

ROSS AND ENDERLIN, PA  
ATTORNEYS AT LAW

June 6, 2018

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

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JUN 12 2018

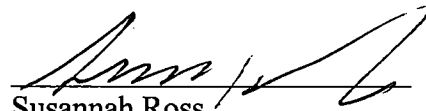
S.C. SUPREME COURT

Re: Jed D. Wheeler v. State  
2017-CP-23-5235

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  
Greenville County Clerk of Court

330 E. COFFEE ST. • GREENVILLE/SC • 29601  
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THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

Frank R. Addy, Jr., Circuit Court Judge

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2017-CP-23-5235

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Jed D. Wheeler, ..... Appellant,

v.

The State, ..... Respondent.

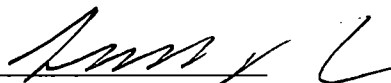
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NOTICE OF APPEAL

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Jed D. Wheeler appeals the Honorable Frank R. Addy, Jr.'s Order of Dismissal filed May 18, 2018, and Order Denying Applicant's Motion to Alter or Amend filed June 6, 2018.

This 6 day of June, 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  
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Attorney for Respondent

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JUN 12 2018

S.C. SUPREME COURT



STATE OF SOUTH CAROLINA )  
COUNTY OF GREENVILLE )  
Jed D. Wheeler, 369693 )  
Applicant, )  
v. )  
State of South Carolina, )  
Respondent. )

IN THE COURT OF COMMON PLEAS  
FOR THE THIRTEENTH JUDICIAL CIRCUIT

2017-CP-23-5235

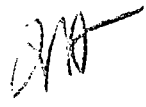
**ORDER OF DISMISSAL**

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This matter comes before the Court by way of an application for post-conviction relief filed on August 17, 2017 by Jed D. Wheeler (Applicant). Respondent made its Return on or about January 17, 2018. An evidentiary hearing into the matter was convened on February 20, 2018, at the Greenville County Courthouse in Greenville, South Carolina. Applicant was present and represented by Susannah C. Ross, Esquire. Respondent was represented by DeShawn H. Mitchell, Esquire of the South Carolina Attorney General's Office.

At the hearing, Applicant testified on his own behalf. Applicant's Plea Counsel Randall L. Chambers, Esquire also testified. This Court had before it a copy of the records of the Greenville County Clerk of Court regarding the Applicant's convictions, the transcript from Applicant's guilty plea, the PCR application, Respondent's Return and Applicant's records from the Department of Corrections. After reviewing the record and everything presented, this Court finds Applicant has failed to establish any constitutional deprivations entitling him to post-conviction relief and denies this application.

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## PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Greenville County Clerk of Court. Applicant waived presentment to the grand jury on the charge of bank robbery (2016-GS-23-601). Randall L. Chambers, Esquire, represented Applicant. On September 9, 2016, Applicant plead guilty to bank robbery before the Honorable Perry H. Gravely. Judge Gravely sentenced Applicant to ten years with credit for any time served already. Applicant did not appeal his sentences or convictions.

## FACTUAL HISTORY

On October 13, 2015, Applicant entered the Regions Bank in Simpsonville in Greenville County. Applicant was wearing a dark shirt over his face. Applicant demanded money from the teller and as the teller was putting the money in a bag, she was able to slide a dye pack in the bag. Applicant then left the bank and took off his mask as he was leaving. The teller and other employees were able to see that he was a young white male. Subsequently, an individual matching the description of the robber presented a \$50 bill to a Spinx gas station in order to buy alcohol. The police were able to identify Applicant and arrested him. During a recorded interview, Applicant confessed to this bank robbery as well as a robbery that occurred elsewhere. (GP. Tran. p. 21).

## ALLEGATIONS

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

1. Ineffective Assistance of Counsel on plea agreement.
  - a. Court failed to follow negotiated plea agreement.
2. SCDC altered the Judge's original ruling of 10 years non-violent sentence.

On February 14, 2018, Applicant filed a supplemental application alleging he is being



held in custody unlawfully for the following reasons:

1. Ineffective assistance of plea counsel for advising the Applicant to plead guilty to a charge lacking the factual basis of force, intimidation, or threat and misadvising the Applicant as to the amount of time he would serve;
2. Due Process violations due to the plea not being knowingly and voluntarily made and lack of factual basis for the charge of entering a bank with intent to steal the record.

### **SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING**

#### Applicant's Testimony

Applicant testified he was charged with bank robbery. He testified when he pled guilty he believed he was signing a plea sheet to a guilty plea for a non-violent offense in which he would only have to serve sixty-five percent of that time. Applicant testified he did not know he would have to serve eighty-five percent of the sentence he pled guilty to. He testified that he subsequently found that out in the county jail. Applicant testified during the guilty plea proceeding that he wanted to make sure the crime he was pleading guilty to was non-violent so he asked the plea judge. He testified he did not have a weapon during the crime and do not reach for one.

On cross-examination, Applicant testified he met with Plea Counsel twice. He testified he admitted to police he committed the crime and gave a statement.

#### Plea Counsel's Testimony

Plea Counsel testified he had practiced law in South Carolina for quite some time. He testified he met with Applicant at least two times prior to Applicant pleading guilty. Plea Counsel testified Applicant was talking about pleading guilty during their first meeting. Plea Counsel testified there was a substantial factual basis for Applicant entering the guilty plea.

On cross-examination, Plea Counsel testified he did not recall if he told Applicant that the offense he was pleading guilty to was considered non-violent versus violent or how that

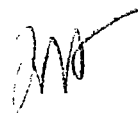
would affect the amount of time he would have to serve.

### **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. Below are the findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2017).

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 443, 334 S.E.2d at 814. 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. at 689. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove that counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Id. (quoting Strickland v.

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Washington, 466 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, 300 S.C. at 117-18, 386 S.E.2d at 625. 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).

After careful review of the entire record, including the testimony presented at the evidentiary hearings, based on the standard discussed above, this Court finds Applicant has failed to carry his burden in this action regarding any of his allegations of ineffective assistance of counsel. A summary of this Court's findings is discussed below.

#### **Ineffective Assistance of Counsel**

Applicant's primary ground for relief is that he was not advised that the bank robbery charge to which he pled guilty and received a ten year sentence was classified as a "no-parole offense" pursuant to Section 24-13-100 of the South Carolina Code of Laws. Applicant testified that, although he was advised that the offense was serious, the non-violent nature of the charge caused him to believe that the offense would be parole eligible. This Court having reviewed the guilty plea transcript finds Judge Gravely did not specifically inform Applicant that the offense was a "no-parole", eight-five percent offense. Similarly, this Court finds plea counsel testified he did not recall informing Applicant of the fact that this was a "no-parole offense".

Because of the additional time which an inmate must serve in SCDC for "no parole offenses," this Court finds that the better and preferred practice is for the plea court and counsel to specifically inform a defendant of the fact that they will have to serve eighty-five percent of

the sentence imposed. In this case, this Court finds Applicant was not informed of the “no-parole” nature of his sentence.

However, to the extent which Plea Counsel and the plea court should have informed Applicant of this fact, this Court finds that Applicant has suffered no prejudice. From the evidence presented at the evidentiary hearing, the underlying case for the State was extremely strong in that Applicant confessed to the robbery after he was caught attempting to pass one of the dye-stained bills stolen in the robbery. The State was unwilling to offer any plea to a charge of strong arm robbery or any other offense which would be a non-eighty-five percent offense. Accordingly, based on the overwhelming evidence of guilt and the fact that more lenient offers were not available, this Court finds that Applicant has failed to show any prejudice despite any supposed deficient performance by plea counsel.

Furthermore, to the extent Applicant raises the issue of whether his conduct rose to the level of “threats, force, or intimidation” as required under 16-11-380 (A) for the charge of bank robbery, this Court finds a sufficient factual basis was presented during the plea colloquy to indicate that Applicant “demanded money from the teller.” Accordingly, Applicant conduct was sufficient to constitute the crime of bank robbery. Therefore, Applicant’s application is dismissed and denied.

### CONCLUSION

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

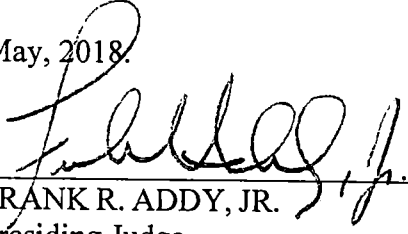
This Court notifies Applicant that he must file and serve a notice of appeal within thirty (30) days from receipt by counsel of written notice of entry of judgment to secure the appropriate

appellate review. *See* Rule 203, SCACR. An applicant has a right to an appellate counsel's assistance when they are seeking review of the denial of PCR. Austin v. State, 305 S.C. 453 (1991). If an applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. See Rule 71.1 (g), SCRCP. Reffer to Rule 243 of the South Carolina Appellate Court Rules for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED THAT:**

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

**IT IS SO ORDERED** this 8<sup>th</sup> day of May, 2018.

  
FRANK R. ADDY, JR.  
Presiding Judge  
Thirteenth Judicial Circuit

Greenwood, South Carolina



STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE

Jed D. Wheeler,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

2017-CP-23-5235

**ORDER DENYING APPLICANT'S  
MOTION FOR RECONSIDERATION**

**THIS MATTER CAME BEFORE THE COURT** pursuant to Applicant's Rule 59(e) SCRCR motion for reconsideration dated and filed on May 29, 2018. In his motion, Applicant did not request a hearing, and the court does not feel that a hearing is necessary or would be helpful as the court has retained a good recollection of the testimony from the hearing. Applicant seeks reconsideration of the court's prior Order of Dismissal which was filed on May 17, 2018.

Applicant cites the recent case of *Frierson v. State*, Op. No. 27801 filed on May 23, 2018, six (6) days after the Court's order in the present case. In *Frierson*, the South Carolina Supreme Court clarified the standard to be employed by the trial courts concerning PCRs from guilty pleas. The Supreme Court stated that the proper standard is "whether but for counsel's deficiency, the defendant would have declined to plead and instead proceeded to trial." *Id.* Furthermore, the *Frierson* Court cautioned the trial bench that, where deficiency and prejudice are shown, courts should not then engage in an overwhelming evidence analysis.

To the extent the order of May 8, 2018 analyzed the strength of the state's case in discussing the prejudice prong, Applicant's point concerning the *Frierson* holding is well-taken. However, even if this Court erred by engaging in such an analysis, Applicant is not automatically entitled to relief.

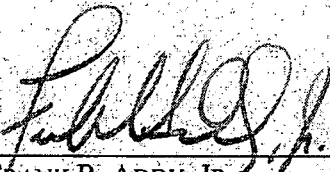


In the May 8, 2018 Order, the Court did find that Applicant was not informed of the no-parole nature of the charge to which he pled. However, it is a settled principle of law that counsel need not specifically advise a client concerning parole eligibility. Hill v. Lockhart, 474 U.S. 52, 56 (1985). Only where counsel undertakes to advise a client on parole eligibility, and that advice is relied upon in pleading and also turns out to be erroneous, should relief be granted. Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

In the present case, plea counsel testified that he could not specifically recall whether he advised Applicant concerning parole eligibility but that his normal practice was not to discuss parole eligibility; similarly, the plea judge did not offer any such advice during the colloquy. Accordingly, because counsel was under no obligation to advise Applicant with respect to parole eligibility and consistent with the holding in *Frasier*, the Court finds that plea counsel was not deficient in his representation. Accordingly, the Court reaffirms its denial of relief.

Having reconsidered the matter, the Court modifies the Order of May 8, 2018 in the above respects. In all other respects, the Court's prior order denying the Application is reaffirmed.

**IT IS SO ORDERED.**

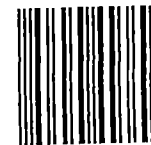
  
FRANK R. ADDY, JR.  
Presiding Judge

May 30, 2018  
Greenwood, South Carolina

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