

THE BOOZER LAW FIRM, LLC

Lance S. Boozer, Esq.*
*Also admitted in Florida

1419 Pendleton Street
Columbia, SC 29201

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

Email: lsb@boozerlawfirm.com
Website: www.boozerlawfirm.com

July 30, 2018

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

The Honorable Mary Brown
Clerk, Berkeley County
300 California Dr.
Moncks Corner, SC 29461

RECEIVED

JUL 31 2018

S.C. SUPREME COURT

RE: Julie Gordon-Gookins, #370329, v. State of South Carolina
2016-CP-08-2322

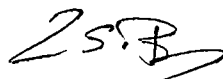
Dear Mr. Shearouse and Ms. Brown:

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 Ms. Gordon in his PCR proceeding, I anticipate that the Office of Appellate Defense will represent Ms. Gordon in this appeal.

Yours very truly,



Lance S. Boozer

cc: Kelly Oppenheimer, AAG
Office of Appellate Defense
Julie Gordon-Gookins, #370329

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

JUL 31 2018

S.C. SUPREME COURT

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

The Honorable Roger M. Young, Sr., Circuit Court Judge

Case No. 2017-CP-08-2388

Julie Gordon-Gookins, #370329,.....Petitioner,

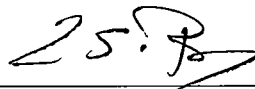
v.

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

NOTICE OF APPEAL

The Petitioner appeals the Honorable Roger M. Young's Order dated July 18, 2018, denying post-conviction relief to the Petitioner. Undersigned counsel received notice of entry of the Order on July 23, 2018. A copy of the Order on appeal is attached to this notice.

Respectfully submitted,



Lance S. Boozer
The Boozer Law Firm, LLC
1419 Pendleton Street
Columbia, SC 29201
Tele: 803-608-5543

July 30, 2018

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

JUL 31 2018

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

S.C. SUPREME COURT

The Honorable Roger M. Young, Sr., Circuit Court Judge

Case No. 2017-CP-08-2388

Julie Gordon-Gookins, #370329,.....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 Kelly Oppenheimer, P.O. Box 11549, Columbia, SC 29211. I further certify that all parties required by Rule to be served have been served this 30th day of July, 2018.



Lance S. Boozer
The Boozer Law Firm, LLC
1419 Pendleton Street
Columbia, SC 29201
Tele: 803-608-5543

STATE OF SOUTH CAROLINA)
 COUNTY OF BERKELEY)
)
 Julie L. Gordon-Gookins, #370329,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE NINTH JUDICIAL CIRCUIT

Case No. 2017-CP-08-2822

ORDER OF DISMISSAL

MARY P. BROWN
 CLERK OF COURT
 BERKELEY COUNTY, S.C.

2018 JUL 23 AM 11:29

FILED

PROCEDURAL HISTORY

This matter comes before the Court by way of an application for post-conviction relief filed October 11, 2017, by Julie L. Gordon-Gookins (Applicant). Subsequently, on November 28, 2017, Applicant filed a *pro se* amendment to her original application. The State (Respondent) made its Return on March 7, 2018, requesting an evidentiary hearing be held. Thereafter, on May 1, 2018, through her counsel, Applicant filed a “first amendment to prior application for PCR.” An evidentiary hearing into the matter was convened on May 25, 2018, at the Berkeley County Courthouse before the Honorable Roger M. Young, Sr. Applicant was present at the hearing and was represented by Lance S. Boozer, Esquire. Assistant Attorney General Kelly Oppenheimer of the South Carolina Attorney General’s Office represented Respondent.

The records before this Court indicate Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Berkeley County Clerk of Court¹. During its December 2014 term, the Berkeley County Grand Jury indicted

¹ The Charleston County Grand Jury also indicted Applicant for one count of bank fraud during its March 2011 term. On April 19, 2011, Applicant appeared before the Honorable Thomas L. Hughston, Jr., and pled guilty as indicted to this charge. Pursuant to a recommendation by the State, Judge Hughston sentenced Applicant to a term of imprisonment of five years, suspended to five years’ probation. After the commission of the Berkeley County

Applicant for first-degree burglary (2014-GS-08-01883), kidnapping (2014-GS-08-01884), possession of a weapon during the commission of a violent crime (2014-GS-08-01885), and attempted murder (2014-GS-08-01886). Chief Public Defender, David P. Schwacke, of the Berkeley County Public Defender's Office, represented her on these charges. Assistant Solicitor Anne M. Williams, of the Ninth Circuit Solicitor's Office, prosecuted the case. On October 28, 2016, Applicant appeared before the Honorable Kristi L. Harrington and pled guilty as indicted to first-degree burglary and kidnapping. Applicant also pled guilty to the lesser-included offense of assault and battery of a high and aggravated nature. The weapons charge was dismissed. Pursuant to a negotiated sentence for a cap of thirty years imprisonment, Judge Harrington sentenced Applicant to a term of imprisonment of thirty years for first-degree burglary, thirty years for kidnapping, and twenty years for assault and battery of a high and aggravated nature. All sentences were to run concurrently.

Applicant filed a timely Notice of Appeal. Pursuant to a written Order dated January 20, 2017, the South Carolina Court of Appeals dismissed Applicant's appeal for failing to provide a sufficient explanation as required by Rule 203(d)(1)(B)(iv), SCACR. The Remittitur was issued on February 8, 2017.

In her application for post-conviction relief, Applicant alleges she is being held in custody unlawfully for the following allegations:

1. "Gross ineffectiveness of counsel;"
 - a. "Failure of defendants counsel to investigate the victim and/or her family's employment with Berkeley Co Sheriff or Prosictor's [sic] Office. (Government official);"
 - b. "Failed to fully explain legal terms and procedures while defendant was not medicated;"
 - c. "Failed to investigate victim and family when defendant heard they worked for county sheriffs or prosecutors office when defendant told him

crimes, a warrant for Applicant's arrest was issued due to her violation of her probation conditions. On March 24, 2017, Applicant appeared before the Honorable W. Jeffrey Young, who revoked Applicant's probation in full.

- what her family had heard in the lobby outside her preliminary [sic] hearing;"
- d. "Failure to call expert witness' to rebut evidence or raise issues of past and present psychological wellbeing;"
 - e. "Failure to prove criminal intent or argue against any allegations;"
 - f. "Defense counsel failed to explain mens rea was needed and to be proven by prosecution or to explain even what mens rea is;"
 - g. "Failure to raise issues of mental health, mental anguish, extreme or outrageous character at time or mental distress defendant was under;"
 - h. "No alternative defense provide [sic] as atty and I discussed just prior to hearing;"
 - i. "Failed to be adequately [sic] prepared or present any defense as discussed;"
 - j. "Had no defense prepared for trial told me he had none;"
 - k. "Threatened, intimidated [sic] and coerced me and my child to get me to plead guilty even when I told him prior that morning 10-28-16 I did not want to go in front of Judge Herrington [sic] or plead guilty and address it he yelled screamed and curse at me and told me all I was allowed to say was yes or no and I needed to just agree and go along with everything or I would get a life sentence but in essence that is what I got (30 years);"
 - l. "Violation of my 4th, 5th, 6th, 8th, and 14th constitutional rights;"
 - m. "Never discussed lesser included offense or told me ABHAN was a lesser included offense to Attempted Murder because he knew I'd never plead guilty to that because I had told him it was never my intent to kill anyone and I wouldn't say it was;"
 - n. "Violation of Due Process because of inadequate [sic] counsel;"
 - o. "Violation of search warrants never addressed even though I raised that concern – (Rule of Evidence/mitigating circumstances);"
 - p. "Tactics of trial court and failed to raise any arguments [sic] on my behalf;"
 - q. "Not objecting to any evidence that was discussed or entered, never discussed evidence to be used with me other than briefly once before;"
 - r. "No objection to prosecutors allegations to what defendant's intent was. That was never proven therefore objections should have been made;"
 - s. "Dismissing gun voids charges because lack of evidence, material aspect of crime dismissed (not armed) therefore defense atty should have argued for . . .;"
 - t. "Failed to object to trial court error-failed to object to hearsay evidence and improper argument [sic] made by prosecution;"
 - u. "Did not ever act as my advocate;"
 - v. "Counsel deficient for failing to object to improper charge [sic] of malice which improperly shifted the burden of proof from the state to the defendant + other matters that could otherwise be reviewed on direct appeal if not for defense counsels failure to properly preserve the issue;"
 - w. "Not arguing for defendant not to have to register on the sex offender's registry as part of plea agreement previously discussed;"



- x. "Failed to keep promises as part of plea, I was told by defendant counsel when I was asked if I was promised anything to say no even though I was promised things;"
 - y. "Failed to run own tests on evidence as defense;"
 - z. "Defense Attorney did not adequately [sic] argue the fact that the defendant was under the influence of mind altering medication at time of incident and as a result Diminished [sic] capacity doctrine applied to defense case;"
 - aa. "Failure to assist the defendant through complete appeal process to the SC Court of Appeals causing appeal to be dismissed."
2. "Judges Errors/Government Agency Errors"
 - a. "Improper acceptance of plea due to defense counsel stating . . .;"
 - b. "Judges refusal to read letter that was written to the court 12 days prior on October 16, 2016 stating these issues I had with defense counsel and requesting new counsel to be appointed;"
 - c. "When defense counsel told judge I had an issue with his representation she should not have continued to accept plea (violates right to adequate [sic] counsel);"
 - d. "Arresting officers or victim possible agent of Berkeley county or Prosecutor's office that wasn't revealed to court or defense counsel. Defendant's family member heard talk of this a preliminary [sic] hearing but defense counsel never investigated properly."
 3. "Involuntary [sic] plea"
 - a. "Not fully aware of constitutional rights and meanings;"
 - b. "Plea was unlawfully induced and not made voluntarily or within a complete understanding of the nature of the charges and inadequacies [sic] of plea potential;"
 - c. "Promised things to get me to plea that never happened or received;"
 - d. "Coerced by defense atty. as well as intimidated [sic] and threatened to get me to enter plea;"
 - e. "My atty. lead [sic] me to believe I could be sentenced to less than the cap requested by the prosecution if I pled guilty and that he would push for that because of my minimal criminal record;"
 - f. "I didn't understand I could withdraw my plea during the process my atty. told me doing so would only anger the judge and insure a life sentence."
 4. "Violation of search & seizure;" and
 - a. "Search and seizure issues: Illegal search and seizure;"
 - b. "Police report of statements made at scene inadmissible because I was not mirandized at scene. I didn't sign my right (Miranda rights) sheet until 9-5-14, was held 9-4-14."
 5. "Right of adequate representation."

In her *pro se* amendment to her original application, Applicant raised the following additional issues:

1. "Guilty plea was rendered involuntarily;"



2. "Arresting officers breach of its official investigation capacity misconduct in search and seizure of evidence obtained in violation of the 4th Amendment . . .;"
3. "Victim and/or victim's family member(s) are believed to be or have been employed by Berkeley County Sheriff's Dept. or the Solicitor's Office in an official capacity, acting as alter ego or were at the time of arrest and after without notifying defense or court;"
4. "The prosecution [sic] failed to prove mens rea in kidnapping charge and burden of proof was therefore shifted to defense which was never explained or discussed with defendant by her public defender;"
5. "Because victim was never harmed and released to a safe place, unharmed it constituted lesser charge of second degree kidnapping a lesser sentence when charge were discussed with defendants attorney he never seemed to want to argue for her, he only stating she was guilty;"
6. "Under the burden of proof for kidnapping § 48(a) states under some authority, all mental deficiencies and disorders when there is evidence of an underlying mental defect or disease, including conditions that causes loss of emotional control, may support a diminished capacity defense. Courts have determined that the exclusion of testimony evidence of P.T.S.D. constituted reversible error in prosecution for violent crimes . . .:"
7. "The fact that the defendant suffers from P.T.S.D. and that it is documented in the State's ordered psychological evaluation should and did speak to § 48(a) diminished capacity defense . . . neither the prosecution or defense atty. was willing to make the court aware of this fact;"
8. "Because the garage door was open and force was not used to obtain entry into garage and unauthorized entry was not constituted regardless to the intent of the person entering. Reasonable belief that entry was allowed because defendant was never asked to leave, therefore entry was implied as agreeable and not unauthorized . . .;"
9. "Defendant never said she was guilty of burglary or kidnapping her response was 'the State says by their statute [sic] that I'm guilty, so I guess by the statute I'm guilty. The only crime the defendant plead guilty to was Assault and Battery of a High and Aggravated [sic] Nature which renderard [sic] the whole plea VOID;"
10. "The guilty plea was rendered involuntary. . . . I was on psych meds. definitely [sic] mind altering. . . . The guilty plea was not freely and voluntarily entered into. There was no guilty plea agreement entered prior to the hearing on October 28, 2016 to show that the (applicant) in this case at bar, freely and voluntarily waived her rights to a (trial by jury);"
11. ". . . [T]he (applicant) maintains she didn't know prior to being woken up on the morning of October 28, 2016 by the C.O. that she was going to court that morning, that her attorney gave her his word that he would have her scheduled for Judge Dennis' Dockett [sic] or one of the visiting judges and she maintains she was harassed, threatened, and coerced by her public defender in various ways but that on October 28, 2016 he threatened that she would receive life in prison if she didn't plea guilty but in fact the 30 year sentence she received was in effect a life sentence for her at 46 years old. She also maintains she was under great duress caused by her court appointed attorney the entire time he was representing her. . . ."



12. "The (applicant) maintains that she wrote to the public defenders office on three separate occasions [sic] requesting that David Schwacke be replaced as her attorney, with no response before writing to the court on October 16, 2016 prior to the October 28th, plea date asking for her attorney to be changed due to his blatant [sic] ineffectiveness and because of his attitude towards her. . . .;"
13. "The Berkeley county sheriff searched a residence . . . in Dorchester County where the (applicant) did not reside and had last resided there in 1999 some 15 years prior removing items not belonging to applicant that many others used and had access to for the purpose of using as evidence against the (applicant) even though they belonged to (applicant's) daughter who live appart [sic] from (applicant) who's daughter advised law enforcement of such at the time of the search, and there were questions concerning warrant and searches which (applicant) has requested copies of warrant's (search) of from both her attorney David P. Schwacke and the solicitor in this case but have not been provided by either. . . .;"
14. ". . .The (applicant) did not freely waive her right to a jury trial, her right to confront her accuser nor did she willingly waive her right to appeal her guilty plea, (applicant's) attorney harassed, threatened, and intimidated her into doing so. . . .;"
15. ". . . Because of gun evidence that has only reciently came [sic] to light the charges as charged do not apply causing all charges to be void. Also when (applicant) asked her attorney to investigate the evidence the solicitor planned to use and to have medical records subpoenaed he told (applicant) no his investigator was on medical leave. . . .;"
16. ". . .[T]he alleged deed was never carried out and completed it was left undone, the victim never left her own yard, never held for ransom, never moved a substantial distance (carried away) confined or abducted, the deed was left undone and unproven there by definition meaning no mens rea, no crime. . . . [D]efense attorney never informed the defendant of this and never argued any of this all he continually did was to tell the (applicant) she was guilty of the crime as charged. Defense attorney admitted to (applicant) several times that he had no defense prepared for her case if she chose to go to trial but would ask at the plea agreement that (applicant) not have to register on the registry but never followed through with that promise either. . . .;"
17. ". . .There was proof given to the defense and prosicution [sic] that such conditions[, mental disease or defect,] existed and was discussed with doctors during psychological eval. but defense refused to address it even when (applicant) told him she know [sic] something was wrong. . . .;"
18. "Defense counsel failed to object to hearsay evidence and improper arguement [sic] of the prosicutor [sic];"
19. "Failure to keep promises of guilty plea and forced involuntary plea;"
20. ". . .[T]he State failed to disclose crucial evidence of the victim or victim's family members identity as a police or solicitor's agent for Berkeley Co.;"
21. "The property listed from 224 Ruth Ann Dr. Summerville, S.C. in Dorchester County was in violation of search and seizure because there was no probable cause for the warrant to obtain the items listed from that address . . .;"
22. ". . .[W]ith the denial of a right to appeal the guilty plea, when trial attorney did not advise or give any (instruction) on a guilty plea . . .;"
23. ". . .Procedural errors of criminal charges: Entering of a garage where the door is up and another door seperates [sic] living space where no force was used to enter is not

1st degree Burglary and since the occurrence [sic] happened between 6 am – 6 pm the charge of First degree Burglary is incorrect . . .;” and

24. “. . . Per People v. Picaroni Assault and Battery High and Aggravated [sic] Nature requires the intent, which was never proven to exist nor did intent exist to cause serious injury, there was no serious bodily injury, no indifference to human life, on the contrary the (Applicant) offered to assist the victim and call for (medical attention) help when the (victim) said she had gone into labor and her water had broken. The statute for ABHAN requires [sic] that the perpetrator [sic] could be found guilty of manslaughter had the victim died which with no intent and indifference to life did not apply. Therefore this was an inadequate [sic] charge for this case at bar.”

Finally, in her “First Amendment to Prior Application for PCR,” submitted through her counsel, Applicant raised the following additional ground for relief:

1. “Applicant’s relationship with plea counsel deteriorated to the point counsel should have requested to be relieved from Applicant’s case and new counsel appointed. Counsel’s failure to do so resulted in an involuntary guilty plea.”

At the evidentiary hearing, Applicant proceeded forward on the allegations raised in her “First Amendment to Prior Application for PCR,” as well as allegations plea counsel was ineffective for failing to investigate Applicant’s prior history of mental health problems, failing to investigate the victim and her family’s employment with Berkeley County, failing to appeal, and failing to challenge the search warrant.

STATEMENTS OF FACTS ADDUCED AT THE PLEA

On September 4, 2014, a woman wearing a wig was seen in the Cane Bay neighborhood of Summerville, South Carolina, looking into the windows of various house. Tr. 12. The next day, September 5, 2014, the same woman was seen at the victim’s home. Tr. 12. The woman wearing the wig was Applicant. Tr. 12.

The victim, who was thirty-seven weeks pregnant at the time, had just returned home from the grocery store with her two young children. Tr. 12-13. As she was unloading groceries, Applicant approached the victim with a loaded pistol. Tr. 13, 18. Applicant told the victim she



would kill her, her children, and her unborn child if she did not go with her. Tr. 13. Applicant then grabbed the victim by her baby bump and led the victim to the back of the home, where Applicant had parked her car. Tr. 13, 18-19. The victim, however, pretended to go into labor and was able to wrestle the gun away from Applicant and throw the gun into a pond nearby. Tr. 13, 19. Applicant then grabbed the victim by her hair and began punching her. Tr. 19. The victim then screamed for help, and a neighbor came over, tackled Applicant, and sat on her until law enforcement could arrive. Tr. 13, 19.

When law enforcement arrived, they recovered the gun, which was a forty-five caliber pistol containing one round. Tr. 13. A magazine for the gun was also found in Applicant's car. Tr. 13. In addition to the magazine, law enforcement officers also found a baby bracelet containing the name "Baby Girl Gordon," a car seat, bottle, baby formula, infant clothing, rubber gloves, a new shovel, tarp, and a list containing the items scalpel and clamps in Applicant's car. Tr. 13-14. Also in the car was a wrist band that would be for a mother who had just given birth and a syringe containing the sedative diphenhydramine. Tr. 14.

Further investigation revealed Applicant had been pretending to be pregnant for months, despite having a hysterectomy ten years before. Tr. 14. Because of her fake pregnancy, Applicant and her boyfriend had furnished a full nursery, and her boyfriend's mother had traveled from out-of-state for the birth of the baby. Tr. 14.

Upon her arrest, Applicant told law enforcement she had come up with this plan with the victim's husband. Tr. 15. She also gave a fake name for the victim's husband, explaining the two would meet in a bar and she would refer to him by that name. Tr. 15. Law enforcement then obtained the victim's husband's cellphone and discovered there had been no contact between him and Applicant. Tr. 15.



Applicant's son also gave a statement to the police. Tr. 17. In that statement, he indicated Applicant is very manipulative, and this was not the first time she had done something like this. Tr. 17.

While in the county jail, Applicant had three other inmates send letters to the victim. Tr. 15. Applicant told these inmates the letters were for a psychiatrist, and they were to write the letter and return it to Applicant. Tr. 15-16. In addition to these letters, which were sent in February 2016, Applicant also wrote to the solicitor, encouraging her to speak with the victim and ask her not to ask for a lengthy sentence. Tr. 16.

Applicant was also evaluated for competency and criminal responsibility. Tr. 17. In both of those evaluations, Applicant was found competent and criminally responsible. Tr. 17. The evaluation further showed she was feigning symptoms and pretending to be psychotic. Tr. 17.

TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

At the evidentiary hearing, Applicant testified on her own behalf. Respondent presented testimony from plea counsel, Assistant Public Defender David P. Schwacke, (hereinafter "Counsel"), as well as Assistant Solicitor Anne M. Williams. This Court also had before it a copy of Applicant's plea transcript, the records of the Berkeley County Clerk of Court, Applicant's appellate records, and Applicant's records from the South Carolina Department of Corrections.

During the evidentiary hearing, Applicant testified she is currently incarcerated for kidnapping, assault and battery of a high and aggravated nature (ABHAN), and first-degree burglary; but she was originally charged with a weapons charge and attempted murder. She elaborated she did not plead to attempted murder and would not have pled to ABHAN because it

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is a lesser-included offense of attempted murder. She also testified she was arrested on September 4, 2014 and pled guilty on October 28, 2016. She further testified around the time of this incident, she was self-medicating, so everything was hazy.

Applicant denied having a gun at the time of the crime and testified she had never seen a gun. She further testified she hit the victim, and the victim bit her. She elaborated she was running from the neighbor because he said he was calling 911. She elaborated the neighbor alleged he was a member of law enforcement and tackled her to the ground. She testified she had a baby bracelet, clothes, and a car seat in her car because she has an eleventh-month-old granddaughter. She further testified she had the shovel in her car because she had taken it to the cemetery, and she had subsequently cleaned it off. She also testified she had tarp and rope in her car because she was moving, and she had a list of surgical items because she had taken them from her mother's house, but they were not in the car.

Applicant testified Counsel was her only lawyer and was appointed within the first month of her arrest. She further testified they met approximately twelve times over a twenty-six month period, and the two did not get along. She elaborated Counsel did not review discovery materials with her but sent her a copy. She further elaborated she was overwhelmed by the discovery. She also testified based on her research in the jail, she told Counsel the charges were not the appropriate charges in her case, but Counsel told her "you're guilty, what do you want me to do?" She further testified she was not guilty of first-degree burglary. Applicant elaborated she was unable to help Counsel with her defense, as he was not open to anything.

Applicant also testified Counsel did not have a trial strategy, and they did not discuss any strategy or any possible defenses. She testified she asked Counsel about raising a possible defense, but Counsel told her it was not applicable. She also testified she asked Counsel for a

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psychologic evaluation. She testified Counsel continued to tell her she would go to prison for her life but never asked whether or not she was guilty. Applicant further testified Counsel never explained to her mens rea and the necessary intent required for these charges, particularly kidnapping. She elaborated Counsel never explained malice aforethought to her. She further elaborated because she had no understanding of the necessary elements of each charge, she would not have pled.

Applicant testified Counsel never investigated the victim and her family's employment with Berkeley County. She elaborated someone told her the victim was a victim's advocate. She further elaborated Counsel inquired to the solicitor about this alleged employment, but Counsel indicated the victim never worked as a victim's advocate. Applicant also testified Counsel's investigator was out on sick leave during this time.

Applicant testified had Counsel investigated her mental health history, it would have assisted in explaining her reasoning at the time of these crimes. Applicant further elaborated she asked for a psychological evaluation, and she complained to the evaluators about Counsel. She testified at the evaluation she was found competent and criminally responsible. She further testified she was found to be feigning symptoms during her evaluation, but the evaluators "did not know what was going on in her head."

She also testified she had issues with the search warrants that were issued, but she does not know how they work. She elaborated law enforcement served the warrant on her seventeen-year-old child, who did not have access to Applicant's belongings. She further elaborated law enforcement obtained a search warrant for her deceased mother's cellphone. Applicant also testified Counsel never told her she could challenge the warrants, and when she asked for copies of the warrants, he refused to provide them to her.

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She testified she sent a letter to the Public Defender's Office in March or April 2016, indicating she was not comfortable with Counsel and asking for a new attorney. She elaborated no one replied. She further testified she requested a different attorney twice during her psychological evaluation but also received no reply. Applicant testified she told Counsel three times she wanted a new attorney, but he told her he was still her attorney. She elaborated it was not until her third letter to the Public Defender's Office or to Counsel that Counsel visited her regarding her request for a new attorney.

Applicant further testified she attempted to hire and spoke with another lawyer, but her children had taken the money out of her bank account, so she could not afford to hire new counsel. Applicant testified she never made a motion to relieve counsel, because she did not know that she could make such a motion.

Applicant also testified she sent a letter to the court on October 19th asking for Counsel to be removed and asking for a new attorney. She further testified when the plea court asked her if she had any complaints of Counsel she told the plea court she did not have any complaints. She elaborated she did not detail any of her complaints from her letter to the plea court. She elaborated she was unaware she would be coming to court for a plea, and Counsel never discussed the plea with her. She further elaborated on the morning of her plea, Counsel reviewed the rules with her, during which they got into a verbal altercation. Applicant testified Counsel promised her she would not have to plead before Judge Harrington, but rather would be able to plead before the Honorable R. Markley Dennis, Jr. She also testified Counsel told her the plea was the only option that day, and she would have to "give a little to get a little." Applicant elaborated Counsel told her not to raise any issues with him before the plea court, as she would only "piss off" the court.

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Applicant further testified she called her daughter the morning of the plea, and they had a discussion prior to her plea. She elaborated the letters she had written prior to the plea had an effect on her decision to plead.

Applicant testified she did not want to plead guilty, as she suffers from post-traumatic stress disorder and anxiety. She testified because she did not have an understanding of the elements of the charges, she would not have pled. She further testified because Counsel was yelling and cursing at her, she was scared and did not know what to do. She elaborated because Counsel was not open to anything, she had no way of helping him prepare her defense. Applicant also testified the plea court erred by accepting the plea, because Applicant's issues with Counsel were on the record. She elaborated Counsel admitted the breakdown in their relationship at the plea. She further elaborated the plea court's acceptance of her plea biased her case.

Applicant also testified at the plea, she told the court she was satisfied with Counsel. She testified the plea court reviewed her right to a jury trial and each of her rights at trial with her, to which she responded she understood. She further testified she told the plea court she was waiving those rights.

She testified the Counsel told her after the plea the only thing he could do was file an appeal, and she had twenty days to explain to the Court of Appeals her reasons for appealing. She further testified she believed this was Counsel's job as her attorney. She elaborated she wrote a letter to the Court of Appeals, in which she complained about Counsel.

Following Applicant's testimony, Respondent presented the testimony of Counsel. Counsel testified he has been practicing law since 1981, and he has been working at the Public Defender's Office full-time since 2007. He elaborated from 2002 to 2007, he was working part-

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time at the Public Defender's Office. He testified he was appointed to Applicant's case on September 9, 2014, and he had the case for two years. He elaborated he met with Applicant fifteen times. He further testified during these meetings, Applicant gave him multiple accounts of this incident, and several times she indicated she did not remember anything except for waking up in the jail. He testified he reviewed the discovery material with Applicant and discussed the elements of each charge. He elaborated they also discussed possible defenses.

Counsel also testified he attempted to develop a defense within the facts and thought he could attempt a criminal responsibility defense. He elaborated, however, based on his investigation, he had no confidence in that defense.

Counsel testified because Applicant alleged she could not remember the incident, she was evaluated by the State at the Medical University of South Carolina for competency and criminal responsibility. He elaborated the State found she was both competent and criminally responsible. He also testified he had her evaluated independently by Dr. Knight, whose findings were consistent with those of the State.

Counsel testified he discussed with the State numerous times about a plea, and they went back and forth between a recommendation and a negotiation. He elaborated he sent a number of requests to the State asking them to reduce the charges, which he discussed with Applicant. He elaborated he discussed the consequences of the plea with Applicant and also discussed her constitutional rights. He testified it was Applicant's decision to plead guilty, and had she decided to go to trial, he would have been ready.

Counsel also testified he and Applicant were not friends during his representation of her, but that is not his job as a defense attorney. He elaborated his responsibility was to ensure Applicant was fully informed of everything so that she could make good decisions. He further

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elaborated he had no reason to move to be relieved as Applicant's counsel. He testified although they had firm discussions, they were productive. He explained at times, Applicant did not want to hear what he had to say, but he explained the facts were what they were. Counsel also testified he did everything Applicant asked him to, and he left nothing on the table.

He also testified Applicant asked him to investigate whether or not the victim was employed by the Berkeley County Sheriff's Office. He elaborated he contacted the Solicitor's Office, and no one had any information regarding the alleged employment. He elaborated there was no conflict.

Counsel testified his representation of Applicant was not strained during the entire course of representation. He elaborated at times, Applicant would glare at him and would not want to hear what he had to tell her. He further elaborated the only correspondence he received from Applicant regarding her discontent was the last letter she sent, which they discussed at the jail. He explained during this conversation Applicant informed him she did not want him to be her attorney anymore, to which he replied she could take it up with the judge if she wanted. He further explained he explained to Applicant the court would explain to her she was not entitled to her choice of Public Defenders should she move for Counsel to be relieved. He also testified he and Applicant did not discuss relieving him as her counsel prior to the plea. He elaborated they had a couple of boisterous discussions, but they were not arguing. He further elaborated he did this in an effort to get his point across. Counsel also testified he did not ask to be relieved, as he was handling Applicant's case appropriately.

Counsel testified prior to the plea, he told the Applicant to respond respectfully, but never told her how to answer the court's questions. He elaborated he typically informs his clients of the questions they will be asked prior to the plea.

He elaborated Applicant indicated he was not doing what she wanted him to do and felt he was working for the State, rather than her. Counsel also testified at the plea, Applicant informed the court she had sent her a letter, but he did not recall if he and Applicant ever had a discussion about that letter, as he has never seen the letter to the court.

He also testified Applicant's hesitation at the plea concerning her first-degree burglary charge was due to some incorrect information she had been provided by "jailhouse lawyers." He elaborated he explained to Applicant the elements and further explained to her that a garage qualified as part of the home for a conviction of first-degree burglary.

Counsel testified with regards to an appeal, he files a notice of appeal if his client wishes him to do. He elaborated he filed an appeal in this case, but there was no appealable issue, as this was a negotiated plea and the sentence was within the appropriate range.

Following Counsel's testimony, Assistant Solicitor Anne M. Williams testified. Assistant Solicitor Williams testified she has been practicing law for twenty years, ten of which have been in South Carolina and ten of which have been in Arkansas.

She testified Applicant did not know the victim, but somehow Applicant found out the victim was pregnant. She elaborated the day before this incident, Applicant was seen outside of the victim's home, which was on camera. She testified on this day, while the victim's toddlers were in the garage, Applicant accosted the victim and led her to her car. She elaborated a neighbor saw them wrestling, which was also captured on video. She further elaborated the victim was able to throw Applicant's gun into a pond nearby. She also testified inside Applicant's car was a syringe containing a horse tranquilizer, baby clothes, a baby bracelet, a car seat, a list indicating scalpel and clamps, a brand new shovel, tarps, and a rope. Assistant

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Solicitor Williams also testified around this time, Applicant had been pretending to be pregnant and had posted pictures of the nursery she and her boyfriend set up.

She also testified because of the oddity of these facts, everyone was concerned whether or not Applicant was in the right state of mind. She explained Applicant made admissions in her letter but indicated she had blacked out during the incident. She further explained she had Applicant evaluated for competency and criminal responsibility. She elaborated Applicant was found competent, criminally responsible, and to be feigning symptoms at the evaluation.

Assistant Solicitor Williams also testified she and Counsel entered into plea negotiations. She explained the victim did not want Applicant to have any chance of getting out of prison and did not want the State to make any plea offers, because Applicant had immediately attempted to contact the victim after this incident. She further explained Applicant had people in the jail send letters to the victim. She also testified after a while, due to the victim's distress and believing a plea would be the better route, Counsel negotiated a cap of thirty years. She further testified at the eleventh hour, Applicant did not want to plead to attempted murder or the weapons charge.

She also testified had Applicant not accepted the plea and proceeded to trial, she would have sought a life sentence. She further testified Applicant's on wrote her a letter indicating this was not the first time Applicant had done something like this and he was prepared to testify at her trial.

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, an applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, the applicant must prove “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.” *Strickland v. Washington*, 466 U.S. 668 (1984); *Butler*, 286 S.C. 441, 334 S.E.2d 813.

The proper measure of performance is whether an 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. 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 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. In order to satisfy the prejudice prong of this test following a guilty plea, the applicant “must show that there is a reasonable probability that, but

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for counsel's errors, [s]he would not have pleaded guilty and would have insisted on going to trial." *Hill v. Lockhart*, 474 U.S. 52, 59 (1985).

After careful review based on the standard discussed above, this Court finds Applicant has failed to carry her burden in this action. Below are this Court's findings in regards to each of Applicant's allegations of ineffective assistance of counsel.

Counsel's alleged failure to investigate Applicant's prior mental health history

Applicant alleges Counsel was ineffective for failing to investigate Applicant's prior mental health history. Applicant further contends had Counsel investigated her previous mental health issues, it would have helped explain her actions.

"Although counsel should conduct a reasonable investigation into potential defenses, *Strickland* does not impose a constitutional requirement that counsel uncover every scrap of evidence that could conceivably help their client." *Tucker v. Ozmint*, 350 F.3d 433, 442 (4th Cir. 2003) (quoting *Green v. French*, 143 F.3d 865, 892 (4th Cir. 1998)). Moreover, "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), *abrogated on other grounds by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836, 839 (2018) (citing *Moorehead v. State*, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). "In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." *Wiggins v. Smith*, 539 U.S. 510, 521-22 (2003). Here, Counsel testified Applicant was evaluated not only by the State's experts but also by an independent mental health expert. The results of these evaluations were consistent, indicating

Applicant was not only criminal responsible and competent but also feigning symptoms. As Counsel did, in fact, investigate whether or not he would have a viable defense based on Applicant's mental health, this Court finds Applicant has wholly failed to establish any deficiency on the part of Counsel.

Similarly, this Court finds Applicant has failed to establish any resulting prejudice from this alleged deficiency. Because Applicant neither produced any medical records concerning her mental health "nor offered the testimony [of some mental health expert] in some other manner consistent with the rules of evidence," what this additional testimony would have been, and similarly what her medical records would have shown, is "purely speculative." *Bannister v. State*, 333 S.C. 298, 304, 509 S.E.2d 807, 810 (1998). This Court finds this allegation must be denied and dismissed with prejudice.

Counsel's alleged failure to investigate the victim's alleged employment with Berkeley County

Applicant alleges Counsel was ineffective for failing to investigate the victim's alleged employment with Berkeley County. Specifically, Applicant alleges Counsel was ineffective for failing to investigate whether or not the victim was employed with the Berkeley County Solicitor's Office. This Court finds Applicant has wholly failed to establish any deficiency on the part of Counsel or any resulting prejudice therefrom. When asked by Applicant to investigate the victim's alleged employment with the Berkeley County Solicitor's Office, Counsel contacted the Solicitor's Office to inquire whether or not the victim worked there. This investigation proved fruitless, as there is no indication whatsoever the victim had any connection to the Solicitor's Office. Moreover, even if the victim had a connection to the Solicitor's Office,

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no conflict would exist such that it would prejudice Applicant. Based on the foregoing, this allegation is denied and dismissed with prejudice.

Counsel's alleged failure to appeal

Applicant alleges Counsel was ineffective for failing to assist her with her appeal. Counsel has a constitutionally-imposed duty to consult with a defendant about an appeal when there is reason to think either: (1) that a rational defendant would want to appeal or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. *Roe v. Flores-Ortega*, 528 U.S. 470 (2000). When a defendant has pled guilty, “there must be proof that extraordinary circumstances exist, such as where a defendant inquires about an appeal, in order for counsel to be required to advise a defendant of the right to appeal.” *Rolen v. State*, 384 S.C. 409, 415, 683 S.E.2d 471, 474-75 (2009) (citing *Weathers v. State*, 319 S.C. 59, 61, 459 S.E.2d 838, 839 (1995)). When counsel has consulted with the defendant regarding the right to appeal, “Counsel performs in a professionally unreasonable manner *only* by failing to follow the defendant’s express instructions with respect to an appeal.” *Flores-Ortega*, 528 at 478 (emphasis added).

Here, Counsel testified Applicant asked him to appeal, so he filed a notice of appeal. “If the appeal is from a guilty plea, . . . a written explanation showing that there is an issue which can be reviewed on appeal” must accompany the notice of appeal. Rule 203(d)(1)(B)(iv), SCACR. Such an explanation should “identify the issue(s) to be raised on appeal and the factual basis for the issue(s) including how the issue(s) was raised below and the ruling of the lower court on that issue(s).” *Id.* Counsel testified, however, there were no appealable issues from Applicant’s guilty plea, as it was a negotiated plea and the sentence was within the statutory requirements. Based on the foregoing, this Court finds Applicant has wholly failed to establish

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Counsel was deficient or suffered any resulting prejudice from this alleged deficiency. Accordingly, this allegation must be denied and dismissed with prejudice.

Counsel's alleged failure to challenge the search warrant

Applicant contends Counsel was ineffective for failing to challenge the search warrant. Specifically, Applicant contends law enforcement served the warrant on her seventeen-year-old child, who did not have access to Applicant's belongings, and they obtained a warrant for her mother's cellphone. Applicant, however, has wholly failed to establish any basis on which Counsel should have challenged the search warrants. Accordingly, this allegation must be denied and dismissed with prejudice.

Involuntary Guilty Plea

Applicant further alleges her guilty plea was not voluntarily made. This Court finds Applicant's guilty plea was freely and voluntarily made. In evaluating issues concerning guilty pleas, this Court will consider the entire record, including the transcript of the guilty pleas and the evidence presented at the post-conviction relief hearing. *Roddy v. State*, 339 S.C. 29, 528 S.E.2d 418 (2000). Voluntariness of a guilty plea is not merely determined by an examination of a specific inquiry by the plea court alone but rather is determined by the record of both the guilty plea proceeding and the post-conviction relief hearing. *Id.* In order to find a guilty plea was knowingly and voluntarily entered into, the record must establish the defendant had a full understanding of the consequences of her plea and the charges against her. *Boykin v. Alabama*, 395 U.S. 238 (1969). Further, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant; thus, an applicant's right to contest the validity of such a plea is usually foreclosed. *Dalton v. State*, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (citing *Blackledge v. Allison*, 431 U.S. 63 (1977)). Therefore, admissions "made during a guilty plea

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should be considered conclusive unless [an applicant] presents valid reasons why [s]he should be allowed to depart from the truth of [her] statements.” *Id.* (citing *Crawford v. United States*, 519 F.2d 347 (4th Cir. 1975)); *Edmonds v. Lewis*, 546 F.2d 566 (4th Cir. 1976).

This Court finds this allegation is without merit, and Applicant has failed to carry her burden of proving that her guilty plea was involuntarily made. This Court further finds Applicant’s plea was entered into freely and voluntarily. The record before this Court reflects that the plea court thoroughly reviewed all of Applicant’s constitutional rights with her, including her right to a jury trial. Upon explanation of each constitutional right, Applicant indicated she understood and waived her constitutional rights. Applicant further indicated she no one had promised her anything, threatened her, or forced her to plead guilty.

Furthermore, this Court finds Counsel’s testimony concerning this allegation credible, whereas Applicant’s testimony is not credible. Specifically, Counsel testified he reviewed all discovery materials with Applicant and reviewed all of the elements which the State would be required to prove at trial to Applicant. Moreover, Counsel testified although he was not friends with Applicant and Applicant was difficult to work with at times, he was able to fully inform her of the consequences of her plea, her constitutional rights, and able to fully inform her of the circumstances so that she could make a decision regarding whether or not to plead.

Therefore, this Court finds Applicant had a full understanding of the consequences of her plea and the charges against her, and the plea court correctly found Applicant’s plea was freely, voluntarily, and intelligently made. Consequently, this allegation must be denied and dismissed with prejudice.

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CONCLUSION

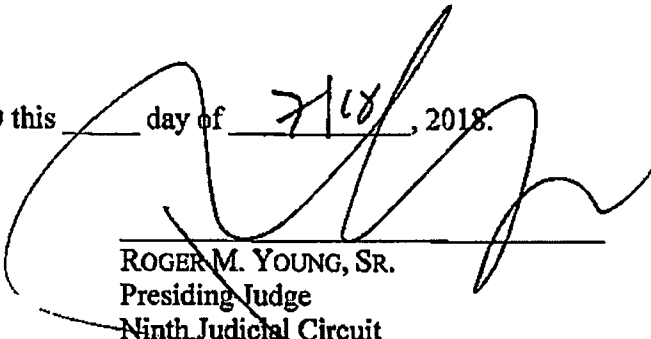
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this court to grant her application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

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.

IT IS THEREFORE ORDERED:

1. That this application for post-conviction relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to and remain in the custody of the State

AND IT IS SO ORDERED this _____ day of 7/18, 2018.



ROGER M. YOUNG, SR.
Presiding Judge
Ninth Judicial Circuit



South Carolina

STATE OF SOUTH CAROLINA)
 COUNTY OF BERKELEY)
 Julie Lynn Gordon-Gookins, # 370329,)
 Plaintiff(s),)
 -vs-)
 State Of South Carolina,)
 Defendant(s).)

IN THE COURT OF COMMON PLEAS
 9th JUDICIAL CIRCUIT
 CASE NO.: 2017CP0802322
 APPOINTMENT OF COUNSEL OR GAL
 (Select one.)

ORDER
 AMENDED ORDER

TYPE OF CASE/PROCEEDING: (Check one.)

- Post-Conviction Relief (PCR)/habeas case Adoption Juvenile
 SVP case Custody and/or Visitation Abuse and Neglect
 Minor Name Change Other: Post Convict Rel 500

It appears Julie Lynn Gordon-Gookins, # 370329, 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 609(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 Boozar 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
 December 11, 2017

Mary P. Brown / GW
 Circuit Judge Clerk of Court

Plaintiff Attorney:

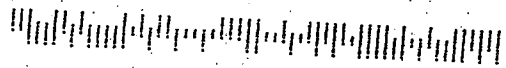
Lance Boozar	
1400 Laurel St, Ste 4A	
Columbia, SC 29201	

Defendant Attorney:

Megan Harrigan Jameson	
PO Box 11549	
Columbia, SC 29211	

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, 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.

FILED
 2017 DEC 11 PM 3:00
 MARY P. BROWN
 CLERK OF COURT
 BERKELEY COUNTY, S.C.



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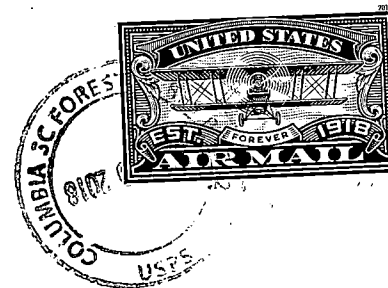
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THE BOOZER LAW FIRM, LLC

1419 Pendleton Street
Columbia, SC 29201



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