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*Arthur K. Aiken*

*A. Bea Hightower*

November 7, 2018

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

**RECEIVED**

NOV 09 2018

Re: Wallace Glover v. State of South Carolina  
Civil Action No.: 2017-CP-02-2128

**S.C. SUPREME COURT**

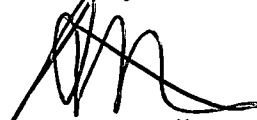
Dear Mr. Shearouse:

I am appointed counsel for the Applicant, Wallace Glover, in the above captioned post-conviction relief case. I have enclosed, for filing in your office, a Notice of Appeal and Motion to Proceed in Forma Pauperis for this case. Please return file stamped copies to me.

By copy of this letter with the filings enclosed, I have filed these filings with the Clerk of the Aiken County Court of Common Pleas and have served these filings on the Office of the Attorney General for South Carolina. Please call with any questions.

Thank you for your help

Sincerely,



Arthur K. Aiken

[art@aikenandhightower.com](mailto:art@aikenandhightower.com)

cc: Clerk, Aiken County Court of Common Pleas (w/enclosures)  
Office of the Attorney General for South Carolina (w/enclosures)  
Wallace Glover (w/enclosures)

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

**RECEIVED**

NOV 09 2018

APPEAL FROM AIKEN COUNTY  
Court of Common Pleas

**S.C. SUPREME COURT**

Larry B. Hyman, Jr., Circuit Court Judge

Case No. 2017-CP-02-2128

Wallace Glover.....Applicant/Appellant

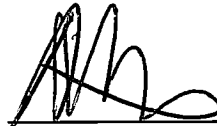
v.

State of South Carolina.....Respondent/Respondent

NOTICE OF APPEAL

This is a post-conviction relief case. Appellant appeals from the Order of Dismissal entered in this case on October 8, 2018. Appellant received written notice of the entry of the Order of Dismissal entered on October 8, 2018 by efile on October 8, 2018. A copy of the Order of Dismissal appealed from is attached.

November 7, 2018



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ATTORNEYS FOR APPELLANT

**OTHER COUNSEL OF RECORD:**

Office of the Attorney General of the State of South Carolina  
PO Box 11549  
Columbia, SC 29201  
ATTORNEYS FOR RESPONDENT

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

**RECEIVED**

APPEAL FROM AIKEN COUNTY  
Court of Common Pleas

NOV 09 2018

Larry B. Hyman, Jr., Circuit Court Judge

**S.C. SUPREME COURT**

Case No. 2017-CP-02-2128

Wallace Glover.....Applicant/Appellant

v.

State of South Carolina.....Respondent/Respondent

PROOF OF SERVICE AND FILING

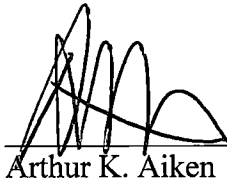
I certify that, on November 7, 2018, I served and filed the Notice of Appeal and Motion to Proceed in Forma Pauperis in the above appeal by mailing copies of those filings to the following:

Office of the Attorney General for South Carolina  
PO Box 11549  
Columbia, SC 29201

and

Office of the Aiken County Clerk of Court  
PO Box 583  
Aiken, SC 29802

**SIGNATURE ON THE FOLLOWING PAGE**



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Columbia, SC  
November 7, 2018

STATE OF SOUTH CAROLINA )  
COUNTY OF AIKEN )  
Wallace Glover, #231429, )  
 )  
Applicant, )  
 )  
v. )  
 )  
State of South Carolina, )  
 )  
Respondent. )

IN THE COURT OF COMMON PLEAS  
SECOND JUDICIAL CIRCUIT

2017-CP-02-2128

**ORDER OF DISMISSAL**

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on September 5, 2017. Respondent submitted its Return and Motion for More Definite Statement on July 6, 2018. An evidentiary hearing was convened on August 27, 2018, at the Aiken County Courthouse. Applicant was present at the hearing and was represented by Arthur Aiken, 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 Public Defender De Grant Gibbons, Esquire ("Plea Counsel"). This Court had before it the records of the Aiken 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 presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. In June 2016, the Aiken County Grand Jury indicted Applicant for distribution of cocaine base (crack cocaine) (2016-GS-02-00866). The charge resulted from an incident

which occurred on February 1, 2016, where Applicant sold 0.13 grams of cocaine base to an Aiken County Sherriff's office confidential informant during an undercover narcotics operation. This was a hand-to-hand transaction which occurred at Applicant's residence in Aiken, South Carolina. The informant was wired with surveillance equipment which produced a video clearly showing Applicant's face and his placing of the narcotics in the informant's hand. Applicant absconded upon being shown the video and was subsequently arrested through a bench warrant.

Applicant was represented by Public Defender De Grant Gibbons, Esquire. Assistant Solicitor Elizabeth B. Young, of the Second Circuit Solicitor's Office, prosecuted the case. On March 22, 2017, Applicant before the Honorable Doyet A. Early, III to plead guilty to distribution of crack cocaine, third or subsequent offense. Pursuant to negotiations between Applicant and the State, another charge from a prior drug purchase was dismissed in exchange for Applicant's plea. Judge Early accepted his guilty plea to distribution, third offense and sentenced Applicant to ten years in prison.

## II. ALLEGATIONS

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

1. Abuse of Discretion
  - a. "The court sentenced was for third offense, one offense was outdated."
2. Ineffective Assistance of Counsel
  - a. "Counsel failed to ascertain and/or inform the court of prior conviction could not be considered."

Applicant filed an amended application on August 13, 2018, adding the following allegations:

- i. Glover's guilty plea was not made with or based on advice of competent counsel.
- ii. Glover's guilty plea was not intelligently made.
- iii. Trial counsel did not prepare Glover's case for trial, and Glover was left with no choice but to plead guilty.

- iv. Trial counsel did not discuss potential defenses with Glover.
- v. Trial counsel never discussed the advantages and disadvantages of a trial versus the advantages and disadvantages of a plea with Glover so that Glover could make an informed choice of whether to enter a plea or try his case.
- vi. Trial counsel did not investigate Glover's case.
- vii. Trial counsel erroneously advised Glover that his conviction in this case was a third offense when the present conviction was at most a second offense under S.C. Code section 44-53-470.
- viii. Trial counsel erroneously advised Glover that his sentence could not be suspended when S.C. Code section 44-53-375(B)(3) provides for a suspended sentence when all prior offenses are for possession of a controlled substance.
- ix. Trial counsel erroneously advised Glover that his present conviction was non-violent with a 65% minimum service requirement instead of an 85% minimum service requirement.
- x. Trial counsel erroneously advised Glover that he would be eligible for parole on the present conviction.

### III. SUMMARY OF RELEVANT TESTIMONY PRESENTED

#### *Applicant's testimony*

At the evidentiary hearing, Applicant testified he pled guilty to an offense with a sentencing ranging from ten to thirty years, and he got a ten year sentence. He stated he had prior drug offenses, and his sentence was enhanced under section 470 of the statute, but the State improperly counted an offense that was outside the ten year period allowed to enhance his statute. He testified he had a 1993 conviction for cocaine, a 2009 conviction for cocaine, and a federal conviction from 1989 for possession of drugs. Applicant testified Plea Counsel should have requested a suspended sentence during the guilty plea, because he should have been entitled to a suspended sentence under section 375 of the statute.<sup>1</sup>

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<sup>1</sup> Applicant's attorney conceded at the evidentiary hearing that Applicant had the requisite prior offenses to enhance his charge to third or subsequent offense under the statute and did not challenge the charge as a third offense.

*Plea Counsel's testimony*

At the evidentiary hearing, Plea Counsel testified Applicant had been charged with two distribution charges, and he only pled guilty to one offense and the other was dropped. He testified that he was unclear on Applicant's parole eligibility because of his prior conviction of armed robbery, which was a most-serious offense, but he advised Applicant before and during the plea that he could not promise him that SCDC would classify him as parole eligible or not. He testified he gave Applicant the tools he needed to give to SCDC during the guilty plea so that they might determine him parole eligible. He testified Applicant's parole eligibility probably would have been the same regardless of whether he pled guilty or was convicted at trial. Plea Counsel testified Applicant had two prior state drug convictions and at least one federal drug conviction.

Plea Counsel testified he met with Applicant three or four times before the guilty plea and reviewed the video tape of the drug buy with him. He stated the State's video showed a very clear hand-to-hand exchange of the drugs with a confidential informant, and it was one of the strongest videos he had seen before. He testified Applicant had no defense to present at trial. Plea Counsel testified that the State could have tried and convicted Applicant for this offense, and then tried him again on the other drug charge and had him sentenced to life without parole, so Applicant chose to plead guilty to avoid that risk. He testified that he was ready to go to trial, but Applicant chose to plead guilty.

**IV. APPLICABLE LAW**

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must

prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty pleas, the applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985).

#### V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their

testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

#### 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 was fully prepared for trial, but he discussed the risks of trial with Applicant, which included being tried and convicted of two separate drug charges, and facing life without parole, and Applicant chose to plead guilty to avoid that risk. He testified Applicant did have the proper prior convictions to enhance his charge to a third or subsequent offense under the drug statute and there was no reason to challenge. Finally, he testified at the evidentiary hearing, and the record shows a discussion during the guilty plea, that he advised Applicant that he may not be parole eligible

and could have to serve eighty-five percent of his sentence, but he gave him all the tools he needed to give to SCDC to become parole eligible. Tr. 7, line 7-16. This Court finds Applicant knew he could have to serve eighty-five percent of his sentence when he chose to plead guilty, and he has failed to prove that he would have gone to trial had he known this. Furthermore, there is nothing in the record to suggest the plea judge was not fully aware that Applicant may be eligible for a suspended sentence, and this Court finds Plea Counsel is not ineffective for failing to request a suspended sentence. Notably, Applicant's prior record includes a conviction for armed robbery, so he would not be entitled to a suspended sentence under the statute regardless of whether Plea Counsel requested it or not.

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.

#### INVOLUNTARY GUILTY PLEA

This Court finds Applicant's guilty plea was entered freely and voluntarily. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238 (1969). Defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427

S.E.2d 171, 174 (1993)). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63 (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).

This Court finds that this allegation is without merit and Applicant has failed to carry his burden of proving that his guilty plea was involuntarily made. This Court finds that Applicant's testimony was entered freely and voluntarily. This Court further finds that the record reflects that Applicant was thoroughly advised of the waiver of his constitutional rights by both trial counsel and the plea judge. The record reflects Applicant at his plea proceeding told the Court that he wished to plead guilty and was aware of the rights he was waiving by pleading. Tr. 8-10. The record also reflects that Applicant told the Court that he had not been promised or threatened by anyone to get him to plead guilty. Tr. 10. This Court finds that Applicant had a full understanding of the consequences of his plea and the charges against him. This Court finds that the plea judge correctly found that the Applicant's plea was freely, voluntarily, and intelligently made. Accordingly, these allegations are denied and dismissed with prejudice.

*[conclusion and signature page to follow]*

## 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), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

### IT IS THEREFORE ORDERED:

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

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



LARRY B. HYMAN, JR.  
Presiding Judge  
Second Judicial Circuit

Cosway, South Carolina

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

S.C. SUPREME COURT

APPEAL FROM AIKEN COUNTY  
Court of Common Pleas

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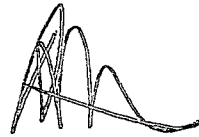
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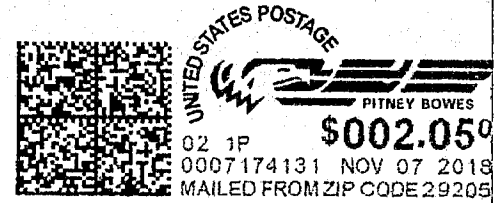
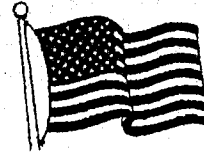
MOTION TO PROCEED *IN FORMA PAUPERIS*

I, Arthur K. Aiken, hereby Motion the Court to allow Appellant to proceed in this matter without requirement of the filing fee and other applicable fees. I was appointed counsel for the Appellant in this post-conviction relief case. and appellate counsel will be provided by the South Carolina Commission on Indigent Defense due to Appellant's indigence.

November 15, 2017



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