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Attorney at Law

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June 6, 2016

Hon. Daniel E. Shearouse, Clerk
Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

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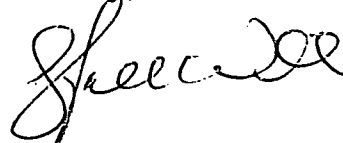
S.C. SUPREME COURT

Re: Anthony B. Chapman, 251075 v. State of South Carolina
2011-CP-42-5457

Dear Mr. Shearouse,

Enclosed please find a Notice of Appeal. I have notified SCCID Appellate Division of the appeal by copying them with the notice of appeal and related documents. I have also provided SCCID with an affidavit of indigent status for Mr. Chapman. Unless I am directed to do so, I will take no further action in this case.

Sincerely,



J. Falkner Wilkes

c.

Suzanne White, Esq.
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
via facsimile also to: (803) 734-4113 (fax)
Counsel for Respondent

AND TO:

Robert M. Dudek
Chief Appellate Defender
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Hope Blackley, Clerk of Court
POB 3483
Spartanburg, SC 29304-3483
via facsimile also to: (864) 596-2239

Anthony Chapman, 251075
Perry Correctional Institution
430 Oaklawn Road
Pelzer, SC 29669

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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Court of Common Pleas, Richland County
Honorable Roger L. Couch

S.C. SUPREME COURT

Circuit Court Case No. 2011-CP-42-5457
Appellate Case No. _____

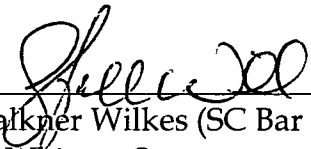
Anthony B. Chapman, 251075 Appellant,

v.

State of South Carolina, Respondent.

NOTICE OF APPEAL
(PCR CASE)

Appellant hereby appeals the judgment of the Court of Common Pleas dismissing his action for post conviction relief, **ORDER OF DISMISSAL** signed by the Honorable Roger L. Couch on May 20, 2016. A copy of said order(s) is/are attached hereto and made a part hereof.



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Counsel for Respondent

THE STATE OF SOUTH CAROLINA
In the Supreme Court

Court of Common Pleas, Richland County
Honorable Roger L. Couch

Circuit Court Case No. 2011-CP-42-5457
Appellate Case No. _____

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JUN 10 2016

S.C. SUPREME COURT

Anthony B. Chapman, 251075 Appellant,

v.

State of South Carolina, Respondent.

CERTIFICATE OF SERVICE

I certify that on June 6, 2016, I served Appellant's notice of appeal and attached order(s) on the Respondent, and others if indicated, by placing a copy in the U.S. Mail, first class, postage prepaid, addressed as follows, and by electronic means if indicated:

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Counsel for Respondent

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Respectfully submitted,



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Counsel for Appellant

SCANNED

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT

Anthony B. Chapman, #251075,)
Applicant,)

Case No. 2011-CP-42-5457

v.)

ORDER OF DISMISSAL

State of South Carolina,)
Respondent.)

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This matter comes before the Court by way of an Application for Post-Conviction Relief ("PCR") filed December 8, 2011. Respondent made a Return on or about September 11, 2012. The Court convened an evidentiary hearing into the matter on January 21, 2014, at the Spartanburg County Courthouse. Applicant was present at the hearing and represented by J. Falkner Wilkes, Esquire. Suzanne H. White, 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, Michael D. Brown, Esquire, ("Counsel"), Eddie Hunter, Esquire, with the Seventh Circuit Solicitor's Office, and Matt Hutchins of the Spartanburg County Sheriff's Department also testified. The Court had before it a copy of the plea transcript, the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the pleadings, the return, and the exhibits introduced at the hearing. The Court finds as follows:

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I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. In January 2010, the Spartanburg County Grand Jury indicted Applicant for manufacturing marijuana (2002-GS-20-0546), trafficking in methamphetamine or crack (2002-GS-20-0082), and possession with intent to distribute cocaine ("PWID") (2002-GS-20-0132). Michael D. Brown, Esquire, represented Applicant. On October 5, 2010, Applicant pleaded guilty to the lesser included offense of trafficking in cocaine 28-100g and pleaded guilty as indicted to the other two charges before the Honorable J. Derham Cole. Pursuant to the State's recommendation, Judge Cole sentenced the Applicant to confinement for concurrent terms of twenty years each for trafficking in cocaine 28-100g and PWID cocaine, second offense, and five years for manufacturing marijuana, second offense.

On October 15, 2010, Applicant filed a pro se document captioned "Motion for Reconsideration." In the document, he stated that the motion was filed pursuant to Rule 59(e), SCRCRP. On April 29, 2011, Applicant then filed a pro se document titled "Notice of Intent to Appeal." Respondent also received a copy of a document titled "Notice and Motion for Related or Out of Time Appeal," dated September 20, 2011. The South Carolina Court of Appeals dismissed the Applicant's appeal as not timely by written Order dated October 12, 2011. The Remittitur was issued October 28, 2011.

At Applicant's PCR hearing on January 21, 2014, the issue of whether the circumstances surrounding Applicant's filing of the pro se document titled "Motion for Reconsideration," ten days after his guilty plea constituted an unresolved motion under Rule 29, SCRCrimP. The Court issued an Order on July 18, 2014, finding that the Order was a proper motion under Rule 29,



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SCRCrimP, and holding the PCR matter in abeyance until the motion was ruled upon. On February 12, 2016, the Honorable J. Derham Cole denied the Rule 29 motion by written Order.

II. ALLEGATIONS

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

1. Ineffective Assistance of counsel; in that,
 - a. Counsel failed to investigate
 - b. Counsel failed to inform Applicant of discovery pertaining to arrest,
 - c. Counsel stated that no appeal could be filed,
 - d. Counsel failed to challenge the search warrant and arrest, and
2. Involuntary Guilty Plea.

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III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the evidentiary hearing. The Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. The Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80.

A. Summary of Testimony

Applicant testified that his case started out as a jury trial. He testified Michael Brown represented him for at least a year. Applicant testified that he met with Brown once while he was out on bond during the entire year. Applicant testified he saw Counsel the day before trial and that they talked about going to trial. Applicant testified that a Jackson v. Denno¹ hearing was

¹ 378 U.S. 368 (1964).

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held the day of trial. Applicant testified he told Counsel that he wanted to appeal and asked Brown to file the appeal. Applicant testified that he wanted to withdraw the guilty plea and that he made a motion within eight days after the plea. Applicant testified that a suppression hearing was held at the time of trial. He testified he did not believe Counsel was effective. Applicant testified that there was a material false statement in the affidavit used to obtain the search warrant, which was that the confidential reliable informant ("CRI") bought a quantity of marijuana at the house. Applicant stated that Counsel should have used the video, could have challenged the chain of custody and done a chemical analysis. Applicant testified that Counsel did not introduce the video. He testified he had seen a copy of the video.

Applicant testified that the search warrant was challenged in the suppression motion. Applicant introduced the search warrant and affidavit attached as Applicant's Exhibit No. 6 at the hearing. He indicated that paragraph two of the affidavit contained the statement he believed was false, which was that on June 18, 2009, the CRI purchased marijuana and saw marijuana being grown behind the house. Applicant testified that there were other theories he wanted Counsel to use. He stated that no drugs were ever sold out of the residence. Applicant testified that based on the video, the CRI entered his garage and was conducting a search without Applicant being present. Applicant testified that he left the CRI downstairs to take his son upstairs and the CRI went back and looked around the garage. Applicant testified that he never gave permission for a recording and would not have let him in if he knew he was recording.

Applicant testified that he pleaded guilty on the advice of Counsel. Applicant testified that if Counsel told him his Fourth Amendment rights had been violated and that there was a chance jury would have suppressed the drugs, he would not have pleaded guilty. Applicant testified that after the guilty plea, he told Counsel there were things that should have been said.

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Applicant testified the plea judge did not ask if he thought Counsel did a good job. Applicant stated he testified at the suppression hearing.

Officer Matt Hutchins testified that at the time he was a Senior Narcotics Agent with the Spartanburg County Sheriff's Department. He testified that the Spartanburg County analysis of the substance was completed on June 25, 2009, and the substance was found to be 2.67 grams of marijuana. He testified those were the drugs referenced in the controlled buy in the affidavit supporting the search warrant. Hutchins testified the chemist sends a copy to the solicitor's office but it is unsigned because it is not the original. He testified the search warrant was executed at the time the arrest warrant was executed. He testified that crack cocaine and marijuana were found. Hutchins testified that regarding the chain of custody, the substances all had the solicitor's markings and he could identify them. Hutchins also testified that the video from June 18, 2009, showed marijuana being grown. Hutchins testified that the CRI also reported marijuana being grown on July 28, 2009.

Eddie Hunter of the Seventh Circuit Solicitor's Office testified regarding the chain of custody for the first charge. He testified that he did not have drug analysis or chain for the June 18, 2009, offense. Hunter testified that he had a note in his file dated November 2, 2009, regarding discovery being turned over. Hunter testified that Applicant was permitted to see the video prior to trial. The video was introduced as Applicant's Exhibit No. 9.

Counsel testified that he was retained about a year prior to the plea. Counsel stated that he tries to keep a log of when he visits with his clients. He testified that he has notes in his file that he met with Applicant on three occasions—December 18, 2009, September 27, 2010, and October 4, 2010. Counsel testified that he and Applicant discussed the federal statutes and the nature in which the authorities came in. Counsel testified there were problems with the search

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and questioning of Applicant. He stated that he talked with Applicant about the statements that were made during questioning. Counsel testified that he told Applicant it would be up to the Court whether the statements would be admissible. Counsel testified he did not agree with the statement about the Fourth Amendment violations. Counsel testified he did not consider entering the video in at the suppression hearing. Counsel testified the first video was black and white and the second video was in color, and both had audio. Counsel testified that his conversation with Applicant revolved around the Court's ruling on the suppression motions and stated that the decision to move forward was left up to Applicant. Counsel testified he spoke with narcotics regarding a plea deal and twenty years. Counsel testified he was aware at some point of a pro se motion for reconsideration and withdrawing.

Counsel testified that he discussed the chain of custody issue and always told him that they could challenge the chain at trial. Counsel testified that he raised issues at the pretrial motions that he discussed with Applicant. Counsel testified he was not sure if he had chain of custody documents on the initial controlled buy. Counsel testified he did not address the issue of chain of custody at the pretrial hearing.

B. Ineffective Assistance of Plea Counsel

In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). The applicant "must first demonstrate that counsel was deficient and then must also show the deficiency resulted in prejudice." Walker v. State, 407 S.C. 400, 404-05, 756 S.E.2d 144, 146 (2014). "The

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two-part test adopted in Strickland also applies to challenges to guilty pleas based on ineffective assistance of counsel.” Holden v. State, 393 S.C. 565, 572, 713 S.E.2d 611, 615 (2011).

The applicant must first show that counsel’s performance “fell below an objective standard of reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, he would not have [pleaded] guilty, but would have insisted on going to trial.” Thompson v. State, 340 S.C. 112, 116, 531 S.E.2d 294, 297 (2000).

The record reflects that prior to Applicant's plea, Counsel made a pretrial motion in which he challenged the search warrant and moved to suppress Applicant's statements. The plea judge denied the motions, finding that the statement was made freely and voluntarily and that the search warrant appeared to be valid. Applicant also testified at the suppression hearing. Following the judge's ruling in the suppression hearing, Applicant pleaded guilty. The plea judge informed Applicant on the record that if his ruling regarding the suppression motions was incorrect, the method of correcting the mistake would be for Applicant to have a trial. The judge admonished Applicant that by pleading guilty, he was giving up his right to contest the ruling and waiving his right to contest any illegal search and seizure. (Tr. pp. 91-93). The plea judge also confirmed that Applicant was aware of his constitutional rights and that he understood that by pleading guilty he was waiving those rights. Applicant stated that he understood the rights he

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was giving up and that he still wished to plead guilty. Applicant stated that he was making the decision on his own and that he was satisfied with the decision. Applicant stated he was pleading guilty to each indictment because he did commit the crimes as described in the indictments. Applicant confirmed that he was satisfied with Counsel's representation and that he had sufficient time to discuss the decision to plead with him.

Failure to inform Applicant of discovery

Applicant testified Counsel met with him only once. Counsel testified he met with Applicant at least three times. Counsel testified he reviewed all discovery with Applicant, and Applicant admitted he had seen a copy of the video of the controlled buy. This Court finds Counsel adequately conferred with Applicant and reviewed all discovery with him. See Moody v. Polk, 408 F.3d 141, 148 (4th Cir. 2005) (“[T]here is no established ‘minimum number of meetings between counsel and client prior to trial necessary to prepare an attorney to provide effective assistance of counsel.’” (citing United States v. Olson, 846 F.2d 1103 (7th Cir. 1988))). Applicant has failed to satisfy his burden of proving counsel's performance was deficient in this regard, or that any alleged deficiency prejudiced him. Accordingly, this Court finds this allegation is without merit and it is therefore denied and dismissed.

Failure to investigate

Applicant alleged Counsel failed to conduct a proper investigation. To show ineffective assistance in this regard, Applicant must present evidence to show what counsel should have discovered had he been more fully prepared for the trial. Jackson v. State, 329 S.C. 345, 354, 495 S.E.2d 768, 772 (1998). Failure to conduct an independent investigation does not constitute

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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 trial counsel conducted a proper investigation, adequately conferred with Applicant regarding the State's burden of proof and any potential defenses, and was thoroughly competent in his representation. Counsel reviewed all the evidence against Applicant and discussed it with him. Counsel testified that he discussed potential defenses with Applicant, including the challenges to the search and Applicant's statements. Applicant failed to produce any evidence regarding any additional investigation that Counsel could have pursued.

Therefore, this Court finds that Applicant has failed to meet his burden of proving that Counsel was deficient in this regard. This Court further finds that Applicant failed to produce any evidence of how any further investigation would have affected the outcome at trial. See Glover v. State, 318 S.C. 496, 499, 458 S.E.2d 538, 540 (1995) ("[A]pplicant's mere speculation what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice."). Accordingly, this Court finds Applicant has failed to prove either prong of Strickland, and this allegation must be denied and dismissed with prejudice.

Failure to challenge the search warrant and arrest

Applicant alleged Counsel failed to properly challenge the search warrant. However, Counsel made pretrial motions challenging both the search warrant and the admissibility of Applicant's statement. Ultimately, the motions were not successful. After the judge denied the suppression motions, Counsel consulted with Applicant and properly advised him regarding his option to go forward with the trial or plead guilty. Counsel negotiated a plea to the lesser

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included offense of trafficking in cocaine base second offense, with a recommendation of twenty years and concurrent sentencing. Though Applicant testified he had other theories that he wanted Counsel to explore, he failed to present sufficient evidence showing what these theories would have been or how they would have been successful. See Arnette v. State, 306 S.C. 556, 557, 413 S.E.2d 803, 804 (1992) (counsel not ineffective for failing to advise of potential defense where no evidence exists to support the defense).

This Court finds Applicant has failed to satisfy his burden of showing that Counsel's performance fell below an objective standard of reasonableness. Furthermore, Applicant admitted to the plea judge that he was guilty, and stated that he understood that the agreement reached was a twenty year sentence and he stated that he wanted the judge to go along with that recommendation. This Court finds Applicant has failed to satisfy his burden of showing that but for any alleged deficiency of Counsel, Applicant would not have pleaded guilty, but would have insisted on going to trial. Accordingly, this Court finds Applicant has failed to show ineffective assistance of counsel and this allegation is therefore denied and dismissed.

Failure to file an Appeal

This Court finds that trial counsel was not ineffective for failing to file an appeal. The United States Supreme Court has rejected a "bright-line rule that counsel must always consult with the defendant regarding an appeal." Roe v. Flores-Ortega, 528 U.S. 470, 480, 150 S.Ct. 1029, 1036, 145 L. Ed. 2d 985 (2000). It instead held that "counsel has a constitutionally imposed duty to consult with the defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that

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he was interested in appealing.” Id. “[A]lthough not determinative, a highly relevant factor in this inquiry will be whether the conviction follows a trial or a guilty plea, both because a guilty plea reduces the scope of potentially appealable issues and because such a plea may indicate that the defendant seeks an end to judicial proceedings.” Id.

This Court finds that this allegation is without merit and the Applicant has failed to carry his burden of proving counsel failed to file an appeal on his behalf. Counsel made pretrial motions to suppress on Applicant's behalf that were not successful. Counsel then conferred with Applicant regarding his options to proceed with trial or enter a plea. Counsel negotiated a favorable plea offer on Applicant's behalf and testified that Applicant made the decision to plead. Applicant clearly stated on the record that he understood that if the judge accepted the plea, he would receive a twenty year sentence. In addition, the plea judge admonished him that he was waiving any challenge to the evidence by pleading guilty. This Court finds that there is no evidence that a rational defendant would want to appeal or that the Applicant indicated he wanted to appeal. Accordingly, this Court finds that Applicant has failed to satisfy his burden as to this allegation, and it is therefore denied and dismissed.

C. Involuntary Guilty Plea

Applicant alleges he was coerced to plead guilty and that therefore his plea was involuntary. This Court finds Applicant's guilty plea was entered freely and voluntarily. So if 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,

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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).

An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing (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, 20, 546 S.E.2d 417, 419 (2001) (citing Hill v. Lockhart, 474 U.S. 52; Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000); Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000); Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994)).

This Court finds that the record fully supports the knowing and voluntary nature of Applicant's guilty plea. Applicant has presented no reason why he should be allowed to depart from the truth of his statements made at the plea hearing. Applicant's Counsel made challenges to the search warrant and made a motion to suppress Applicant's statements. The plea judge denied the motions and admonished Applicant that by pleading guilty he was waiving any challenges he had to the Court's ruling. The record reflects that Applicant told the plea judge that he was not threatened, coerced, or forced to plead guilty. Counsel informed Applicant of his

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constitutional rights, and Applicant waived these rights, including the right to challenge the search and seizure of the drugs, the admission of his statement, his right to a jury trial, right to remain silent, and right to confront witnesses. Applicant has failed to show that Counsel's performance was deficient or that any alleged deficient performance prejudiced him. Accordingly, this Court hereby denies and dismisses Applicant's allegation that his guilty plea was involuntary.

D. All Other Allegations

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

IV. CONCLUSION

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

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

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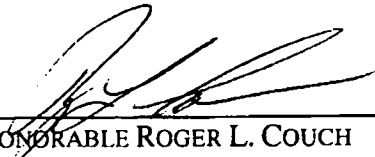
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appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

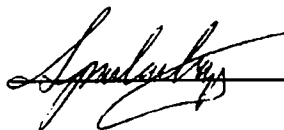
IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 20th day of May, 2016.



THE HONORABLE ROGER L. COUCH
Presiding Judge
Seventh Judicial Circuit

 _____, South Carolina

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