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OCT 19 2018

**THE BOOZER LAW FIRM, LLC**

S.C. SUPREME COURT

**Lance S. Boozer, Esq.\***  
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October 17, 2018

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

Honorable Clerk of Court  
Marlboro County  
P.O. Drawer 996  
Bennettsville, SC 29512

**RE: David Dixon, #331496, v. State of South Carolina  
2015-CP-34-228**

Dear Mr. Shearouse and Ms. Williams:

Enclosed for filing is a Notice of Appeal in the above-referenced case. Also enclosed are the following:

- (1) Proof of Service of the Notice of Appeal;
- (2) A copy of the Order which is to be challenged on appeal; and
- (3) Prior Order of Appointment of Counsel.

As I was appointed to represent Mr. Dixon in his PCR proceeding, I anticipate that the Office of Appellate Defense will represent Mr. Dixon in this appeal.

Yours very truly,



Lance S. Boozer

Enclosures

cc: Johnny E. James, Jr., AAG  
Loriene French, OAD  
David Dixon, #331496

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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S.C. SUPREME COURT

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APPEAL FROM MARLBORO COUNTY  
Court of Common Pleas

The Honorable Larry B. Hyman, Jr., Circuit Court Judge

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Case No. 2015-CP-34-228

---

David Dixon, #331496, .....Petitioner,

v.

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

---

**NOTICE OF APPEAL**

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The Petitioner appeals the Honorable Larry B. Hyman, Jr.'s Order dated October 1, 2018, denying post-conviction relief to the Petitioner. Undersigned counsel received notice of entry of the Order on October 16, 2018. A copy of the Order on appeal is attached to this notice.

Respectfully submitted,



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Lance S. Boozer  
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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM MARLBORO COUNTY  
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The Honorable Larry B. Hyman, Jr., Circuit Court Judge

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Case No. 2015-CP-34-228

---

David Dixon, #331496, .....Petitioner,

v.

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

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**PROOF OF SERVICE**

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I, Lance S. Boozer, appointed attorney for Petitioner, certify that I have today served within Notice of Appeal upon the Respondent by depositing a copy of it in the United States Mail, postage prepaid, addressed to Assistant Attorney General Johnny E. James, Jr., P.O. Box 11549, Columbia, SC 29211. I further certify that all parties required by Rule to be served have been served this 18th day of October, 2018.



---

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STATE OF SOUTH CAROLINA  
COUNTY OF MARLBORO

) IN THE COURT OF (Select one.)  
)  GENERAL SESSIONS  FAMILY COURT  
) FOURTH JUDICIAL CIRCUIT

State of South Carolina,  
Plaintiff,

) CASE NO.: 15-CP-34-00228  
) APPOINTMENT OF COUNSEL

-vs-

) (Select one.)

David Dixon,  
 Defendant  Juvenile.

)  ORDER  
)  AMENDED ORDER

Offense(s): \_\_\_\_\_

It appears that the above named person is entitled to court-appointed counsel or a guardian ad litem.

It further appears that: (Select only one.)

- the public defender now represents another person involved herein and that a conflict would arise if that office represents the above-named individual.
- the public defender has indicated a possible conflict of interest or other good cause warranting the appointment of counsel based on: \_\_\_\_\_
- the public defender or court-appointed counsel has indicated that the named individual has now retained private counsel and is no longer entitled to appointed counsel.
- court-appointed counsel has claimed an exemption or has demonstrated good cause pursuant to Rule 608 warranting the appointment of new counsel based on: \_\_\_\_\_
- court-appointed counsel has obtained substitute counsel named below pursuant to Rule 608(h)(2); only the member who originally received the appointment and who sought substitute counsel shall receive credit for the appointment.

Therefore, it is ordered that Lance Boozer, Esquire hereby is appointed as  
(Select only one.)  counsel  lead counsel (if capital PCR case)

for the above-named person. Counsel previously appointed is/are hereby relieved as counsel.

(If Death Penalty PCR Case) It is further ordered that \_\_\_\_\_,  
Esquire, is hereby appointed as second counsel in this capital case.

The clerk of court is directed to forward a copy of this order to all persons entitled to notice.

IT IS SO ORDERED THIS 19 DAY OF August, 2015.

William B. Sunderbank  
 Circuit Judge  Clerk of Court

NOTICE: SC Supreme Court Order of September 29, 2006, requires appointed counsel entitled to payment from the Office of Indigent Defense (OID) to register the case online with OID within fifteen (15) days of this appointment at [www.sccid.sc.gov](http://www.sccid.sc.gov), and further directs that reimbursement vouchers be submitted directly to SCCID and not to the trial judge or clerk of court. See SCCID website for further details.

SCCA/268 (03/07)

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

STATE OF SOUTH CAROLINA  
COUNTY OF MARLBORO

) IN THE COURT OF COMMON PLEAS  
) FOR THE FOURTH JUDICIAL CIRCUIT  
)

David Eric Dixon,  
S.C.D.C. No. 331496,

) Case No.: 2015-CP-34-00228  
)

Applicant,

) **ORDER OF DISMISSAL**  
)

v.

State of South Carolina,

Respondent.

This matter comes before the Court by way of an application for post-conviction relief filed by David Eric Dixon ("Applicant") on August 19, 2015, thereafter amended by filing on June 5, 2017. Respondent made its return on or about January 25, 2017, and thereafter amended on June 20, 2017. The Court convened an evidentiary hearing into the matter on Tuesday, July 24, 2018, at the Darlington County Courthouse in Darlington, South Carolina. Applicant was present at the hearing and represented by Lance S. Boozer, Esq. Johnny Ellis James Jr., of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's trial counsel, T. Brandon Steen, Esq. ("Counsel") also testified. The Court had before it Applicant's records from the South Carolina Department of Corrections, a copy of the original trial transcript, the records of the Marlboro County Clerk of Court regarding the subject convictions, Applicant's direct appeal records, and the pleadings. The Court finds as follows:

### I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Marlboro County Clerk of Court. Applicant was indicted at Marlboro County, S.C.

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CLERK OF COURT  
MARLBORO COUNTY, S.C.

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2013 term of the Marlboro County Grand Jury for murder (2015-CP-34-00228), attempted murder (2013-GS-34-00087); and possession of a weapon during the commission of a violent crime (2013-GS-34-00088). T. Brandon Steen, Esq., and Nicolas I. Lewis, Esq. represented Applicant. Mia David, Esq., of the Fourth Circuit Solicitor's Office, prosecuted the case. On October 28, 2013, Applicant proceeded to trial before the Honorable J. Michael Baxley and a jury. The jury found Applicant guilty as indicted on October 31, <sup>2013 J/A U</sup> ~~2018~~ Judge Baxley sentenced Applicant to imprisonment for concurrent terms of 35 years for murder, 30 years for attempted murder, and one consecutive term of 5 years for the weapon charge, for a cumulative term of incarceration for 40 years.

Applicant filed a timely notice of appeal and a direct appeal was perfected by Lara Caudy, Esq. filing a brief pursuant to Anders v. California, 386 U.S. 738 (1967). Applicant filed a *pro se* brief in response, raising the following issue:

Whether the court erred by refusing to grant Appellant's Motion to keep the State's offer open until Discoverable Evidence is turned over.

The South Carolina Court of Appeals dismissed Applicant's appeal by unpublished opinion. State v. Dixon, Op. No. 2015-UP-385 (S.C. Ct. App. filed July 29, 2015). The Remittitur was issued on August 14, 2015.

#### Present Application

In his post-conviction relief application, Applicant alleges he is being held unlawfully for the following reasons:

1. "Ineffective assistance of Counsel"
  - a. "Failed to have a mental health exam done before trial."
  - b. "Failed to file a motion to keep state's offer of 25 years open in a timely manner."
  - c. "Failed to object to the jury instruction that Attempted Murder is a general intent crime."

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2. "Ineffective Assistance of Appellate Counsel"

By amendment filed by and through PCR counsel on June 5, 2017, Applicant raised the following additional grounds for relief:

1. Ineffective assistance of counsel, in that:
  - a. "Counsel failed to properly calendar and/or record the deadline with which to accept the State's plea offer and offered erroneous information to Applicant regarding the deadline to accept the plea. See trial transcript pg. 50-53. See also bond hearing transcript, pg. 6 and pg. 10."
  - b. "Counsel failed to argue prior to trial that the State's plea offer should have been allowed to remain open after counsel was provided with ballistics information that was subject to Rule 5 disclosure and bring to the Court's attention Chief Justice Toal's March 1, 2004, memorandum regarding plea agreements and discovery to Solicitors."

At the evidentiary hearing, Applicant proceeded forward only on allegations set forth in the June 5, 2017, amendment, and indicated Applicant did not desire a new trial, but only wished for the offer to plead guilty in exchange for a sentence of 25 years.

**II. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the records submitted to it by the parties and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented.

**A. Ineffective Assistance of Counsel**

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she must prove "counsel's conduct so undermined the proper functioning of the adversarial

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process that the trial cannot be relied upon as having produced a just result.” Butler at 442, 334 S.E.2d 441 (quoting Strickland v. Washington, 466 U.S. 668, 686 (1984)). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Id.

“[C]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Butler at 442, 334 S.E.2d 441 (quoting Strickland at 690). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989). “Judicial scrutiny of counsel’s performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel’s assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel’s defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable.” Strickland, 466 U.S. at 689; Edwards v. State, 392 S.C. 449, 456-57, 710 S.E.2d 60, 64 (2011). “[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel.” Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)).

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 at 117, 386 S.E.2d at 625 (citing Strickland at 688). 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 at 117-18, 386 S.E.2d at 625 (citing Strickland at 694).

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The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. Strickland at 696. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. at 696-97.

*1. Misadvice as to Deadline to Accept Offer*

Applicant alleges Counsel was ineffective for erroneously calendaring when the 25 year plea offer was to expire and, consequently, misadvising him as to when the offer would expire. The right to effective assistance of counsel is not limited to trial proceedings, but extends to the plea bargaining process. Davie v. State, 381 S.C. 601, 607, 675 S.E.2d 416, 419 (2009) (citing Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1996)). Consequently defense attorneys have a duty to timely communicate "formal offers from the prosecution to accept a plea on terms and conditions that may be favorable to the accused." Missouri v. Frye, 566 U.S. 134, 145 (2012); accord Davie, 381 S.C. at 609, 675 S.E.2d at 420. Prejudice from the failure to communicate a plea offer is determined on a case-by-case basis, and the ultimate analysis is "whether but for counsel's deficient performance a defendant would have accepted the State's proposed plea bargain and that he would have benefitted from the offer." Id., 381 S.C. at 613, 675 S.E.2d at 422. Where an applicant for post-conviction relief establishes ineffectiveness for failure to communicate a plea offer, the appropriate remedy is a new sentencing hearing with the limitation that the applicant's sentence cannot exceed the original sentence. Id., 381 S.C. at 616-17, 675 S.E.2d at 424; cf. Lafler v. Cooper, 566 U.S. 156, 174-75 (2012) ("The correct remedy in these circumstances, however, is to order the State to reoffer the plea agreement presuming

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respondent accepts the offer, the state trial court can then exercise its discretion in determining whether to vacate the convictions and resentence respondent pursuant to the plea agreement, to vacate only some of the convictions and resentence accordingly, or to leave the convictions and sentence from trial undisturbed.”).

At a bond hearing on August 13, 2013, at which Applicant was present, the State firmly and clearly communicated on the record the parameters of the plea offer extended to Applicant:

MS. DAVID: Your Honor, if I may. We are prepared to move forward with this case the week of September 30<sup>th</sup>. We have made an offer to the Defendant for 25 years, and it is the State's position that we're asking that he accept that offer before August 2<sup>th</sup>. And if not we're prepared to move to trial revoking the offer and that's it.

(R. 6, ll. 19-25). The Honorable Edward B. Cottingham thereafter inquired as to whether the offer had been properly communicated to Applicant and asked Applicant if he understood the deadline and parameters of the offer:

THE COURT: They tell me, I'm not a party to it. I have nothing to do with it. They tell me that they have offered you a possible negotiated sentence. Is that right, Mr. Steen?

MR. STEEN: Yes, Your Honor.

THE COURT: Have you conveyed that to him?

MR. STEEN: Yes, Your Honor.

THE COURT: It is to his interest to know what I'm getting ready to say. That proposal will not be available to you when this case is set for trial in September. At that time all the witnesses would have been assembled. All the victim's family would have been notified. Your family would have been notified, and that offer will not be on the table.

Mia, how long do you proposed to leave that proposal out there?

MS. DAVID: Until our next term of court with you on August 26<sup>th</sup>.

THE COURT: After August 26<sup>th</sup> it will not be available.

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CLERK OF COURT  
CHARLESBORO COUNTY, S.C.

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MS. DAVID: Yes, sir.

THE COURT: Do you understand that?

MR. DIXON: Yes, sir.

THE COURT: I've been on the bench now 30 years, and I have seen so many defendants think that at the last minute they can get the same deal from three months ago. I as a trial judge have nothing to do with that. If she says, "Week after next that offer is over," it's over. And at that time you will be set for trial to face the charges of murder and attempted murder. Do you understand that?

MR. DIXON: Yes, sir.

THE COURT: All right, just so long as – now, your attorney has advised you of that, has he not?

MR. DIXON: Today, sir.

THE COURT: Sir?

MR. DIXON: Today.

THE COURT: Well, I've found from experience that there are experiences where people decide not to take the offer, get convicted and on appeal the first thing that they say is that my lawyer didn't tell me. In fairness to you I'm telling you, too.

I'm not suggesting to you that you do or do not. That's not my call. I'm just saying to you that that proposal will not be available after week after next. I just want you to understand.

MR. DIXON: Yes, sir.

(R. 10-11). On September 9, 2013, Counsel filed a motion seeking disclosure of SLED reports analyzing DNA and ballistics evidence, continue trial, and keep the plea offer open until all discoverable evidence was turned over to the defense pursuant to Chief Justice Jean Toews' memorandum dated March 1, 2004.<sup>1</sup> (R. 14-17).

<sup>1</sup> "[I]t is unethical to premise a plea agreement on the defendant relinquishing the right to discovery in criminal cases. This practice is going to have adverse consequences in the future with claims of ineffective assistance of counsel based on a claim that the plea was not voluntary because the applicant did not have access to the discoverable file."

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During pre-trial motions on October 28, 2013, the trial court permitted Counsel to reaffirm on the record his motion to keep the offer open. (R. 67-74). Counsel noted the Court had declined to hear the motion, and thereafter explained Counsel and Applicant had been waiting for the ballistic report before accepting or rejecting the 25 year offer. (R. 67-68). Counsel argued the withdrawal of the offer was unreasonable, unfair, and then discussed the deadline as it related to a conference for the continuance request:

MR. STEEN: Yes, sir. Per the Solicitor yesterday, I think she said that the deadline passed on August 26<sup>th</sup>. We did have a conference with Your Honor for the continuance on September 12<sup>th</sup>. At that time, based on that, I thought the offer was still opened. I'm not sure exactly at what point it was withdrawn or if the deadline was put on the record, but I thought that it remained opened.

(R. 69, ll. 2-9). The State argued the ballistics were never going to change its decision to prosecute Applicant in light of other evidence available and known to both parties prior to the ballistics report. (R. 71-72). The trial court thereafter explained to Counsel and Applicant that it declined to consider the motion because it had no authority to reinstate the State's plea offer. (R. 72-73). On subsequent appeal, in response to the Anders brief, Applicant filed a *pro se* brief that argued the Court erred in refusing to grant the motion to keep the plea offer open.

At the evidentiary hearing, Applicant testified he was waiting on the results of the ballistics report and did not want to plea before receiving that report. Applicant affirmed he knew the deadline for the plea offer, and claimed he was to be transported on the date of the offer in order to accept it, but that his transport was interfered with and prevented by the jail warden. On cross-examination, Applicant asserted he knew the deadline, that Counsel did not know the deadline, and that he didn't want the plea offer until the day of the deadline, at which time his transport was allegedly canceled.

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Counsel testified the offer was extended at the bond hearing on August 13, 2013, to plead to voluntary manslaughter for a negotiated sentence of 25 years. Counsel stated he took note of the August 26, 2013 expiration date and recalled meeting with Applicant multiple times prior to the expiration regarding the subject:

- On August 15, 2013, at which time Applicant was only willing to accept a 20 year sentence;
- On August 20, 2013, and Applicant was still only willing to accept a 20 year sentence; and
- On August 26, 2013, at which time Counsel informed Applicant he could not guarantee the offer would remain on the table after the expiration. Counsel recalled Applicant was still unwilling to accept the 25 year offer.

Counsel recalled finally receiving the ballistics evidence on October 8, 2013, at which time Applicant wished to accept the offer. The prosecution refused to offer it again. Counsel attempted to get the trial court to hear his motion to keep the offer open, but the trial judge refused to do so before trial, only permitted him to establish the record after insisting he be permitted to do so. Asked about his seeming ignorance during the pre-trial hearing, Counsel asserted that he was referring to his motion to try and keep the offer open. On cross-examination, Counsel recalled Applicant declined the offer four times before the deadline passed and at no time expressed an interest in accepting the offer.

The Court finds no deficiency on the part of counsel, nor prejudice therefrom. The Court finds Applicant's self-serving testimony that he wished to accept the plea offer only on the deadline, only to be foiled by malevolence and ignorance, is not credible and is not supported by any evidence in the record. The record unequivocally shows both Applicant and Counsel knew of the August 26 deadline as put on the record at the bond hearing. Counsel repeatedly broached the subject of the offer with Applicant before the deadline, but Applicant repeatedly refused the offer, would only accept a more favorable deal, and generally desired to wait until he received

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HARRISBURG COUNTY, S.C.

the SLED ballistics report. Considering the record in its complete context, and having observed Counsel closely during the evidentiary hearing, the Court finds Counsel's explanation of his remarks during pre-trial hearings to be credible. Altogether, there was no confusion on the part of either Applicant or Counsel as to the plea offer's deadline, or the parameters of the deal, and Applicant declined to accept the offer on the basis of his own reasonable desire to see the complete record of evidence against him before accepting the offer. As such, Applicant has failed to meet his burden under either prong of Strickland, and his request for relief by way of this allegation is accordingly **DENIED**.

## ***2. Failure to Argue to Keep Offer Open***

Applicant alleges Counsel was ineffective in failing to argue the plea offer should remain open until all discoverable materials were disclosed to him, citing to then-Chief Justice Toal's memorandum dated March 1, 2004. Neither a defendant nor the government is bound by a plea offer until it is approved by the court, and the State may withdraw any plea bargain offer before a defendant pleads guilty, provided the defendant has not detrimentally relied on the offer. Reed v. Becka, 333 S.C. 676, 511 S.E.2d 396 (Ct. App. 1999).

The facts set forth in Section II.A.1, above, are largely relevant to this allegation. Counsel filed on September 9, 2013, a motion which, in part, argued the trial court should force the State to keep its offer open until all discovery was disclosed to Applicant. (R. 16-17). Counsel specifically referred to and quoted from Chief Justice Toal's March 1, 2004 memorandum on Plea Agreements and Discovery in support of his argument. (R. 16). Counsel argued that "Defendant's offer expiring before the State has turned over discoverable evidence is tantamount to the Solicitor offering a plea agreement to the Defendant on the condition they forgo discovery which is, as stated before, [an] unethical practice." Id. The issue was again

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raised to the trial court during the pre-trial hearings and the trial court refused to consider the motion. (R. 72-73). Applicant raised the issue to the South Carolina Court of Appeals, which implicitly rejected the argument by dismissing the appeal and granting appellate counsel's motion to be relieved.

At the evidentiary hearing, Counsel explained he attempted to get the trial court to hear his motion before trial, but was only able to be heard with respect to the request for a continuance. Counsel explained he filed the March 1, 2004, memorandum as an attachment with his motion and sent a copy to Judge Baxley, in addition to quoting it verbatim in the body text of the motion itself.

Applicant, though PCR counsel, argued passionately that a defendant must know what will come out at trial in order to make a knowing, intelligent, and voluntary decision to enter a guilty plea, and cited to Davie and Lafler. The State cited to Reed, noted Counsel made the argument, and further argued that adoption of Applicant's position as the law would functionally eliminate plea bargaining as an institution, as discoverable matters may be unavailable to turn over to a defendant until very near to trial. This Court offered, and the State agreed, that matters may well only occur to be relevant and discoverable until after trial has started. The State also argued that Applicant mischaracterized the substantive purpose of Chief Justice Toal's memorandum, and advanced the interpretation that it pertained to a narrower scope of conduct where prosecutors may have discoverable materials, but condition plea offers on relief from their obligation to turn those materials over to the defense. Respondent contrasted the present circumstance, which was that the ballistics report simply was not completed by SEF until very near to trial.

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The Court finds no deficiency on the part of counsel, nor prejudice therefrom. First, and most importantly, Counsel did precisely what Applicant alleges he did not do—argue the offer should be kept open in reliance upon Justice Toal’s memorandum. Second, the issue was preserved and raised to the South Carolina Court of Appeals by way of Applicant’s *pro se* brief in response to the Anders brief, and the Court of Appeals implicitly rejected it. Third, the law is unequivocal that the power to extend or withdraw a plea offer is wholly within the power of the prosecutor unless and until it is either accepted by the circuit court or there is appropriate detrimental reliance by the accused. Fourth, the Court agrees with Respondent that requiring any plea offer be kept open until all discovery is complete would functionally eliminate plea bargaining before trial, and would be entirely unworkable where trial testimony may cause the parties to a case to seek additional materials or witnesses not known to be relevant until events at trial unfold. Accordingly, Applicant cannot meet his burden under either prong of Strickland, and his request for relief by way of this allegation is **DENIED**.

*[Conclusion and signature on following page]*

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### III. 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 notifies the Applicant that he must file and serve a notice of appeal within thirty (30) 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, 409 S.E.2d 395 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention 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 must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 1 day of Oct, 2018.

  
LARRY B. HYMAN JR.  
Presiding Judge  
Fourth Judicial Circuit

ANITA M. WILLIAMS  
CLERK OF COURT  
MARLBORO COUNTY, S.C.

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Cowley, South Carolina

**THE BOOZER LAW FIRM, LLC**

1419 Pendleton Street  
Columbia, SC 29201

The Honorable Daniel E. Shear  
Clerk, Supreme Court of South Carolina  
P.O. Box 11330  
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