

# THE BOOZER LAW FIRM, LLC

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**Lance S. Boozer, Esq.\***

\*Also admitted in Florida

1400 Laurel Street, Suite 4A  
Columbia, SC 29201

Telephone: 803-608-5543  
Fax: 803-926-3463

Email: [lsb@boozerlawfirm.com](mailto:lsb@boozerlawfirm.com)  
Website: [www.boozerlawfirm.com](http://www.boozerlawfirm.com)

December 15, 2016

**RECEIVED**

**DEC 19 2016**

**S.C. SUPREME COURT**

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

The Honorable Beulah G. Roberts  
Clerk of Court  
P.O. Box 136  
Manning, SC 29102

**RE: Andrew Blackmon, #357777, v. State of South Carolina  
2015-CP-14-423**

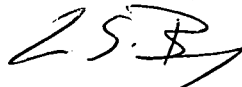
Dear Mr. Shearouse and Ms. Roberts:

Enclosed for filing is a Notice of Appeal in the above-referenced case. Also enclosed are the following:

- (1) Proof of Service of the Notice of Appeal;
- (2) A copy of the Order which is to be challenged on appeal; and
- (3) Prior Order of Appointment of Counsel.

As I was appointed to represent Mr. Blackmon in his PCR proceeding, I anticipate that the Office of Appellate Defense will represent Mr. Blackmon in this appeal.

Yours very truly,



Lance S. Boozer

Enclosures

cc: Julie A. Coleman, AAG  
Loriene French, OAD  
Andrew Blackmon, #357777

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

**RECEIVED**

DEC 19 2016

APPEAL FROM CLARENDON COUNTY  
Court of Common Pleas

S.C. SUPREME COURT

The Honorable Brooks P. Goldsmith, Circuit Court Judge

Case No. 2015-CP-14-423

Andrew Blackmon, #357777, .....Petitioner,

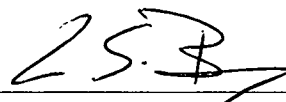
v.

State of South Carolina,.....Respondent.

**NOTICE OF APPEAL**

The Petitioner appeals the Honorable Brooks P. Goldsmith's Order dated October 25, 2016, denying post-conviction relief to the Petitioner and received by undersigned counsel on December 14, 2016. A copy of the Order on appeal is attached to this notice.

Respectfully submitted,



Lance S. Boozer  
The Boozer Law Firm, LLC  
1400 Laurel Street, Suite 4A  
Columbia, SC 29201  
Tele: 803-608-5543

December 15, 2016

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

**RECEIVED**

APPEAL FROM CLARENDON COUNTY  
Court of Common Pleas

DEC 19 2016

S.C. SUPREME COURT

The Honorable Brooks P. Goldsmith, Circuit Court Judge

Case No. 2015-CP-14-423

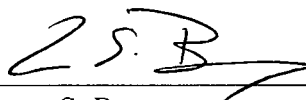
Andrew Blackmon, #357777, .....Petitioner,

v.

State of South Carolina,.....Respondent.

**PROOF OF SERVICE**

I, Lance S. Boozer, attorney for Petitioner, certify that I have today served within Notice of Appeal upon the Respondent by depositing a copy of it in the United States Mail, postage prepaid, addressed to Assistant Attorney General Julie A. Coleman, P.O. Box 11549, Columbia, SC 29211. I further certify that all parties required by Rule to be served have been served this 15th day of December, 2016.



Lance S. Boozer  
The Boozer Law Firm, LLC  
1400 Laurel Street, Suite 4A  
Columbia, SC 29201  
Tele: 803-608-5543

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF CLARENDON ) FOR THE THIRD JUDICIAL CIRCUIT

Andrew Blackmon, #357777 ) 2015-CP-14-423

Applicant, )

v. )

State of South Carolina, )

Respondent. )

**CERTIFIED TRUE COPY  
OF ORIGINAL FILED IN THIS OFFICE**

DATE 12/12/2016 ORDER OF DISMISSAL

Bernd B. Roberts

CLERK OF COURT  
CLARENDON COUNTY, SC

2016 NOV -4 PM 4:49  
CLERK OF COURT  
CLARENDON COUNTY, SC

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on August 20, 2015. An evidentiary hearing into the matter was convened on March 14, 2016, at the Sumter County Courthouse. Applicant was present at the hearing and was represented by Lance S. Boozer, Esquire. Respondent was represented by Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office.

### PROCEDURAL HISTORY

The records before this Court indicate Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clarendon County Clerk of Court. The Applicant was true bill indicted at the February 2013 term of the Clarendon County Grand Jury for robbery/entering bank with intent to steal (2013-GS-14-0070). Lewis King Cutter, Esquire represented Applicant. On November 5, 2013, Applicant pled guilty as indicted before the Honorable W. Jeffrey Young. Judge Young sentenced Applicant pursuant to negotiations to a fifteen year sentence.

A timely Notice of Appeal was filed on Applicant's behalf and an Anders brief was submitted. The South Carolina Court of Appeals affirmed Applicant's plea and sentence. State



v. Blackmon, 2015-UP-373 (S.Ct. App. filed July 29, 2015). The Remittitur was issued on August 14, 2015.

### ALLEGATIONS

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

1. Ineffective assistance of counsel
  - a. Counsel allowed false evidence in court proceedings
2. Prosecutorial misconduct
  - a. Solicitor knowingly allowed false evidence in court
3. Involuntary guilty plea
  - a. Counsel misadvised to plead guilty

At the PCR hearing, Applicant orally amended his application to include two additional allegations:

1. Ineffective assistance of counsel
  - b. Counsel deprived client an adequate insanity defense
    - i. Counsel allowed a false mental evaluation to be used as evidence
  - c. Assisting Solicitor with Rule 5
    - i. Counsel allowed a note to be used in court proceedings that was not turned over in Rule 5 discovery materials

### SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. The State presented testimony from Lewis Cutter, Esquire (hereinafter "Plea Counsel"). This Court also had before it a copy of the Clarendon County Clerk of Court records, Applicant's South Carolina Department of Correction records, guilty plea transcript, and the PCR application. During the evidentiary hearing, various exhibits were introduced.

Applicant stated that he filed his post-conviction relief application seeking a new trial. Applicant stated that he is currently serving a fifteen year sentence. Applicant stated that he understood he can only receive a new trial. Applicant stated that he understood everything that



was going on during the hearing and understood why he was present in court. Applicant stated that he met with Plea Counsel three or four times. Applicant stated they reviewed the State's evidence during their meetings.

Applicant recalled waiving his constitutional rights when pleading guilty and informing the court that he was satisfied with Plea Counsel's services. Applicant recalled telling the plea court that although he suffered from some mental illness in the past, he fully understood what he was doing when entering his guilty plea. Applicant recalled telling the plea court that he was guilty and wanted to plead guilty. Applicant further recalled agreeing with the State's factual recitation of the events.

Applicant stated that he was arrested on January 25, 2013 and received a lawyer shortly thereafter. Applicant stated Plea Counsel was appointed to represent him. Applicant stated that he could not recall the specific dates of their meetings, but recalled meeting with Plea Counsel.

Applicant claimed Trial Counsel was ineffective for failing to challenge the mental evaluation conducted by the South Carolina Department of Mental Health. Applicant stated that he suffered from mental illness. Applicant stated that he did not rob the bank with a clear state of mind. Applicant stated that he or Plea Counsel requested that Applicant be mentally evaluated and the Solicitor's office consented to the evaluation. Applicant stated that he was evaluated on May 7, 2013. Applicant stated that he talked with Plea Counsel after the evaluation.

Applicant claimed that his version of events at the time of the evaluation were incorrect. Applicant stated that he did not learn of the actual version of events until he spoke to his wife shortly before his guilty plea. Applicant stated after his discussion with his wife, he realized that he was confused about the version of events. Applicant concluded that the results of the evaluation were falsified because his version of events was incorrect at the time of his



evaluation. Applicant stated that he discussed the mental evaluation with Plea Counsel. Applicant noted that the evaluation stated that he suffered from antisocial disorder; however Applicant claimed he had never been diagnosed with antisocial disorder in the past. Applicant stated that he told Plea Counsel that he disagreed with the evaluation. Applicant stated that he was getting various medications at South Carolina Department of Corrections.

Applicant stated that he received a ten year plea offer, but he turned it down. Applicant stated Plea Counsel requested a continuance and a second mental evaluation shortly before the trial was scheduled to begin. Applicant stated the trial court denied the second motion for a mental evaluation. Applicant stated Plea Counsel failed to file a timely a notice to seek an insanity defense. Applicant stated that he pled guilty based on Plea Counsel's advice. Applicant stated that there was a lot of mitigating evidence in this case.

Following Applicant's testimony, Plea Counsel was called to testify. Plea Counsel stated that he was assigned Applicant's case on February 13, 2013. Plea Counsel stated he reviewed Applicant's case. Plea Counsel stated that he met with Applicant at least ten separate times. Plea Counsel stated that when he met with Applicant, they reviewed Applicant's version of events and the State's evidence.

Plea Counsel stated that he requested a mental evaluation for Applicant. Plea Counsel stated he secured all available medical records from Applicant's prior doctors. Plea Counsel stated he provided those documents to the South Carolina Department of Mental Health prior to Applicant's mental health evaluation. Plea Counsel stated Applicant was mentally evaluated and the evaluation revealed that he was competent. Plea Counsel stated that he provided Applicant with a copy of the evaluation and informed Applicant of the results.



Plea Counsel stated Applicant continued to believe that he was mentally ill. Plea Counsel stated the evaluation proved otherwise. Plea Counsel stated Applicant took issue with the evaluation's failure to diagnosis him with Bi-Polar disorder and the evaluation's diagnosis that he suffered from an antisocial disorder. Plea Counsel stated that Applicant had been diagnosed in the past with Bi-Polar disorder. Plea Counsel stated Applicant was deemed disabled and received a disability check. Plea Counsel stated Applicant's medical records also revealed malingering was always a consideration.

Plea Counsel stated that he began to strategize possible defenses to the crime. Plea Counsel stated that their ultimate defense was to argue that Applicant did not rob the bank with any threat or intimidation. Plea Counsel stated that he filed a notice of insanity defense right before trial. Plea Counsel stated the judge took the motion under advisement. Plea Counsel stated that Applicant never appeared to have any trouble understanding him. Plea Counsel stated that he felt Applicant was competent and had no concerns that Applicant was mentally incompetent.

Plea Counsel stated that he received a trial list on October 14, 2013, with several names on the list. Plea Counsel stated that Applicant received a ten year plea offer prior to trial, but Applicant refused to accept it. Plea Counsel stated prior to trial, Applicant spoke with his wife about the version of events. Plea Counsel stated Applicant was willing to accept his guilt following his conversation with his wife. Plea Counsel stated that the State was no longer willing to offer a ten year sentence. Instead, the State offered a fifteen year negotiated sentence. Plea Counsel stated Applicant accepted the offer. Plea Counsel characterized the evidence against Applicant as overwhelming. Plea Counsel stated that various victims inside the bank



were related to Applicant. Plea Counsel stated there was a video of the incident in which Applicant could be identified.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

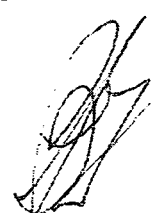
This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

### **INEFFECTIVE ASSISTANCE OF COUNSEL**

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this



prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty Trial Counsel, the Applicant must show that 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, 106 S.Ct. 366 (1985).

### ALLEGATIONS

#### 1. Ineffective assistance of counsel for allowing false mental evaluation into the court.

This Court finds Applicant's allegation that Plea Counsel was ineffective for allowing a false medical evaluation into court is meritless. This Court finds Plea Counsel's actions fell within the reasonable professional norms. Plea Counsel stated Applicant had concerns about his mental health at the time of the robbery. Shortly after being appointed, Plea Counsel sought and received a mental evaluation for Applicant. Plea Counsel stated that he recovered all available medical documents concerning Applicant's prior mental health history. Notably, the evaluation in question makes note of Applicant's past diagnosis. The evaluation conducted by the South Carolina Department of Mental Health revealed that Applicant was criminally responsible and able to conform his conduct to the requirements of the law. Plea Counsel's actions in securing or reviewing the mental evaluation were not deficient.

Furthermore, Applicant can show no prejudice as a result of Plea Counsel's alleged deficiency. This Court notes Applicant failed to present any credible evidence or arguments that the evaluation conducted by the South Carolina Department of Mental Health was in any way



false. Simply because the Applicant does not agree with the evaluation's findings does not make the evaluation incorrect. This Court notes that Applicant contends that he was diagnosed in the past with bi-polar disorder somehow calls into question the current findings. To the contrary, this current evaluation takes into consideration Applicant's past mental health history when arriving at its conclusion. Based on the foregoing, this Court finds Applicant's allegation must be denied and dismissed with prejudice.

**2. Ineffective assistance of counsel for allowing a note that was not turned over in discovery to be used as evidence.**

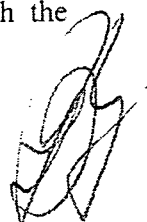
This Court finds that Applicant has failed to meet his burden in proving that Plea Counsel was ineffective in any way regarding a note used as evidence and that any alleged deficiency prejudiced him in any way. Thus, this allegation is denied and dismissed with prejudice.

**3. Prosecutorial Misconduct for presenting a false mental evaluation to the court.**

This Court finds Applicant's allegation of prosecutorial misconduct for presenting a false mental evaluation to the court is meritless. Notably, the Solicitor had no role in setting up, diagnosing, or presenting the evaluation. The evaluation was requested by Plea Counsel. The South Carolina Department of Health conducted the evaluation and the findings were presented to the plea court during Applicant's guilty plea. Applicant wholly failed to present any evidence of prosecutorial misconduct on the part of the solicitor. Based off of the foregoing, this Court finds this allegation must be denied and dismissed.

**4. Involuntary guilty plea.**

This Court finds that Applicant's allegation that his guilty plea was involuntary is meritless. This Court finds Applicant's guilty plea was entered freely and voluntarily entered. 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).

Applicant claims he did not plead guilty voluntarily. This Court finds this contention meritless. This Court finds the record reflects Applicant was fully advised that he was pleading guilty and waived all challenges to the evidence against him. The plea court's very thorough colloquy with Applicant demonstrates that he understood the consequences of pleading guilty. This Court finds Applicant's testimony not credible. Applicant presented no credible evidence as to why he should be able to depart from his statements at the plea hearing. The record further reflects Applicant fully admitted his guilt to the plea court. Therefore, this Court finds the plea judge correctly found Applicant's plea was freely, voluntarily, and intelligently made.



## OVERWHELMING EVIDENCE

Applicant cannot meet his burden to show that he was prejudiced by any alleged deficiencies because there is overwhelming evidence of his guilt. See Franklin v. Catoe, 346 S.C. 563, 570 n. 3, 552 S.E.2d 718, 722 n. 3 (2001), cert. denied, 535 U.S. 1114, 122 S.Ct. 2332, 153 L.Ed.2d 162 (2002) (finding overwhelming evidence of guilt negated any claim that counsel's deficient performance could have reasonably affected the result of the defendant's trial); Geter v. State, 305 S.C. 365, 367, 409 S.E.2d 344, 346 (1991) (concluding reasonable probability of a different result does not exist when there is overwhelming evidence of guilt); cf. Ford v. State, 314 S.C. 245, 248, 442 S.E.2d 604, 606 (1994) (holding respondent failed to prove prejudice from trial counsel's failure to request an alibi charge where there was overwhelming evidence of guilt).

There was video evidence of Applicant committing the crime in which he could clearly be identified. There were also several witnesses at the scene of the crime who were related to the victim. This evidence was overwhelming and it is unlikely that any further actions by Plea Counsel could have prevented a jury from convicting Applicant based on this evidence had he chosen to go to trial.

Applicant did not dispute the evidence against him. This is clearly overwhelming evidence of Applicant's guilt. As a result, Applicant can show no prejudice from any of the allegations raised in his PCR application as no deficiency on behalf of Plea Counsel could have reasonably changed the outcome of trial, and this Court finds that this application should be denied.



### 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, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

### CONCLUSION

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

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

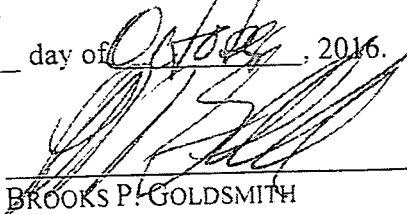
*[Signature page to follow]*

A handwritten signature in black ink, appearing to be a stylized name, located in the bottom right corner of the page.

**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 Respondent.

**AND IT IS SO ORDERED** this 25 day of October, 2016.

  
\_\_\_\_\_  
BROOKS P. GOLDSMITH  
Presiding Judge  
Third Judicial Circuit

2  
\_\_\_\_\_, South Carolina

STATE OF SOUTH CAROLINA )  
COUNTY OF CLARENDON )  
ANDREW LEE BLACKMON, )  
Plaintiff(s), )  
-vs- )  
STATE OF SOUTH CAROLINA, )  
Defendant(s). )

IN THE COURT OF *(Select one.)*  
 COMMON PLEAS  FAMILY COURT  
THIRD JUDICIAL CIRCUIT  
CASE NO.: 2015-CP-14-423  
APPOINTMENT OF COUNSEL OR GAL  
*(Select one.)*  
 ORDER  
 AMENDED ORDER

**TYPE OF CASE/PROCEEDING: *(Check one.)***

- |  |  |  |
|--|--|--|
| <input checked="" type="checkbox"/> Post-Conviction Relief (PCR)/habeas case | <input type="checkbox"/> Adoption                  | <input type="checkbox"/> Juvenile          |
| <input type="checkbox"/> SVP case  | <input type="checkbox"/> Custody and/or Visitation | <input type="checkbox"/> Abuse and Neglect |
| <input type="checkbox"/> Minor Name Change                                   | <input type="checkbox"/> Other:                    |  |

It appears that ANDREW LEE BLACKMON, who is a litigant in this case, is entitled to court-appointed counsel or a guardian ad litem.

It further appears that: *(Select only one.)*

- counsel/guardian ad litem has not yet been appointed by the court; therefore, an appointment for counsel/guardian ad litem is necessary.
- counsel or a guardian ad litem was previously appointed by the court but has indicated either a possible conflict of interest, an entitlement to exemption, or other good cause warranting the appointment of new counsel or guardian ad litem based on: \_\_\_\_\_
- counsel was previously appointed by the court but has not indicated that the litigant has retained private counsel and is no longer entitled to appointed counsel.
- court appointed counsel has obtained \_\_\_\_\_, Esquire as substitute counsel pursuant to Rule 608(h)(2); provided, however, only the member who originally received the appointment and who sought substitute counsel shall receive credit.
- Other:

Therefore, it is ordered that LANCE BOOZER, hereby is appointed as *(Select one.)*

counsel  lead counsel *(if capital PCR case)*  guardian ad litem  
for the above-named person. Any counsel or GAL previously appointed is/are hereby relieved.

*(If Death Penalty PCR Case)* It is further ordered that \_\_\_\_\_, Esquire, is hereby appointed as second counsel in this capital PCR case.

The clerk of court is directed to forward a copy of this order to all persons entitled to notice.

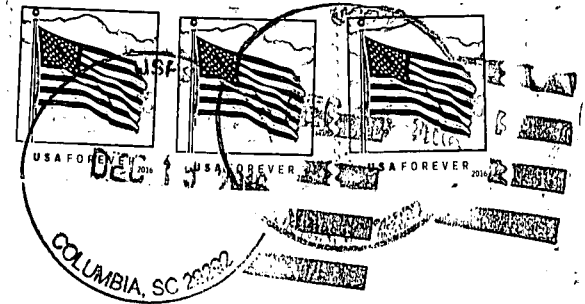
IT IS SO ORDERED THIS 23RD DAY OF SEPTEMBER, 2015.

Brendah S. Roberts  
 Circuit Judge  Clerk of Court

NOTICE: SC Supreme Court Order of September 29, 2006, requires appointed counsel entitled to payment from the Office of Indigent Defense (OID) to register the case online with OID within fifteen (15) days of this appointment at [www.sccid.sc.gov](http://www.sccid.sc.gov), and further directs that reimbursement vouchers be submitted directly to SCCID and not to the trial judge or clerk of court. See SCCID website for further details.

**THE BOOZER LAW FIRM, LLC**

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Columbia, SC 29201



The Honorable Daniel E. Shearouse  
Clerk, Supreme Court of South Carolina  
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