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August 28, 2018

Clerk of Court
Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

RECEIVED
AUG 30 2018
S.C. SUPREME COURT

Re: Travis Harris 349116 v State of South Carolina

Dear Clerk Shearouse:

Please find the enclosed Notice of Appeal, Proof of Service, and Order of Dismissal in the above Colleton County PCR action. Please return a clocked copy of the Notice of Appeal and Proof of Service in the enclosed SASE.

Should you have any additional questions please do not hesitate to contact my office.

With best regards, I am,

James K Falk

Thank you for your assistance.

Cc:
Christian Saville, Esq
Travis Harris 349116

THE STATE OF SOUTH CAROLINA

In The Supreme Court

RECEIVED

AUG 30 2018

S.C. SUPREME COURT

APPEAL FROM COLLETON COUNTY

Court of Common Pleas

Honorable Diane Schafer Goodstein, Circuit Judge

Case No.: 2012-CP-15-0991

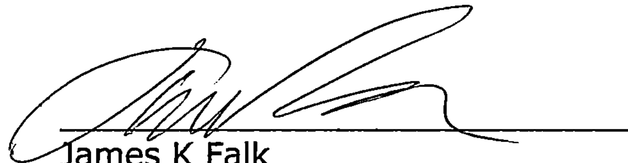
Travis Harris 349116..PETITIONER

V.

State of South Carolina...RESPONDENT

NOTICE OF APPEAL

The Petitioner Travis Harris appeals the Honorable Diane Schafer Goodstein's August 8, 2018 Order of Dismissal. Undersigned counsel received notice of entry of the order on August 17, 2018. A copy of the order on appeal is attached hereto.



James K Falk
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August 28, 2018

Christian Saville, Esq.
Office of S.C. Attorney General
PO Box 11549
Columbia, SC 29211-1549

THE STATE OF SOUTH CAROLINA

In The Supreme Court

RECEIVED

AUG 30 2018

S.C. SUPREME COURT

APPEAL FROM COLLETON COUNTY

Court of Common Pleas

Honorable Diane Schafer Goodstein, Circuit Judge

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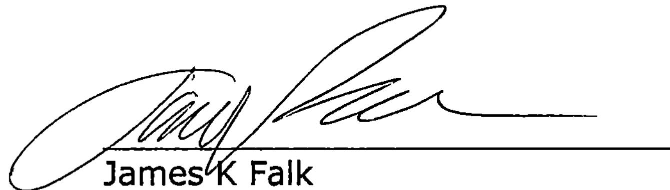
CERTIFICATE OF SERVICE

I, James Falk, certify that I have today served the within notice of appeal upon the Respondent by depositing a copy of it in the U.S. Mail, postage prepaid, addressed to its attorney of record, Christian Saville Esq. Office of the S.C. Attorney General, PO Box 11549, Columbia, SC 29211-1549. I further certify that all parties required by Rule to be served have been served this August 28, 2018.



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STATE OF SOUTH CAROLINA)
COUNTY OF COLLETON)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Travis Javon Harris, #349116,

Applicant,

v.

State of South Carolina,

Respondent.

2012-CP-15-0991

ORDER OF DISMISSAL

PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS
2018 AUG 17 AM 11:49

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on December 28, 2012, and later amended on September 24, 2017. Respondent submitted its return on June 24, 2015. An evidentiary hearing into the matter was convened on June 4, 2018, at the Beaufort County Courthouse. Applicant was present at the hearing and was represented by James K. Falk, Esquire. Respondent was represented by Assistant Attorney General Christian Saville of the South Carolina Attorney General's Office.

Before this Court are the records of the Colleton County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the plea transcript, the State's return, and the application. Based on these records and the testimony presented, the Court finds as follows:

I. PROCEDURAL HISTORY

The records before this Court indicate that Travis Harris ("Applicant") is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Colleton County. During their October 2008 term, the Colleton County Grand Jury indicted Applicant for murder (2008-GS-15-0890), four counts of first-degree burglary (2008-GS-15-0889; -0891; -0914; -0915), and second-degree burglary (violent) (2008-

GS-15-0892). Scott W. Lee, Esquire ("Plea Counsel Lee"), and Dudley B. Ruffalo, Esquire ("Plea Counsel Ruffalo"), represented Applicant. Solicitor Duffie Stone prosecuted the case. On December 21, 2011, Applicant pled guilty as indicted to all charges before the Honorable Carmen T. Mullen. Pursuant to a negotiated sentence, Judge Mullen sentenced Applicant to imprisonment for life without parole ("LWOP") for murder, LWOP for each first-degree burglary charge, and fifteen years for second-degree burglary (violent). Applicant did not appeal from his guilty plea or sentences.

Facts to which Applicant pled guilty

Applicant and codefendant Jacoby Fields were involved in a string of burglaries beginning June 18, 2008, and concluding on August 29, 2008. The first burglary occurred around 11:00pm on June 18, 2008, when they broke into the home of former military officer Stephen Sims and stole a Mossberg 12 gauge shotgun, a bulletproof vest, and other items.

The next night, Applicant and his codefendant entered the home of an eighty-year old woman and stole a long gun from her home before fleeing through a window when she surprised them.

On August 5, 2008, Applicant and his codefendant broke into the Sheriff's Sub Station on Lodge Highway, stealing several files containing information and ransacking the building.

A few hours later, around 2:30am on August 6, 2008, Applicant and his codefendant were burglarizing the home of another woman and in Smoaks, South Carolina, while stealing several items of jewelry. They took with them the Mossberg 12 gauge shotgun stolen from the first burglary.

The murder occurred during the August 6, 2008, burglary. Deputy Compton arrived on the scene responding to an alarm. When he arrived, Deputy Compton was shot to death with the 12 gauge shotgun, killing him inside the house, and both fled.

Less than a month later, Applicant and his codefendant broke into yet another home where they stole a .22 caliber rifle.

Information led law enforcement agencies to identify Applicant's codefendant Jacoby Fields as a suspect. Mr. Fields admitted his participation in the burglary and identified Applicant as the gunman. Later, Applicant gave a statement to SLED after being Mirandized in which he admitted to his own involvement in the burglary, but identified Mr. Fields as the actual gunman. Some items from the burglaries were found in the car of Mr. Fields's girlfriend, but the Mossberg 12 gauge shotgun was found at Applicant's home. Tr. pp. 23-26. At his guilty plea hearing under oath, Applicant agreed with the facts as stated. Tr. p. 27, ll. 8-11.

II. ALLEGATIONS

In his original Application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Counsel misinformed me about the Miranda warning."
2. "Counsel further prejudiced me when he failed to inform me that I could attack the unlawful search warrant, 4th Amendment violation."
3. "Failed to inform me that any evidence of my guilt from my co-defendant Jacoby Fields's statement could have been suppressed per Bruton v. U.S., 88 S.Ct. 1620 (1968).
4. "Or that if my co-defendant did not testify, his statement would be no good. See State v. LaBarge, 268 S.E.2d 278 (1980).
5. "Counsel never informed me there may have been an agreement between the State and my co-defendant to testify against me."
6. "Counsel never talked to me upon any kind of defense levels."
7. "Nor did he give me my Rule 5 evidence to go over."

8. "Counsel prejudiced me when he did not inform or explain to me why I was not charged with possession of a firearm during the commission of a violent crime if I did the crime."
9. "Counsel also never explained the elements of each charge to which I was pleading."
10. "Guilty plea was not voluntarily or intelligently made."

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

1. "Plea Counsel was unaware of Applicant's possible mental health issues yet failed to have him evaluated under 17-24-10(A) (1976) to determine if at the time of the shooting he was criminally responsible for his acts."
2. "Plea Counsel was aware of Applicant's possible mental health issues yet failed to have him evaluated under S.C. Code § 44-23-140 (1976) and State v. Blair, 275 S.C. 529, 273 S.E.2d 536 (1981) to determine whether he was competent to enter a guilty plea or otherwise competent to stand trial."
3. "Plea Counsel was ineffective in recommending Applicant to plead guilty and thereby waive any claims to challenge the validity of certain pieces of evidence seized in this case. On information and belief, Applicant believes that the black 12 gauge pump action shotgun serial# J883431 and the .22 caliber bolt action rifle (no serial number) were recovered from the property located at 2189 Drain Road. Applicant further states that on information and belief that Detective Inabinnett entered upon the property under the color of a consent to search provided by Willie B. Drain of 2357 Drain Rd. in Colleton County, however, Willie B. Drain was no the title owner to the property searched and as such had no authority to grant access to that property." Applicant maintains that the property seized from the property was obtained without a search warrant or consent of the landowner and such seizure was therefore unlawful under the 4th Amendment to the United States Constitution and Article 1, Section 10 of the Constitution of South Carolina.
4. "Plea Counsel was ineffective for not providing the sentencing court with mitigating evidence to show that in light of Applicant's relative age and other factors set forth in Miller v. Alabama, 567 U.S. 460, 132 S.Ct. 2455 (2012), that a life sentence would violate Applicant's rights under the 8th Amendment to the united States Constitution and Article 1 Section 15 of the Constitution of South Carolina.
5. "Plea Counsel was ineffective for failing to investigate the strength of the State's case against Applicant specifically whether the incriminating statement made by Applicant's co-defendant Jacoby Fields was obtained under conditions that were either coercive or otherwise resulted in a false confession."

Applicant, by way of counsel at the PCR hearing, explained he was "really" going forward on whether he was coerced to plead guilty.

III. SUMMARY OF RELEVANT TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. Both Plea Counsel Lee and Plea Counsel Ruffalo testified. Willie B. Drain, codefendant Jacoby Fields, and Applicant's mother also testified.

Applicant

Applicant estimated he met with Plea Counsel Scott eight times and Plea Counsel Ruffalo three times prior to his plea. Applicant testified they advised him the murder weapon was found on his mother's property, he had given an incriminating statement to police, and codefendant Jacoby Fields was going to testify that he was the shooter. When questioned why he was advised to take the plea, Applicant testified Plea Counsel Lee told him he only had a 2% chance of winning at trial and "would not be able to sleep" if he got the death penalty, as death penalty notice was served in June 2009. While he pled guilty on December 21, 2011, Applicant testified he told Plea Counsel Lee a couple days prior that he did not want to plead guilty.

Regarding the location where the murder weapon was found, Applicant testified his Rule 5 showed the gun being found on property owned by his mother, but that he later found out the gun was found on neighbor Mr. Drain's property, which was separated from his mother's property by fencing and a ditch.

Applicant recalled Plea Counsel never interviewed codefendant Jacoby Fields. According to Applicant, Plea Counsel did advise him Jacoby Fields could get a deal for life without parole and testify against Applicant. He asserted he received erroneous legal advice. Applicant also alleged his guilty plea was coerced and the case was going to be called to trial within a few days if he did not plead guilty.

Applicant conceded that he told the plea judge he was satisfied with his counsel, had no complaints with his attorneys whatsoever, and they had "absolutely" done everything he asked of them. Furthermore, Applicant recalled telling the plea judge that he was not promised anything, nor was he mistreated or pressured into pleading guilty. Applicant also recalled agreeing with the State's version of the facts at the plea hearing.

Willie B. Drain

Applicant called neighbor Willie B. Drain as a witness, who testified he did not know if the gun was found on his property. Mr. Drain recalled the police came to his property while he was not there.

Jacoby Fields

Mr. Fields took the stand pro se after being advised of his rights and testified he gave a statement to Colleton County police after his name came up in the investigation. Mr. Fields testified he was told he could go home if he gave them a statement and he was also threated by the death penalty. Mr. Fields testified the statement he gave in which he implicated himself and identified Applicant as the shooter was incorrect.

Applicant's mother

Applicant's mother testified she does not know where the shotgun was found.

Plea Counsel Lee

Plea Counsel Lee explained this was "absolutely" a capital case, and he was appointed to this case because he is death penalty certified.

Plea Counsel Lee also explained the murder weapon being found on or adjacent to Applicant's mother's property was just "icing on the cake." Applicant gave an incriminating statement to law enforcement on September 5, 2011, in which he admitted to taking part in the

robberies and merely blamed codefendant Jacoby Fields for the actual shooting. Plea Counsel Lee recalled obtaining a transcript as well as audio and video of the interview. While Applicant may have been incorrectly informed by law enforcement his cell phone had "pinged" near the location of the incident, Plea Counsel Lee explained to Applicant this was not dispositive to the admissibility of his statement. Plea Counsel recalled discussing Miranda with Applicant. There was a Jackson v. Denno hearing held in an attempt to suppress the statements, and Plea Counsel Lee recalled being prepared and ready to do whatever they had to do. Furthermore, Plea Counsel Lee anticipated codefendant Jacoby Fields would obtain a deal for life without parole and testify against Applicant at trial.

Regarding the location of the murder weapon, Plea Counsel Lee recalled it was not entirely clear whether the property on which the shotgun was found was Applicant's mother's or Mr. Drain's, and he was aware of this. Plea Counsel Lee also explained this presented a problem either way, because if the shotgun was found on what was technically Mr. Drain's property next to Applicant's mother's, Applicant had no reasonable expectation of privacy. Plea Counsel Lee testified Mr. Drain was never a suspect in this case.

Contradicting Applicant's testimony, Plea Counsel Lee asserted the case was not close to going to trial had Applicant decided not to plead guilty that day. Regarding Applicant's assertion that he was told he only had a 2% chance at trial, Plea Counsel Lee clarified he tries not to use numbers, though he felt Colleton County was not a good climate for this kind of case, and they even discussed a change of venue. When asked if he told Applicant he would have to plead to all the charges, Plea Counsel Lee explained that was the offer which would avoid the death penalty.

Regarding communication with codefendant Jacoby Fields, Plea Counsel Lee explained Jacoby Fields was represented by counsel who would not let Fields talk to them just as Plea Counsel Lee and Plea Counsel Ruffalo would not let Applicant talk to the other counsel.

Plea Counsel recalled there was no talk of an appeal after Applicant's negotiated guilty plea, and it was not his opinion there were any meritorious Fourth Amendment challenges.

Plea Counsel Lee testified it was Applicant's decision to plead guilty.

Plea Counsel Ruffalo

Plea Counsel Ruffalo agreed there was no question this was a capital case. Contrary to Applicant's estimation that he and Ruffalo met three times, Plea Counsel Ruffalo recalled meeting with Applicant on approximately fourteen occasions and spending a lot of time together. Regarding the plea offer, Plea Counsel Ruffalo testified there is always a present threat an offer could be pulled but did not feel there was any "pounding on the table" in this case, and a trial was not about to go forward four days before Christmas.

As to communication with codefendant Jacoby Fields, Plea Counsel Ruffalo explained they never met with him because there was no chance, as Jacoby Fields's counsel would not allow it. It was always his suspicion Jacoby Fields would have testified against Applicant at trial and Jacoby Fields was the one who came forward first.

Plea Counsel Ruffalo testified they did retain an expert to examine Applicant's mental health. The doctor never found any mental issues with Applicant prior to the plea and also drove to Walterboro the day of the plea to examine him again, and found no issues.

Plea Counsel Ruffalo testified he does not tell people what to do, and he advised Applicant, "In my professional opinion, you would lose this trial."

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 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 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).

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 counsel was ineffective in any regard. First, this Court finds the testimony of Plea Counsel Lee and Plea Counsel Ruffalo to be credible and persuasive. This Court finds the testimony of Applicant codefendant Jacoby Fields to be self-serving and not credible.

Both Plea Counsel Lee and Ruffalo testified to meeting with Applicant many times for extended periods of time. Plea Counsel Lee credibly testified their investigators did everything asked of them and more, and both Plea Counsel had a solid handle of the facts of this case. This is supported by Applicant's own admissions at his plea hearing that he was completely satisfied with his attorneys, his attorneys had done everything asked of them, and he had no complaints against his attorneys. Tr. p. 20, l. 16 – p. 21, l. 5. Furthermore, Plea Counsel Lee and Ruffalo credibly testified to advising Applicant regarding the Fourth Amendment implications of the evidence found on or adjacent to his mother's property, the possibility for codefendant Jacoby Fields to testify against him at trial, issues regarding the admissibility of his statement implicating himself in the crime, as well as their professional opinion on his chances at trial. Importantly, this Court finds Plea Counsel Lee and Ruffalo's testimony credible that it was Applicant's decision to plead guilty rather than proceed to a trial after he had already been served with death penalty notice. This Court recognizes and agrees with the plea judge's assertion that Applicant's attorneys spent enormous resources and vigorously defended him in their endeavor to prevent him from receiving the death penalty. Tr. p. 37, ll. 1-9.

Issues Regarding Applicant's Statement

Applicant alleges in his original application and amended application that Plea Counsel was ineffective regarding the incriminating statement he gave to law enforcement. In September 2011, Applicant gave a statement to law enforcement in which he placed himself at the scene of the burglary where a police officer was murdered. Plea Counsel Lee and Ruffalo credibly testified to advising Applicant on a myriad of issues including his statement, Miranda issues, and the fact that although Applicant alleges law enforcement incorrectly told him his cell phone "pinged" in the area, this did not render the statement inadmissible. Nevertheless, as Plea

Counsel testified, they were prepared to challenge the statement and ready to do whatever they had to do. Regardless, there is nothing in the record to suggest inadmissibility of Applicant's statement. Plea Counsel correctly advised Applicant the fact he may have been mistakenly told his phone had "pinged" at the incident location would not render his statement inadmissible. The record reflects Applicant freely and voluntarily waived his right to challenge his statements, and this Court finds this decision was based on reasonable and competent advice from counsel. For these reasons, Applicant has failed to meet his burden of proving both deficiency and prejudice regarding these allegations, and they are dismissed with prejudice.

Allegations regarding codefendant Jacoby Fields

Applicant alleges his counsel was ineffective for failing to advise him regarding the admissibility of a codefendant's statement against him, codefendant's potential plea deals, and in their investigation into the circumstances surrounding his codefendant's statement. Again, this Court finds these allegations to be meritless. Plea Counsel Lee and Ruffalo both credibly testified they would not be allowed to interview codefendant Jacoby Fields prior to Applicant's guilty plea because Fields was represented by his own counsel who would not allow it. Plea Counsel is not deficient for failing to interview a codefendant whose counsel would not allow them to speak with him, as Plea Counsel Lee and Ruffalo testified they would have done the same thing for Applicant. Notably, codefendant Fields turned himself in before Applicant, and Plea Counsel expected him to procure a deal and testify against Applicant had Applicant proceeded to trial. This suspicion is, of course, corroborated by a statement codefendant Fields gave to law enforcement in which he implicated himself as well as Applicant and named Applicant as the shooter. As Plea Counsel Lee testified, Fields ended up with the same deal as Applicant.

This Court finds Plea Counsel also adequately advised Applicant of issues related to Bruton v. United States, 391 U.S. 123 (1968). Plea Counsel Lee testified they discussed the possibility of moving for a severance and even prepared a motion for severance, but they did not feel good about it and did not feel Bruton was very helpful as both parties' were insistent that the other party was the shooter, but their own statements and evidence still placed both of them at the crimes.

While codefendant Fields took the stand to recant his earlier statement implicating himself and Applicant, this Court finds his testimony to be self-serving, not credible, and contradictory to both parties' previous statements and existing evidence. Plea Counsel also credibly testified Applicant never raised an alibi defense to them. Weighing Applicant's own statement, his communications with Plea Counsel, and the physical evidence involved in this case, this Court finds any assertion that codefendant Fields would have somehow provided anything other than harmful testimony at trial, much less an alibi defense for Applicant. For these reasons, Applicant has failed to satisfy his burden of proving Plea Counsel was deficient regarding codefendant Jacoby Fields, as well as prejudice therefrom. Therefore, these allegations are dismissed with prejudice.

"Trial" Preparation

Applicant alleges Plea Counsel was ineffective for failing to advise him of Fourth Amendment issues in this case, failed to talk to him about any kind of defenses, did not review Rule 5 with him, and did not explain the elements of his charges. This Court finds these allegations to be meritless. Plea Counsel Lee and Ruffalo credibly testified they met with Applicant many times, reviewed the evidence with Applicant, explained the elements of his charges, even talked about a change of venue, discussed issues with the search of the adjacent

property, and advised him he would probably lose at trial. The record reflects that after being fully apprised of the facts and circumstances of his case, Applicant freely waived his right to a jury trial and pled guilty. Tr. p. 19, ll. 12 – p. 20, l. 2. This Court also finds Plea Counsel Lee's testimony credible that their investigators thoroughly investigated the facts and circumstances of the case.

Trial Counsel Lee explained that had this case proceeded to trial, the strategy would essentially be "they're all lying," such as the codefendant and law enforcement, and try to challenge the issue that the murder weapon was found adjacent to Applicant's mother's property, although it is unclear whether the shotgun was technically on his mother's property or Mr. Drain's property. As Plea Counsel Lee testified there was a Jackson v. Denno hearing held, and they were unsuccessful in keeping out Applicant's own admission of guilt.

Applicant's allegation that the murder weapon was found on his neighbor's property adjacent to his mother's land is misplaced. As Plea Counsel Lee testified that he explained to Applicant, this would have been problematic as well because Applicant would not have a reasonable expectation of privacy on his neighbor's land, and therefore no standing to challenge the search.

This Court finds Plea Counsel was amply prepared for this case and amply advised Applicant of the evidence and law surrounding the case. For these reasons, these allegations are dismissed with prejudice.

"Failure to explain why I was not charged with possession of a firearm during the commission of a violent crime if I did the crime."

Applicant alleges in his original application that Plea Counsel was ineffective for failing to explain why he was not charged with possession of a firearm during the commission of a

violent crime. Applicant presented no evidence or testimony to support this allegation at his PCR hearing. Regardless, this Court does not find this allegation to support an assertion that if Applicant had known why he was not charged with the crime named, he would have proceeded to trial. This allegation is deemed abandoned and dismissed with prejudice.

Mental Health Issues

In his amended application, Applicant alleges Plea Counsel was ineffective for failing to investigate whether he was criminally responsible for his acts pursuant to 17-24-10(A) (1976), and also alleges Plea Counsel was ineffective for failing to have him evaluated to see if he was competent to enter a guilty plea or otherwise stand trial. This Court finds these allegations to be meritless. While Applicant presented no evidence to support these allegations, Plea Counsel Ruffalo credibly testified to retaining a doctor/expert he regularly uses. This doctor did examine Applicant prior to the guilty plea and found no mental problems. Moreover, Plea Counsel brought the doctor back for Applicant's guilty plea, and she was even able to examine him the day of his guilty plea to verify he was mentally competent. This is corroborated by Plea Counsel Ruffalo's representation to the plea judge that Applicant had been properly evaluated, was a clever young man who understood the nature of all the legal arguments, and again found no cognitive issues the day of the plea. Tr. p. 32, l. 20 – p. 33, l. 8. In fact, Applicant himself testified at his plea hearing that he suffered from no mental problems to prevent him from understanding the proceeding. Tr. p. 6, ll. 17-21. For these reasons, this Court finds Applicant has failed to establish deficiency on part of Plea Counsel as they clearly investigated any possible mental issues, and has failed to establish any prejudice from alleged deficiency in their investigation. Therefore, these allegations are dismissed with prejudice.

Miller v. Alabama allegation

In his application, Applicant alleged Plea Counsel was ineffective for failing to present sentence mitigation pursuant to Miller v. Alabama, 567 U.S. 460 (2012). However, Applicant did not present any testimony or evidence to support this allegation at the PCR hearing. Therefore, this allegation is deemed abandoned.

Notwithstanding, this Court notes the South Carolina Supreme Court held in 2014 that sentences of life without the possibility of parole that were imposed on juveniles violated the Eighth Amendment under Miller and that those individuals are entitled to resentencing pursuant to the United States Constitution. Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014). The South Carolina Supreme Court specifically ordered "any individual affected by our holding may file a motion for resentencing within one year from the filing of this opinion in the court of general sessions where he or she was originally sentenced." Id. at 545, 765 S.E.2d at 578 (emphasis added). Therefore, any challenges under Miller are not properly heard in a PCR action and such allegations must be summarily dismissed. Furthermore, Applicant freely and voluntarily pled guilty to a *negotiated* sentence in this case, told the plea judge he understood he would be sentenced to life without parole, was eighteen at the time of the crimes, and Plea Counsel presented mitigating testimony at his guilty plea proceeding. Tr. p. 19, l. 1.

This Court finds this allegation to abandoned and dismissed with prejudice.

INVOLUNTARY GUILTY PLEA

Applicant argues his plea was not entered freely and voluntarily. This Court disagrees and finds the record and testimony establishes that his plea was free and voluntary. 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). A 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).

The guilty plea transcript reveals a more than adequate plea colloquy. The transcript shows Applicant was fully advised of his rights and the consequences of pleading guilty. Applicant testified on the record at the plea that he was not promised anything or threatened to plead guilty, and he had the opportunity to address the court with any concerns about the plea arrangement. Applicant also affirmed he had enough time with his Plea Counsel, was "absolutely" satisfied with them, suffered no mistreatment, and wanted to plead guilty understanding the negotiated sentence. Applicant told the plea judge he agreed with the facts as alleged by the state, and he gave a statement to law enforcement admitting that he was guilty. This Court finds that there was no coercion affecting Applicant's decision to plead guilty, the record reflects that Applicant was fully advised of the rights he was waiving by pleading guilty, and that his plea was entered into knowingly and intelligently. Applicant presented no credible

evidence as to why he should be able to depart from his statements at the plea hearing. Furthermore, Applicant has failed to present any probative or credible evidence that he did not knowingly and voluntarily plead guilty. By contrast, both Plea Counsel Lee and Ruffalo credibly testified it was Applicant's decision to plead guilty, and both refuted Applicant's allegation that he was going to be forced into a trial the next week if he did not plead guilty that day. This Court finds Applicant was not coerced, but pled guilty freely and voluntarily. As a result, Applicant has failed to meet his burden of proof, and this allegation is denied and dismissed.

{Conclusion and signature on following page}

VI. CONCLUSION

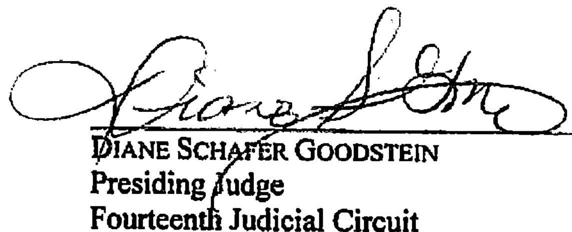
Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

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.

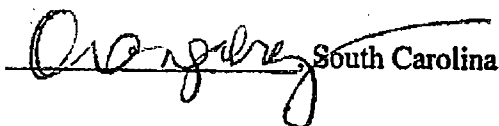
IT IS THEREFORE ORDERED:

1. That the application for Post-Conviction Relief is denied and dismissed with prejudice in regard to all allegations; and
2. Applicant must be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 20 day of August, 2018.



DIANE SCHAFER GOODSTEIN
Presiding Judge
Fourteenth Judicial Circuit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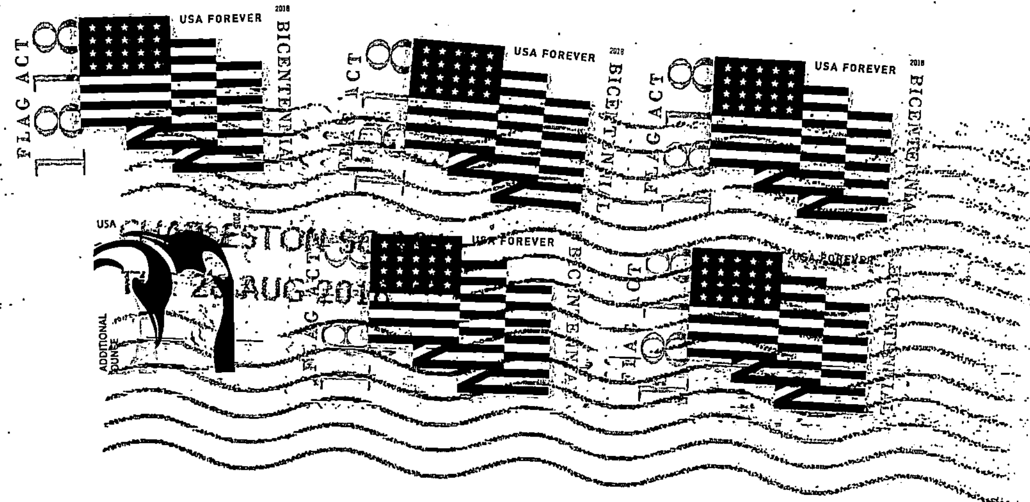

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