

Law Office of Leah B. Moody, LLC

Leah B. Moody
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Rock Hill, South Carolina 29730
Telephone (803) 327-4192
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June 21, 2018

The Honorable Daniel E. Shearouse
The Supreme Court of South Carolina
Post Office Box 11330
Columbia, South Carolina 29221

RECEIVED

JUN 26 2018

S.C. SUPREME COURT

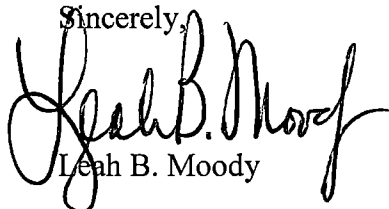
RE: David Dickerson v. State of South Carolina
Case No.: 2017-CP- 46-1057

Dear Mr. Shearouse:

The York County Court of Common Pleas appointed my office to represent David Dickerson in his Post-Conviction Relief action. Please find enclosed for filing the original and two (2) copies of the Notice of Appeal and Proof of Service in the above-referenced case. Please return the clocked copies to me in the enclosed self-addressed, stamped envelope. Also enclosed is a copy of the Order Dismissing Post-Conviction Relief Application.

Thank you for your assistance with this matter.

Sincerely,



Leah B. Moody

Enclosures

Cc David Dickerson
Justin Hunter, Esq.
David Hamilton, Clerk of Court, York County
Sharon Graham, SCCID

IN THE STATE OF SOUTH CAROLINA
In The Supreme Court

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JUN 26 2018

S.C. SUPREME COURT

APPEAL FROM YORK COUNTY
Court of Common Pleas

The Honorable J. Mark Hayes, II, Presiding in York County

Case No. 2017-CP-46-1057

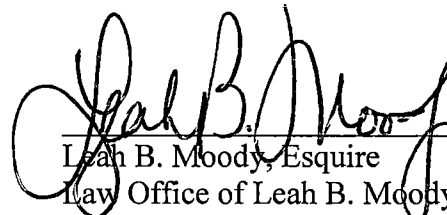
David Dickerson, Appellant,

v.

State of South Carolina, Respondent.

NOTICE OF APPEAL

David Dickerson appeals the order of the Honorable J. Mark Hayes, II, dated April 5, 2018 and mailed on May 17, 2018. Appellant received written notice of entry of the final order on May 21, 2018



Leah B. Moody, Esquire
Law Office of Leah B. Moody, LLC
235 E. Main Street, Suite 115
Post Office Box 1015
Rock Hill, South Carolina 29731

Other Counsel of record:
Justin Hunter, SC Attorney General's Office
Attorney for Respondents
Rembert C. Dennis Building
Post Office Box 11549
Columbia, South Carolina 29211-1549
(803) 734-3970

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JUN 26 2018

S.C. SUPREME COURT

IN THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM YORK COUNTY
Court of Common Pleas

The Honorable J. Mark Hayes, II, Presiding in York County

Case No. 2017-CP-46-1057

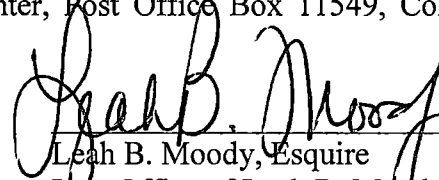
David Dickerson, Appellant,

v.

State of South Carolina, Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Justin Hunter, Esquire by depositing a copy of it in the United States Mail, postage prepaid, on June 21, 2018 addressed to its attorney of record, Justin Hunter, Post Office Box 11549, Columbia, South Carolina, 29211-1549.



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Law Office of Leah B. Moody, LLC
235 E. Main Street, Suite 115
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June 21, 2018

Cc David Dickerson
Justin Hunter, Esq.
David Hamilton, Clerk of Court, York County
Sharon Graham, SCCID

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June 21, 2018

The Honorable David Hamilton
York County Clerk of Court
Post Office Drawer 649
York, South Carolina 29745

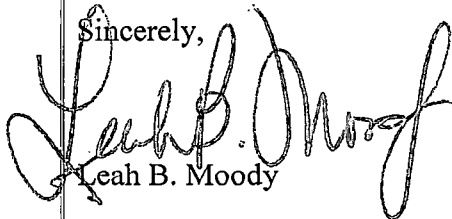
RE: David Alden Dickerson, #369461 vs. South Carolina
C.A. No.: 2017-CP-46-01057

Dear Mr. Hamilton:

The York County Court of Common Pleas appointed my office to represent David Dickerson in his Post-Conviction Relief action. Please find enclosed a copy of the Notice of Appeal and Proof of Service in this matter.

If you have any questions or concerns, please feel free to contact my office. Thank you.

Sincerely,



Leah B. Moody

Enclosures

cc David Dickerson
Justin Hunter, Esq.
Daniel E. Shearouse, Clerk of Court, South Carolina Supreme Court
Sharon Graham, SCCID

Law Office of Leah B. Moody, LLC

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June 21, 2018

Justin Hunter, Esquire
South Carolina Attorney General's Office
Post Office Box 11549
Columbia, South Carolina 29211

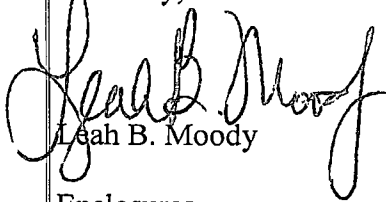
RE: David Dickerson, 369461, v. State of South Carolina
Case No.: 2017-CP- 46-1057

Dear Mr. Hunter:

The York County Court of Common Pleas appointed my office to represent David Dickerson in his Post-Conviction Relief action. Please find enclosed a copy of the Notice of Appeal and Proof of Service in this matter.

If you have any questions or concerns, please feel free to contact my office. Thank you.

Sincerely,



Leah B. Moody

Enclosures

Cc David Dickerson
Daniel E. Shearouse, Clerk of Court, South Carolina Supreme Court
David Hamilton, Clerk of Court, York County
Sharon Graham, SCCID

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June 21, 2018

Mrs. Sharon Graham
SC Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11433
Columbia, South Carolina 29211-1433

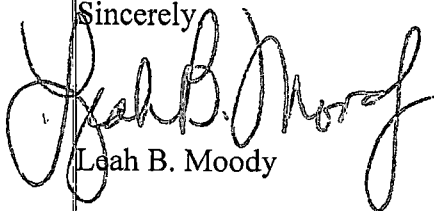
RE: David Dickerson v. State of South Carolina
Case No.: 2017-CP-46-1057

Dear Ms. Graham:

The Cherokee County Court of Common Pleas appointed my office to represent David Dickerson in his Post-Conviction Relief action. Please find enclosed a copy of the Notice of Appeal and Proof of Service in this matter.

If you have any questions or concerns, please feel free to contact my office. Thank you.

Sincerely,



Leah B. Moody

Enclosures

Cc David Dickerson
Justin Hunter, Esq.
Daniel E. Shearouse, Clerk of Court, South Carolina Supreme Court
David Hamilton, Clerk of Court, York County

STATE OF SOUTH CAROLINA)
 COUNTY OF YORK)
)
 David Aldean Dickerson,)
 SCDC #369461,)
)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
)
 Respondent.)
 _____)

THE COURT OF COMMON PLEAS
 FOR THE SIXTEENTH JUDICIAL CIRCUIT

2017-CP-46-1057

ORDER OF DISMISSAL

FILED-RECEIVED
 2019 MAY 17 AM 9:51
 DAVID HAMILTON
 C.C.P. & GS
 YORK COUNTY, SC

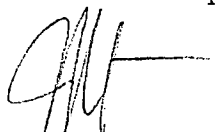
This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed April 11, 2017. An evidentiary hearing into the matter was convened on January 31, 2018, at the Moss Justice Center in York, South Carolina. Applicant was present at the hearing and represented by Leah Moody, Esquire. Justin Hunter, Esquire, of the South Carolina Attorney General’s Office represented Respondent. At the hearing, Applicant testified on his own behalf. Nathan Sheldon, Esquire, also testified. This Court also had before it a copy of Applicant’s PCR application and amendment, the records of the York County Clerk of Court regarding the subject convictions, Respondent’s Return, and the plea transcript.

I. BACKGROUND

Factual History

The following facts were presented by the State and confirmed by Applicant at Applicant’s plea hearing:

In September of 2015 law enforcement was called to a local high school where a sixteen-year old victim reported that her father (Applicant) had sexually assaulted her on their living room couch having vaginal intercourse with her before wiping off on a navy blue t-shirt.


 Page 1 of 13

The victim disclosed that during the summer of 2012 when she was twelve years old Applicant came into her room and got in bed beside her and began digitally penetrating her. She disclosed that Applicant would continue these assaults but escalated to putting his penis inside her mouth to have her perform oral sex on him. The victim also disclosed Applicant performing oral sex on her and the assaults ultimately progressing to Applicant raping her vaginally. The victim disclosed that over the next three years the assaults would occur frequently, sometimes several times a week. The assaults would include oral sex but most frequently would include Applicant vaginally raping her.


The victim disclosed within the past month Applicant had attempted to rape her anally but was not able to insert his penis into her anus completely. The victim also disclosed, and Applicant admitted, calling her names such as whore and slut. She also disclosed that Applicant had gotten angry and punched holes in the walls of the home.

The victim was taken for a rape kit. Her underwear as well as the baby blue t-shirt that was found in the home were both examined forensically and a mixture of Applicant's sperm with the victim's DNA were found on both of those items.

Applicant's phone was also forensically examined. On that phone there was a video of Applicant being masturbated by his daughter. There were also pictures of his daughter nude in her bedroom mirror, as well as photos of her masturbating. The victim disclosed that Applicant would make her take these photos and then send them to him. There are also images of child pornography located not of his daughter but of other unknown girls.

Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. In June 2016, the York County



Page 2 of 13

Grand Jury indicted Applicant for criminal sexual conduct with a minor, second degree (2016-GS-46-1861) and sexual exploitation of a minor, first degree (2016-GS-46-1862). Nathan Seldon, Esquire represented Applicant. Assistant Attorney General Bethany Miles prosecuted the case. On August 23, 2016, Applicant pled guilty as indicted to criminal sexual conduct with a minor, second degree and sexual exploitation of a minor, first degree before the Honorable Brian Gibbons.¹ Pursuant to the State's recommendation, Judge Gibbons sentenced Applicant to imprisonment for twenty years for criminal sexual conduct with a minor, second degree, and sixteen years for sexual exploitation of a minor, first degree. Both sentences were to run consecutively.

Applicant filed a timely notice of appeal. The South Carolina Court of Appeals dismissed Applicant's appeal on November 22, 2016. The remittitur was sent on December 9, 2016.

Allegations

In his application for post-conviction relief, and the amendment filed thereto, Applicant alleges he is being held unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. "Trial counsel failed to provide or explain discovery material when asked to do so by the defendant. Counsel also failed to investigate the details of the discovery material."
 - b. "Trial counsel failed to have defendant evaluated by a psychiatrist when asked to do so."
2. "Unintelligently and involuntarily entered guilty plea"
 - a. "When asked about a trial or refusing the original plea offer, trial counsel stated the plea offer and try to mitigate the time. Counsel also stated that if the offer was not accepted and the case went to trial that the defendant 'would leave prison in a box!' When counsel was questioned, he would only say 'they have you and if you take this to trial you will get the max!' He made these statements many times."

¹ Applicant was also indicted for criminal sexual conduct, third degree (2016-GS-46-1858); incest (2016-GS-46-1859); assault with intent to commit criminal sexual conduct, third degree (2016-GS-46-1860); and criminal sexual conduct with a minor, second degree (2016-GS-46-1863). These charges were dismissed as part of Applicant's guilty plea.

II. APPLICABLE LAW

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel’s performance was deficient. Id. Under this prong, courts measure an attorney’s performance by its “reasonableness under prevailing professional norms.” Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Id. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show there is a reasonable probability that, but for counsel’s alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).



III. SUMMARY OF RELEVANT TESTIMONY AT PCR HEARING

Applicant's Testimony

Applicant testified Counsel did not review the State's evidence with him and he never saw any discovery. He testified he was at home at the time when the victim alleged the crime to have occurred, but he also told Counsel he was guilty. Applicant testified Counsel relayed an offer from the State of a forty-year sentence. He testified he met with Counsel several times after this offer was relayed and did not go over any evidence. He testified Counsel told him there was a video on Applicant's cell phone and Counsel had seen it. He testified he asked Counsel about the videos and photos located on his cell phone.

Applicant testified Counsel was ineffective for failing to investigate. He testified he did not ask Counsel to do any investigation because he planned to kill himself. He testified Counsel told him he was not allowed to see the State's files, but he had eventually seen them.

Applicant testified Counsel was ineffective for failing to have him evaluated. He testified his mother told Counsel to get Applicant evaluated because he was not acting reasonably. Applicant testified Counsel told him not to talk to a doctor.

Applicant testified his plea was not made knowingly and voluntarily. He testified Counsel pressured him by telling him he would leave prison in a box. He testified Counsel discussed with him how much time he faced. Applicant testified the four original charges were based on a Family Court document that alleged the conduct occurred at 12:30AM, but he believed these allegations were false. He testified Counsel first met him in Family Court. Applicant testified he wanted an eight to ten-year sentence and Counsel said he would ask for a ten to thirteen-year sentence. He testified he did not ask for a jury trial. He testified he signed paperwork that said Counsel discussed everything with him. Applicant testified he did not make



rational decisions and was not given the opportunity to defend himself on these claims. Applicant testified he did admit his guilt to the plea court and agree with the State's version of the facts.

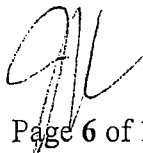
Bonnie Nealan's Testimony

Applicant's mother, Bonnie Nealan, testified at the PCR hearing. She testified she spoke to Counsel in Family Court and paid him. She testified Counsel did not go over the charges with Applicant and she sat in meetings with Counsel and Applicant. She testified Applicant's phone was taken one night and Counsel said he had seen photos from the phone. Ms. Nealan testified Applicant did not agree to do a long amount of time but only agreed to about fifteen years.

Counsel Nathan Sheldon's Testimony

Counsel testified he was appointed to represent Applicant on a DSS matter stemming from these allegations. He testified Applicant and his daughter got in an argument and his daughter went to the police. Counsel testified he met with Applicant roughly ten times prior to the plea. He testified he explained the charges against Applicant and how Applicant would face these at trial. Counsel testified the discovery included videos the State got via warrant from Applicant's wife's phone. He testified the discovery also included a statement from the victim.

Counsel testified he went to the Rock Hill Police Department to watch the videos and explained to Applicant in detail what the videos showed. He testified one video depicted a teen's hand masturbating an adult. He testified a silver ring or bracelet and a mole on the teen's hand identified the victim and the video was clearly taken in Applicant's home. He testified a second video showed a female masturbating and the same hand from the first video was identified. Counsel testified a picture of the victim was found on the phone, where she was fully naked in front of a mirror and her hand showed the same ring and mole. Counsel testified other images on

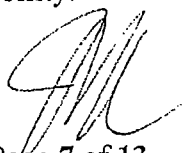


the phone were stock photos that the State would probably not be able to use against Applicant.

Counsel testified he saw the videos and pictures in May or June prior to the plea. He testified there was no offer and, despite his begging, the State would not negotiate lower than forty years. He testified the Assistant Attorney General said Applicant's case was the worst she had ever seen and she would not come off of the forty-year offer. Counsel testified the State threatened to bring nine more exploitation charges based off of the photos from Applicant's phone.

Counsel testified he discussed with Applicant the issue of Applicant not being home at 12:30AM the night the victim alleged misconduct. Counsel testified he explained to Applicant that he was not pleading guilty to conduct stemming from that date in particular but over a range of time. He testified he explained that the exploitation charges would have to run consecutive to the criminal sexual conduct charges. Counsel testified Applicant said his defense was that he was in love with his daughter and saw her as his wife. Counsel testified he explained to Applicant that a lot of the discovery was not relevant except two videos, two photos, and the victim's statement.

Counsel testified he hired Dr. Jeff McKee from Columbia to examine Applicant. He testified he had used Dr. McKee before. Counsel testified this case would be potentially eligible for the Sexually Violent Predator program and he wanted an evaluation to show Applicant's case should not meet that eligibility. He testified he never believed Applicant was not competent or that he had culpability issues in distinguishing right from wrong. He testified Applicant experienced stress but no more than any other criminal defendant and the stress did not seem to impact Applicant's decision-making. Counsel testified he saw no need for an evaluation to determine competency or criminal responsibility.



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Counsel testified Applicant never wanted a jury trial. He testified they discussed the videos including the specific identifiers of Applicant's sweatshirt and his living room. He testified the facts clearly showed a pattern of conduct over several years. He testified he discussed with Applicant the pros and cons of pleading guilty versus proceeding to trial.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the plea transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief and amendment, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

Ineffective Assistance of Counsel

Counsel failed to provide or explain discovery material and investigate

Applicant alleged Counsel was ineffective for failing to provide or explain the State's discovery material. "[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). "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)).

This Court finds Counsel provided credible testimony that he investigated the case by

going to the Rock Hill Police Department and watching the videos and viewing the photographs months before the plea. He testified he explained the Applicant exactly what these videos and photographs showed and also went over the victim's statement. He testified they discussed the specific identifiers in the videos including Applicant's sweatshirt and his living room. Counsel also testified he explained to Applicant that the indictment alleged misconduct over a range of time and not the one night in particular that Applicant was focused on from the Family Court document.

Applicant has failed to show that Counsel's investigation was deficient and has failed to show what further investigation or more adequate investigation would have revealed, and this Court will not speculate as to what further investigation would have revealed. Furthermore, this Court finds Applicant has failed to prove Counsel did not explain or share discovery. This Court finds Counsel did thoroughly explain the photographs, videos, and victim's statement. Applicant has failed to prove prejudice, as he has failed to meet his burden of showing the he would not have pled guilty but would have proceeded to trial had Counsel undertaken different investigation and gone over the discovery differently. Accordingly, this allegation must be dismissed.

Counsel failed to have Applicant evaluated by a psychiatrist

Applicant alleged Counsel was ineffective for failing to have him evaluated by a psychiatrist. This Court finds Applicant has failed to meet his burden of proving Counsel was deficient. This Court finds Counsel hired Dr. Jeff McKee to examine Applicant as this case had potential to be eligible for the Sexually Violent Predator program and he wanted an evaluation to show Applicant's case should not meet that eligibility. This Court finds Counsel provided credible testimony that he saw no need for an evaluation to determine competency or criminal

responsibility, and never believed that Applicant was not competent or could not distinguish right and wrong. This Court finds Applicant testified his mother believed he was “not acting reasonably,” but Applicant has failed to provide any testimony or evidence that would suggest he needed to be evaluated for competency or criminal responsibility. Applicant has failed to provide this Court with any evidence to show what an evaluation would have revealed, and this Court will not speculate as to its possible results.

Furthermore, this Court finds that Applicant has failed to show that he was prejudiced by Counsel’s actions because Applicant has failed to show that he otherwise would have elected to go to trial. Similarly, Applicant has not shown any error in Counsel’s assistance that led him to plead guilty instead. Applicant admitted guilt at the plea and PCR hearings and made no indication that he would have gone to trial but for Counsel’s actions regarding an evaluation. Therefore he cannot prove any prejudice. Accordingly, this allegation is dismissed.

Involuntary Guilty Plea

Applicant alleges that his plea was given involuntarily. This Court finds that Applicant’s allegation must be dismissed. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709, 23 L.Ed.2d 274 (1969). Defendant’s knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and “may be accomplished by colloquy between court and defendant, between court and defendant’s counsel, or both.” Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate’s right to contest the validity of such a plea is usually, but not invariably,



foreclosed. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 97 S. Ct. 1621, 52 L.Ed.2d 136 (1977)). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. United States, 519 F.2d 347 (4th Cir.1975).

“A guilty plea constitutes a waiver of nonjurisdictional defects and claims of violations of constitutional rights.” Jamison v. State, 410 S.C. 456, 467, 765 S.E.2d 123, 129 (2014) (citing State v. Rice, 401 S.C. 330, 331-32, 737 S.E.2d 485, 485-86 (2013); Hyman v. State, 397 S.C. 35, 44, 723 S.E.2d 375, 379 (2012)). Notably the South Carolina Supreme Court has held “[a] guilty plea represents a break in the chain of events which has preceded it in the criminal process.” Id. (citations omitted). “When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea.” Id. (citing Rice, 401 S.C. at 332, 737 S.E.2d at 486).

This Court finds, and the record reflects, Applicant was fully advised that he was pleading guilty and therefore waiving any challenges to the evidence against him. The plea court’s thorough colloquy with Applicant demonstrates that he understood the consequences of pleading guilty and the potential sentences he could receive. Applicant advised the plea court that no one had promised him anything in order to get him to plead guilty. Applicant also advised the plea court that he was pleading guilty freely and voluntarily. The record also reflects that Applicant fully admitted his guilt to the plea court and agreed with the State’s version of the facts. Applicant presented no credible evidence at the PCR hearing as to why he should be able to depart from his statements at the plea hearing. This Court finds credible Counsel’s testimony




regarding his preparation and advice to Applicant prior to the guilty plea. After a full review of the guilty plea transcript, this Court finds the plea judge correctly found Applicant's plea was freely, voluntary, and intelligently made. This Court also finds that Applicant has presented no evidence that he did not understand the plea proceeding or that his plea was not freely, voluntarily, or intelligently made.

Furthermore, this Court finds Applicant's allegation that Counsel pressured him into pleading guilty is without merit. Applicant alleged Counsel pressured him into pleading guilty by telling him he would "leave prison in a box" and get the maximum sentence if he went to trial. This Court finds Applicant's responses at the plea hearing indicate he was not coerced or pressured into pleading guilty and Applicant was well aware of the potential lengthy sentences he faced when pleading guilty. This Court finds Applicant has failed to meet his burden of proving Counsel improperly coerced him into pleading guilty or that Counsel's actions made Applicant's plea involuntary. Furthermore, Applicant has failed to show that but for Counsel's actions, he would not have pled guilty but would have proceeded to trial. Applicant openly admitted guilt several times during the plea hearing and during the PCR hearing and did not prove that he would rather have a trial. Accordingly, this allegation must be dismissed.

V. CONCLUSION

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



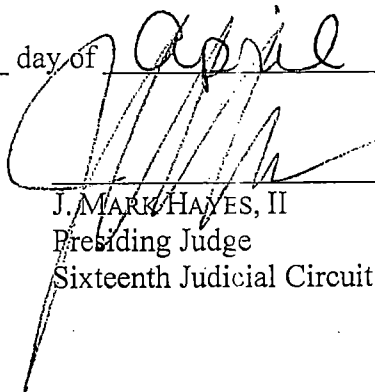
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The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(ε), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

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

AND IT IS SO ORDERED this 5th day of April, 2018.



J. MARK HAYES, II
Presiding Judge
Sixteenth Judicial Circuit

York, South Carolina



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Post-Office Box 649, York, South Carolina 29745-0649



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Rock Hill, SC 29730

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mail.com



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Rock Hill, South Carolina 29730

TO:

The Honorable Daniel E. Shearouse
The Supreme Court of South Carolina
PO Box 11330
Columbia SC 29211-1330