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May 30, 2018

RECEIVED

JUN 01 2018

S.C. SUPREME COURT

**Via US Mail**

Daniel Shearouse  
Clerk of Court  
South Carolina Supreme Court  
Post Office Box 11330  
Columbia, South Carolina 29211

**Re: *Notice of Intent to Appeal from Demossio Valentine v. State of SC***  
***C.A. No.: 2017-CP-39-0021***

Dear Mr. Shearouse:

I was Court Appointed in the above referenced matter, and I expect that appellate defense will handle the appeal and petition for certiorari. On behalf of my client, enclosed for filing please find the Notice of Appeal and proof of service. I've enclosed a copy of the Honorable Letitia H. Verdin's Order of Dismissal to be challenged on appeal. By copy of this letter, I am also serving my client, counsel for the State of South Carolina, the South Carolina Commission of Indigent Defense - Appellate Defense Division and the Pickens County Clerk's Office.

Thank you for your assistance in this matter and if you have any questions, please feel free to contact me.

Sincerely,  
LAW OFFICE OF R. MILLS ARIAIL, JR.  
Attorney at Law

  
R. Mills Ariail, Jr.

RMAjr/dl  
Enclosures (as stated)

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM PICKENS COUNTY  
Court of Common Pleas

Letitia H. Verdin, Circuit Court Judge

Case No. 2017-CP-39-0021

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S.C. SUPREME COURT

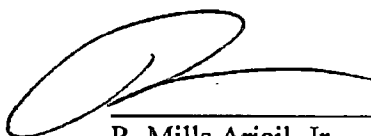
Demossio Montae Valentine,..... Appellant,

v.

State of South Carolina ..... Respondent.

**NOTICE OF APPEAL**

Appellant appeals the Honorable Letitia H. Verdin's Order of Dismissal dismissing Appellant's application for post-conviction relief. On May 15, 2018, the Honorable Letitia H. Verdin signed an order dismissing Appellant's application for post-conviction relief with prejudice. Appellant, through counsel, received written notice of entry of this order on May 29, 2018. A copy of the Honorable Letitia H. Verdin's Order of Dismissal is attached.



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Attorney for Appellant

Greenville, South Carolina  
May 30, 2018

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

RECEIVED

JUN 01 2018

S.C. SUPREME COURT

APPEAL FROM PICKENS COUNTY  
Court of Common Pleas

Letitia H. Verdin, Circuit Court Judge

Case No. 2017-CP-39-0021

Demossio Montae Valentine,..... Appellant,

v.

State of South Carolina ..... Respondent.

**CERTIFICATE OF SERVICE**

I, Denise Tanner LaBeck, paralegal to R. Mills Ariail, Jr., do hereby certify that on this May 30, 2018, I served upon the below named Respondents copies of the **NOTICE OF APPEAL** by depositing copies of the same via U.S. Mail, postage prepaid, Registered Mail in an envelope addressed as set forth herein below:

**DeShawn Mitchell, Esq.**  
**Assistant Attorney General**  
**PO Box 11549**  
**Columbia, SC 29211**

**Pickens County Clerk's Office**  
**Pickens County Courthouse**  
**214 East Main Street**  
**Pickens, SC 29671**

**Demossio Valentine #00242226**  
**Lee Correctional Institution**  
**990 Wisacky Highway**  
**Bishopville, SC 29010**

**SC Commission of Indigent Defense**  
**Division of Appellate Defense**  
**PO Box 11433**  
**Columbia, SC 29211-1433**

*Denise Tanner LaBeck*  
Denise Tanner LaBeck

May 30, 2018

STATE OF SOUTH CAROLINA )  
COUNTY OF PICKENS )  
Demossio Montae Valentine, #242226, )  
Applicant, )  
v. )  
State of South Carolina, )  
Respondent. )

IN THE COURT OF COMMON PLEAS  
THIRTEENTH JUDICIAL CIRCUIT

2017-CP-39-0021

ORDER OF DISMISSAL

CLERK OF COURT  
SOUTH CAROLINA

FILED MAY 21 A 8 33

This matter is before the Court by way of an application for post-conviction relief filed by Demossio Montae Valentine (“Applicant”) on January 11, 2017. The Court convened an evidentiary hearing into the matter on October 25, 2017, at the Greenville County Courthouse in Greenville, South Carolina. Applicant was present at the hearing and represented by R. Mills Ariail Jr., Esquire. Rasheeda Cleveland, Esquire, of the South Carolina Attorney General’s Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant’s plea counsel, John DeJong, Esquire (“Counsel”) also testified. The Court had before it Applicant’s records from the South Carolina Department of Corrections, Applicant’s appellate records, a copy of the original plea transcript, the records of the Pickens County Clerk of Court regarding the subject convictions, and the pleadings. The Court finds as follows:

**I. PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Pickens County Clerk of Court. In February 2012, the Pickens County Grand Jury indicted Applicant for distribution of cocaine base (crack cocaine), third offense (2011-GS-39-2047). John W. DeJong, Esquire represented Applicant. Assistant

Solicitor D. Graham Buckner, Esquire prosecuted the case. On September 15, 2014, Applicant pleaded guilty as indicted before the Honorable G. Edward Welmaker. Judge Welmaker sentenced Applicant to imprisonment for fifteen years and nine months for distribution of cocaine base (crack cocaine), third offense.

Applicant filed a timely notice of appeal. The South Carolina Court of Appeals dismissed Applicant's appeal for failure to provide a sufficient guilty plea explanation on December 30, 2015. State v. Valentine, Appellate Case No. 2014-001991 (S.C. Ct. App. filed December 30, 2015). The remittitur was returned to the circuit court on February 10, 2016.

#### **FACTUAL HISTORY**

On November 23rd, 2010, in Pickens County within the city limits of Easley, Applicant sold .19 grams of crack cocaine to a confidential informant working under the supervision and direction of the Easley Police Department. (GP. Tr. p. 8).

#### **PRESENT APPLICATION**

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

1. "Ineffective Assistance of Counsel"
  - a. "Counsel failed to help produce a defense in the case which" cause me to plead guilty"
2. "Violation of the 14<sup>th</sup> amendment Due Process"

#### **II. APPLICABLE LAW**

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her 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, he or she must prove "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." Butler at 442, 334

S.E.2d 441 (quoting Strickland v. Washington, 466 U.S. 668, 686 (1984)). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Id.

"[C]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Butler at 442, 334 S.E.2d 441 (quoting Strickland at 690). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989). "Judicial scrutiny of counsel's performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel's assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Strickland, 466 U.S. at 689; Edwards v. State, 392 S.C. 449, 456-57, 710 S.E.2d 60, 64 (2011). "[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)).

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 at 117, 386 S.E.2d at 625 (citing Strickland at 688). 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 at 117-18, 386 S.E.2d at 625 (citing Strickland at 694). With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged

errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 (1985).

In PCR cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citations omitted). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Lockhart, 474 U.S. at 56. 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.

The record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Dalton v. State, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Boykin v. Alabama, 395 U.S. 238, 242 (1969)). A 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 the court and defendant, between the 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)). 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, at 137-38, 654 S.E.2d at 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)). “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.” *Id.* 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)).

### **III. 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 had the opportunity to observe the witnesses presented at the hearing, and can weigh their testimony and credibility accordingly. These credibility findings have been applied to the Court’s findings and conclusions set forth below. Further, this Court has reviewed the records submitted to it by the parties and the legal arguments made by the attorneys. Below are the findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2017).

#### **A. Ineffective Assistance of Counsel**

##### ***IAC Allegation— Failure to Help Applicant Produce A Defense in the Case***

Applicant alleges Counsel failed to “help produce a defense in the case” which caused him to plead guilty. At the guilty plea proceeding, the plea judge asked Applicant if he understood that by pleading guilty he was giving up any defenses he may have, to which Applicant replied that he understood. GP. Tr. 6. 21-25, 7.,1-3.

At the evidentiary hearing, Applicant testified that he met with Counsel before trial and

reviewed the facts of his case with him. Applicant recalled meeting with Counsel three to four days before his plea. Applicant asserted Counsel advised him of a plea for ten years for Applicant's August 2012 assault and battery of a high and aggravated nature and distribution of crack cocaine- 2<sup>nd</sup> offense charge. Applicant further asserted that before this meeting he had never been informed of this ten year plea offer. Applicant stated that he did not want to discredit Counsel but he should have subpoenaed his witnesses and he did not. Applicant also stated that he wanted to know if the confidential informant would testify at his trial but Counsel was unable to provide him with an answer. Applicant explained that the confidential informant was brought to his holding cell, and that he took this as a threat to force him to plea. He alleged that he never sold the confidential informant drugs, and only discussed alcohol with him. Applicant testified he pled freely and voluntarily to avoid a possible thirty year sentence.

Applicant further testified that he pled for the "sake of kids" so that he could get home to them. Applicant asserted that he "was ignorant to the law" and his biggest issue was that he did not know of a ten year plea offer. Applicant also testified that he pled because he "didn't know what to do." Applicant stated that he provided Counsel with at least four names of witness that he wanted subpoenaed to testify at trial. Applicant further testified that Applicant explained that he had no complaints against Counsel and that he was truthful during his guilty plea.

Counsel testified that he represented Applicant on a number of other charges in addition to the distribution of crack cocaine-3<sup>rd</sup> offense charge. Counsel could not recall the exact number of times he met with Applicant before the guilty plea but recalled that Applicant was not good at keeping his appointments. Counsel also recalled that during the time he met with Applicant he reviewed the evidence and all written discovery with him. Counsel testified that he recalled reviewing the statements of the confidential informant with Applicant. Counsel further

testified that Applicant did not provide him with names of any witnesses. Counsel explained that there was nothing in his file that showed there was a ten year plea offer in Applicant's case. Counsel further explained that it was for Applicant's benefit to see the confidential informant because he was so adamant that the informant would not show up to testify at trial. Counsel testified that it was Applicant's decision to plea.<sup>1</sup>

This Court finds Counsel's testimony credible. Based upon this Court's observations of Applicant at the hearing and the inconsistency of his testimony, the Court finds Applicant's testimony not credible. This Court finds Counsel provided effective assistance in this case and Applicant's decision to plead guilty was made freely and voluntarily. Counsel is a trial practitioner who had experience in the trial of criminal offenses. Counsel conferred with Applicant on multiple occasions, during which Counsel discussed the pending charges, the State's evidence, possible defenses and courses of action, and answered all of Applicant's questions.

This Court further finds the record reflects Applicant's plea was entered freely, voluntarily, knowingly, and intelligently. The plea judge explained the charges to Applicant, including the maximum penalties for each. The plea judge also went through Applicant's constitutional rights and questioned Applicant as to whether he understood those rights and wished to give them up to plead guilty. Applicant agreed that he did. Applicant admitted he was guilty of these offenses told the plea judge that he was satisfied with his attorney. Applicant further told the plea judge no one had threatened him or made him any promises to get him to plead guilty, and he was doing so of his own accord. Additionally, Applicant told the plea judge

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<sup>1</sup> There was a break in the courtroom during Counsel's testimony. During the break, Applicant proclaimed that he did not want to continue to go forward with Mr. Mills representing him because he was not prepared. The Court construed this proclamation as a motion for continuance. The motion was denied and the evidentiary hearing continued.

he did not have any physical or mental issues which would prevent him from understanding the proceeding, and Applicant indicated he understood all of the plea judge's questions and had answered them honestly. This Court therefore finds that Applicant understood the terms of the plea and the possible sentences he could receive.

Therefore, this Court finds Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present compelling evidence that Counsel committed either errors or omissions in his representation of Applicant. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. This Court also finds that the record fully supports the knowing and voluntary nature of Applicant's guilty plea. See Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (holding defendant's knowing and voluntary waiver of statutory or constitutional rights in a guilty plea "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."). In addition, Applicant has presented no evidence or valid reasons why he should be allowed to depart from the truth of his statements made at the plea. See Dalton, 376 S.C. at 137, 654 S.E.2d at 874 ("[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."). This Court concludes Applicant has not met his burden of proving Counsel failed to render reasonably effective assistance. The allegation is denied and dismissed.

This Court would further find Applicant stated that he provided Counsel with at least four names of witness that he wanted subpoenaed to testify at trial. However, those witnesses were not present in the courtroom and did not present any testimony during the evidentiary hearing.

Prejudice from trial counsel's failure to interview or call witnesses cannot be shown where the witnesses do not testify at post-conviction relief. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Bassette v. Thompson, 915 F.2d 932 (4<sup>th</sup> Cir. 1990), cert. denied, 499 U.S. 982 (1991).

#### **Due Process Violation**

Applicant alleges that he was denied due process of law. However, Applicant failed to set forth with specificity the grounds upon which these constitutional violations were based or present any evidence of a specific violation. After a review of the record, this Court finds this allegation is without merit. Accordingly, this allegation is denied and dismissed with prejudice.

#### **IV. CONCLUSION**

Based on all the foregoing, this Court finds and concludes that 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 notifies the Applicant that he must file and serve a notice of appeal within thirty (30) 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 PCR. Rule 71.1(g), SCRCP provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your

attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED:**

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

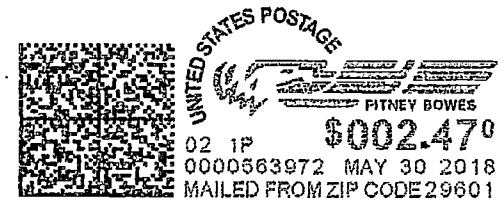
AND IT IS SO ORDERED this 15 day of May, 2018.

  
LETITIA H. VERDIN  
Presiding Judge  
Thirteenth Judicial Circuit

Greenville, South Carolina.

CLERK OF COURT  
SOUTH CAROLINA

2018 MAY 21 A 8:34



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IL, JR.

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