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July 30, 2018

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

The Honorable Rhonda Dale McElveen
Clerk, Barnwell County
PO Box 723
Barnwell, SC 29812-0723

RE: Bill Breeland, #315919, v. State of South Carolina
2016-CP-06-326

Dear Mr. Shearouse and Ms. McEleveen:

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

Yours very truly,

LSB

Lance S. Boozer

cc: Julie A. Coleman, AAG
Office of Appellate Defense
Bill Breeland, #315919

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

AUG 01 2018

S.C. SUPREME COURT

APPEAL FROM BARNWELL COUNTY
Court of Common Pleas

The Honorable R. Scott Sprouse, Circuit Court Judge

Case No. 2016-CP-06-326

Bill Breeland, #315919,.....Petitioner,

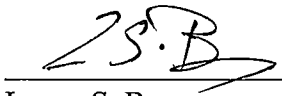
v.

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

NOTICE OF APPEAL

The Petitioner appeals the Honorable R. Scott Sprouse's Order dated June 14, 2018, denying post-conviction relief to the Petitioner. Undersigned counsel received notice of entry of the Order on July 24, 2018. A copy of the Order on appeal is attached to this notice.

Respectfully submitted,



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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 30th day of July, 2018.

LSB

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STATE OF SOUTH CAROLINA COUNTY OF BARNWELL	IN THE COURT OF COMMON PLEAS SECOND JUDICIAL CIRCUIT
Bill Breeland, #315919, Applicant, v. State of South Carolina, Respondent.	2016-CP-06-0326 **ORDER OF DISMISSAL**

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on July 22, 2016. Respondent submitted its Return on January 24, 2017. An evidentiary hearing into the matter was convened on May 7, 2018, at the Aiken County Courthouse. Applicant was present at the hearing and was represented by Lance S. Boozer, Esquire. Respondent was represented by Assistant Attorney General Julie A. Coleman of the South Carolina Attorney General's Office.

At the evidentiary hearing, Applicant testified on his own behalf. Respondent presented testimony from Laura McCann, Esquire ("Plea Counsel"). This Court had before it the records of the Barnwell County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the plea transcript, the direct appeal records, and the pleadings. The Court finds as follows:

I. 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 Barnwell County Clerk of Court. Applicant was indicted at the May 2014 term of the Barnwell County Grand Jury for attempted murder (2014-GS-06-0107). Laura A. McCann, Esquire, represented Applicant.

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On May 27, 2014, Applicant pled guilty before the Honorable Edgar W. Dickson, as indicted. Judge Dickson sentenced Applicant to imprisonment for twenty years.

Applicant filed a timely notice of appeal and a brief was filed pursuant to Anders v. California.[1] Laura R. Baer, Esquire, represented Applicant on appeal. The South Carolina Court of Appeals dismissed Applicant's appeal on August 12, 2015. State v. Breeland, Op. No. 2015-UP-419 (S.C. Ct. App. filed August 12, 2015). The Remittitur was returned on August 28, 2015.

II. ALLEGATIONS

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

1. Ineffective assistance of trial counsel and appellate counsel
   i. "Failur [sic] of counsel to have independant [sic] mental evaluation."
   ii. "Failur [sic] to allow applicant to plea guilty (6 & 14 amendents)."
2. Denial of Due Process Clause.

Applicant filed an amended application on April 11, 2018, adding the following allegations:

(a) Involuntary guilty [plea];
(b) Counsel failed to explain defenses or trial strategy.

At the evidentiary hearing, Applicant informed this Court he was withdrawing his allegation of ineffective assistance of counsel for failure to have an independent mental evaluation.

III. SUMMARY OF RELEVANT TESTIMONY PRESENTED

Applicant's testimony

At the evidentiary hearing, Applicant testified he met with Plea Counsel three or four times at the jail before his guilty plea. He stated Plea Counsel basically told him he would get thirty years if he were convicted at trial. He stated the State would not give him a plea offer. Applicant stated it took a long time for him to be able to trust Plea Counsel. He testified that Plea

[1] 386 U.S. 738 (1967).

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Counsel told him that they were going to trial, but he felt that there had been no preparation for a trial, so he decided to plead guilty at the last minute based on Plea Counsel's unpreparedness.

Plea Counsel's testimony

At the evidentiary hearing, Plea Counsel testified she was appointed to Applicant's case and represented him on other charges before he was charged with this crime. She stated her representation began on June 2, 2012, and continued with the current charge on January 6, 2014. Plea Counsel testified she met or spoke with Applicant in person or on the phone at least thirty-eight times. She stated she reviewed all discovery with Applicant and provided him with a copy of the materials twice, but she could not send him the video evidence because of jail policy. Plea Counsel stated that Applicant always admitted his guilt to her, and he told her he never wanted a trial—he always said he was guilty and he wanted a non-violent plea offer.

Plea Counsel testified the evidence against Applicant was overwhelming, and consisted of at least seven eye witnesses, included the bus driver and three passengers from the bus who all witnessed the stabbing, the victim, and the victim's family members who were going to testify at trial, as well as statements Applicant had given to law enforcement implicating himself in the crime. Plea Counsel testified that the State refused to give a non-violent plea offer, like Applicant wanted, but they did agree to dismiss five pending charges in exchange for his guilty plea. She stated it was Applicant's decision to plead guilty, and he had enough experience with the law to ask good, thoughtful questions about his plea, so she believed he understood his decision. She testified that Applicant never wanted to go to trial but always wanted a plea.

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IV. APPLICABLE LAW

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 pleas, 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).

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V. 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

Applicant alleges Plea Counsel was ineffective in her representation surrounding his guilty plea. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. See Al-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (1999) (citing Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993)). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the applicant 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) (citations omitted). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985).

After considering the testimony, judging the credibility of the witnesses, and reviewing the materials presented to the court, this Court finds Applicant has failed to meet his burden in proving Plea Counsel was ineffective in any regard. Plea Counsel credibly testified she reviewed the discovery with Applicant, which she believed was overwhelmingly against him, and that Applicant never wanted a trial but always wanted to plead guilty. Plea Counsel credibly testified

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she thoroughly discussed the case with Applicant numerous times and answered all his questions, and she was able to get a plea deal from the State that resulted in the dismissal of five pending charges against Applicant.

This Court finds Plea Counsel's representation and advice was reasonable under the circumstances and nothing she did was outside the scope of reasonable professional norms. Plea Counsel thoroughly investigated the case and fully represented her client and advised him based on his best interests in light of the evidence against him, which was to plead guilty. Accordingly, Applicant has failed to prove that Plea Counsel was deficient or that he would have gone to trial but for these deficiencies, and post-conviction relief is denied.

INVOLUNTARY GUILTY PLEA

Applicant alleges his guilty plea was not given freely and voluntarily. This Court finds otherwise and concludes Applicant's plea was entered freely and voluntarily. 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

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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 alleges he was coerced into pleading guilty because his attorney failed to prepare his case for trial, and he felt he had no choice but to plead. This Court finds this testimony to be not credible. Plea Counsel credibly testified that Applicant always admitted his guilt to her and always wanted to plead guilty rather than go to trial. Their interest was in negotiating a favorable plea deal for Applicant, and at no point did Applicant wish to prepare for a trial.

At the guilty plea, the plea court advised Applicant of his right to a jury trial, and he informed the plea court that he wished to waive that right. Tr. 9, line 9. The plea court asked him if anyone had threatened him or promised him anything to get him to plead guilty, and Applicant responded no. Tr. 8, line 11. Applicant testified at the plea hearing that he was satisfied with his attorney and he did not need more time to consider his decision before pleading. Tr. 9, line 3 - 6. Applicant has failed to prove he was coerced into pleading guilty and would have gone to trial otherwise.

Notably the South Carolina Supreme Court has held "[a] guilty plea represents a break in the chain of events which has preceded it in the criminal process." Id. (citations omitted). "When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea." Id. (citing Rice, 401 S.C. at 332, 737 S.E.2d at 486). This Court finds Applicant has not presented any credible evidence that he should be allowed to depart from the truth of the statements he presented to the plea court. Therefore, this Court finds the plea court correctly found Applicant's

plea was freely, voluntary, and intelligently made. Accordingly, this allegation must be denied and dismissed.

VI. 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 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.

IT IS THEREFORE ORDERED:

1. That the application for Post-Conviction Relief is denied and dismissed with prejudice; and

2. Applicant must be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 14 day of June, 2018.

R. SCOTT SPROUSE
Presiding Judge
Second Judicial Circuit

Walterboro, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF BARNWELL Bill Breeland, Plaintiff(s), -vs- South Carolina State of, Defendant(s).	))))))	IN THE COURT OF COMMON PLEAS 2nd JUDICIAL CIRCUIT CASE NO.: 2016CP0600326 APPOINTMENT OF COUNSEL OR GAL (*Select one.*) ☒ ORDER ☐ AMENDED ORDER

FILED FOR RECORD
2016 NOV -4 PM 3:28
RHONDA D. McELVEEN
BARNWELL COUNTY, S.C.

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 Bill Breeland, 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 S. 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
November 4, 2016

Constance B. Mansfield for Rhonda McElveen Clerk of Court

☐ Circuit Judge ☒ Clerk of Court Deputy

Plaintiff Attorney:

Lance S. Boozer	
807 Gervais St., Suite 203	
Columbia, SC 29201	

Defendant Attorney:

Julia Amanda Coleman	
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.

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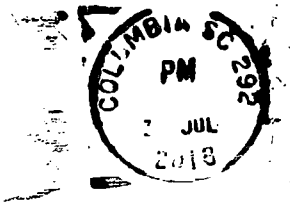

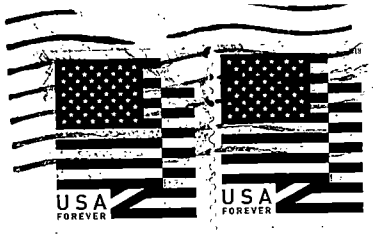

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