

Timothy L. Griffith Attorney at Law

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September 4, 2018

Clerk of Court, South Carolina Supreme Court
Case # 2017-CP-43-1835

Matthew Ryan Brown v State of South Carolina

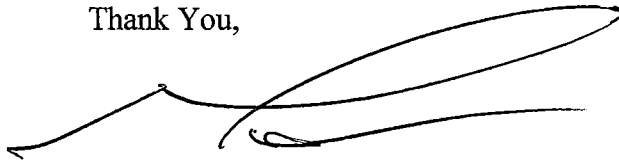
Please see the included Notice of Appeal. I have also forwarded by separate mail copies to:

The Sumter County Clerk of Court
The Office of the Attorney General of South Carolina
The Honorable Kristi F. Curtis, Circuit Court Judge
SC Office of Indigent Defense / Commission of Indigent Defense

Please file the included NOTICE OF APPEAL for the case captioned.

Attorney Timothy L. Griffith was appointed as PCR Council and not retained and will not be handling the Appeal.

Thank You,



Timothy L. Griffith, Esquire

RECEIVED

SEP 06 2018

S.C. SUPREME COURT

**NOTICE OF APPEAL FROM A PCR DENIAL BY THE COURT OF
COMMON PLEAS**

THE STATE OF SOUTH CAROLINA
In Supreme Court of SC

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

KRISTI F. CURTIS , Circuit Court Judge

Case # 2017-CP-43-1835

The State,

Respondent,

v.

Matthew Ryan Brown

Appellant.

RECEIVED

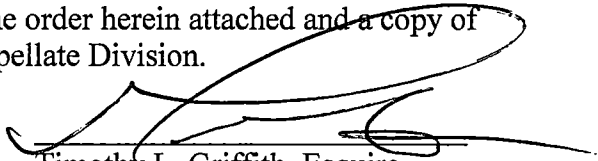
SEP 06 2018

S.C. SUPREME COURT

NOTICE OF APPEAL

Matthew Ryan Brown, appeals the decision of the Court, on August 28, 2018, where Mr. Brown was denied his request for Post Conviction Relief. Mr. Brown was represented at the hearing by Timothy L. Griffith, Attorney at Law who files this notice on behalf of the Appellant. The order herein attached and a copy of which is also forwarded to the SCCID Appellate Division.

Dated September 4, 2018


Timothy L. Griffith, Esquire
360 W. Wesmark Blvd,
Sumter, South Carolina 29150
Telephone: (803)607-9087
Attorney for Appellant (relieved)
Will not be representing on appeal

Other Counsel of Record:
Julie A. Coleman, Esquire
Assistant Attorney General
South Carolina Attorney General's Office P.O. Box 11549
Columbia, S.C. 29211

PROOF OF SERVICE OF A NOTICE OF APPEAL

THE STATE OF SOUTH CAROLINA
In the South Carolina Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

KRISTI F. CURTIS, Circuit Court Judge

Case # 2017-CP-43-1835

The State,

Respondent,

v.

Matthew Ryan Brown

Appellant.

RECEIVED

SEP 06 2018

PROOF OF SERVICE


S.C. SUPREME COURT

I certify that I have served the Notice of Appeal on the Office of the Attorney General of South Carolina, PCR Division, by U.S. Postal Service, postage prepaid, to P.O. Box 11549, Columbia, S.C. 29211, on September 4, 2018

Date 9/4/18

I received a copy of the Notice of Appeal
on this ____ day of _____, 2018

Office of the Attorney General
PCR Division



Timothy L. Griffith
360 West Wesmark Blvd
Sumter, SC 29150
Telephone: (803) 607-9087
Attorney for Appellant

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

JUDGMENT IN A CIVIL CASE
CASE NUMBER **2017CP4301835**

IN THE COURT OF COMMON PLEAS

RECORDED

2019 AUG 28 PM

Matthew Ryan Brown

South Carolina State of

CERTIFIED TRUE COPY
OF ORIGINAL FILED

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Clerk of Court

Attorney for: Plaintiff Defendant
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: **See attached Order.**

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

2099

8/28/2018

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

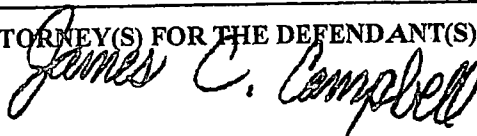
This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on , to attorneys of record or to parties (when appearing pro se) as follows:

Matthew Ryan #370550 Brown Lieber Correctional Institution P O Box 205 Ridgeville, SC 29472
Timothy Lee Griffith 360 W Wesmark Blvd Second Floor Sumter, SC 29150

Alan McCrory Wilson S.C. Attorney General's Office PO Box 11549 Columbia, SC 29211-1549

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)



Court Reporter

James C. Campbell - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Fileers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

RECORDED

2018 AUG 29

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

CERTIFIED TRUE COPY
OF ORIGINAL FILED

Matthew Ryan Brown, #370550,

JAMES S. RUSSELL
CLERK OF COURT
SUMTER COUNTY, S.C.

2017-CP-43-1835

[Signature]
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

Applicant,

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on October 10, 2017. Respondent submitted its Return on June 21, 2018. An evidentiary hearing into the matter was convened on July 24, 2018, at the Sumter County Courthouse. Applicant was present at the hearing and was represented by Timothy Griffith, 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 Garryl Deas, Esquire ("Plea Counsel"). This Court had before it the records of the Sumter County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina 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 confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. Applicant was indicted at the March 2016 term of the Sumter County Grand Jury for first-degree criminal sexual conduct with a minor (2016-GS-43-0336). The charges stem from the disclosure

by the victim, Applicant's step-daughter, on December 12, 2015 that Applicant had been touching her inappropriately for approximately three years. The acts began when the victim was six years old and continued over the span of about three years. The sexual battery which was the basis for the indictment and plea was an act of cunnilingus that Applicant performed on the victim in approximately September to October of 2015. Tr. 6-8.

Garryl Deas, Esquire, represented Applicant, and Assistant Solicitor J. Scott Matthews, Esquire, prosecuted the case. On November 14, 2016, Applicant pled guilty to second-degree criminal sexual conduct with a minor before the Honorable W. Jeffrey Young. Judge Young sentenced Applicant to imprisonment for twenty years. Applicant did not appeal his guilty plea or his sentence.

II. ALLEGATIONS

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

1. "My attorney did not do what I ask him."
2. "The judge told my attorney to be quiet he did not want to hear from him."
3. "My attorney did not say anything to the judge on my behalf."
4. "My attorney never gave me my sentencing set (sic)."

III. SUMMARY OF RELEVANT TESTIMONY PRESENTED

Applicant's testimony

At the evidentiary hearing, Applicant testified that his family hired Plea Counsel to represent him on his charges. He stated he thought the crime he was charged with carried zero to fifteen years in prison, and he did not know there was no cap on his potential sentence. He stated he would have gone to trial rather than pleading guilty if he had known there was no cap of fifteen years. Applicant testified that he asked Plea Counsel to file an appeal, but Plea Counsel told his

family it would not be in his best interest for him to represent Applicant anymore, and to hire someone else for the appeal.

Applicant testified that Plea Counsel tried to say something on his behalf at the guilty plea, but the plea judge shut him down. He stated that Plea Counsel should have spoken more on his behalf. Applicant testified Plea Counsel told him the Solicitor was going to recommend a fifteen year sentence, and he broke down the plea offer to him before the guilty plea. He testified he did not want to plead guilty before Judge Young because he is a harsh judge who gives maximum sentences. Applicant testified he was pressured into pleading guilty. He stated he probably did not ask his attorney to explain things to him because he has a learning disability.

Plea Counsel's testimony

At the evidentiary hearing, Plea Counsel testified that he has been practicing law for twenty-one years, and he was retained to represent Applicant almost a year before his plea. He stated he met with Applicant several times, and the case was about to be called for trial when Applicant decided to plead guilty. He stated he had no difficulty communicating with Applicant and there was no reason to believe Applicant did not understand their conversations. Plea Counsel testified the State never offered a cap of fifteen years, but the offer he accepted was for a recommendation of fifteen years.

Plea Counsel testified that Applicant admitted his guilt to him during his representation, so he began to negotiate favorable plea offers. He testified that he spoke on Applicant's behalf at the guilty plea and offered an extensive background in mitigation, as well as the testimony of three of his family members. He testified that, even though the plea judge cut him off at one point during the plea, he had the opportunity to speak later, and he had ample opportunity to speak on Applicant's behalf. Plea Counsel testified that he never told Applicant there was a cap of fifteen

years, and he did explain to Applicant that the judge did not have to accept the State's recommendation. He stated that Applicant never told him to file an appeal, and Applicant's family never communicated to him about an appeal. He stated that a trial probably would not have worked out well for Applicant, and he was facing twenty-five years or up to life in prison at trial.

Plea Counsel testified that, based on his experience, he believed Applicant was competent to stand trial and he understood their discussions and what was going on. He stated Applicant never told him he did not understand anything, and there was never any indication that he was prevented from understanding, so it was not a concern for him. He testified Applicant usually responded to him and would discuss the issues with him. Plea Counsel testified that he asked for a negotiated plea, but the Solicitor refused to make such an offer. He further testified believed Judge Young would not likely have accepted a negotiated plea because it was his practice not to accept such pleas. He testified there was a strong likelihood that Applicant would be found guilty at 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), SCRPC; 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).

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. Plea Counsel credibly testified he did not tell Applicant he would have a sentencing cap of fifteen years, and he fully explained, and the plea judge explained as well, that the judge did not have to accept the State's recommendation. He testified it was Applicant's decision to plead guilty, and Applicant understood all their conversations and was fully aware of the risks and benefits of pleading guilty. The guilty plea transcript shows Plea Counsel presented three family members to speak on Applicant's behalf and a large amount of information for mitigation purposes. Plea Counsel had ample opportunity to speak on Applicant's behalf and was not restricted by the plea judge in any manner. Applicant has failed to present any credible evidence that Plea Counsel did not do what he asked of him or was ineffective in any way.

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 and what Applicant told him he wanted, which was to plead guilty. Accordingly, Applicant has failed to prove that Plea Counsel was deficient or that he would have gone to trial but for these deficiencies, and post-conviction relief is denied.

VI. CONCLUSION

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


This Court notes that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRPC, 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 28th day of August, 2018.

Sunder, South Carolina



 KRISTI F. CURTIS
 Presiding Judge
 Third Judicial Circuit

Timothy L. Griffith, Attorney at Law
360 West Wesmark Blvd, 2nd Floor
Sumter, SC 29150

COLUMBIA SC 290

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

29211-133030

