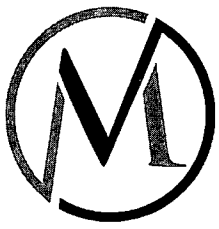


MAC | VANCE ATTORNEYS, LLC

RECEIVED
DEC 13 2018
S.C. SUPREME COURT

December 10, 2018

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

RE: **Tyler M. Elkins, #370294 v. State of South Carolina**
2017-CP-36-00122

Dear Mr. Shearouse:

Please find enclosed a Notice of Appeal along with the accompanying Order for the above-referenced matter. By way of this letter I am copying the Office of Appellate of Defense, as I was appointed to represent Mr. Elkins.

Best regards,

ASHLEY A. MCMAHAN
ATTORNEY AT LAW

AAM
cc: Tyler M. Elkins, #370294
Janell H. Gregory, Asst. Attorney General
Newberry County Clerk of Court
Office of Appellate Offense

P.O. BOX 5501 · WEST COLUMBIA, SC 29171
TEL 803-219-1110 · FAX 803-500-9140 · WWW.MACVANCE.COM

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas

The Honorable J. Mark Hayes, II, Circuit Court Judge

Case No. 2017-CP-36-00122

Tyler M. Elkins, #370294, ... Petitioner,

v.

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

NOTICE OF APPEAL

Applicant, Tyler M. Elkins, appeals the order of the Honorable J. Mark Hayes, II, signed on October 29, 2018, and November 26, 2018.

12/10, 2018

ASHLEY A. MCMAHAN, ESQUIRE
MAC | VANCE ATTORNEYS, LLC
PO Box 5501
West Columbia, SC 29171
803-219-1110
ashley@macvance.com
SC Bar No. 71676
ATTORNEY FOR APPLICANT

Opposing Counsel:
Janell H. Gregory, Asst, Attorney General
S.C. Attorney General's Office
PO Box 11549
Columbia, SC 29211-1549

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas

The Honorable J. Mark Hayes, II, Circuit Court Judge

Case No. 2017-CP-36-00122

Tyler M. Elkins, #370294, ... Petitioner,

v.

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

PROOF OF SERVICE

I, Ashley A. McMahan, certify that I have served the within Notice of Appeal on Respondent by depositing a copy of the same in the United States mail, postage prepaid, addressed to:

Janell H. Gregory, Asst, Attorney General
S.C. Attorney General's Office
PO Box 11549
Columbia, SC 29211-1549

I further certify that all parties required by Rule to be served have been served.

12/10, 2018

ASHLEY A. MCMAHAN, ESQUIRE
MAC | VANCE ATTORNEYS, LLC
PO Box 5501
West Columbia, SC 29171
803-219-1110

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2017CP3600122

Tyler Mckenzie Elkins		**State Of South Carolina**	
PLAINTIFF(S)		**DEFENDANT(S)**	
Submitted by:		**Attorney for:** ☐ Plaintiff ☐ Defendant ☐ 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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ 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 INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk:

Order of Dismissal

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:

he judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this rm may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or lditional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
ote: Title abstractors and researchers should refer to the official court order for judgment details.
-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

S/J. Mark Hayes, II — 11/29/2018

Circuit Court Judge | **Judge Code** | **Date**

For Clerk of Court Office Use Only

This judgment was entered on **11/26/2018**, and a copy mailed first class or placed in the appropriate attorney's box on **11/27/2018**, to attorneys of record or to parties (when appearing pro se) as follows:

Ashley A. McMahan PO Box 5501 West Columbia, SC 29169

Janell H Gregory Attorney General's Office P.O.Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Elizabeth P. Folk (jt)

Court Reporter

Elizabeth P. Folk - 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), SCRCP.

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 NEWBERRY	)	IN THE COURT OF COMMON PLEAS EIGHTH JUDICIAL CIRCUIT
Tyler Elkins, #370294, Applicant, v. State of South Carolina, Respondent.	)	2017-CP-36-122 **ORDER OF DISMISSAL**

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on March 13, 2017. Respondent made its Return on July 21, 2017. An evidentiary hearing was convened on June 22, 2018, at the Laurens County Courthouse. Applicant was present at the hearing and was represented by Ashley McMahan, Esquire. Respondent was represented by Assistant Attorney General Julie A. Coleman of the South Carolina Attorney General's Office.

At the evidentiary hearing, Applicant testified on his own behalf. Respondent presented testimony from A. Bea Hightower, Esquire ("Plea Counsel") and Arthur K. Aiken, Esquire. This Court had before it the Newberry County Clerk of Court records regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, and the plea transcript, and the pleadings. The Court finds as follows:

I. PROCEDURAL HISTORY

The records before this Court indicate Tyler Elkins ("Applicant") is presently confined with the South Carolina Department of Corrections pursuant to orders of commitment of the Newberry County Clerk of Court. Applicant was indicted at the October 2015 term of the Newberry County Grand Jury for attempted murder (2015-GS-36-505), murder (2015-GS-36-507), attempted murder (2015-GS-36-508), possession of a weapon during the commission of a violent crime

(2015-GS-36-509), armed robbery (2015-GS-36-510), and first-degree burglary (2015-GS-36-514). Applicant was represented by A. Bea Hightower, Esquire. On October 31, 2016, Applicant pled guilty before the Honorable L. Casey Manning. Judge Manning sentence Applicant to twenty-five years for both counts of attempted murder, twenty-five years for voluntary manslaughter as a lesser included offense of murder, five years for possession of a weapon during the commission of a violent crime, twenty-five years for armed robbery, and twenty-five years for first degree burglary, to run concurrently. Applicant did not appeal his plea or conviction.

II. ALLEGATIONS

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

1. "The plea was involuntary"
2. "Trial Counsel ineffective assistance due to ill-advised for defendant to plea."
3. "White v. State, 263 S.C. 110, 208 S.E.2d 35 (1975)."

Applicant filed an amended application on September 27, 2017, adding the following allegations:

1. Ineffective Assistance of Counsel as to Arthur K. Aiken, Esquire and A. Bea Hightower, Esquire:
   a. Ineffective assistance during plea bargain negotiations. *See* Williams v. Jones, 571 F3d 1086 (10th Circuit 2009).
   b. Counsel never communicated to Applicant any plea offers.

III. SUMMARY OF RELEVANT TESTIMONY PRESENTED

Applicant's testimony

At the evidentiary hearing, Applicant testified he was represented by a public defender for a short time before he retained Plea Counsel to represent him. He stated he met with Plea Counsel about eight times at Newberry County before his plea. He stated he was never initially given a plea offer, but he was subpoenaed as a witness in his co-defendant's trial to testify for the

State. He explained that Plea Counsel told him that he had to plead guilty that day, so he did. Applicant testified Plea Counsel told him about a twenty-five year plea offer on the day that he pled, and she told him that if he did not take the deal, he would get a trial. He stated that he did not want to go to trial, he just wanted a decent plea offer.

Applicant testified that he and Plea Counsel went over the details of the case during their meetings, and they went over bits and pieces of the discovery. He stated they did not discuss defenses, and they only talked about how he had no prior record. Applicant said he asked about plea offers, and his attorneys told him it was too early in the case to get a plea offer. He explained that he was represented by both Plea Counsel and attorney Arthur Aiken, but he dealt more with Plea Counsel. Applicant testified that his co-defendant, Satterwhite, was on trial, and when they appeared for Satterwhite's trial, Plea Counsel told him immediately that the solicitor wanted to sentence all three co-defendants that day.

Applicant testified that he wanted an appeal, and he asked his attorneys for an appeal, but they told him they would just file a PCR. Applicant testified he was the only one of the co-defendants charged with murder, and it was not fair that the other two co-defendants were not charged with murder. He stated that, if he had taken the stand at Satterwhite's trial, he was going to plead the Fifth. Applicant stated that he is not saying he is not guilty, but he wanted a fair plea and he got more time than his co-defendants did. He stated his attorney should have explained that he did not have to take the plea offer, and he only took it because he could have gotten a life sentence at trial.

Plea Counsel's testimony

At the evidentiary hearing, Plea Counsel testified Applicant became involved in the investigation of this murder when a juvenile co-defendant gave a statement to law enforcement and told them that Applicant was involved. Based on the evidence against Applicant, Plea Counsel believed trying to negotiate a plea deal was the best course of action for the case. She testified there were no plea offers given by the State at first, and she met with the solicitor very early. She testified the solicitor told her that is Applicant cooperated, they would not charge him with murder, but the solicitor reneged on this deal and charged him anyway. Plea Counsel testified that one of the co-defendants committed suicide, which left Applicant as the most culpable case out of the group. She stated they tried to argue that the juvenile in the group was actually the most culpable. She explained that the group of co-defendants went to a known drug dealer's house to rob them, and the juvenile put the plan together.

Plea Counsel testified that she met with an investigator to prepare the case. She testified the State also had his cell phone data. Plea Counsel testified Applicant was a gang member, and she met with a gang task investigator and could not get anywhere with it as a defense. She stated Satterwhite never gave a confession, but Applicant did give a statement, which directly implicated him in the crime. She stated Applicant cooperated with law enforcement and identified the fourth person involved. Plea Counsel testified that everyone was charged with murder, not just Applicant. She explained that Applicant knew they were going to commit a robbery, but he thought that was all they were doing—he did not plan to murder the victims, and the shooting was not planned. She stated Applicant admitted he shot into the house to warn the people inside, not to actually shoot anyone. Plea Counsel testified she tried to explain this in mitigation.

Plea Counsel testified they wanted the best plea offer possible, and they really wanted a cap of twelve years. She based this on the argument that there were four co-defendants, Applicant was not the shooter, he was young, and he had no record. She testified she was able to get a cap of twenty years, but they wanted Applicant to testify at Satterwhite's trial in exchange for the deal, and Applicant would not testify at trial. Plea Counsel stated that Applicant would never give her the authority to tell the solicitor that he would cooperate with them. She explained that the State would not negotiate until after Satterwhite's trial, and after Applicant refused to testify, they would not offer him a twenty year cap. She stated the State offered a cap of twenty-five years with Judge Manning. Plea Counsel testified that if he did not plead then with Judge Manning, he would face a murder trial in three weeks before Judge Hood and face a life sentence.

Plea Counsel stated that Applicant had shot into the victim's car at the house during the crime. She stated her trial strategy would have been to move to suppress his statement at a Jackson v. Denno hearing, but she had no credible defense that they could win on, because voluntary intoxication was not a valid defense. Plea Counsel testified she and Art Aiken discussed the plea offer with Applicant, and he decided to take the offer instead of facing life at trial. She testified that she believes Applicant's plea was voluntary. She stated they discussed filling an appeal, but she advised Applicant that PCR was a more appropriate action for him to challenge his plea.

Arthur K. Aiken's testimony

At the evidentiary hearing, Arthur K. Aiken testified that he helped Plea Counsel with Applicant's case. His involvement included helping with case development, reviewing discovery, researching case law, and preparing for trial. He testified he met with Applicant four

times before the plea. Aiken testified they were preparing for trial in this case. He stated he was not present for any discussions about the plea deal, but he did explain to Applicant the potential defenses they could use at trial. He testified he did not give Applicant all the discovery because it was three and a half bankers' boxes full of materials, mostly about gangs, and it was not necessary for him to see all of it. Aiken testified he showed Applicant the "guts" of the file, and all of his notes, laws, statutes, and the elements of the crimes.

Aiken testified they had two possible defense strategies to take if they had gone to trial. First, he stated they would move to suppress his statement at a Jackson v. Denno hearing based on the promises made to Applicant by law enforcement to give his statement. He stated he explained to Applicant that they should not count on winning this hearing. Second, he stated they would move to suppress the cell phone data based on the lack of a search warrant to obtain the records. He stated the State got an order from Judge Addy to get the records, and there was still a possibility of raising this issue at trial.

Aiken testified that Applicant had been indicted on other charges, as well, and they were dropped in exchange for his guilty plea. He stated that if he had not pled guilty, all of the charges would have been tried together. Aiken testified Applicant's mother had spoken to Applicant about an appeal, and she asked him if they should appeal. He stated he explained to her that it would probably be dismissed because he pled guilty, and he did not see any meritorious issues here to appeal. Aiken testified he provided Applicant with a PCR application, and he filled out the application for him except for the grounds. He testified he did not recall meeting with Applicant after the guilty plea.

IV. APPLICABLE LAW

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). 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 pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant alleges Plea Counsel was ineffective in her representation surrounding his guilty plea. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. See Al-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (1999) (citing Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993)). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the applicant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citations omitted). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985).

After considering the testimony, judging the credibility of the witnesses, and reviewing the materials presented to the court, this Court finds Applicant has failed to meet his burden in proving Plea Counsel was ineffective in any regard. Plea Counsel credibly testified she fully discussed the case, the evidence, the discovery, and potential defenses with Applicant in preparation for trial. She stated she attempted to negotiate the best plea deal possible on his

behalf, but Applicant refused to cooperate with the State and testify at his co-defendant's trial, which was a mandatory condition of their plea offer. She testified Applicant would never authorize her to tell the State he would cooperate, which made plea negotiations difficult. Plea Counsel credibly testified that she discussed the plea offer with Applicant on the day he pled guilty, and she correctly advised him that if he did not accept the only plea offer he was given, his only other option was to go to trial in three week and face a life without parole sentence.

This Court finds Plea Counsel's representation conformed to reasonable professional norms and was not ineffective in any regard. Plea Counsel was given a tough situation in which to negotiate a plea, but she did all she could to get Applicant a favorable plea deal. Applicant has failed to prove anything Plea Counsel could have done differently to obtain a better outcome in his case. In fact, Applicant did get a twenty-five year sentence by accepting the plea deal where he likely would have received a life sentence at trial. As to Applicant's allegation that counsel was ineffective for failing to convey plea offers, the record shows there simply were no plea offers to convey until the day of Satterwhite's trial, which became the day Applicant pled guilty. This Court finds Applicant was fully advised of all plea offers and Plea Counsel did not fail to convey any offers.

This Court finds Plea Counsel's representation and counsel Art Aiken's representation and advice were reasonable under the circumstances and nothing they did was outside the scope of reasonable professional norms. Plea Counsel and Aiken thoroughly investigated the case and fully represented their client and advised him based on his best interests in light of the evidence against him, which was to plead guilty. Accordingly, Applicant has failed to prove that Plea Counsel was deficient or that he would have gone to trial but for these deficiencies, and post-conviction relief is denied.

INVOLUNTARY GUILTY PLEA

Applicant alleges his guilty plea was not given freely and voluntarily. This Court finds otherwise and concludes Applicant's plea was entered freely and voluntarily. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709, 23 L.Ed.2d 274 (1969). Defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 97 S. Ct. 1621, 52 L.Ed.2d 136 (1977)). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. United States, 519 F.2d 347 (4th Cir.1975).

The record and Plea Counsel's testimony clearly show Applicant was not threatened, forced, or coerced to plead guilty. This Court finds very credible Plea Counsel's testimony that she thoroughly discussed the evidence, Applicant's defenses and lack thereof, and his option to plead or go to trial with Applicant, and she was prepared to argue a defense if Applicant chose to proceed to trial, which he did not wish to do. It was clearly Applicant's decision to plead guilty based on the high likelihood he would receive a life sentence if convicted at trial in just three weeks.

At the guilty plea, Applicant testified he had not taken any medications, drugs, or alcohol in the past twenty-four hours. Tr. 11, line 6-8. He testified he knew what he was doing, and he understood his charges, the possible punishments, and his constitutional rights. Tr. 11. He testified that he was fully satisfied with his attorney and did not need any more time with her. Tr. 32. Applicant agreed with the facts of the case as alleged in the indictments, and he admitted he was guilty of the crimes and wished to plead guilty. Applicant has failed to prove he was coerced into pleading guilty and would have gone to trial otherwise.

Notably the South Carolina Supreme Court has held "[a] guilty plea represents a break in the chain of events which has preceded it in the criminal process." Id. (citations omitted). "When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea." Id. (citing Rice, 401 S.C. at 332, 737 S.E.2d at 486). This Court finds Applicant has not presented any credible evidence that he should be allowed to depart from the truth of the statements he presented to the plea court. Therefore, this Court finds the plea court correctly found Applicant's plea was freely, voluntary, and intelligently made. Accordingly, this allegation must be denied and dismissed.

WHITE V. STATE CLAIM

Applicant's claim that he is entitled to White relief based on his attorney's failure to file a direct appeal on his behalf is meritless. Where an applicant can establish that he did not knowingly and voluntarily waive his right to a direct appeal of his conviction, the post-conviction relief court may grant him the opportunity to petition the Supreme Court for a belated review of his direct appeal issues. White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974). In such

cases, the South Carolina Supreme Court, upon an appeal of the post-conviction relief decision, will review the trial record and pass upon all issues properly raised and argued as if the direct appeal has been perfected.

Here, however, the testimony presented at the evidentiary hearing shows counsel Aiken discussed with Applicant and Applicant's mother the right to file an appeal. Aiken credibly testified that he advised Applicant and his mother that a direct appeal would likely be dismissed because there were no meritorious issued to appeal, and he would have a better chance at success if he filed a PCR application instead. Aiken then provided Applicant with a PCR application and helped him fill out all parts except the grounds for relief. Applicant clearly waived his right to a direct appeal knowingly and voluntarily based on competent advice from counsel. Accordingly, he is not entitled to relief pursuant to White, and this allegation is denied and dismissed with prejudice.

VI. CONCLUSION

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

This Court notes that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's

behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

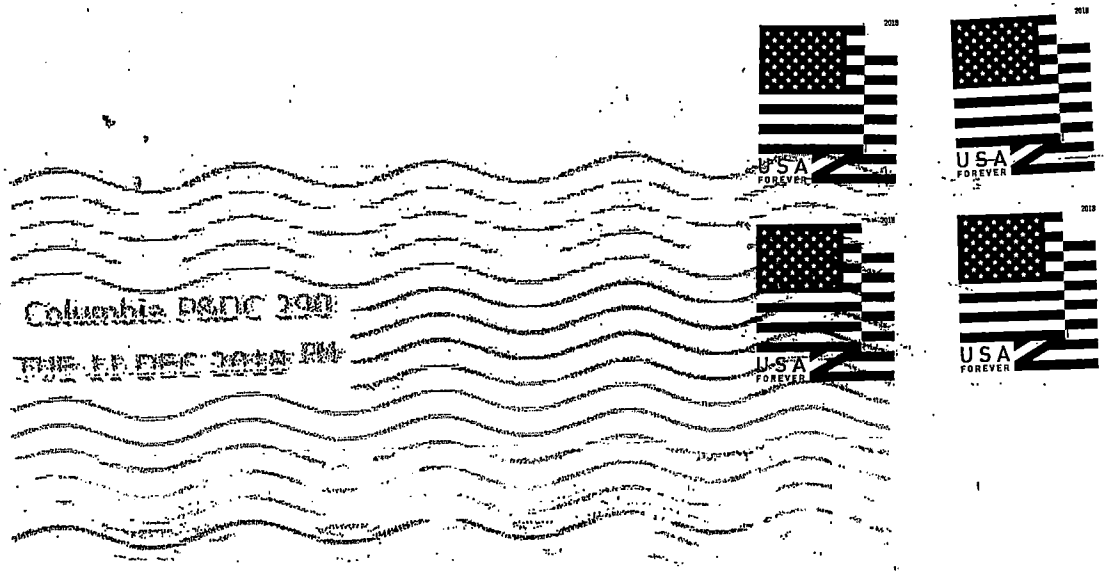
1. That the application for Post-Conviction Relief is denied and dismissed with prejudice; and

2. Applicant must be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 29th day of October, 2018.

J. MARK HAYES, II
Presiding Judge
Eighth Judicial Circuit

Newberry, South Carolina



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