gave him a hearing aid, but it was not working. He further testified he could hear a few words at the beginning but nothing else. In order to accommodate Applicant's hearing loss, however, Counsel purchased a hearing magnifying device. He further testified Applicant was able to answer and respond to questions at the hearing. Counsel elaborated Applicant would interrupt during the plea and would tell Counsel things pertaining to the plea as it was ongoing, which indicated to Counsel that Applicant could hear. This Court

finds Counsel's testimony regarding this allegation very credible, whereas Applicant's testimony is not credible. Because Counsel provided Applicant with a hearing magnifying device and because Applicant was clearly and unequivocally able to respond to questions from the plea court during his plea, this Court finds there was no Due Process violation. Therefore, this Court finds this allegation must be denied and dismissed with prejudice.

CONCLUSION

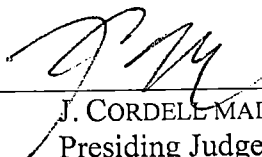
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

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. CORDELE MADDOX, JR.
 Presiding Judge
 Tenth Judicial Circuit

Anderson, South Carolina

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 COMMON PLEAS AND
 GENERAL SESSIONS

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STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

EDRICK PERIGO,

v.

THE STATE OF SOUTH CAROLINA,
RESPONDENT.

) IN THE COURT OF COMMON PLEAS
) TENTH JUDICIAL CIRCUIT
)
)

) MOTION TO ALTER OR AMEND
) THE JUDGEMENT
)

) CASE # 2017-CP-04-1175
)
)
)

COMES NOW the Applicant and hereby moves pursuant to Rule 59(e), SCRC, to alter or amend the judgment of this Court filed on April 2, 2018. The Applicant takes issue with the findings of fact and conclusions of law set forth resulting in the denial of post-conviction relief in his case. He further argues that even if a single allegation does not amount to ineffective assistance of counsel standing alone, the cumulative effect of counsel's performance was deficient and prejudiced him to the degree that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 386 S.E.2d 624, 625 (1989).

The Order of Dismissal finds that plea Counsel's failure to file an appeal of the Applicant's probation violation (VOP) that was triggered by the guilty plea which counsel did appeal was not ineffective and no prejudice was shown. (Order of Dismissal p. 14). However, court records show that the appeal was withdrawn and the case sent straight to PCR because the failure to include the VOP in the Notice of Appeal negated any benefit of a reversal on appeal because the Applicant would still be serving ten years on the VOP. Therefore, the Applicant submits that it was ineffective to not include the VOP with the appeal of the plea that triggered it, and the prejudice was the loss of any benefit of a reversal on appeal.

In addressing the Applicants argument of ineffective assistance of trial counsel for failure to object to victim testimony regarding unsubstantiated allegations of criminal acts by the Applicant, the Order of Dismissal states that the Applicant failed to present any testimony or argument and abandoned the issue. However, the record supports the argument that there was no objection to the State's reading of Robert Gary Bannister's statement made through his attorney, Lee Cole, referencing unproven hearsay, accusations of relatives and friends committing crimes which were unproven, as well as statements to the plea judge that the victim, Ms. Lash, was hysterical after two threatening phone calls that day when jail records showed the Applicant did not access phone or visitation. (Order of Dismissal p. 17).

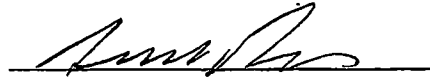
Finally, citing *Anderson v. State* the Order of Dismissal finds that there was a factual basis for the indicted charge of attempted murder such that the plea to ABHAN even though there was no injury was a tactical maneuver. (Order of Dismissal p. 12) *Anderson v. State*, 342 S.C. 54, 57-58, 535 S.E.2d 649, 651 (2000). The Applicant argued that the lack of injury in the factual basis of the plea as both a due process violation bringing into question the knowing and voluntary nature of the plea and an ineffective assistance of counsel claim for advising a plea to ABHAN when there was no alleged injury or evidence of intent to kill to support the indicted charge of attempted murder.

Anderson recognizes there must at least be a sufficient factual basis for the indicted offense to support a plea to a lesser-included offense. *Id.* at 58 & 651. Here, *Van Selner v. State* is applicable because facts presented in Mr. Perego's plea do not include physical injury, attempt to kill with malice aforethought, or intent to kill, and do not form a sufficient factual basis for either the indicted charge of attempted murder or ABHAN. (See plea transcript pp 13-19) *Van Selner v. State*, 416 S.C. 606, 787 S.E.2d 525 (2016). This especially so because Mr. Perego is a

nearly deaf, octogenarian, World War II veteran with moderate dementia and attempted murder requires both an attempt to kill with malice aforethought and specific intent to kill.

For the foregoing reasons, the Applicant requests this Court to alter or amend its Order of Dismissal.

Respectfully submitted,



Susannah Ross
Attorney for the Applicant
330 E. Coffee St,
Greenville, SC 29601
(864) 242-0029

This 11 day of April, 2018

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)
)
EDRICK PEREGO,)
)
)
Applicant,)
)
vs.)
)
THE STATE OF SOUTH CAROLINA,)
)
)
Respondent.)
_____)

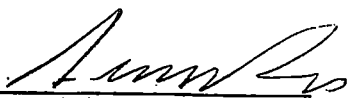
IN THE COURT OF COMMON PLEAS

2017-CP-04-1175

AFFIDAVIT OF SERVICE
BY MAIL

1. I am the attorney for the Applicant in the above-captioned matter.
2. Regular communication by mail exists throughout the state of South Carolina and this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Motion to Alter or Amend** on the above-captioned matter on the following person by depositing the same in the United States mail with proper postage affixed thereto:

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Attn: Kelly Oppenheimer



Attorney for Defendant

This 11 day of April, 2018

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STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

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Edrick Perego, #368192,

Applicant,

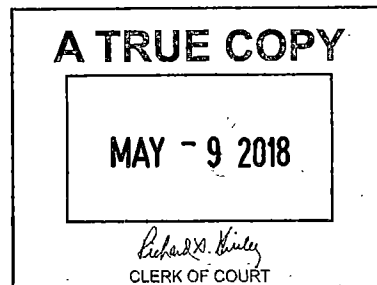
COMMON PLEAS AND
GENERAL SESSIONS

Case No. 2017-CP-04-1175

**ORDER DENYING APPLICANT'S
"MOTION TO ALTER OR AMEND
THE JUDGEMENT"**

v.

State of South Carolina,
Respondent.



This matter comes before this Court by way of Applicant's "Motion to Alter or Amend the Judgement," asking this Court to alter or amend its Order of Dismissal denying Applicant post-conviction relief.

I.

The records before this Court indicate Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Anderson County Clerk of Court. The Anderson County Grand Jury indicted Applicant for two counts of third-degree arson during its September 2014 term (2014-GS-04-01598) and for two counts of attempted murder during its October 2014 term (2014-GS-04-01834;-01835). Herverly Young, Esquire represented Applicant on these charges. On May 13, 2016, Applicant appeared before the Honorable R. Scott Sprouse, where he pled guilty as indicted to two counts of third-degree arson and to two counts of assault and battery of a high and aggravated nature as a lesser-included offense of attempted murder. Judge Sprouse sentenced Applicant to ten years imprisonment for each charge. At the time of this conviction and sentence, Applicant was serving a probationary sentence for solicitation to commit assault and battery and solicitation to commit kidnapping.¹

¹ On April 16, 2013, Applicant appeared before the Honorable Alexander S. Macaulay and pled guilty as indicted to one count of

Consequently, Judge Sprouse revoked Applicant's probation in full, requiring him to serve ten years imprisonment for each Solicitation charge. All sentences were to run concurrently.

Applicant filed a timely notice of appeal, and Appellate Defender Laura R. Baer of the South Carolina Commission on Indigent Defense, Office of Appellate Defense represented Applicant. On December 15, 2016, the South Carolina Court of Appeals issued an Order indicating that Applicant, with full understanding of all possible consequences and with agreement of counsel, withdrew his appeal. The Remittitur was issued on January 3, 2017.

II.

Applicant filed his *pro se* application for post-conviction relief on June 5, 2017, in which he alleged he was being held in custody unlawfully based on allegations of:

1. Guilty plea not knowingly, intelligently, and voluntarily entered;
 - a. No factual bases for plea;
 - b. Did not understand sentencing.
2. Ineffective assistance of plea counsel;
 - a. Failed to object to unconstitutional sentence;
 - b. Failed to appeal from probation cases;
 - c. Failure to investigate.
3. Ineffective assistance of appellate counsel; [and]
 - a. Advised to drop direct appeal.
4. Unconstitutional sentence (violation of 8th Amdt.).
 - a. De facto life sentence violates prohibition against cruel and unusual punishment and is disproportionate;
 - b. Failure to provide proper medical care.

Respondent made its Return and Partial Motion to Dismiss on September 12, 2017, requesting all allegations arising from Applicant's 2012 guilty plea be summarily dismissed as time barred and requesting Applicant's allegation of improper medical care be summarily dismissed for failing to state a cognizable claim under the Uniform Post Conviction Procedure Act. Respondent requested an evidentiary hearing on

solicitation to commit assault and battery and one count of solicitation to commit kidnapping. Judge Macaulay sentenced Applicant to a term of imprisonment for ten years, suspended on the service of thirty-four days with five years' probation.

all other claims. Thereafter, Applicant, through his counsel filed an amended application for post-conviction relief on February 15, 2018, alleging:

1. Ineffective assistance of plea counsel for advising Mr. Perego to plead guilty, allowing victim testimony regarding unsubstantiated allegations of criminal acts by Mr. Perego after he was imprisoned, and failing to effectively use evidence of Mr. Perego's diagnosis of dementia as mitigation of his conduct; [and]
2. Due process violations due to the plea not being knowingly and voluntarily made, non-compliance with the ADA due to failure to accommodate Applicant's hearing loss, and no factual basis for ABHAN in the record.

An evidentiary hearing was convened on February 21, 2018, at the Anderson County Courthouse before the Honorable J. Cordell Maddox, Jr. Applicant was present at the hearing and was represented by Susannah C. Ross, Esquire. Respondent was represented by Assistant Attorney General Kelly Oppenheimer of the South Carolina Attorney General's Office. Testifying at the hearing were Applicant, Applicant's ex-wife, Janice Perego, Applicant's granddaughter, Jessica Ford, and plea counsel Hervery Young, Esquire.

Following this Court's review of the testimony and evidence presented at the hearing, this Court found there were no constitutional deprivations or other errors entitling Applicant to relief and denied and dismissed the application with prejudice by formal order signed March 30, 2018, and filed April 2, 2018. Applicant received the filed Order on April 6, 2018.

On April 11, 2018, Applicant served a copy of his "Motion to Alter or Amend the Judgement" on Respondent and this Court. Respondent filed its Return to this motion on April 27, 2018.


III.

This Court's find that its Order of Dismissal contains the required findings of facts and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1976) and Rule 52(a) SCRPC. *See also McCray v. State*, 305 S.C. 329, 408 S.E.2d 241 (1991). Having carefully reviewed the entire record in this matter, this

Court finds there is no basis for altering or amending its prior ruling.² Therefore, this Court hereby denies Applicant's Motion in its entirety, and affirms the previous Order of Dismissal.

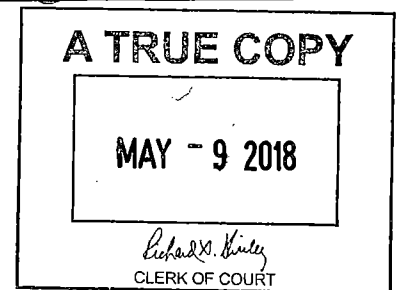
This Court notes if Applicant desires to secure appellate review of this Order and the Order of Dismissal, a notice of appeal must be filed and served within thirty days of the service of this Order. Applicant is directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of appeal has been timely filed.

AND, IT IS SO ORDERED this 17 day of May, 2018.



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

Anderson, South Carolina



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² The Court, in its discretion, has considered this matter based upon the motions submitted by the parties and the post-conviction relief file, since oral argument will not aid the Court in reaching its decision. See Rule 59(f), SCRCP.

SUSANNAH ROSS ESQ.

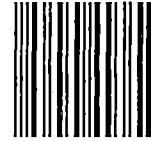
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Susannah Ross



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