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August 14, 2018

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

RECEIVED

AUG 16 2018

S.C. SUPREME COURT

The Honorable Sharon W. Staggers
Clerk of Court
125 W Main St.
Kingstree, SC 29556

RE: Almondo Washington, #368479, v. State of South Carolina
2016-CP-45-363

Dear Mr. Shearouse and Ms. Staggers:

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

Yours very truly,

Lance S. Boozer

Enclosures
cc: Julie Coleman, AAG
Loriene French, OAD
Almondo Washington, #368479

RECEIVED
AUG 1 6 2018
S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM WILLIAMSBURG COUNTY
Court of Common Pleas

The Honorable George M. McFaddin, Jr., Circuit Court Judge

Case No. 2016-CP-45-363

Almondo Washington, #368479 ....Petitioner,

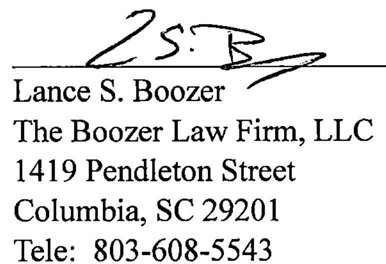
v.

State of South Carolina,..Respondent.

NOTICE OF APPEAL

The Petitioner appeals the Honorable George M. Mcfadden Jr.'s Order dated July 20, 2018, denying post-conviction relief to the Petitioner. Undersigned counsel received a copy of the filed Order on August 14, 2018. A copy of the Order on appeal is attached to this notice.

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA
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The Honorable George M. McFaddin, Jr., Circuit Court Judge

Case No. 2016-CP-45-363

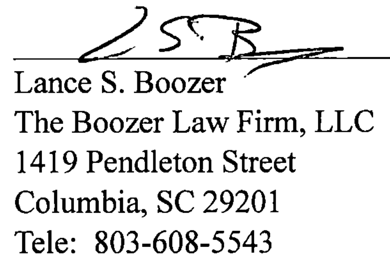
Almondo Washington, #368479 ....Petitioner,

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 Coleman, P.O. Box 11549, Columbia, SC 29211. I further certify that all parties required by Rule to be served have been served this 14th day of August, 2018.



Lance S. Boozer
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STATE OF SOUTH CAROLINA

County of Williamsburg

Almondo Washington

Petitioner

vs.

STATE OF SOUTH CAROLINA

Defendant

IN THE COURT OF COMMON PLEAS

Third Judicial Circuit

RECEIVED
AUG 16 2018
S.C. SUPREME COURT

NOTICE OF APPOINTMENT FOR LEGAL COUNSEL

Case Number 2016-CP-45- 363

To: Lance Boozer,Attorney at Law

By order of the Chief Administrative Judge and pursuant to Rule 608, SCACR, you are hereby appointed to act as attorney for Almondo Washington, the Petitioner, in this action.

This 1st day of November, 2016.

Shawn W. Skaggs
~~Judge~~/Clerk of Court

SCCA 265 (2/04)

STATE OF SOUTH CAROLINA COUNTY OF WILLIAMSBURG	)	IN THE COURT OF COMMON PLEAS THIRD JUDICIAL CIRCUIT
Almondo D. Washington, #368479,	)	2016-CP-45-363
Applicant,	)	
v.	)	**ORDER OF DISMISSAL**
State of South Carolina,	)	
Respondent.	)	

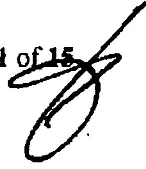
2018 DEC -2 AM 11:24

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on August 5, 2016. Respondent submitted its Return on February 13, 2017. An evidentiary hearing into the matter was convened on November 16, 2017, 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 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 W. LeGrand Carraway, Esquire, and Doward K. Harvin, Esquire ("Plea Counsel"). This Court had before it the records of the Williamsburg County Clerk of Court regarding the subject convictions, Applicant's records for the Department of Corrections, the plea transcript, 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 Clerk of Court for Williamsburg County. Applicant was indicted by the May 2013 term of the Grand Jury for Williamsburg County for Armed Robbery, Possession of a Weapon during the Commission of a



Violent Crime, and Criminal Conspiracy (2013-GS-45-0132). Applicant was represented by Doward K. Harvin, Esquire, and W. LeGrand Carraway, Esquire. On June 1, 2016, Applicant pled guilty as indicted to Armed Robbery, with the other two charges being dismissed in consideration of the guilty plea. Applicant was sentenced by the Honorable R. Ferrell Cothran, Jr. to ten years' imprisonment. Applicant did not appeal his conviction or sentence.

II. 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. "Failure to file appeal."
   b. "Failure to move for the suppression of a speedy trial (sic) and suppress evidence."
      i. "Failure to advise me that under my 5th Amendment right I did not have to answer to any crime whether it be capital or infamous unless on a presentment of indictment of a Legal Grand Jury"

2. Involuntary Guilty Plea
   a. "Plea is not voluntarily or intelligently entered."

3. Subject Matter Jurisdiction
   a. "This indictment is a nullity."
   b. "This indictment does not state where the crime happened. This left the Grand Jury to speculate where the crime happened in Williamsburg."

III. SUMMARY OF RELEVANT TESTIMONY PRESENTED

Applicant's testimony

At the evidentiary hearing, Applicant testified he did not want a new trial on his charges, but rather wanted to enforce the original plea deal that his attorney should have secured for him. He stated he was currently twenty-two years old and was serving a ten year sentence for the

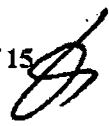
armed robbery he committed. He stated he was twenty-one years old when he plead guilty, and he was seventeen years old when he committed the crime in 2012. Applicant testified he was originally offered a plea deal from the State for a strong-armed robbery charge, and if he accepted the deal the State would recommend a sentence under the Youthful Offenders Act not to exceed six years.

Applicant testified he signed up for a public defender and was originally represented by Doward K. Harvin (Plea Counsel). He stated his parents then hired attorney LeGrand Carraway to represent him at his bond reduction hearing. He stated he does not know why Carraway was relieved as counsel. Applicant testified he got bond and bonded out of jail, and he did not see Carraway again after his bond hearing. He stated he does not remember when the original plea offer was made to him. He testified that he signed a sentencing sheet in order to plead to the YOA plea deal, and it was also signed by Carraway and by Solicitor Tyler Brown. He stated he relied on this plea deal to go forward, but for some reason, he was not able to enter his plea for this recommended sentence.

Applicant stated that after Carraway was relieved from his case, Plea Counsel represented him again. He testified that he told Plea Counsel about the plea deal for a recommendation of a YOA sentence and asked him to get that deal for him. He stated he did not want to go to trial and get more than ten years in prison. Applicant testified that, even though he was not able to accept the original plea offer, he did plead guilty with Plea Counsel and understood he was getting a ten year sentence, which was the mandatory minimum sentence for armed robbery.

W. LeGrand Carraway's testimony

W. LeGrand Carraway testified he has been practicing law for twenty-eight years, and he served as an Assistant Public Defender for twenty-three years. He testified he recalled being



appointed to this case, although he could not recall the circumstances surrounding being relieved or how Plea Counsel took over representation. He stated he did not file any Rule 5 or Brady motions in this case because Applicant's previous attorney had already done so. Carraway testified he represented Applicant at a bond hearing in Family Court before Judge Clifton Newman.

Carraway testified he recalled participating in plea negotiations with Solicitor Tyler Brown, and Solicitor Brown offered him the YOA plea offer informally, before he had spoken to the victim in the case. He stated that after the Solicitor spoke to the victim, he realized the victim did not agree with the plea deal, so he told Carraway he could not offer this plea deal. He stated he did sign a sentencing sheet for this plea offer, and he probably had Applicant sign the sentencing sheet when he saw him after his bond hearing. He testified that he considered the signing of the sentencing sheet to be an offer by the State and acceptance of the offer by Applicant, but he did not consider it to be a binding contract on the parties because they had not yet appeared before the court to have a plea judge accept the plea. Carraway stated that Applicant never showed up to court on the day he was supposed to plead guilty to accept the original deal, and that is why there was a delay. He opined that if Applicant had been in court that day, he could have pled to the original deal.

Plea Counsel's testimony

Plea Counsel testified he was originally appointed to Applicant's case through the Public Defender's Office. He stated he represented Applicant through a bond hearing held before Judge Clifton Newman where bond was denied. He stated that he was then relieved for some reason and Carraway was appointed to the case. Plea Counsel testified that Carraway represented

Applicant at another bond hearing before Judge Newman and got Applicant out on bond. He stated he was then reappointed to the case in 2015.

Plea Counsel testified that he and Applicant did have conversations about the original plea offer, but he did not know there had been a sentencing sheet signed. He testified that Solicitor Tyler Brown left the Solicitor's Office and Solicitor Kimberly Barr took over the case, and she informed him she would not be extending the original plea offer. Plea Counsel testified Solicitor Barr planned to call the case for trial and did not extend any plea offers. He stated that he could not get in contact with Applicant to prepare for trial, despite his best efforts. He testified that he tried to contact Applicant via mail and telephone, and he begged him to come to court, and he eventually wanted to get a bench warrant to have him brought to court.

Plea Counsel testified he appeared for Applicant's trial on May 31, 2016, and Applicant did not appear. He stated Solicitor Barr was prepared to try the case in Applicant's absence. Plea Counsel stated that he happened to see Applicant driving in town that week, and told him to come to his trial. When he did, the bench warrant was lifted.

Plea Counsel testified that when Solicitor Barr took over the case from Tyler Brown, she spoke to the Victim and took the position that the original plea offer from years prior was no longer on the table. He stated Solicitor Barr sat down with him and Applicant and she explained to Applicant about the YOA sentence and explained why it would not happen. He stated Applicant did not speak much in this meeting, but he believed Applicant understood the circumstances surrounding the plea deal. Plea Counsel testified it was Applicant's decision to plead guilty to armed robbery and accept the ten year sentence. He testified that he brought the original plea deal up to the plea court on the record and at a sidebar at the guilty plea. Plea

Counsel testified that the Solicitor has a lot of power, and he did not feel he had any way to force the Solicitor to re-offer the original plea deal.

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).

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).

DETRIMENTAL RELIANCE

First, Applicant alleges he is entitled to a vacation of his guilty plea and to be able to plead guilty according to the terms of the original plea offer from the State because he detrimentally relied on the State's offer, and it was a binding contract which the State was obligated to uphold. This Court finds this allegation meritless, as Applicant has failed to prove detrimental reliance, and the plea offer was not a binding contract because it was not entered before the court.

Solicitors have broad discretion in choosing the offenses with which a defendant will be charged and in plea negotiations leading up to trial. State v. Johnson, 287 S.C. 171, 172, 337 S.E.2d 204, 205 (1985) (citing State v. Blackburn, 271 S.C. 324, 247 S.E.2d 334 (1978); Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1975)). Furthermore, a criminal defendant has no constitutional right to a plea bargain. . Lafler v. Cooper, 132 S. Ct. 1376 (2012); State v. Easler, 322 S.C. 333, 471 S.E.2d 745 (Ct.App.1996), aff'd as modified, 327 S.C. 121, 489 S.E.2d 617 (1997). The decision whether to offer a plea bargain is within the solicitor's discretion. State v. Whipple, 324 S.C. 43, 49, 476 S.E.2d 683, 686 (1996) (citing State v. Chisolm, 312 S.C. 235,

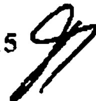
439 S.E.2d 850 (1996)). Our Supreme Court has recognized a plea agreement rests on contractual premises. State v. Gates, 299 S.C. 92, 94-95, 382 S.E.2d 886-87 (1989). Parties are free to withdraw offers until performance occurs. Reed v. Becka, 333 S.C. 676, 687, 511 S.E.2d 396, 402 (Ct. App. 1999). A plea agreement is only an "offer" until the defendant enters a court-approved guilty plea. Id. at 668, 511 S.E.2d at 403. Until formal acceptance has occurred, the plea is not binding on the defendant, the State, or the court. Id.

Reed explicitly holds that a plea agreement, even if the defendant has accepted its terms, is not a binding contract until the actual plea has been accepted by the court:

> A plea agreement is only an "offer" until the defendant enters a court-approved guilty plea. A defendant accepts the "offer" by pleading guilty. Thus, until formal acceptance of the plea by the court has occurred, the plea binds no one, not the defendant, the State, or the court. See Harden v. State, 453 So.2d 550 (Fla.Dist.Ct.App.1984) (until formal acceptance of plea has occurred, plea binds no one, not defendant, prosecutor, or court; formal acceptance of plea occurs when trial court affirmatively states to parties, in open court and for the record, court accepts the plea).

Reed, 333 S.C. at 688, 511 S.E.2d at 402. Reed does not differentiate between oral or written plea agreements. Plea agreements are often negotiated in writing via letter or e-mail, but an e-mail offer from the solicitor and an e-mail accepting the offer from defense counsel does not make the negotiations a binding contract. This is no different than the case at hand. Reed is very clear on its holding regarding the contractual principles of a plea agreement, and any plea agreement is a contract whether it is oral or written. Accordingly, in this case, because Applicant never pled guilty to this offer and the court did not accept his guilty plea and the terms of the agreement, this plea offer was not accepted and it is not a binding contractual agreement.

Absent a plea of guilt, a defendant may enforce an oral plea agreement upon a showing of detrimental reliance. State v. Miller, 375 S.C. 370, 389, 652 S.E.2d 44, 454 (2007). "Even if the agreement has not been finalized by the court, a defendant's detrimental reliance on a

prosecutorial promise in plea bargaining could make a plea agreement binding." Reed, 333 S.C. at 688, 511 S.E.2d at 402–03 (citing United States v. Savage, 978 F.2d 1136 (9th Cir.1992)). "A defendant relies upon a solicitor's plea offer by taking some substantial step or accepting serious risk of an adverse result following acceptance of the plea offer." Id. (citing State v. Vixamar, 687 So.2d 300 (Fla.Dist.Ct.App.1997)). Reliance may not be shown "by the mere passage of time," and it may not be shown by the prospect of a longer sentence. Id. (citing Cope v. Kentucky, 645 S.W.2d 703 (Ky.1983)).

Here, Applicant has failed to show that he detrimentally relied in any way on the prior plea offer. Importantly, Applicant later entered a valid guilty plea to the charge of armed robbery and received the mandatory minimum sentence of ten years. Plea Counsel testified it was Applicant's decision to plead guilty to armed robbery on June 1, 2016. The record before the Court shows Applicant knowingly and voluntarily pled guilty to armed robbery with no detrimental reliance on the prior plea offer. Because there is no detrimental reliance here, this Court finds no reason to enforce the prior plea offer from the State, and this allegation is denied and dismissed with prejudice.

INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant alleges Plea Counsel was ineffective in his 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. Although Applicant alleges Plea Counsel was ineffective for failing to enforce the original plea offer from the State, this Court finds Plea Counsel cannot be ineffective for failing to do so. Plea Counsel credibly testified he discussed the prior plea offer with Applicant and with Solicitor Barr, but when Solicitor Barr took over the case and consulted with the victims, she took the position that she would not be re-offering the prior plea agreement. As discussed above, this Court finds the prior plea offer was not an enforceable, binding contract, and Applicant did not detrimentally rely on the offer from the State. Accordingly, this Court finds Plea Counsel was not deficient for failing to secure the prior plea offer from the State.

This Court further finds there is no resulting prejudice from Plea Counsel's inability to resurrect the State's prior plea offer. In the circumstances here where an applicant asserts ineffective assistance of counsel that caused him to reject a plea offer, in order to prove prejudice the applicant must show that (1) "but for the ineffective advice of counsel there is a reasonable probability that the plea offer would have been presented to the court (i.e., that the defendant would have accepted the plea *and the prosecution would not have withdrawn it in light of intervening circumstances*);" (2) "*that the court would have accepted its terms*;" and (3) "that the conviction or sentence, or both, under the offer's terms would have been less severe than under

the judgment and sentence that in fact were imposed." Lafler, 132 S. Ct. at 1385 (2012) (emphasis added). Furthermore, "a trial judge is not required to accept a plea." Reed, 333 S.C. at 685, 511 S.E.2d at 401 (citing Easler, 322 S.C. 333, 471 S.E.2d 745 (Ct.App.1996); Santobello v. New York, 404 U.S. 257, 92 S.Ct. 495, 30 L.Ed.2d 427 (1971) (defendant has no absolute right to have guilty plea accepted; court may reject plea in exercise of sound judicial discretion)).

In the present case, the testimony presented at the evidentiary hearing shows that the original plea offer was made before the solicitor spoke with the victims, and that once a new solicitor took over the case and consulted with the victims, she took the position that the prior plea offer was no longer on the table. Plea Counsel testified that Solicitor Barr spoke to Applicant about the prior offer for a YOA sentence and explained to him why it was no longer available. Respondent submits that the evidence presented about the discovery of the victim's position on the plea offer and the change in prosecuting solicitor on the case constitute intervening circumstances that properly allowed the State to withdraw the plea. Accordingly, the first prong of the requirements of Lafler listed above is not met. Furthermore, the second prong likely would not have been met, because it is highly probable that the plea court would not have accepted the guilty plea if the victims, who had a right to be present at the plea, voiced their concerns about the agreement.

Therefore, Applicant cannot prove prejudice from any alleged deficiencies on the part of either attorney who represented him, and he has failed to meet his burden of proving ineffective assistance of counsel. This Court finds Plea Counsel's representation and advice was reasonable under the circumstances and nothing he did was outside the scope of reasonable professional norms. Plea Counsel fully represented his client and advised him based on his best interests in light of the evidence against him, which was to plead guilty with the State's recommendation for

the mandatory minimum. The plea deal Applicant accepted also included the dismissal of two other charges against Applicant in exchange for his plea. 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 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. The record and Plea Counsel's testimony clearly show Applicant was not threatened, forced, or coerced to plead guilty. This Court finds very credible Plea Counsel's testimony that it was Applicant's decision to plead

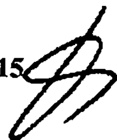
guilty under the circumstances, and he understood the terms of the guilty plea offer he was accepting.

At the guilty plea, the plea court asked Applicant if anyone had promised him anything to get him to plead guilty, and Applicant responded no. Tr. 3, line 22. 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. 3, line 16 - 19. 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.

LACK OF SUBJECT MATTER JURISDICTION

Applicant's allegations that the plea court lacked subject matter jurisdiction to accept his guilty plea because of flaws in his indictments are meritless. Applicant alleges that his indictment is defective. This allegation is improper for post-conviction relief. The sufficiency of an indictment is not a matter of subject matter jurisdiction, and thus cannot be raised at any time. State v. Gentry, 363 S.C. 93, 101, 610 S.E.2d 494, 499 (2005) ("[S]ubject matter jurisdiction of



the circuit court and the sufficiency of the indictment are two distinct concepts.") Furthermore, in order to challenge the sufficiency of an indictment, an objection must be made before the jury is sworn in. S.C. Code Ann. §17-19-90 (2003). Applicant waived his right to challenge the sufficiency of the indictments when he pled guilty to the charges against him, thus he can no longer raise this issue.

In post-conviction relief, an applicant wishing to raise challenges to the sufficiency of an indictment must do so in the context of ineffective assistance of counsel, basically alleging that his trial counsel failed to properly move to quash the indictment in accordance with S.C. Code Ann. § 17-19-90 (2003). Indictments are sufficient when they allege time and place, as required by law, and charge the crime substantially in the language of the statute or the common law which prohibits the crime or so plainly that the offense charged may be easily understood and, if the offense is statutory, that the offense is contrary to the statute involved. S.C. Code Ann. § 17-19-20 (2003). All indictments must be viewed with a "practical eye" to determine whether they fulfill their function to notify the accused of the charge he must answer, notify the court of what judgment and sentence to pronounce, and present a bar to subsequent prosecution. See Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). Moreover, "an indictment passes legal muster when it charges the crime substantially in the language of the statute prohibiting the crime or so plainly that the nature of the offense charged may be easily understood." Id. at 63, 700 S.E.2d at 443 (citing State v. Tumbleston, 376 S.C. 90, 98, 654 S.E.2d 849, 853 (Ct. App. 2007.)

Even if Applicant had properly raised this issue as one of ineffective assistance of counsel, this Court finds no merit to the claim. The indictment is clearly valid on its face, and Plea Counsel was not deficient for failing to challenge it. Furthermore, there is no resulting prejudice from any possible error in the indictment because Applicant pled guilty to the crime,

solemnly admitting his guilt in open court. Therefore, since neither prong of the Strickland test is met, this allegation is denied and dismissed with prejudice.

VI. 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.

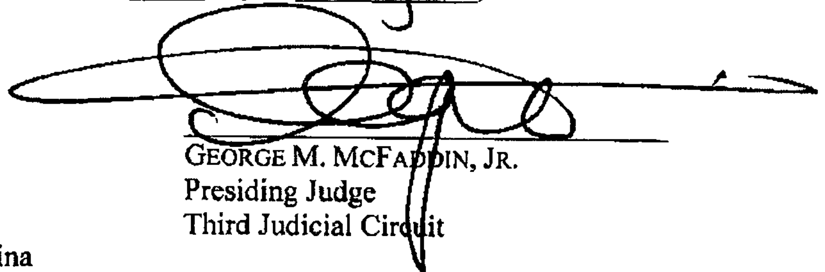
This Court notes Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate 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 20th day of July, 2018.



GEORGE M. MCFADDIN, JR.
Presiding Judge
Third Judicial Circuit

Sumter, South Carolina

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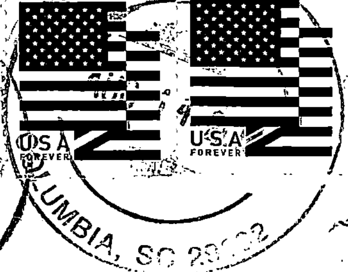

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211