

LAW OFFICE OF
Kristy Grafton Goldberg, LLC
ATTORNEY AT LAW

August 28, 2018

RECEIVED

AUG 30 2018

The Honorable Daniel E. Shearouse
Clerk of Court, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

S.C. SUPREME COURT

RE: Dan Demetri Ford, SCDC # 359232, vs. State of South Carolina
Appeal of Case No. 2014-CP-32-4618

Dear Mr. Shearouse,

Enclosed for filing is a Notice of Appeal in the above referenced case. Also enclosed are a certificate of service and a copy of the original court order which is to be challenged on appeal. I would appreciate it if you could file the Notice of Appeal and mail a date-stamped copy back to me in the enclosed pre-stamped envelope.

Please be aware that, although the final order of dismissal was filed and clocked on October 6, 2017, counsel for the Applicant was never served with or notified of the final order August 24, 2018.

By copy of this letter I am informing the Office of Appellate Defense of this Appeal so that they can assume representation of Mr. Ford. I was appointed to represent Mr. Ford on his PCR.

Please let me know if you have any questions or concerns regarding this matter.

Respectfully,



Kristy Goldberg

CC: Susannah Cole
Assistant Attorney General
Post Office Box 11549
Columbia, South Carolina 29211-1549

Dan Demetri Ford, SCDC # 359232
McCormick Correctional Institution
386 Redemption Way
McCormick, South Carolina 29899

The Honorable Lisa M. Comer
Clerk of Court
205 East Main Street
Lexington , South Carolina 29072

Office of Appellate Defense
Chief Appellate Defender – Robert Dudek
PO Box 11433
Columbia, SC 29211-1433

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

AUG 30 2018

S.C. SUPREME COURT

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

R. Keith Kelly, Circuit Court Judge

Case No. 2014-CP-32-4618

Dan Demetri Ford, SCDC # 359232, Appellant

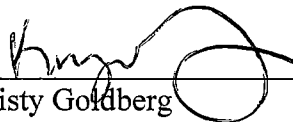
v.

State of South Carolina, Respondent.

NOTICE OF APPEAL

Applicant Dan Demetri Ford, SCDC # 359232 hereby appeals from the Order of the Honorable R. Keith Kelly presiding Judge for the 11th Judicial Circuit, filed October 6, 2017 received by counsel for the Applicant on August 24, 2018 in the matter of Dan Ford v. State of South Carolina, Case No. 2014-CP-32-4618. The Applicant would ask this Court to please be aware that counsel for the Appellant was not served with or made aware of the filed final order until August 24, 2018.

August 28, 2018



Kristy Goldberg
Attorney for Plaintiff

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1720 Main Street, Suite 303
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Phone (803) 667-6633
kristy@kristygoldberglaw.com

Other Counsel of Record:
Assistant Attorney General, Susannah Cole
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

AUG 30 2018

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

S.C. SUPREME COURT

R. Keith Kelly, Circuit Court Judge

Case No. 2014-CP-32-4618

Dan Demetri Ford, SCDC # 359232, Appellant

v.

State of South Carolina, Respondent.

PROOF OF SERVICE

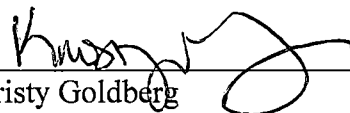
Personally appeared before me, Kristy Goldberg, Esquire, who being duly sworn, deposes
and states:

She is the counsel of record for Applicant;

Service by mail is proper in this instance; and

She has served the NOTICE OF APPEAL on the following party on August 28, 2018 by
depositing one copy in the U.S. Mail, postage prepaid:

Assistant Attorney General, Susannah Cole
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211



Kristy Goldberg
Attorney for Plaintiff

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Other Counsel of Record:
Assistant Attorney General, Susannah Cole
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)
Dan Demetri Ford, #359232,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

C/A No.: 2014-CP-32-4618

ORDER OF DISMISSAL

CLERK
LISA M. COOPER
CLERK OF COURT
LEXINGTON, SC

2017 OCT -6 AM 10:35

FILED

This matter comes before the Court by a *pro se* application for post-conviction relief filed December 18, 2014, by Dan Demetri Ford (Applicant). Respondent, through Assistant Attorney General Walt Whitmire, made a return dated September 21, 2015. Aimee Zmroczek, Esquire, was appointed as counsel. On July 6, 2016, Kristy Goldberg, Esquire, was substituted as counsel. On November 8, 2016, Applicant presented his claims in an evidentiary hearing. Respondent was represented by Senior Assistant Attorney General Johanna C. Valenzuela. Applicant presented testimony from Applicant and witness Lanae Stevenson. Respondent presented testimony from plea counsel Brad Kirkland, Esquire. The Court had before it the Clerk of Court records, the South Carolina Department of Corrections' records, and the plea transcript. This Court has also been provided a transcript of the PCR hearing of November 8, 2016.

Upon review of the trial testimony, the appellate court record, the records of the Clerk of Court, and the evidence presented in this proceeding, this Court is constrained to deny relief.

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THE ALFORD¹ PLEA

Applicant was indicted at the April 2013 term of the Lexington County Grand Jury for burglary – first degree (2013-GS-32-0853) and armed robbery (2013-GS-32-0857). On March 13, 2014, Applicant appeared before the Honorable Brian M. Gibbons and pled guilty as indicted. Applicant was represented by Bradley Kirkland, Esq. Judge Gibbons sentenced Applicant to a term of imprisonment for seventeen years for burglary – first degree; and to a concurrent term of imprisonment for seventeen years for armed robbery. Applicant did not appeal his plea or sentence.

Petitioner elected to plead guilty pursuant to *North Carolina v. Alford*. (GP Trans. p. 3.) At the start of the plea, counsel asked the court to place some information on the record concerning his discussions with Applicant and his investigation of Applicant's case. (GP Trans. p. 3.) Counsel explained that after his appointment, he immediately began preparing for trial and requested his experienced investigator meet with Applicant to investigate any potential alibi witnesses. (GP Trans. p. 4.) The investigator located a potential witness and spoke to her, explaining she would be asked to testify in court. (GP Trans. p. 4.) After that conversation, the potential witness broke off contact with counsel's investigator. Shortly after that, Applicant wrote counsel and explained he wanted counsel to cease the investigation into an alibi and to attempt to negotiate a plea. (GP Trans. p. 4.) Counsel worked for months to negotiate the seventeen year deal with the State, and although Applicant agreed to accept the offer, Applicant was not happy with the plea. (GP Trans. p. 4.) On the day of the plea, the State offered sixteen and a half years in exchange for Applicant's plea of guilty, and Applicant considered the offer.

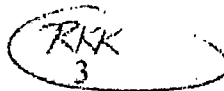
¹ *North Carolina v. Alford*, 400 U.S. 25 (1970)

Applicant changed his mind, however, and decided to plead pursuant to *Alford* in exchange for seventeen years. (GP Trans. p. 5.)

Counsel told the court he asked Applicant if there was any more he could do to assist in his defense and Applicant mentioned another possible alibi witness whose name he did not know but Applicant knew the man "hung out" at Columbiana Mall. (GP Trans. p. 5) Counsel offered to have an investigator spend an entire day at Columbiana Mall in search of the man, but Applicant declined and directed counsel to continue with the plea negotiations. (GP Trans. p. 6.)

The plea judge asked Applicant if he heard counsel's comments on his representation. Applicant said he did and agreed with counsel's comments. (GP Trans. p. 6.) Applicant told the court he had a tenth grade education, he understood the charges against him, and understood he faced a minimum of fifteen years to a maximum of life in prison on the burglary charge and a minimum of ten years and a maximum of thirty years on the armed robbery charge. (GP Trans. p. 7.) Applicant also understood the nature of an *Alford* plea. (GP Trans. pp. 7-8.) Plea counsel told the court that he explained the ramifications of the *Alford* plea to Applicant, as well, concerning the recidivism consequences and his parole eligibility. (GP Trans. pp. 8, 10.) Applicant acknowledged he was willing to plead under *Alford* to avoid going to trial, no one had forced, pressured, or coerced him into accepting the plea, and understood the sentence he would receive was the negotiated seventeen year term. (GP Trans. pp. 9-10.) Applicant also understood he was waiving the constitutional rights afforded to him at trial. (GP Trans. pp. 11-12.)

Plea counsel explained to the court he reviewed discovery with Applicant, including the incident reports and videotaped statements of Applicant's co-defendants. Applicant told the court he reviewed the discovery with counsel was satisfied with the information he had prior to pleading. (GP Trans. pp. 13-14.)



The solicitor then recited the details of the crimes: At thirteen year old boy was home from school because he was sick. His mother was at work. Applicant and his two co-defendants knocked on the child's door. The boy looked through the peephole and did not recognize the female co-defendant at the door. The child called his mother, who told him not to open the door and to go to bed. A few minutes later, the child heard glass breaking and people in the house. He called his mother again to tell her he thought someone was breaking in the house. The mother then heard men's voices before the phone disconnected. The child's mother called 911 and raced home. The child later explained that two men rushed into his bedroom with guns, took the phone away from him and asked him if he wanted to die. The men told the child to put a pillow over his head, and then they went downstairs to look for items to steal. As the law enforcement vehicles approached, the men ran from the house and the female co-defendant tried to back out of the driveway, while stolen items were actually falling out of the open trunk. The co-defendant was detained, and the police began a search for the two men. The co-defendant told police who the men were, and the men were found eighty minute later within walking distance of the house. The other male co-defendant identified Applicant as committing the crime. Applicant denied involvement. (GP Trans. pp. 14-18.)

The solicitor explained to the court the strength of the case against Applicant and his decision to dismiss additional charges of kidnapping, possession of a firearm, grand larceny, and assault and battery. (GP Trans. p. 18.) The solicitor told the court he agreed to the plea, in spite of the considerable evidence against Applicant, to spare the child of having to testify at trial. (GP Trans. p. 18.)

Following the recitation of the facts, Applicant agreed he wished to plead under *Alford*. (GP Trans. p. 19.)

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THE PCR PROCEEDINGS

In his *pro se* application for post-conviction relief, Applicant alleged he was being held in custody unlawfully for the following reasons:

- (a) Ineffective Assistance of Counsel
- (b) Violation of the Fourteenth Amendment of due process

On October 12, 2016, Applicant, via PCR counsel, amended his application to also allege:

- (a) Ineffective assistance of trial counsel – counsel failed to adequately investigate and prepare a defense for trial.
- (b) Ineffective assistance of trial counsel – counsel failed to adequately prepare Applicant for trial.
- (c) Ineffective assistance of trial counsel Applicant was pressured and improperly induced into entering an involuntary guilty plea based on statements made by counsel.
- (d) Ineffective assistance of trial counsel pursuant to *White v. State* failure to properly initiate client's direct Appeal.

Applicant proceeded under the amended grounds at the PCR evidentiary hearing. (PCR T. pp. 4-5.)

Summary of the Testimony

At the hearing, Applicant testified counsel met him at the jail in December 2013, and then again in February 2014. (PCR T. p. 8.) Applicant said counsel met with him in jail several times in the week before the plea. (PCR T. pp. 8-9.) Applicant reviewed the discovery with counsel, but claimed he did not understand the charges against him because of the "short notice." (PCR T. p. 9.) Applicant believed he either needed to plead or go to trial. (PCR T. pp. 9-10.) Applicant said he wanted to go to trial, but with the evidence against him he thought he would be convicted and sentenced to the maximum amount of time possible. (PCR T. p. 10.) Applicant said he thought it was in his best interest to plead. (PCR T. p. 10.)

Applicant said he had an alibi at the time of the crime because he was at his girlfriend's house. (PCR T. p. 12.) Applicant said he told plea counsel about her, and counsel's investigator located his girlfriend. (PCR T. pp. 13-14.) Applicant claimed his girlfriend was willing to testify for them, but then counsel's investigator passed away. Applicant said he told counsel to pursue his alibi with another investigator. (PCR T. pp. 14-15.) Applicant said he never asked counsel whether the new investigator followed up on his alibi witness. (PCR T. p. 16.) Applicant claims he felt pressured to accept the plea because counsel told him he could either plead guilty or go to trial. (PCR T. p. 16.) Applicant said he realized he should take the offer of seventeen years because the evidence against him looked bad. (PCR T. pp. 16-17.) Applicant claimed counsel coerced him to plead guilty by telling him he would lose at trial and "he made it seem like to me that seventeen years was a good decision." (PCR T. p. 17.) Applicant further complained trial counsel did not visit him early enough, instead visiting him every day the week before the plea. (PCR T. p. 18.) Applicant also claimed he asked counsel to appeal his sentence because he had "never been in [] serious trouble with the law" and because he thought counsel never fully pursued his alibi after the investigator's death. (PCR T. pp. 19-20.)

On cross-examination, Applicant said the investigator met with him between three and five times at the jail. (PCR T. p. 21.) Applicant denied knowing any information about whether his alibi witness terminated contact with the investigator after he asked her to testify, although he did recall the investigator telling him he was unable to reach her and retrieve a sworn statement from her. (PCR T. p. 23.) Applicant also acknowledged the investigator told him the police would likely review his telephone recordings between him and the alibi witness. (PCR T. p. 24.) Applicant also admitted he sent a letter to counsel shortly after meeting with the investigator asking counsel to cease all investigation of his case. (PCR T. pp. 25-26.) Applicant said he did

not want to involve his girlfriend in such a serious situation. (PCR T. p. 47.) Applicant acknowledged the State's case against him, including messages on his cell phone to a man with the same street name as his co-defendant, as well as the co-defendant's statements implicating him in the crimes. (PCR T. pp. 28-29.) Applicant said the decision to accept the seventeen year offer was hard and he told counsel he would decide in court, "and that's when [Applicant] signed his papers at the plea hearing." (PCR T. p. 30.) Applicant testified he told counsel he wanted to plead guilty, so they proceeded with the plea. (PCR T. p. 30.) Applicant said he knew he would receive seventeen years when he accepted the plea offer and he also understood the State was dismissing additional charges as part of the negotiations. (PCR T. pp. 31-32.)

Applicant testified that at the time was committed, he was at the home of his girlfriend, Lanae Stevenson. Applicant claimed he slept in that day, rose at approximately 12:00 or 12:30 pm, showered, dressed, and then left to buy a hat from Columbiana Mall. (PCR T. pp. 38-40.) Applicant claimed he walked to mall and spent the day there, until he was apprehended on his way home. (PCR T. pp. 40-41.) Applicant claimed he had not spoken with the witness about the alibi testimony and did not know the content of her testimony. (PCR T. p. 43.)

Lanae Stevenson testified she was dating Applicant at the time of the crime. (PCR T. pp. 49-50.) Stevenson recalled Applicant spent the night with her the evening before the crime, slept in until 12:00 or 12:30 pm, and then Applicant showered and said he was going to Columbiana Mall to buy a hat. (PCR T. pp. 50-51.) Stevenson claimed she did not hear from him after seeing him walk out of the door until he contacted her from the county jail. (PCR T. pp. 51-52.) Stevenson said Applicant never asked her to lie and said she told the investigator what she remembered about the day of the crime. (PCR T. pp. 52-53.) Stevenson said she gave the investigator her contact information but at the time she had "a lot going on" and did not have a

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stable address. (PCR T. p. 54.) Stevenson said she received several voicemail messages from the investigator and she tried to call him back but only reached his voicemail. (PCR T. p. 55.) Stevenson also said she told the investigator she would meet with him to sign a statement, but she was busy at the time and never really had free time to sign the statement. (PCR T. p. 62.) Stevenson said after she learned the investigator died, she attempted to contact counsel but only reached his office voicemail. (PCR T. p. 64.)

Brad Kirkland testified he was appointed to represent Applicant in August of 2013, and he met with Applicant at the jail shortly thereafter. Counsel reviewed his notes from his meeting with Applicant and said Applicant initially told counsel he was at the home of a woman named Michelle the morning of the crime, then with his brother at the time of the crime, and then he was later dropped off by a man named Taylor in the neighborhood where he was apprehended. (PCR T. pp. 70-71.) Counsel said Applicant did not initially tell him about Stevenson as an alibi witness, but only later told the investigator about her. (PCR T. p. 73.) Counsel said it was the investigator's practice to warn the witnesses that if they testified, then law enforcement would likely investigate their testimony and threaten penalty of perjury if the witness lied. (PCR T. p. 74.) Counsel said the investigator would interview a witness, inform them the conversation was being recorded, and then would type the statement and ask the witness to sign the statement. The investigator would also tell the witness the statement would be turned over to the prosecution. (PCR T. pp. 77-78.) Counsel said after the investigator warned Stevenson of the consequences of providing false alibi testimony, she broke off contact. (PCR T. p. 74.) Counsel said he never spoke to Stevenson and she never left a voicemail at his office. (PCR T. p. 75.) Counsel also testified he would not have called her as a witness at trial after viewing her testimony at the PCR hearing. (PCR T. p. 79.)

Counsel said shortly after the investigator completed his investigation, he received a letter from Applicant asking him to discontinue their investigation into his case. (PCR T. pp. 75-76.) Counsel said Applicant made it clear he did not want to go to trial but he also did not want to plead guilty. (PCR T. p. 80.) Counsel said he was not sure what Applicant would decide to do when he transported him to plea. (PCR T. p. 80.) Counsel said on the day before the plea, Applicant informed him of a possible new alibi witness, who counsel could find by going to Columbiana Mall and interviewing every young African American male there. (PCR T. p. 91.) Counsel offered to send an investigator to do that but said Applicant declined his offer by the end of their conversation that day. (PCR T. p. 81.)

Counsel said the solicitor was getting a little impatient with the negotiations, but counsel had a positive working relationship with the solicitor and testified she would have consented to more time to negotiate the plea had counsel requested it. (PCR T. p. 82.) Counsel said Applicant understood he was under no great pressure to accept the deal. (PCR T. p. 82.)

Counsel distinctly recalled his conversation with Applicant concerning his right to appeal his sentence. (PCR T. p. 83.) Counsel said Applicant told him he wanted to plead pursuant to *Alford* because Applicant believed it gave him an advantage in a direct appeal. (PCR T. p. 83.) Counsel said Applicant told him he did not want to fight his case at trial and instead wanted to fight it only on appeal. (PCR T. p. 83.) Counsel said he "stopped everything" and explained to Applicant he could not plea before the judge believing he would fight his case on appeal because Applicant would not be successful, particularly when he accepted a negotiated deal. (PCR T. pp. 83-84.) Counsel said Applicant described how he would appeal his case by arguing he had witnesses who would have testified for him. (PCR T. p. 84.) Counsel said he told Applicant that was not an appropriate venue for a direct appeal because he would not be allowed to add

evidence to the record. (PCR T. p. 84.) Counsel explained Applicant would be allowed to call witnesses only in a post-conviction relief action. (PCR T. p. 84.) Counsel understood at the plea Applicant intended to file a post-conviction relief application and did not want to pursue a direct appeal because it would be a waste of time. (PCR T. pp. 84-85.) Counsel said the Applicant did not ask him to file an appeal after the plea. (PCR T. p. 85.) Counsel believed there was no appealable issue because Appellant received the exact negotiated sentence of seventeen years. (PCR T. p. 86.) Counsel testified Appellant fully understood the consequences of going to trial and the significant evidence the State had against him. (PCR T. pp. 92-93.) Counsel said he warned Applicant he faced a possible life sentence because of the very serious nature of the crime and the prominence of the victim's family. (PCR T. pp. 93-94.) Counsel explained to Applicant if he proceeded to trial, he would not get out of jail until he was a very old man. (PCR T. p. 94.)

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

This Court is constrained to deny all of Applicant's allegations of ineffective assistance of plea counsel. The Court finds Applicant's attorney rendered effective assistance well within the standard of reasonableness within professional norms for a criminal defense attorney.

A two-pronged test is used 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 v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (citing *Strickland v. Washington*, 466 U.S. 668 (1984)). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. "There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case." *Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007). Applicant must overcome this presumption in order to receive relief. *Cherry*, 300 S.C. at 625, 386 S.E.2d at 118.

The second, or "prejudice," requirement, on the other hand, focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process. In other words, in order to satisfy the "prejudice" requirement, the defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial. *Stalk v. State*, 383 S.C. 559, 562, 681 S.E.2d 592, 594 (2009) (citing *Hill v. Lockhart*, 474 U.S. 52 (1985)).

After careful review of the entire record, including the testimony and exhibits presented at the evidentiary hearing, and based on the standard discussed above, this Court finds that Applicant has failed to carry his burden in this action. This Court finds plea counsel's testimony to be credible and affords it great weight as to these allegations. Below are this Court's rulings in regards to each of Applicant's specific allegations of ineffective assistance of counsel:

Counsel Adequately Prepared for and Investigated Applicant's Case

Applicant argues plea counsel neglected to adequately investigate and prepare a defense on his behalf. However, plea counsel testified that after reviewing all discovery materials from

the State and his own independent investigator, he was prepared to go to trial if Applicant had requested it. Counsel said his investigator located Applicant's alibi witness and attempted to obtain a sworn statement from the witness, but she discontinued contact with the investigator and counsel. The witness testified she agreed to give a statement but then was too busy to meet with counsel. Following Stevenson's testimony at the PCR hearing, counsel said he would not have called her to the stand at trial. Counsel also claimed he had funding to hire another investigator following the death of the lead investigator for Applicant's case, but he stopped his investigation into the case after Applicant specifically asked him to stop and pursue plea negotiations instead. Counsel further said he informed Applicant he would send an investigator to Columbiana Mall to attempt to locate another alibi witness, but Applicant again told him not to pursue it. Based on Applicant's instructions to pursue the plea, counsel successfully negotiated a seventeen year offer for crimes which carried a maximum of life in prison.

Further, counsel testified, and the plea transcript reflects, the State had overwhelming evidence of Applicant's guilt based on his co-defendant's statements implicating him, his proximity to the crime scene, and incriminating texts on his cell phone. Applicant did not explain what counsel could have done to investigate his case further, nor has Applicant shown that the discovery of the evidence would have led counsel to change his recommendation as to the plea. *See Stalk*, at 562, 681 S.E2d at 594.

The Court finds counsel thoroughly investigated Applicant's case, and only ended investigation when he was specifically asked by Applicant to cease all investigation. Counsel did not pressure Applicant to plead guilty; Applicant chose to do so voluntarily. As such, counsel did not need to prepare Applicant's case for trial any further. This Court finds counsel's performance was not deficient and Applicant was not prejudiced. Therefore, this allegation must

be denied and dismissed with prejudice.

Counsel Adequately Prepared Applicant for Trial

Applicant alleges counsel failed to prepare him for trial, but did not fully explain his allegation at the PCR hearing. Applicant did testify he felt rushed to make a decision to prepare for trial or accept the plea, but he also testified at the plea hearing and at the PCR hearing he reviewed the discovery with counsel and was satisfied he had seen all relevant information about his case to make the decision to plead. Counsel testified the plea was set for a date certain, but he had a positive relationship with the solicitor and the State would have given Applicant more time had counsel known Applicant needed it. Counsel also testified he explained the consequences of going to trial if Applicant was found guilty, given the age of the victim and the circumstances of the crime.

This Court finds counsel's testimony to be credible and affords it great weight. Furthermore, this Court finds Applicant cannot establish any requisite deficiency or prejudice, particularly in light of the statements made at his guilty plea and the PCR hearing indicating he understood the risks of proceeding to trial, instead opting for the plea. Therefore, this allegation must be denied and dismissed with prejudice.

Counsel Did Not Coerce or Induce Applicant to Plead

Applicant alleges counsel was ineffective for pressuring Applicant and improperly inducing an involuntary guilty plea. "A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial." *Roscoe v. State*, 345 S.C.16, 546 S.E.2d 417 (2001). To be

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knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. *Boykin v. Alabama*, 395 U.S. 238 (1969). The record and the credible testimony support the finding Applicant had a full understanding of the charges and consequences of his guilty plea, which he entered voluntarily.

The record reflects Applicant fully understood the nature of the charges against him and the risk he would take if he proceeded to trial. Applicant repeatedly testified counsel told him his options were to plead or go to trial. Applicant testified counsel encouraged him to accept the seventeen year offer because a guilty verdict could result in imprisonment for life. Applicant also testified, however, the decision to accept the seventeen year offer was "hard" and he told counsel he would decide in court whether to accept the plea. Applicant further testified he told counsel he wanted to plead guilty, knowing he would receive seventeen years when he accepted the plea offer.

Applicant's own statements indicate he knew the decision to plead was entirely his to make. Further, the record reflects Applicant understood why counsel encouraged him to accept the plea offer, considering the State's evidence against him and the severity of the charges. The record also shows Applicant considered accepting a reduced sentence in exchange for a straight plea, but Applicant declined, accepting the *Alford* plea instead. Therefore, this Court finds Applicant failed to prove any deficiency of counsel induced him to plea or that he would have insisted on going to trial had counsel not advised him to plead. This Court finds the record clearly reflects Applicant knowingly, intelligently, and voluntarily entered into the *Alford* plea. Accordingly, this allegation is denied and dismissed with prejudice.

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Applicant Did Not Want To Appeal His Sentence

Applicant alleges counsel failed to file a notice of appeal following the imposition of his sentence. Applicant failed to meet his burden to prove that counsel was either deficient or he was prejudiced counsel's failure to file a notice of appeal on his behalf. "[C]ounsel has a constitutionally imposed duty to consult with the defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal (for example, because there are non-frivolous grounds for 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, 480 (2000).

Applicant testified he asked counsel to appeal his plea on the day of the plea. However, counsel testified he discussed the purpose of the direct appeal, the limitations of a direct appeal, and the purpose of post-conviction relief with Applicant. Counsel said once Applicant understood he would not be allowed to call witnesses in his direct appeal, Applicant indicated he would file an application for post-conviction relief instead. Counsel also said Applicant did not want to delay his PCR application by filing for a direct appeal first. Further, Counsel testified that there were no objectionable issues that arose at the plea hearing.

The Court finds counsel thoroughly and properly apprised Applicant of his right to appeal and explained how the direct appeal differs from the PCR process. This Court finds Applicant declined to request an appeal following his plea. This Court finds Applicant has failed to demonstrate any deficiency of counsel or resulting prejudice from counsel's failure to file a notice of appeal. Therefore, this allegation is denied and dismissed with prejudice.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this order, the Court finds Applicant failed to present any

evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

CONCLUSION

Based on 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.

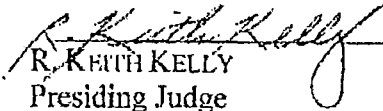
This Court notes Applicant must file and serve a notice of appeal within thirty days from receipt of written notice of entry of judgment to secure the appropriate appellate review. *See* Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCR, provides that if Applicant wishes to seek appellate review, his post-conviction relief attorney must serve and file a notice of appeal on Applicant's behalf. Applicant and his attorney are directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

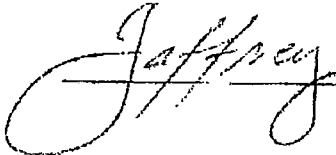
IT IS THEREFORE ORDERED:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

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AND IT IS SO ORDERED this 29th day of September, 2017.


R. KEITH KELLY
Presiding Judge
11th Judicial Circuit


_____, South Carolina



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The Honorable Daniel E. Shearouse
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