

# Lowcountry Law Office

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December 6, 2018

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

S.C. SUPREME COURT

DEC 13 2018

RECEIVED

RE: Felicia Cooper v. State of South Carolina, Case No.: 2016-CP-08-2207

Dear Mr. Shearhouse:

Enclosed for filing is the Notice of Appeal (original and clocked copy) in the above Post Conviction Relief (PCR) case. Also enclosed are the following:

- (1) Proof of service of the Notice of Appeal on the respondent;
- (2) The Order of Dismissal &
- (3) A Request for Representation on Appeal.

The Applicant-Appellant was represented by me as an indigent pursuant to my contract with the South Carolina Commission on Indigent Defense (SCCID) to handle PCR cases. By copy of this letter, I am forwarding a duplicate set of documents to the SCCID.

The Request for Representation on Appeal and the Affidavit in Support thereof are signed by me as attorney for Applicant-Appellant. If you need anything further, do not hesitate to contact me. Thank you for your time and attention to this matter.

Sincerely,

Rodney D. Davis  
South Carolina Bar #: 12396  
101 Meeting Street, 5<sup>th</sup> Floor  
Charleston, SC 29401  
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CC: Kelly Oppenheimer  
Assistant Attorney General

Kimberly McCall  
Appellate Division, SCCID

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

RECEIVED

DEC 13 2018

APPEAL FROM BERKELEY COUNTY S.C. SUPREME COURT  
Court of Common Pleas

Deadra L. Jefferson, Circuit Court Judge

Case No.: 2016-CP-08-2207

Felicia Cooper,

Appellant,

v.

State of South Carolina,

Respondent.

NOTICE OF APPEAL

Felicia Cooper appeals the denial of her Post Conviction Relief application in this case. The Application for relief was denied, following an evidentiary hearing before the Honorable Deadra L. Jefferson on July 23, 2018.

December 6, 2018



Rodney D. Davis  
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Other Counsel of Record:  
Kelly Oppenheimer, Assistant Attorney General  
Office of the Attorney General, State of South Carolina  
P.O. Box 11549  
Columbia, SC 29211-1549  
Attorney for Respondent

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DEC 13 2018

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM BERKELEY COUNTY  
Court of Common Pleas

Deadra L. Jefferson, Circuit Court Judge

Case No.: 2016-CP-08-2207

Felicia Cooper, Appellant,  
v.  
State of South Carolina, Respondent.

2018 DEC -7 AM 11:33  
FILED  
MARY P. BROWN  
CLERK OF COURT  
BERKELEY COUNTY, S.C.

NOTICE OF APPEAL

Felicia Cooper appeals the denial of her Post Conviction Relief application in this case. The Application for relief was denied, following an evidentiary hearing before the Honorable Deadra L. Jefferson on July 23, 2018.

December 6, 2018



Rodney D. Davis  
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THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM BERKELEY COUNTY  
Court of Common Pleas

Deadra L. Jefferson, Circuit Court Judge

Case No.: 2016-CP-08-2207

Felicia Cooper,

Appellant,

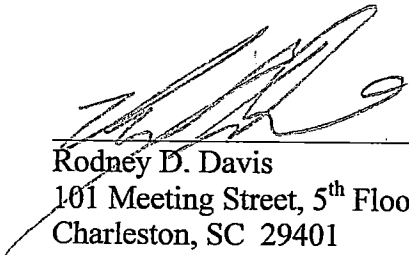
v.

State of South Carolina,

Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the State by mailing a copy of it to the address of record, Kelly Oppenheimer, P.O. Box 11549, Columbia, South Carolina 29211-1549, on 12/7, 2018.

  
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Attorney for Appellant

Other Counsel of Record:  
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Columbia, SC 29211-1549  
Attorney for Respondent

*John*  
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2018 DEC -7 AM 11:33  
MARY P. BROWN  
CLERK OF COURT  
BERKELEY COUNTY, S.C.

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S.C. SUPREME COUR

STATE OF SOUTH CAROLINA  
COUNTY OF BERKELEY

Felicia N. Cooper, #366402,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT

Case No. 2016-CP-08-2207

ORDER OF DISMISSAL

BERKELEY COUNTY  
CLERK OF COURT

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Presiding Judge:  
Applicant's Attorney:  
Respondent's Attorney:  
Plea Counsel:  
Date of Hearing:  
Court Reporter:

Honorable Deadra L. Jefferson  
Rodney Davis, Esq.  
Kelly Oppenheimer, Esq.  
William Runyon, Esq.  
July 23, 2018  
Joyce C. Rueger

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed September 19, 2016 by Felicia N. Cooper (Applicant). The Respondent made its Return on or about June 21, 2017. Thereafter, on July 13, 2018, Applicant, through her counsel, filed an amendment to the application for post-conviction relief. An evidentiary hearing into the matter was convened on July 23, 2018 at the Charleston County Courthouse.<sup>1</sup> The Applicant was present at the hearing and was represented by Rodney D. Davis, Esquire. Kelly Oppenheimer, Esquire of the South Carolina Attorney General's Office was present on behalf of the State of South Carolina. Applicant's plea counsel, William L. Runyon, Jr., was also present. Testimony was taken from William Runyon, the Applicant, and the Applicant's father. The Court was also presented with the guilty plea transcript, the records of the Berkeley County Clerk of Court, the

<sup>1</sup> At the onset of the hearing, Applicant waived jurisdiction to have her Berkeley County case disposed of in Charleston County.

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Applicant's records from the South Carolina Department of Corrections, the PCR application, and Respondent's Return. After a review of the record and all evidence presented, this Court finds that Applicant has failed to meet her burden of proof and denies the application with prejudice.

### **FACTS**

The Applicant was engaged in an affair with a married man, and during their relationship, accused him of domestic violence via formal complaint. (Transcript of Plea at 8: 3-6, State v. Felicia Cooper, June 15, 2016). After an investigation into this accusation, law enforcement determined that the Applicant had fabricated the evidence against her lover and the charges against him were dropped. (Id. at 8:6-8). The next evening, the Applicant went to her lover's home where he was watching television with his daughter; his wife was also home. (Id. at 8:17-19). Applicant knocked on the door several times until the wife eventually came to the door. (Id. at 8: 23-24). Upon seeing the wife at the door, Applicant shot at her, and then shot at her lover when he approached her. (Id. at 8:24-9:7). Applicant continued to fire the gun at her lover two more times before dropping the weapon and running away. (Id. at 9:5-10). Law enforcement eventually arrived on the scene and found the Applicant's discarded firearm, which was later discovered to have an obliterated serial number. (Id. at 10: 20-21).

### **PROCEDURAL HISTORY**

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Berkeley County Clerk of Court. The Applicant was indicted at the July 2015 term of the Berkeley County Grand Jury for: (1) three counts of Attempted Murder<sup>2</sup> (2015-GS-08-01159; 2015-GS-08-01160; 2015GS-08-01161); (2) Possession of a

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<sup>2</sup> Attempted Murder is a violent and most serious felony, punishable by up to thirty (30) years in prison. See S.C. CODE ANN. § 16-3-29 (2005). A sentence for Attempted Murder may not be suspended nor probation granted. Id.

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Weapon during the Commission of a Violent Crime<sup>3</sup> (2015-GS-08-01162); and (3) Possession of a Handgun with an Obliterated Serial Number<sup>4</sup> (2015-GS-08-01163).

The Applicant appeared before the Honorable G. Thomas Cooper, Jr. on June 15, 2016 and pled guilty as indicted to all charges. William L. Runyon, Jr., Esquire represented the Applicant at the plea. Anne M. Williams, Esquire of the Ninth Circuit Solicitor's Office represented the State. Judge Cooper sentenced the Applicant to a term of imprisonment of twenty (20) years, suspended to upon the service of twelve (12) years followed by three years probation<sup>5</sup> for each Attempted Murder charge and five (5) years for each weapons charges. Credit was given to the Applicant for pretrial detention time served pursuant to SC Code Ann. §24-13-40. These sentences were to run concurrently. Applicant did not appeal her plea or sentence.

### ALLEGATIONS

In her application for post-conviction relief, Applicant alleges she is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel: Counsel Misled me with misleading statements
2. Ineffective Assistance of Counsel: Counsel failed to properly investigate my case
3. Ineffective Assistance of Counsel: Counsel explained the plea but not the sentence

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<sup>3</sup> Possession of a Weapon during a Violent Crime is felony punishable by five (5) years in prison, in addition to the punishment provided for the principal crime. See S.C. CODE ANN. § 16-23-490 (2005). Service of the five-year sentence is mandatory unless a longer mandatory minimum term of imprisonment is provided by law for the violent crime. Id. The court may impose this mandatory five-year sentence to run consecutively or concurrently. Id.

<sup>4</sup> A person in Possession of a Firearm from which a serial number has been removed or obliterated is guilty of a felony and, upon conviction, must be fined not more than two thousand dollars or imprisoned not more than five years, or both. See S.C. CODE ANN. § 16-23-50 (2005).

<sup>5</sup> Probation was tolled during the service of the Applicant's active sentence.

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In an amendment to the original application for post-conviction relief, submitted by counsel, Applicant raised the following additional ground for relief:

1. The Applicant amends the original Application to include a claim that she made a request for an appeal and her attorney failed to act on this request.

At the evidentiary hearing, Applicant proceeded forward on the allegations raised in her original and amended application for post-conviction relief. All other allegations are hereby deemed to have been abandoned.

#### SUMMARY OF TESTIMONY AT THE EVIDENTIARY HEARING

Applicant testified on her own behalf and presented the testimony of her father, Edward Cooper, at the evidentiary hearing. Respondent elicited the testimony of plea counsel, William L. Runyon, Jr. (hereinafter "Counsel"), and Applicant cross-examined him.

The first witness to testify at the hearing was the Applicant, Felicia Cooper. Applicant testified that her father retained William Runyon to represent her on these charges while she was incarcerated. Applicant testified that she met with Counsel approximately three to four times, with each meeting lasting about ten to fifteen minutes. Applicant claimed that Counsel failed to review the discovery, specifically the police and incident reports, with her during these meetings. Applicant further testified Counsel did not thoroughly investigate the facts of her case. She elaborated that Counsel was aware of the relationship between her and the victim, but never investigated any of the prior domestic violence incident reports against him. Applicant also testified that she never discussed the elements of the offenses, the State's burden of proof, the potential sentences, serious and most-serious classifications, the eighty-five percent rule, parole eligibility, or any potential defenses with Counsel.

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Applicant further testified that she met with Counsel for five minutes prior to her plea, but stated that Counsel did not ask for her input regarding whether to plea or go to trial. She testified that Counsel decided that she would plead guilty, and she agreed because Counsel told her that she would be going home. Applicant testified Counsel told her she was going to get probation, community service, and a time served sentence. She claimed she would not have pled if she knew she was not going to be released, and would have instead insisted on proceeding to trial. Applicant testified she did not understand the sentencing sheets, but Counsel told her to sign them without an explanation. She stated that she thought she was pleading to fifteen months with six years' probation and community service when she signed the sentencing sheets.

Applicant further testified that she spoke with Counsel for approximately five minutes after her plea. She allegedly asked Counsel whether she would have to serve eighty-five percent of her sentence. Applicant testified that Counsel informed her that he would attempt to get her sentence reduced from eighty-five percent to sixty-five percent. Counsel allegedly failed to contact the Applicant or her family after this brief conversation. Applicant explained that she had her sister, mother, and father call Counsel in order to inquire about an appeal. She testified that she attempted to file an appeal, but was informed that her attorney would have to file one on her behalf. Applicant stated that Counsel neglected to file the Appeal.

Following Applicant's testimony, Applicant's father, Edward Cooper, testified. Mr. Cooper testified that he hired William Runyon, Jr. to represent Applicant on these charges. He further testified that Mr. Runyon's office notified him of Applicant's plea date approximately one week beforehand. He explained he took Applicant's clothes to the courthouse with him on the day of the plea as it was his belief that the Applicant would be released after the plea.

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The Respondent then presented the testimony of counsel, William Runyon, Jr., Esquire. Mr. Runyon testified that he has been practicing law for approximately fifty-one (51) years. He informed the Court that he has owned his own practice for the last ten years, and that fifty percent (50%) of his caseload involves criminal work.

Counsel testified that he was retained to represent Applicant by her father. He testified that he met with Applicant approximately six (6) times during the course of his representation. He explained that they reviewed the elements the State would be required to prove for each charge, the potential sentences, possible defenses, and Applicant's constitutional rights during these meetings. He further testified that he filed Brady and Rule 5 motions on Applicant's behalf, and that he received all of the discovery and reviewed it with the Applicant. Counsel further testified that he conducted an independent investigation of the case during which he discovered that the Applicant and victim were having an affair. He also discovered photographs of Applicant and Sergeant Shivers in a compromising position and also discovered that the relationship was riddled with harassment and physical altercations.

Counsel further testified that he discussed potential defenses with the Applicant, and even explored a "battered wife" defense, but ultimately determined that the best option was to plead. Given the facts and circumstances of this case, there was no question in Counsel's mind that Applicant was the individual who shot into the victim's home as she was identified by the victim, with whom she had an intimate relationship. Counsel also found it problematic that the Applicant shot into her lover's home with his wife and young daughter present and within "the cone of her fire." Because of their presence, Counsel believed that Applicant would be incarcerated for a

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period of time, which he explained to the Applicant. He further explained that his strategy was to limit Applicant's sentence exposure.

Counsel testified that it was ultimately the Applicant's decision to plead guilty. He informed Applicant that the plea was straight up to all charges, without recommendation or negotiation, but that the State was seeking the maximum sentence. Counsel testified that he did not make any promises to Applicant regarding her sentence, and that he never promised Applicant she would get probation, although they did discuss probation as a possibility. He stated that he never told the Applicant or her father that she would be released upon pleading guilty. It was counsel's understanding that Applicant's father brought clothing to the plea to ensure that Applicant would look presentable to the Court.

Lastly, Counsel testified that he informs all of his clients that they will need a separate contract if they wish to appeal their sentence or conviction. He testified that Applicant never asked him to appeal, and that, in any event, he did not believe an appeal would be successful since the sentence was fair.

#### **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 each witness who testified at the hearing, closely pass upon his or her credibility, and weigh his or her testimony accordingly. Upon doing so, this Court finds Counsel's testimony to be credible whereas Applicant's testimony is not. The Court has detailed its relevant findings of facts and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1985), below.

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## I. Ineffective Assistance of Counsel

The Applicant seeks relief from her conviction on the basis that she received ineffective assistance of counsel at her criminal trial in violation of the Sixth Amendment. The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984). 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, 466 U.S. at 686, 104 S. Ct. at 2064; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

In evaluating allegations of ineffective assistance of counsel, the reviewing court must apply a two-pronged test. Strickland, 466 U.S. 668, 104 S. Ct. at 2064. First, the applicant must prove that counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690, 104 S. Ct. at 2064). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690, 104 S. Ct. at 2064). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Once the Applicant has established deficient performance by counsel, he must then establish that counsel’s

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performance 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.” *Id.* at 117-18, 386 S.E.2d at 625. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial.” *Johnson v. State*, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing *Strickland*, 466 U.S. at 694, 104 S. Ct. at 2068). After careful review based on the above standard, this Court finds that the Applicant has failed to carry her burden in this action. Below are this Court’s findings in regards to each of Applicant’s allegations of ineffective assistance of counsel.

***A. Failure to Investigate***

Applicant first alleges that Counsel was ineffective for failing to investigate her relationship with the victim, specifically her reports to law enforcement of abuse as well as her version of events. Counsel is required to conduct a reasonable investigation into potential defenses; however, our courts do not “impose a constitutional requirement that counsel uncover every scrap of evidence that could conceivably help their client.” *Tucker v. Ozmint*, 350 F.3d 433, 442 (4th Cir. 2003) (quoting *Green v. French*, 143 F.3d 865, 892 (4th Cir. 1998)). Indeed, “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) (abrogated on other grounds by *Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836, 839 (2018)). “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.” *Wiggins v. Smith*, 539 U.S. 510, 521-22, 123 S. Ct. 2527, 2535 (2003).

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Here, Counsel credibly testified that he conducted an independent investigation into Applicant's version of the facts as well as her relationship with the victim. He further testified that Applicant later admitted that her story or version was untrue. Moreover, Applicant informed the plea court that Counsel had done everything she asked of him during the course of his representation and preparation for the plea. (Transcript of Plea at 7:5-7, State v. Felicia Cooper, June 15, 2016). The Court, thus, finds that Counsel did, in fact, investigate the facts and circumstances of Applicant's case. Applicant has wholly failed to establish any deficiency on the part of Counsel.

Likewise, this Court finds that Applicant has failed to establish any resulting prejudice from this alleged deficiency. Applicant did not offer any testimony regarding a benefit or advantage she would have received from additional investigation. See Porter, 368 S.C. at 386, 629 S.E.2d at 358 (finding counsel was not ineffective when Petitioner failed to present any evidence showing how additional investigation would have changed the result). This allegation is therefore denied and dismissed with prejudice.

***B. Failure to Explain Plea***

Applicant further alleges that Counsel was ineffective for failing to explain the plea to her. This allegation is clearly refuted by Counsel's testimony and the record itself. Counsel credibly testified that he discussed whether to plea or go to trial with the Applicant, with particular emphasis on the fact that an acquittal would be unlikely because of the nature of the crime and victims involved. Moreover, Applicant indicated to the plea court that she understood her option to plead guilty or not guilty to these charges as well as her constitutional rights at trial. (Transcript of Plea at 5:13-6:20, State v. Felicia Cooper, June 15, 2016). She further indicated that she understood her

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rights, and still desired to plead guilty to these charges. (Id. at 6:21-22). In light of the foregoing, this Court finds that the Applicant has wholly failed to establish Counsel was deficient for allegedly failing to explain the plea or discern any resulting prejudice therefrom.

Applicant further contends that Counsel was ineffective for ensuring her a probationary sentence rather than active time. This assertion is also clearly refuted by Counsel's testimony and the record. Counsel credibly testified that he made Applicant aware of the range of penalty and potential sentences on these charges. Counsel was adamant that he never promised Applicant a probationary sentence. In fact, Counsel informed Applicant that the possibility of her receiving a probationary sentence was minimal in light of the innocent victims involved. Additionally, Applicant indicated to the plea court that she understood that each charge of Attempted Murder carried up to thirty (30) years imprisonment. (Id. at 5:1-5). She further indicated that she understood each weapons charge carried up to five (5) years imprisonment. (Id. at 5:6-12). Furthermore, Applicant informed the plea court that no one had promised her anything or held out any hope of reward in order to cause her to plead guilty. (Id. at 6:24-7:1). As such, Applicant has failed to establish any deficiency on the part of Counsel with regards to this allegation, nor has she established any resulting prejudice from the alleged deficiency. Accordingly, this allegation is denied and dismissed with prejudice.

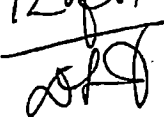
### ***C. Failure to Appeal***

Applicant alleges Counsel was ineffective for failing to file an appeal. Counsel has a constitutionally-imposed duty to consult with a defendant about an appeal when there is reason to believe that: (1) that a rational defendant would want to appeal or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores-Ortega, 528

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U.S. 470, 480, 120 S. Ct. 1029, 1036 (2000). In the event of a guilty plea, “there must be proof that extraordinary circumstances exist, such as where a defendant inquires about an appeal, in order for counsel to be required to advise a defendant of the right to appeal.” Rolen v. State, 384 S.C. 409, 415, 683 S.E.2d 471, 474-75 (2009) (citing Weathers v. State, 319 S.C. 59, 61, 459 S.E.2d 838, 839 (1995)). When counsel has consulted with the defendant regarding the right to appeal, “[c]ounsel performs in a professionally unreasonable manner *only* by failing to follow the defendant’s express instructions with respect to an appeal.” Flores-Ortega, 528 at 478, 120 S. Ct. at 1036 (emphasis added).

In this case, Counsel credibly testified that Applicant was aware she would need a separate contract with him in the event of an appeal. However, per counsel's testimony, the Applicant never ask him to appeal the sentence. Further, the plea court advised the Applicant of her right to appeal, and notified her that she would have ten days from sentencing in which to file a Notice of Intent to Appeal. (Transcript of Plea at 11:18-21, State v. Felicia Cooper, June 15, 2016). Applicant then indicated that she understood her right to appeal and the time constraints in which she would be required to do so. (Id. at 11:22) Due to Applicant’s complete lack of inquiry into an appeal, this Court does not find that there were extraordinary circumstances that would require Counsel to advise Applicant of her right to appeal. Moreover, this Court finds that Applicant was clearly aware of her right to appeal and wholly failed to request that Counsel file a Notice of Intent to Appeal on her behalf. In light of the foregoing, this Court finds that the Applicant has failed to establish that Counsel was deficient or that she suffered any prejudice from this alleged deficiency. Accordingly, this allegation is denied and dismissed with prejudice.

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## II. Involuntary Guilty Plea

Lastly, Applicant alleges that her guilty plea was involuntary since it was based on Counsel's misrepresentations to her. In evaluating issues concerning guilty pleas, this Court will consider the entire record, including the transcript of the guilty plea and the evidence presented at the post-conviction relief hearing. Roddy v. State, 339 S.C. 29, 528 S.E.2d 418 (2000). The 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. In order to make a finding that a guilty plea was knowing and voluntary, the record must establish that the defendant had a full understanding of the consequences of her plea and the charges against her. Boykin v. Alabama, 395 U.S. 238, 242, 89 S. Ct. 1709, 1712 (1969). Further, “[a] guilty plea is a solemn, judicial admission of the truth of the charges” against the applicant; as a result, an applicant’s right to contest the validity of such a plea is usually foreclosed. Dalton v. State, 376 S.C. 130, 137–38, 654 S.E.2d 870, 874 (citing Blackledge v. Allison, 431 U.S. 63, 97 S. Ct. 1631 (1977)). Thus admissions “made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why [s]he should be allowed to depart from the truth of [her] 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 to be without merit. Applicant’s plea was entered into freely and voluntarily. Plea counsel credibly testified that he conferred with the Applicant prior to her guilty plea and adequately advised her of her constitutional rights, the elements of the offenses, the potential sentences, and the consequences of her guilty plea. Counsel further informed Applicant that the plea was straight up to all charges, without recommendation or negotiation, but

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that the State was seeking the maximum sentence. Counsel testified that he did not make any promises to Applicant regarding her sentence, although they did discuss probation as a possibility. Applicant testified that it was ultimately her decision to plead guilty.

Moreover, the record reflects that the Applicant wished to plead guilty to the charged offenses and that the Applicant entered his plea freely, voluntarily, knowingly, and intelligently. (Transcript of Plea at 11:11-15, State v. Felicia Cooper, June 15, 2016). The Applicant told the Court that she was not under the influence of alcohol, drugs, or prescription medication at the time of the plea (Id. at 7:10-12). The Applicant further testified that she was satisfied with her attorney's representation, advice, and preparation of her case. (Id. at 7:1-9).

The Applicant was advised of and waived her right to a jury trial and accompanying constitutional rights, such as the right to confront witnesses, the right to present evidence in her own defense, and the right to remain silent. (Id. at 5:24-6:11). Applicant was also advised of the presumption of innocence and the State's burden of proof by the Court. (Id. at 6:12-16). In response, the Applicant told the Court that she understood the proceedings, and was pleading guilty of her own free will and accord. (Id. at 7:13-19). The Applicant advised the Court that she wished to plead guilty to three (3) counts of Attempted Murder, Possession of a Weapon during the Commission of a Violent Crime, and Possession of a Firearm with an Obliterated Serial Number, and further informed the Court that she understood the penalty range for each of these offenses. (Id. at 4:25-5:16). Applicant testified that she was not induced to plead guilty by a false promise or hope of reward, and reiterated that she was doing so of her own free will (Id. at 6:24-7:1)

In light of the foregoing, this Court finds that Applicant has failed to meet her burden of proof in establishing that the plea was involuntary. The Applicant had a full understanding of the

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consequences of her plea and the charges against her, and the plea court correctly found Applicant's plea was freely, voluntarily, knowingly, and intelligently made. Additionally, the Applicant was represented by competent counsel at the plea. Counsel conducted a proper investigation, adequately conferred with the Applicant, and provided thorough representation. Plea counsel demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 5, 239 S.E.2d 750, 752 (1977). Accordingly, this allegation must be denied and dismissed with prejudice.

### CONCLUSION

This Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require the Court to grant his application. Counsel was not deficient and the Applicant was not prejudiced by counsel's representation. The Application is therefore denied and dismissed with prejudice.

The Court advises the Applicant that she must file and serve a notice of appeal within thirty (30) days from the receipt of this Order if she wants to secure the appropriate appellate review. See Rule 203, SCACR. The Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief; however, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf pursuant to Rule 71.1(g), SCRCP. See Austin v. State, 305 S.C. 453 (1991). The Applicant is hereby directed to South Carolina Appellate Court Rule 243 for the appropriate procedures for appeal.

### **IT IS THEREFORE ORDERED:**

1. That this application for post-conviction relief must be denied and dismissed with prejudice; and

15 Feb 16  


2. The Applicant must be remanded to and remain in the custody of the State

AND IT IS SO ORDERED this 8<sup>th</sup> day of Nov, 2018.

DR Jefferson  
DEADRA L. JEFFERSON  
Presiding Judge  
Ninth Judicial Circuit

Charleston, South Carolina  
at chambers

160716  
DRJ

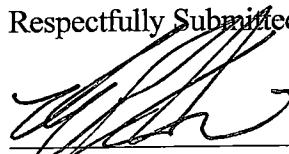
STATE OF SOUTH CAROLINA	)	IN THE SUPREME COURT OF SOUTH CAROLINA
	)	
COUNTY OF BERKELEY	)	
	)	Case No.: 2016-CP-08-2207
	)	
FELICIA COOPER,	)	
Applicant.	)	
	)	
-versus-	)	REQUEST FOR REPRESENTATION ON APPEAL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

On behalf of the request of the above-named Applicant, to be represented by the South Carolina Commission of Indigent Defense, Appellate Division (SCCID), the undersigned attorney would show unto this Honorable Court that:

1. He is the attorney for the Applicant-Appellant in the above captioned case. The Applicant-Appellant was in custody during and taken into custody immediately following the Post Conviction Relief (PCR) hearing and was not available to personally sign this request;
2. The Applicant-Appellant was represented by the undersigned attorney as an indigent, pursuant to a contract with the SCCID;
3. The Applicant-Appellant has been informed that he may request assistance from the SCCID Appellate Division in perfecting his appeal;
4. A timely Notice of Intent to Appeal has been filed on the Applicant-Appellant's behalf;
5. The Applicant-Appellant has been informed that nothing requires SCCID Appellate Division to pursue this appeal unless that office's Chief Attorney is satisfied that there is arguable merit to this appeal and that he cannot afford to hire an attorney.

At this time, the Applicant-Appellant requests the aid of the SCCID Appellate Division in perfecting his appeal to the South Carolina Court of Appeals.

Respectfully Submitted,



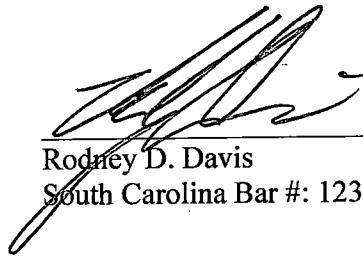
\_\_\_\_\_  
 Rodney D. Davis  
 South Carolina Bar #: 12396

12/11, 2018  
 Charleston, South Carolina.

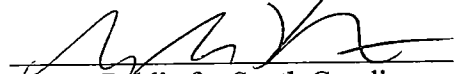
STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF BERKELEY )

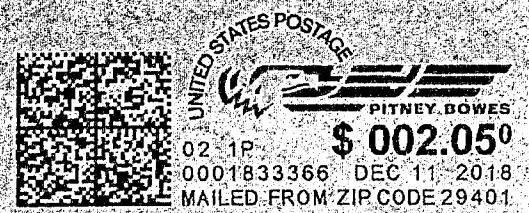
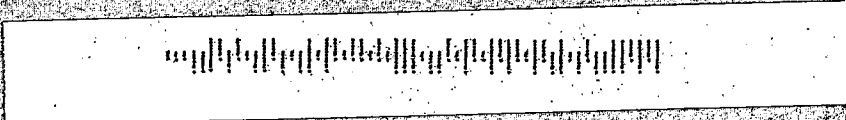
VERIFICATION

PERSONALLY appeared before me, Rodney D. Davis, attorney for Felicia Cooper, being first duly sworn, deposes and says that he has read the foregoing *Request for Representation on Appeal* and the same is true of his knowledge except those matters alleged on information and belief, and as to those matters, he believes them to be true.

  
\_\_\_\_\_  
Rodney D. Davis  
South Carolina Bar #: 12396

SWORN to and subscribed to me  
this 11 day of Dec., 2018.

  
\_\_\_\_\_  
Notary Public for South Carolina  
My Commission expires 4/4/28



Rodney D. Davis  
101 Meeting Street, 5<sup>th</sup> Floor  
Charleston, SC 29401

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