

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL FROM PICKENS COUNTY  
COURT OF GENERAL SESSIONS

ALEX KINLAW, JR., CIRCUIT COURT JUDGE  
2018 CP -39-0469

RECEIVED

NOV 28 2018

RECEIVED  
SC COURT OF APPEALS

NOV 26 2018

SC Court of Appeals

ERIC WAYNE WATKINS, #317253.....Appellant

v.

STATE OF SOUTH CAROLINA .....Appellant

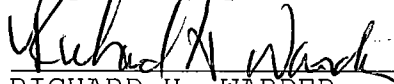
---

NOTICE OF INTENT TO APPEAL

---

ERIC WAYNE WATKINS, #317253, appeals the Order signed by,  
the Honorable Alex Kinlaw, Jr. on November 5, 2018.

Respectfully Submitted



RICHARD H. WARDER  
Attorney at Law  
P.O. Box 26133  
Greenville, SC 29601  
(864) 271-9955

November 20, 2018

Other counsel of record:  
DESHAWN MITCHELL  
Assistant Attorney General  
Office of the Attorney General  
P.O. Box 115449  
Columbia, South Carolina 29211

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL FROM PICKENS COUNTY  
COURT OF GENERAL SESSIONS

HONORABLE ALEX KINLAW, JR.

2018-CP-39-0469

RECEIVED

NOV 28 2018

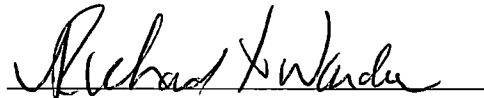
S.C. SUPREME COURT

Eric Wayne Watkins, #317253.....Applicant

V


State of South Carolina .....Respondent

I certify that I have served the Notice of Intent to Appeal on DeShawn Mitchell, Assistant Attorney General, by depositing a copy of it in the United States Mail, postage prepaid on November 20, 2018, addressed to him at Office of Attorney General, P.O. Box 115449, Columbia, South Carolina 29211 and to the Clerk of Court, Pickens County Courthouse, Pickens County Courthouse, Pickens, South Carolina 29671.



RICHARD H. WARDER  
POST OFFICE BOX 26133  
GREENVILLE, S.C. 29616  
ATTORNEY FOR APPELLANT

SWORN to before me this  
20<sup>th</sup> day of November, 2018



NOTARY PUBLIC FOR SOUTH CAROLINA  
MY COMMISSION EXPIRES: 9-25-23

RECEIVED

NOV 26 2018

SC Court of Appeals

**Richard Warder**

Attorney At Law

November 19, 2018

South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, South Carolina 29211

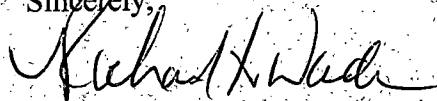
Re: Eric Wayne Watkins vs. State

Dear Court:

Enclosed please find for filing a Notice of Intent to Appeal and Certificate of Mailing in the above captioned case.

Thank you for your cooperation in this matter.

Sincerely,



Richard H. Warder

RHW/ts

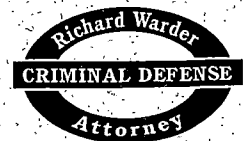
Enclosures

cc: DeShawn Mitchell, Assistant Attorney General  
Pickens County Clerk of Court (courtesy copy)

**RECEIVED**  
NOV 20 2018  
SC Court of Appeals

**RECEIVED**  
NOV 28 2018  
S.C. SUPREME COURT

15 Primrose Street  
Post Office Box 26133  
Greenville, SC 29616  
271-9955 Office  
232-8045 Fax



STATE OF SOUTH CAROLINA )  
COUNTY OF PICKENS )

Eric Wayne Watkins, #317253 )  
Applicant, )

v. )

State of South Carolina, )  
Respondent. )

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

) 2018-CP-39-0469 )

) ORDER OF DISMISSAL )

RECEIVED

NOV 28 2018

2018 NOV 12 P 2:56  
C. SUPREME COURT

CLERK OF COURT  
GREENVILLE COUNTY

This matter comes before the Court by way of an application for post-conviction relief filed on April 18, 2018 by Eric Wayne Watkins (Applicant). Respondent made its Return on September 10, 2018. An evidentiary hearing into the matter was convened on October 25, 2018, at the Greenville County Courthouse in Greenville, South Carolina. Applicant was present and represented by Richard H. Warder, Esquire. Respondent was represented by DeShawn H. Mitchell, Esquire of the South Carolina Attorney General's Office.

At the hearing, Applicant testified on his own behalf. Applicant's Plea Counsel H. Chase Harbin, Esquire also testified. This Court had before it a copy of the records of the Pickens County Clerk of Court regarding the Applicant's convictions, the transcript from Applicant's guilty plea, the PCR application, Respondent's Return and Applicant's records from the Department of Corrections. After reviewing the record and everything presented, this Court finds Applicant has failed to establish any constitutional deprivations entitling him to post-conviction relief and denies this application.

*[Handwritten signature]*  
Page 4 of 12

RECEIVED

NOV 26 2018

SC Court of Appeals

### PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Pickens County Clerk of Court. In June 2015, the Pickens County Grand Jury indicted Applicant for first degree burglary (2015-GS-39-0890), and petit larceny (2015-GS-39-0891).

Applicant was represented by Mr. Chase Harbin, Esquire. This case was prosecuted by Assistant Solicitor Graham Buckner, Esquire of the Thirteenth Circuit Solicitor's Office. On May 24, 2017, Applicant appeared in the Pickens County Court of General Sessions before the Honorable Robin Stillwell where he pled guilty as indicted. Judge Stillwell accepted Applicant's guilty plea and sentenced him to fifteen years for first degree burglary and thirty days for the petit larceny charge, both to run concurrently with each other. Applicant did not appeal his sentences or convictions.

### FACTUAL HISTORY

Applicant's charges arose from an incident occurring on August 4, 2013. On this date, Applicant assisted co-defendant, Timothy Mark King with entering a dwelling without the occupant's permission, in Easley, South Carolina. Applicant drove co-defendant King and another co-defendant Margaret Johnson to the victim's residence where he instructed his co-defendant on how to obtain entry. Applicant had intimate knowledge of the residence as he had previously done work on victim's house. After dropping off his co-defendants, Applicant gave them instructions that they would wait for Applicant near-by. Upon Applicant's co-defendant's burglarizing the residence, Applicant armed himself with a .22 caliber rifle belonging to the victim. The petit larceny charge occurred at the same residence on the same day whereby Applicant stole a 12 gauge shotgun along with the .22 caliber rifle.

## ALLEGATIONS

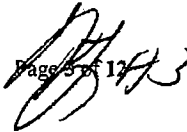
In his application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "Attorney Failed to investigate and did not talk to co-defendants"
2. "Witnessed he over exaggerated the risk that the judge would give a sentence over fifteen (15) years and didn't explain that he could also put mitigation evidence that would be considered by the trial judge if convicted after trial".
3. "The attorney made him feel that it was sure he would get a large sentence after trial, he never prepared for trial".

## SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTARY HEARING

### Plea Counsel's Testimony

Plea Counsel testified he represented Applicant on his charges from Pickens County. He testified Alex Kornfeld, Esquire represented Applicant on charges from Greenville County prior to Plea Counsel representing Applicant on the Pickens County charges. Plea Counsel testified he believed Mr. Kornfeld had secured a plea offer for Applicant for seven years for a burglary 2<sup>nd</sup> degree charge that would have taken care of his Pickens and Greenville County charges. He testified ultimately Applicant did not take this offer. Plea Counsel testified he started to represent Applicant in April of 2017 for his Pickens County charge. He testified once he started to represent Applicant there was still a plea offer of seven years from the State for his Pickens County charge. Plea Counsel testified the plea offer was going to expire in late April and that he conveyed the offer to Applicant who decided not to accept it. He testified Applicant had other co-defendants but he could not recall how much time they received for the disposition of their case. Plea Counsel testified he reviewed Applicant's file with him and that he investigated possible defenses Applicant could have raised at trial. He testified because of the facts of the case, he explained to Applicant the concept of "the hand of one is the hand of all" given that

  
Page 3 of 17

Applicant had told him he did not enter the victim's home during the burglary. Plea Counsel testified he was also concerned about other corroborating evidence in Applicant case as he recalled someone from another house in the neighborhood being able to place Applicant and his co-defendants in the area. He testified Applicant was also caught with one of his co-defendants pawning the items from the burglarized home. Plea Counsel testified all of these things were issues that would have come up had the case gone to trial with potentially the issue of Applicant's criminal history coming up had Applicant chosen to testify.

On cross-examination, Plea Counsel testified Applicant's charges met the elements of burglary 1<sup>st</sup> degree. He testified Applicant did not initially reject the plea deal because he did not want the deal but that he turned it down because since he had been locked up for an extended period of time he wanted to be released from jail for a while before he had to go back jail and also spend time with his fiancée. Plea Counsel testified Applicant was aware of the expiration of the plea offer. He testified it was within the authority of the Solicitor to extend plea offers to defendants based on their discretion when prosecuting cases. Plea Counsel testified once the plea offer had expired he tried to get it back but the State would not offer it again.

#### Applicant's Testimony

Applicant testified Plea Counsel was not his original law for his Pickens County charges. He testified Steven Alexander, Esquire, was his first attorney and that he then hired Alex Kornfeld, Esquire for Greenville County charges. He testified Mr. Kornfeld was able to secure a plea bargain for his charges that included his charge for Pickens County. Applicant testified he did not pled guilty to the Pickens charges at that time. He testified he was then represented by Plea Counsel on his Pickens charges. Applicant testified he talked to Plea Counsel about getting the plea agreement back that Mr. Kornfeld had worked out for him on his Pickens charges. He

testified Plea Counsel did not review his discovery with him in his case. Applicant testified Plea Counsel's paralegal told him he should take his case to trial and that if he was convicted he would only get fifteen years. He testified he was not at the house when the burglary took place and that he caught a ride someplace else during the burglary and that he did not steal anything. Applicant testified his co-defendant only got a seven year sentence which was non-violent and he thought that was unfair. He testified he was offered a seven year plea deal while Plea Counsel represented him but that the offer expired. Applicant testified he wanted to accept the plea offer but he wanted to deal with some personal affairs and the Solicitor would not extend the date for the offer. He testified Plea Counsel never investigated his case or talked to his witnesses who were his co-defendants. Applicant testified he only knew what Plea Counsel wanted him to know and Plea Counsel advised him his only choice was to plead guilty.

On cross-examination, Applicant testified Plea Counsel did not review discovery with him or talk about possible defenses. He testified Plea Counsel relayed the seven year plea offer to him but that he did not accept it in a timely manner. Applicant testified he had a lengthy criminal history and had dealt with plea offers before. He testified none of his co-defendants or witnesses were present to testify at his evidentiary hearing.

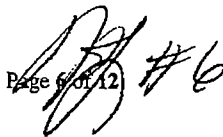
#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

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 had the opportunity to observe the witnesses presented at the hearing, and can weigh their testimony and credibility accordingly. These credibility findings have been applied to the Court's findings and conclusions set forth below. Below are the findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2017).

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel 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. at 443, 334 S.E.2d at 814. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 689. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove that counsel’s performance was deficient. Id. Under this prong, the court measures an attorney’s performance by its “reasonableness under professional norms.” Id. (quoting Strickland v. Washington, 466 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, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel’s alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 (1985).

In PCR cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742,

#6

747 (2000) (citations omitted). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Lockhart, 474 U.S. at 56. Further, "[t]hat a guilty plea must be intelligently made is not a requirement that all advice offered by the defendant's lawyer withstand retrospective examination in a post-conviction hearing." McMann v. Richardson, 397 U.S. 759, 770 (1970). Rather, "whether a plea of guilty is unintelligent . . . depends as an initial matter, not on whether a court would retrospectively consider counsel's advice to be right or wrong, but on whether that advice was within the range of competence demanded of attorneys in criminal cases." Id. at 771.

The record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Dalton v. State, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Boykin v. Alabama, 395 U.S. 238, 242 (1969)). A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between the court and defendant, between the 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)). Further, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant; thus, an applicant's right to contest the validity of such a plea is usually foreclosed. Dalton, at 137-38, 654 S.E.2d at 874 (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Therefore, admissions "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." Id. (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)). "In considering an allegation on PCR that a guilty plea was based on inaccurate

advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing.” *Id.* at 138–39, 654 S.E.2d at 874 (citing *Wolfe v. State*, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997)).

After careful review of the entire record, including the testimony presented at the evidentiary hearings, based on the standard discussed above, this Court finds Applicant has failed to carry his burden in this action regarding any of his allegations of ineffective assistance of counsel. This Court finds as follows on the following grounds presented by Applicant at the evidentiary hearing:

**Ineffective Assistance of Counsel**

*Failure to Investigate/Call Witnesses*

Applicant alleges Trial Counsel was ineffective in failing to investigate his case. To show ineffective assistance in this regard, Applicant must present evidence to show what counsel could have discovered had he more fully investigated. *Jackson v. State*, 329 S.C. 345, 354, 495 S.E.2d 768, 772 (1998) (“Respondent failed to present any evidence of what counsel could have discovered or what other defenses respondent would have requested counsel pursue had counsel more fully prepared for the trial.”). Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result. *Porter v. State*, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006) (citing *Moorehead v. State*, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). Applicant has failed to show what beneficial information could have been discovered had Plea Counsel done more investigation. Even so, Plea Counsel testified credibly that he reviewed all of the discovery and that he investigated possible defenses Applicant could have raised at trial. He testified

because of the facts of the case, he explained to Applicant the concept of “the hand of one is the hand of all” given that Applicant had told him he did not enter the victim’s home during the burglary. Furthermore, Plea Counsel testified he was also concerned about other corroborating evidence in Applicant case as he recalled someone from another house in the neighborhood being able to place Applicant and his co-defendants in the area. He testified Applicant was also caught with one of his co-defendants pawning the items from the burglarized home. Notwithstanding, this court finds Applicant has failed to produce any information that Plea Counsel would have found had he done more investigation. This Court finds Plea Counsel’s investigation was reasonable. Therefore, this Court finds Applicant has failed to prove the first prong of the Strickland test – that Plea Counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present compelling evidence that Plea Counsel committed either errors or omissions in his representation of Applicant. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Plea Counsel’s performance. This Court concludes Applicant has not met his burden of proving Plea Counsel failed to render reasonably effective assistance. The allegation is denied and dismissed with prejudice.

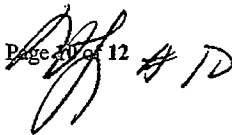
Furthermore, Applicant alleges Plea Counsel was ineffective in failing to call certain witnesses during his trial. He testified Plea Counsel never investigated his case or talk to his witnesses who were his co-defendants. This Court finds Applicant has failed to show that Plea Counsel was ineffective for either not interviewing or calling witnesses. First, this Court notes any claims surrounding the failure to present testimony from a witness assumes the testimony from the witness would have been favorable to the defense and therefore affected the outcome of the trial. However, this contention is based on pure conjecture and speculation. Prejudice from

trial counsel's failure to interview or call witnesses cannot be shown where the witnesses do not testify at post-conviction relief. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Bassette v. Thompson, 915 F.2d 932 (4<sup>th</sup> Cir. 1990), cert. denied, 499 U.S. 982 (1991). Applicant's mere speculation as to what a witnesses' testimony would have been cannot, by itself, satisfy his burden of showing prejudice. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993); Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995). An Applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998). Because Applicant failed to produce the testimony of any witness, sufficient prejudice cannot be demonstrated by Applicant. Therefore, Applicant has failed to prove Trial Counsel was ineffective. The allegation is denied and dismissed with prejudice.

*Involuntary Guilty Plea*

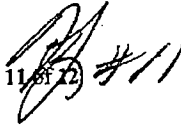
This Court construes Applicant's testimony presented at the evidentiary hearing that his guilty plea was induced by ineffective assistance of counsel and as such was involuntary. This Court finds Applicant has failed to meet his burden of proof. This Court finds Plea Counsel provided effective assistance in this case and Applicant's decision to plead guilty was made freely and voluntarily.

This Court further finds the record reflects Applicant's plea was entered freely, voluntarily, knowingly, and intelligently. The plea judge explained the charges to Applicant, including the maximum penalties for each. The plea judge also went through Applicant's constitutional rights and questioned Applicant as to whether he understood those rights and wished to give them up to plead guilty. Applicant agreed that he did. Applicant admitted he was

Handwritten signature and initials, possibly "DJ #10", written in black ink.

guilty of these offenses told the plea judge that he was satisfied with his attorney. Applicant further told the plea judge no one had threatened him or made him any promises to get him to plead guilty, and he was doing so of his own accord. Additionally, Applicant told the plea judge he did not have any physical or mental issues which would prevent him from understanding the proceeding, and Applicant indicated he understood all of the plea judge's questions and had answered them honestly. This Court therefore finds that Applicant understood the terms of the plea and the possible sentences he could receive.

Therefore, this Court finds Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present compelling evidence that Counsel committed either errors or omissions in his representation of Applicant. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. This Court also finds that the record fully supports the knowing and voluntary nature of Applicant's guilty plea. See Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (holding defendant's knowing and voluntary waiver of statutory or constitutional rights in a guilty plea "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."). In addition, Applicant has presented no evidence or valid reasons why he should be allowed to depart from the truth of his statements made at the plea. See Dalton, 376 S.C. at 137, 654 S.E.2d at 874 ("[Admissions] made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements."). This Court concludes Applicant has not met his burden of proving Counsel failed to render reasonably effective assistance. The allegation is denied and dismissed.



**CONCLUSION**

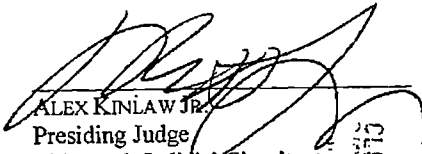
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.


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 (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 THAT:**

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 7 day of November, 2018.

  
ALEX KINLAW JR.  
Presiding Judge  
Thirteenth Judicial Circuit

  
South Carolina

CLERK OF COURT  
SOUTH CAROLINA  
13th JUDICIAL CIRCUIT

2018 NOV 12 P 2:56



UNITED STATES POSTAGE



\$ 004.50<sup>0</sup>

02 1P

0004715743 NOV 20 2018

MAILED FROM ZIP CODE 29601

RECEIVED

NOV 28 2018

S.C. SUPREME COURT

South Carolina Court of Appeals

P.O. Box 11629

Columbia, South Carolina 29211

RECEIVED

NOV 28 2018

SC Court of Appeals