



LAW OFFICE OF
JEREMY A. THOMPSON
LLC

November 30, 2018

RECEIVED

DEC 03 2018

S.C. SUPREME COURT

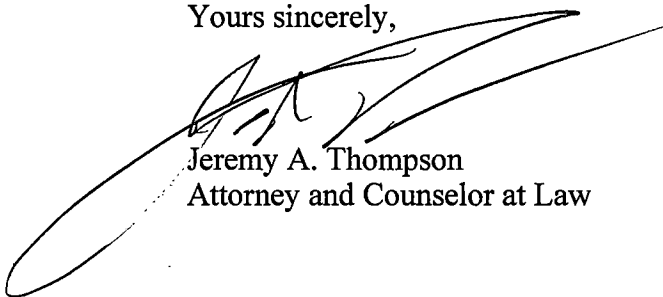
The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
P.O. Box 11330
Columbia, SC 29211-1330

RE: Kyler Brakefield, #370366 v. State of South Carolina; 2017-CP-46-2196

Dear Mr. Shearouse:

Enclosed please find the original and two copies of my Notice of Appeal in the above-captioned action. I would appreciate your filing the original, clocking the copies, and returning the two clocked copies to me in the envelope provided. I would note that Judge Henderson issued a written Order of Dismissal in this case which was filed with the York County Clerk of Court's Office on October 30, 2018. A copy of that Order is also enclosed. I will be continuing my representation of Mr. Brakefield on appeal to this Court. A copy of my letter to the court reporter requesting a copy of the PCR hearing transcript is also enclosed. With my thanks for your assistance in this matter and my best regards, I am,

Yours sincerely,



Jeremy A. Thompson
Attorney and Counselor at Law

JAT/

Enclosures

cc: Kelly Oppenheimer, Assistant Attorney General (w/ notice of appeal)
Kyler Brakefield, #370366 (w/ enclosures)
Bobby Brakefield (w/ enclosures)

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM YORK COUNTY
Court of Common Pleas

Roger E. Henderson, Presiding Judge

2017-CP-46-2196

RECEIVED

DEC 03 2018

S.C. SUPREME COURT

KYLER BRAKEFIELD, #370366,

Petitioner,

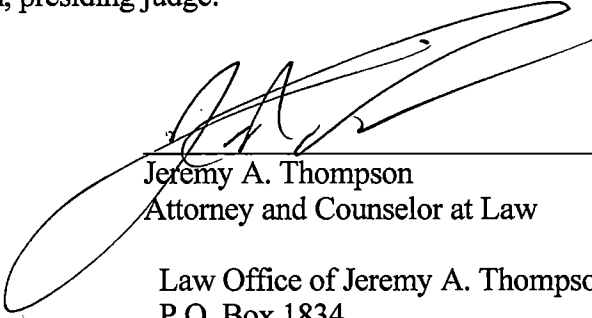
v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Kyler Brakefield, #370366, appeals the Order of Dismissal denying his Application for Post-Conviction Relief filed October 30, 2018, and received by counsel on November 1, 2018, issued by the Honorable Roger E. Henderson, presiding judge.



Jeremy A. Thompson
Attorney and Counselor at Law

Law Office of Jeremy A. Thompson, LLC
P.O. Box 1834
Irmo, SC 29063
803-779-2555 Phone
803-753-9732 Fax
jeremyatlaw@yahoo.com E-mail

ATTORNEY FOR PETITIONER

This 30th day of November, 2018.

Other Counsel of Record:
Kelly Oppenheimer, Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211
Attorney for Respondent
(803) 734-3737

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM YORK COUNTY
Court of Common Pleas

Roger E. Henderson, Presiding Judge

2017-CP-46-2196

RECEIVED

DEC 03 2018

S.C. SUPREME COURT

KYLER BRAKEFIELD, #370366,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

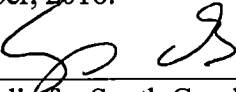
Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the Petitioner's Notice of Appeal in the above-entitled case has been served upon opposing counsel, Kelly Oppenheimer, Assistant Attorney General, P.O. Box 11549, Columbia, SC 29211, by mailing in an envelope properly addressed with postage prepaid on this 30th day of November, 2018.


Jeremy A. Thompson
Attorney and Counselor at Law

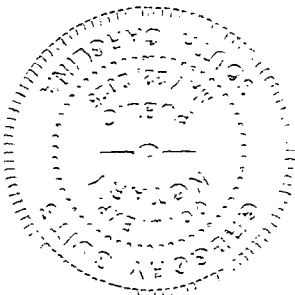
SWORN TO BEFORE me this 30th day
of November, 2018.



Notary Public for South Carolina

(L.S.)

My Commission Expires: 05/22/2025



STATE OF SOUTH CAROLINA
 COUNTY OF YORK
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2017CP4602196

Kyler Brakefield		South Carolina State Of	
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PLAINTIFF(S)	DEFENDANT(S)
Submitted by: The Court	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> 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 OF DISMISSAL

This order ends does not end the case.

Additional Information for the Clerk: _____

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.

S/Roger E Henderson

Circuit Court Judge

2754

Judge Code

10/19/2018

Date

For Clerk of Court Office Use Only

This judgment was entered on **October 30, 2018**, and a copy mailed first class or placed in the appropriate attorney's box on **October 30, 2018**, to attorneys of record or to parties (when appearing pro se) as follows:

Jeremy Adam Thompson PO Box 1834 Irmo, SC 29063

Janell Gregory P.O.Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

Court Reporter

David Hamilton - 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-Filers or who are appearing pro se. See Rule 77(d), SCRCF.

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 YORK)
)
 KYLER BRAKEFIELD, #370366)
 Plaintiff,)
 vs.)
)
 STATE OF SOUTH CAROLINA)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 SIXTEENTH JUDICIAL CIRCUIT
 CASE NO.: 2017-CP-46-02196

**MOTION AND ORDER INFORMATION
 FORM AND COVERSHEET**

FILED-RECEIVED
 2018 OCT 30 AM 9:20
 DAVID S. HUNTER
 CLERK OF COURT
 YORK COUNTY, SOUTH CAROLINA

Plaintiff's Attorney: Jeremy A. Thompson, Bar No. _____ Address: Post Office Box 1834 Irmo, South Carolina 29063 Phone: _____ Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: Kelly Oppenheimer, Bar No. _____ Address: Post Office Box 11549 Columbia, South Carolina 29211 Phone: _____ Fax _____ E-mail: _____ Other: _____
--	--


- MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
 PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: _____
 Estimated Time Needed: _____ Court Reporter Needed: YES / NO

SECTION II: Motion/Order Type

- Written motion attached
 Form Motion/Order
 I hereby move for relief or action by the court as set forth in the attached proposed order.



 Signature of Attorney for Plaintiff / Defendant

October 17, 2018
 Date submitted

SECTION III: Motion Fee

- PAID - AMOUNT: \$ _____
 EXEMPT: (check reason)
- Rule to Show Cause in Child or Spousal Support
 - Domestic Abuse or Abuse and Neglect
 - Indigent Status State Agency v. Indigent Party
 - Sexually Violent Predator Act Post-Conviction Relief
 - Motion for Stay in Bankruptcy
 - Motion for Publication Motion for Execution (Rule 69, SCRPC)
 - Proposed order submitted at request of the court; or,
 reduced to writing from motion made in open court per judge's instructions
- Name of Court Reporter: _____
 Other: _____

JUDGE'S SECTION

- | | |
|--|---------------------------------|
| <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order.
<input type="checkbox"/> Other: _____ | JUDGE CODE _____
Date: _____ |
|--|---------------------------------|

CLERK'S VERIFICATION

- Collected by: _____ Date Filed: _____
 MOTION FEE COLLECTED: \$ _____
 CONTESTED - AMOUNT DUE: \$ _____

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)
))
Kyler Brakefield, #370366,)
))
Applicant,)
))
v.)
))
State of South Carolina,)
))
Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE SIXTEENTH JUDICIAL CIRCUIT

Case No. 2017-CP-46-02196

ORDER OF DISMISSAL

FILED-RECEIVED
2018 OCT 30 AM 9:20
CLERK OF COURT
SOUTH CAROLINA
YORK COUNTY, SC

This matter comes before the Court by way of an application for post-conviction relief filed July 27, 2017, by Kyler Brakefield (Applicant). The State (Respondent) made its return on October 17, 2017, requesting an evidentiary hearing be held. An evidentiary hearing into the matter was convened on April 16, 2018, at the Moss Justice Center before the Honorable Roger E. Henderson. Applicant was present at the hearing and represented by Jeremy A. Thompson, Esquire. Assistant Attorney General Justin J. Hunter of the South Carolina Attorney General's Office represented Respondent.

Following a thorough review of the record in its entirety, and the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to establish any constitutional violations and denies this application with prejudice.

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 York County Clerk of Court. During its August 2016 term, the York County Grand Jury indicted Applicant for armed robbery (2016-GS-46-02724), possession of a weapon during the commission of a violent crime (2016-GS-46-02725), first-degree burglary (2016-GS-46-02727), and malicious injury to a

courthouse or jail (2016-GS-46-02729). Thereafter, during its November 2016 term, the Grand Jury indicted Applicant for an additional count of armed robbery (2016-GS-46-04065), one count of criminal conspiracy (2016-GS-46-04066), and an additional count of first-degree burglary (2016-GS-46-04067). Assistant Public Defender Melissa A. Inzerillo, of the Sixteenth Circuit Public Defender's Office, represented Applicant on these charges. Assistant Solicitors Jenny E. Desch and Daniel K. Porter, both of the Sixteenth Circuit Solicitor's Office, prosecuted the case. On December 15, 2016, Applicant appeared before the Honorable John C. Hayes, III, and pled guilty to two counts of the lesser-included offense of attempted armed robbery and two counts of the lesser-included offense of second-degree burglary, violent. Applicant also pled guilty as indicted to all other charges. Judge Hayes accepted the pleas and deferred sentencing. On January 23, 2017, Applicant again appeared before Judge Hayes for sentencing. Pursuant to a recommendation by the State, Judge Hayes sentenced Applicant to a term of imprisonment of eighteen years for each count of attempted armed robbery, five years for the weapons charge, fifteen years for each count of second-degree burglary, three years for malicious injury to a courthouse or jail, and five years for criminal conspiracy. The sentences were to be served concurrently. Applicant did not appeal his pleas or sentences.

STATEMENT OF FACTS

On June 9, 2015, three males, Applicant and two co-defendants, armed with handguns, entered the home of John Henry Goode. Tr. 13. At the time, Mr. Goode was asleep in his bed. Tr. 13. The men took Mr. Goode from his bed, took him to the den, and forced him to open the safe and take out the contents. Tr. 13. Applicant and his co-defendants took various items from the safe, including guns. Tr. 13. Later, a fingerprint matching one of Applicant's co-defendants, Wesley Henning, was found on the safe. Tr. 13.

Subsequently, on July 21, 2015, officer from the York County Sheriff's Office responded to a home in Edgemoor in reference to a burglary. Tr. 13. When they arrived at the scene, law enforcement met with the homeowner, Allen Wilson, who advised that two unidentified males had entered his home. Tr. 13. The men entered the home and held Mr. Wilson at gunpoint, in a similar manner to the armed robbery at Mr. Goode's residence. Tr. 13. Mr. Wilson further stated he awoke to one of the males sitting on top of him, holding a gun in his face and demanding money. Tr. 13. The men stole the following items from Mr. Wilson's home: a good watch, a gold ring, a diamond ring, and a wallet containing credit cards and personal identification. Tr. 13-14.

Later, on February 17, 2016, and April 29, 2016, Applicant's co-defendant, Henning, was interviewed. Tr. 14. He gave a statement to law enforcement, implicating Applicant in these robberies. Tr. 13, 14. Henning also indicated Applicant's mother had told both him and Applicant Mr. Wilson had money to be stolen. Tr. 14. Law enforcement also interviewed Applicant's girlfriend and Henning's girlfriend. Tr. 14. Both stated Applicant and Henning had gone to Mr. Wilson's house and came back between thirty and forty-five minutes later. Tr. 14. They also indicated when they returned Applicant and Henning were speaking in an accent, consistent with statements Mr. Wilson made to law enforcement. Tr. 14.

CURRENT APPLICATION

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

1. Ineffective Assistance of Counsel; [and]
 - a. Defense counsel failed to conduct an adequate investigation into the Applicant's case.
 - b. Defense counsel failed to adequately advise the Applicant of all possible defenses and legal and factual claims that could be



made at trial, and failed to adequately advise the Applicant of all available plea offers.

2. Involuntary Guilty Plea.

- a. The Applicant's pleas of guilty were not knowingly, voluntarily, or intelligently entered.

At the evidentiary hearing, Applicant proceeded forward on allegations plea counsel was ineffective for failing to investigate and for having a conflict of interest, as well as an allegation his guilty pleas was involuntary.

TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

At the evidentiary hearing, Applicant testified on his own behalf. Applicant also presented the testimony of Assistant Public Defender Inzerillo (Counsel). This Court also had before it a copy of Applicant's plea transcript, the records of the York County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, and the records from this current post-conviction relief application.

During the evidentiary hearing, Applicant first presented the testimony of Counsel. Counsel testified she is employed with the York County Public Defender's Office and has been working there for approximately fifteen years. She further testified she was employed at the Public Defender's Office when she represented Applicant.

She testified she is familiar with her office's policy regarding representation of co-defendants. She explained her office follows former-Chief Justice Toal's order, instructing that attorneys representing co-defendants must be walled off from each other. She further explained in her office, attorneys representing co-defendants will be on opposite sides of the office. Counsel further testified in this case, there was not the situation of one co-defendant testifying against another, as most cases entered into a plea. She testified if there is a conflict, she will explain the conflict to her boss, and they will conflict out if necessary based on the information



received. She explained if she felt as though she needed to explain this situation to her boss, she would have. She further explained she is unaware of a specific point in which a potential conflict needs to be addressed, but rather it is situational.

She also testified Applicant was arrested when Henning's fingerprint was found in one of the victim's homes. She further testified Henning cooperated with the State, and Applicant was, therefore, arrested. Counsel testified had Applicant proceeded to trial, she would have been fully prepared to cross-examine Henning, which she discussed with Applicant. She explained her strategy on cross-examination of Henning would have been to bring out the deal he received from the State and what he expect to receive. She further explained any cross-examination would have involved Henning's delay in cooperation and his discussions with the State. Counsel also testified at the time of Henning's interview, Henning's attorney was present; and at that point, no one else in the Public Defender's Office was involved in this case. She explained she became involved after Applicant had been arrested.

She testified she had no specific notes of advising Applicant Henning was also represented by the Public Defender's Office. She further testified, however, it did come up; and she and Applicant discussed it. She testified Applicant did not sign an informed consent waiver. Counsel also testified she did not see the issue with Henning as a conflict, as she and her colleague were walled off from each other during their representations of Applicant and Henning. She explained had it become an issue, she would have discussed it with Applicant. She further explained Henning ultimately retained private counsel. Counsel also testified the fact Henning was initially represented by one of her colleagues did not affect her representation, as she acted as if Henning were represented by outside counsel. She explained this occurs frequently.

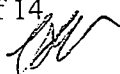
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Counsel further testified she reviewed the discovery with Applicant. She could not recall whether or not she gave Applicant a physical copy of his discovery. She testified they also reviewed Henning's statements to law enforcement. She also testified Applicant gave her witnesses to investigate, whom she pursued. She explained, however, these witnesses also placed Applicant at the crime scenes.

She testified Applicant pled guilty to a charge of attempted armed robbery in Cherokee County. She further testified at that point, their strategy with respect to the York County case shifted to a plea, due to the strike Applicant now had on his record. She explained she was worried Applicant would be served with notice the State would seek a sentence of life without the possibility of parole (LWOP). She testified she discussed her concern with Applicant, specifically informing him she did not want to expose Applicant to an LWOP sentence.

Counsel also testified she was disappointed with the sentence Applicant received. She explained the facts were bad, as horrible things happened to the victims. She further explained, however, due to Applicant's age, she believes the sentence was extensive. Counsel testified Applicant will spend half of his life in prison. She further testified she presented during mitigation that Applicant's father was steady, whereas Applicant's mother introduced Applicant to drugs and crime. She explained during mitigation, she told the court Applicant would return to living with his father, and his father had mentored Applicant and would ensure Applicant stayed out of trouble. Counsel also testified Applicant's co-defendants were not punished as severely as Applicant.

Following Counsel's testimony, Applicant testified. Applicant testified he was represented by Counsel, but he did not know who represented Henning. He testified Counsel never reviewed Henning's counsel with him. He explained he raised this issue to Counsel. He



further explained Counsel's colleague represented Henning before Applicant was arrested. Applicant elaborated he was not treated with the same amount of respect, and Counsel threw him under the bus. He further elaborated he was concerned with Counsel, as Counsel was not "giving it her all." Applicant further testified Counsel made "it" sound good, but she was not going to the ends necessary to represent Applicant. He explained Counsel gave a half-effort. Applicant also testified Henning was the key to the State's prosecution of Applicant. He explained Henning would testify against Applicant at trial, and he was not comfortable with Counsel's colleague representing Henning. He further explained had he known Counsel's colleague represented Henning, he would have filed a motion to relieve Counsel.

Applicant also testified he never made bond, as he was incarcerated on another charge as well. He testified he and Counsel met approximately seven times, but they were short meetings. He further testified Counsel did not give him a copy of his discovery, and he and Counsel did not review the discovery. He elaborated he and Counsel discussed things that were happening but did not discuss his case. He further elaborated though they discussed proceeding to trial, he pled guilty because he had no other options. Applicant explained he did not have a strong chance at trial with Counsel. He also testified he recalled the plea and recalled informing the plea court he was satisfied with Counsel. He testified he also informed the plea court he did not want to proceed to trial, but rather wanted to plead guilty. Applicant further testified at the plea, he apologized and stated he deserved to be punished.

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).

Applicant's allegations are two-fold: (1) ineffective assistance of counsel for failing to investigate and for having a conflict of interest; and (2) involuntary guilty plea. On these claims, this Court finds Applicant has wholly failed to meet his burden.

Ineffective Assistance of Counsel

In a post-conviction relief action, an 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). When an applicant alleges ineffective assistance of counsel as a ground for relief, the applicant must prove "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.

The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Courts presume 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. 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 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*,

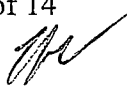


300 S.C. at 117-18, 386 S.E.2d at 625. In order to satisfy the prejudice prong of this test following a guilty plea, the applicant “must show that there is a reasonable probability that, but for counsel’s errors, he would not have pleaded guilty and would have insisted on going to trial.” *Hill v. Lockhart*, 474 U.S. 52, 59 (1985).

After careful review based on the standard discussed above, this Court finds Applicant has failed to carry his burden in this action. Below are this Court’s findings in regards to each of Applicant’s allegations of ineffective assistance of counsel.

Counsel’s alleged failure to investigate

Applicant contends Counsel was ineffective for failing to investigate. “Counsel’s concern is the faithful representation of the interest of his client and such representation frequently involves highly practical considerations as well as specialized knowledge of the law.” *Tollett v. Henderson*, 411 U.S. 258, 267-68 (1973). “Although counsel should conduct a reasonable investigation into potential defenses, *Strickland* does not impose a constitutional requirement that counsel uncover every scrap of evidence that could conceivably help their client.” *Tucker*, 350 F.3d at 442 (quoting *Green v. French*, 143 F.3d 865, 892 (4th Cir. 1998)). “In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel’s judgments.” *Strickland*, 466 U.S. at 691; *Wiggins v. Smith*, 539 U.S. 510, 521-22 (2003). Moreover, “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*, 368 S.C. at 385-86, 629 S.E.2d at 357, *abrogated on other grounds by Smalls*, 422 S.C. 174, 810 S.E.2d 836 (citing *Moorehead v. State*, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)).



Here, Counsel testified she pursued the witnesses Applicant asked her to investigate. She explained, however, these witnesses provided more evidence against Applicant, as each of the witnesses placed Applicant at the crime scenes. Based on the foregoing, this Court finds counsel's investigation was reasonable under the circumstances. This Court further finds there was no reasonable basis for Counsel to believe any additional investigation would have been beneficial.

This Court further finds Applicant has failed to establish any resulting prejudice from the alleged deficiency. Applicant wholly failed to testify as to what additional investigation in which he wanted Counsel to partake or what benefit could have been realized from any additional investigation. Applicant's bare assertions, without more, do not give rise to the level of proof required for Applicant to meet his burden. *See Porter*, 368 S.C. at 385-86, 629 S.E.2d at 357 ("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."). Accordingly, this allegation must be denied and dismissed with prejudice.

Counsel's alleged conflict of interest

Applicant further alleges Counsel was ineffective for having a conflict of interest between Applicant and Wesley Henning. "An actual conflict of interest occurs where an attorney owes a duty to a party whose interests are adverse to the defendant's." *Staggs v. State*, 372 S.C. 549, 551, 643 S.E.2d 690, 692 (2007). Furthermore, a conflict of interest occurs when "a defense attorney places himself in a situation inherently conducive to divided loyalties." *Lomax v. State*, 379 S.C. 93, 101, 665 S.E.2d 164, 168 (2008). "Until a defendant shows that his counsel actively represented conflicting interests, he has not established the constitutional predicate for a claim of ineffective assistance of counsel arising from multiple representation."



Langford v. State, 310 S.C. 357, 359, 426 S.E.2d 793, 795 (1993). “The mere possibility defense counsel may have a conflict of interest is insufficient to impugn a criminal conviction.” *State v. Gregory*, 364 S.C. 150, 152-53, 612 S.E.2d 449, 450 (2005).

Here, Counsel testified Henning was initially represented by one of her colleagues in the Public Defender’s Office, though he eventually retained private counsel. She further testified her office abides by the strict adherences in former-Chief Justice Toal’s order, in which counsel are instructed to be walled off when representing adverse parties. Counsel explained she and Henning’s counsel were on opposite sides of the office, and the fact Henning was represented by one of her colleagues did not affect her representation of Applicant. This Court finds Counsel’s testimony very credible. This Court further finds Counsel did not have a conflict of interest and, therefore, Applicant has failed to establish any deficiency on the part of Counsel.

Similarly, this Court finds Applicant has wholly failed to establish any resulting prejudice from this alleged deficiency. Counsel testified had the fact she and one of her colleagues represented Applicant and Henning become a problem, she would have addressed the conflict with her boss and Applicant. Additionally, Henning ultimately retained private counsel. Accordingly, this allegation must be denied and dismissed with prejudice.

Involuntary Guilty Plea

Applicant further contends his guilty plea was not voluntarily made. This Court finds Applicant’s guilty plea was freely and voluntarily made. In evaluating issues concerning guilty pleas, this Court will consider the entire record, including the transcript of the guilty pleas and the evidence presented at the post-conviction relief hearing. *Roddy v. State*, 339 S.C. 29, 528 S.E.2d 418 (2000). 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



court and defendant, between court and defendant's counsel, or both." *Id.* at 34, 528 S.E.2d at 421 (citing *State v. Ray*, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). Voluntariness of a guilty plea is not merely determined by an examination of a specific inquiry by the plea court alone but rather is determined by the record of both the guilty plea proceeding and the post-conviction relief hearing. *Id.* However, the overarching concept remains "a guilty plea should only be accepted where the record evidences 'an affirmative showing that it was intelligent and voluntary.'" *Boykin v. Alabama*, 395 U.S. 238, 242 (1969) (internal quotation omitted); *Parke v. Raley*, 506 U.S. 20, 29 (1992). This is because "waivers of constitutional rights not only must be voluntary but must be knowing, intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences." *Brady v. United States*, 397 U.S. 742, 748 (1970).

Key to the analysis in reviewing a plea for voluntariness is looking to "whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." *Raley*, 506 U.S. at 29 (quoting *Alford*, 400 U.S. at 31). In order to find a guilty plea was knowingly and voluntarily entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. *Boykin*, 395 U.S. at 244. 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, but not invariably, foreclosed." *Dalton v. State*, 376 S.C. 130, 137-38, 654 S.E.2d 870, 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).



This Court finds 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 Applicant's plea was entered into freely and voluntarily. The record before this Court reflects that the plea court thoroughly reviewed all of Applicant's constitutional rights with him, including his right to a jury trial. Tr. 11-12. Applicant indicated he understood his constitutional rights and, understanding those rights, still wanted to enter a guilty plea. Tr. 11-12. Applicant further indicated no one had promised him anything or threatened him in order to get him to plead guilty. Tr. 10-11.

Additionally, the record before this Court indicates the plea court thoroughly reviewed each charge with Applicant, including the potential sentences and classifications. *See* Tr. 7-10. Moreover, during the sentencing hearing, Counsel indicated she had reviewed all discovery with Applicant. Tr. 14. Counsel testified similarly at the evidentiary hearing.

Therefore, this Court finds Applicant had a full understanding of the consequences of his plea and the charges against him, and the plea court correctly found Applicant's plea was freely, voluntarily, and intelligently made. Consequently, this allegation must be denied and dismissed with prejudice.



CONCLUSION

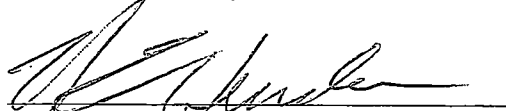
Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes Applicant must file and serve a notice of appeal within thirty days from 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 if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That this application for post-conviction relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to and remain in the custody of the State.

AND IT IS SO ORDERED this 19th day of October, 2018.


ROGER E. HENDERSON
Presiding Judge
Sixteenth Judicial Circuit

Chesterfield, South Carolina

of Jeremy A. Thompson
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The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
P.O. Box 11330
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