

LAW OFFICE OF
Kristy Grafton Goldberg, LLC
ATTORNEY AT LAW

December 14, 2018

RECEIVED

DEC 17 2018

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

S.C. SUPREME COURT

RE: Willie Gunter, SCDC # 299126, vs. State of South Carolina
Appeal of Case No. 2014-CP-40-7848

Dear Mr. Shearouse,

Enclosed for filing is a Notice of Appeal in the above referenced case. Also enclosed are a certificate of service and a copy of the original court order which is to be challenged on appeal. I would appreciate it if you could file the Notice of Appeal and mail a date-stamped copy back to me in the enclosed pre-stamped envelope.

By copy of this letter I am informing the Office of Appellate Defense of this Appeal. I was **retained** to represent Mr. Gunter on his PCR, however, I would request that he be screened for indigency to see if he qualifies for appointed counsel for his appellate action

Please let me know if you have any questions or concerns regarding this matter.

Respectfully,



Kristy Goldberg

CC: Lindsey McCallister
Assistant Attorney General
Post Office Box 11549
Columbia, South Carolina 29211-1549

Willie Gunter, SCDC # 299129
Evans Correctional Institution
610 Highway 9 West
Bennettsville, South Carolina 29512

Jeanette McBride
Richland County Clerk of Court
Post Office Box 2766
Columbia, South Carolina 29202

Office of Appellate Defense
Chief Appellate Defender – Robert Dudek
PO Box 11433
Columbia, SC 29211-1433

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

D. Craig Brown, Circuit Court Judge

Case No. 2014-CP-40-7848

Willie Gunter, SCDC # 299126, Appellant

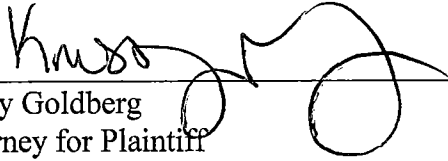
v.

State of South Carolina, Respondent.

NOTICE OF APPEAL

Applicant Willie Gunter hereby appeals from the Order of the Honorable D. Craig Brown presiding Judge for the 5th Judicial Circuit, filed October 23, 2018 and Order Denying Motion to Alter/Amend received by counsel for the Applicant on December 7, 2018 in the matter of Willie Gunter v. State of South Carolina, Case No. 2014-CP-40-7848.

December 14, 2018



Kristy Goldberg
Attorney for Plaintiff

Law Office of Kristy Goldberg, LLC.
1720 Main Street, Suite 303
Columbia, SC 29201
Phone (803) 667-6633
kristy@kristygoldberglaw.com

RECEIVED

DEC 17 2018

S.C. SUPREME COURT

Other Counsel of Record:
Assistant Attorney General, Lindsey McCallister
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

D. Craig Brown, Circuit Court Judge

Case No. 2014-CP-40-7848

Willie Gunter, SCDC # 299126, Appellant

v.

State of South Carolina, Respondent.

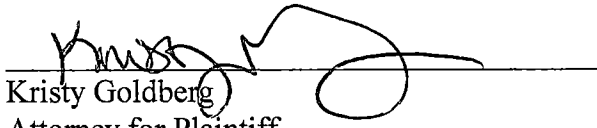
PROOF OF SERVICE

Personally appeared before me, Kristy Goldberg, Esquire, who being duly sworn, deposes
and states:

She is the counsel of record for Applicant;
Service by mail is proper in this instance; and

She has served the NOTICE OF APPEAL on the following party on December 14, 2018 by
depositing one copy in the U.S. Mail, postage prepaid:

Assistant Attorney General, Lindsey McCallister
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211



Kristy Goldberg
Attorney for Plaintiff

Law Office of Kristy Goldberg, LLC.

RECEIVED

DEC 17 2018

S.C. SUPREME COURT

1720 Main Street, Suite 303
Columbia, SC 29201
Phone (803) 667-6633
kristy@kristygoldberglaw.com

Other Counsel of Record:
Assistant Attorney General, Lindsey McCallister
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Willie Gunter, #299126,

APPLICANT,

vs.

State of South Carolina,

RESPONDENT.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CASE NO.: 2014-CP-40-7848

**ORDER DENYING MOTION TO
ALTER/AMEND JUDGMENT**

RICHLAND COUNTY
FILED
2018 DEC -3 PM 4:36
JEANETTE W. PRINGLE
C.C.P. & P.S.

This matter came before the court by way of application for post-conviction relief filed December 16, 2014. It is of importance to note that this was Applicant's fourth PCR action.

A hearing into the matter was subsequently convened at the Richland County Courthouse on July 12, 2016. Applicant was present and represented by Kristy Goldberg, Esquire. The State was represented by Jessica Kinard of the South Carolina Office of the Attorney General.

Applicant alleged in his fourth PCR application that he was being held in custody unlawfully for the following reasons:

1. "Newly discovered evidence pursuant to 17-25-45(c)
2. "Involuntary guilty plea"
3. "Due process violation"

After hearing testimony from Applicant and his plea counsel, Fielding Pringle, this Court denied Applicant's Application for Post-Conviction Relief in an Order signed October 9, 2018 and filed October 17, 2018. Applicant timely filed a Motion to Alter/Amend Judgment pursuant to Rule 59(e), South Carolina Rules of Civil Procedure, on October 23, 2018. Applicant, by and through counsel, filed such Motion based upon the following argument:

1. "The Applicant contends his due process was violated when trial counsel failed to provide the Applicant with complete documentation regarding her consolation (sic) with an expert witness and a full explanation of the DNA results."

2. "The Applicant contends that he entered an involuntary and unintelligent plea when he entered a guilty plea without full knowledge regarding the DNA results and the expert opinion.

Pursuant to this Court's review of Applicant's Motion to Alter/Amend Judgment and its prior Order denying Applicant's Application for Post-Conviction Relief, this Court hereby DENIES Applicant's Motion to Alter/Amend Judgment. Each of Applicant's arguments in his Motion to Alter/Amend Judgment were considered and ruled upon in this Court's Order signed October 9, 2018, and filed October 17, 2018.

THEREFORE, IT IS, SO ORDERED THAT:

Applicant's Motion to Alter/Amend Judgment is DENIED.

This the 8 day of November, 2018
Florence, South Carolina



The Honorable D. Craig Brown
Twelfth Judicial Circuit



State of South Carolina
The Circuit Court of the Twelfth Judicial Circuit

D. Craig Brown
Judge

City-County Complex, MSC-C
180 North Irby Street
Florence, SC 29501
Phone: (843) 679-7156
Fax: (843) 679-7157
cbrownj@sccourts.org

November 8, 2018

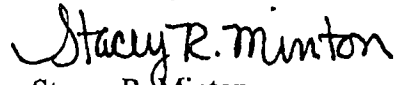
The Honorable Jeanette McBride
Richland County Clerk of Court
Post Office Box 2766
Columbia, SC 29202

Re: Willie Gunter, SCDC # 299126 v. State of SC; 2014-CP-40-07848

Dear Mrs. McBride:

I am hereby enclosing an Order Denying Motion to Alter/Amend Judgment as it relates to the above referenced case. Please file the original and send certified clocked copies to the attorneys of record.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Stacey R. Minton
Secretary

Enc.

FORM 4

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

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2014CP4007848

Willie #299126 Gunter		State of South Carolina	
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PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	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 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: _____

JAN 23 2018
 9:24 AM
 FILED
 RICHLAND COUNTY
 JANETTE W. HUBBARD
 C.C.P. & G.S.

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: _____

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.

10/23/2018

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

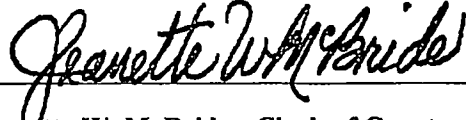
This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on **October 23, 2018**, to attorneys of record or to parties (when appearing pro se) as follows:

Willie #299126 Gunter Broad River Correctional Institution
4460 Broad River Road Columbia, SC 29210
Kristy Grafton Goldberg 1720 Main Street, Suite 303
Columbia, SC 29201

Lindsey Ann McCallister PO Box 11549 Columbia, SC
29211-1549

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)



Jeanette W. McBride - Clerk of Court

Court Reporter

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 RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Willie Gunter, #299126,)
)
Applicant,)

Case No. 2014-CP-40-7848

v.)

ORDER OF DISMISSAL

State of South Carolina,)
)
Respondent.)

2016 OCT 17 PM 3:15
JEANETTE W. MCBRIDE
C.C.P. & G.S.
RICHLAND COUNTY
FILED

This matter comes before this Court by way of an application for post-conviction relief (PCR) filed December 16, 2014. The State made its Return and Motion to Dismiss on November 17, 2015, asserting that this Court should dismiss the application because: (1) it was successive to Applicant's prior PCR action, (2) it was filed after the statute of limitations had expired, (3) it did not present a valid case for newly discovered evidence, and (4) it was barred by the doctrine of laches. Applicant filed a Response to the State's Motion to Dismiss on or about December 16, 2015. A hearing into the matter was subsequently convened at the Richland County Courthouse on July 12, 2016. Applicant was present and represented by Kristy Goldberg, Esquire. The State was represented by Jessica Kinard of the South Carolina Office of the Attorney General.

This Court heard testimony from Applicant and his plea counsel, Fielding Pringle. This Court had before it the pleadings of both parties, the transcripts of Applicant's preliminary hearing and guilty plea hearing, the Clerk of Court's records regarding the subject convictions, and the Applicant's records from the Department of Corrections. This Court hereby denies Respondent's motion to dismiss and also denies Applicant's application on the merits.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. In August 2002, the Richland County Grand Jury indicted Applicant for kidnapping (2002-GS-40-6905), carjacking (2002-GS-40-6906), and criminal sexual conduct, first degree (2002-GS-40-6907). Fielding Pringle, Esquire ("Counsel") represented Applicant. On January 12, 2004, Applicant pled guilty as indicted before the Honorable G. Thomas Cooper. Judge Cooper sentenced Applicant to imprisonment for concurrent terms of twenty-five years for kidnapping, twenty years for carjacking, and twenty-five years for criminal sexual conduct, first degree. Applicant filed a notice of direct appeal, but it was not perfected and was dismissed by the South Carolina Court of Appeals on April 19, 2004. The Remittitur was issued on April 19, 2004.

First PCR Application (2004-CP-40-2947)

Applicant filed his first application for PCR on June 18, 2004, in which he alleged that he was being held unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. Failure to investigate potential witnesses
 - b. Coercion of guilty plea by telling Applicant he would receive 80 years
 - c. Counsel promised Applicant that he would only receive approximately 3 or 4 years total and that the charge of criminal sexual conduct and kidnapping would be dismissed and that carjacking would be dropped to breach of trust; and
 - d. Counsel failed to advise the court of his plea bargain that had been entered prior to the guilty plea
2. Involuntarily Entered Guilty Plea

Respondent filed its Return on September 21, 2004. An evidentiary hearing into the matter was convened at the Richland County Courthouse on February 13, 2006 before the Honorable James R. Barber, III. Applicant was present at the hearing and represented by Tara

Shurling, Esquire. Judge Barber denied and dismissed Applicant's post-conviction relief action by written Order dated March 3, 2006 and filed March 7, 2006.

A timely notice of appeal was filed on Applicant's behalf, and a Johnson¹ petition for writ of certiorari was submitted by Robert M. Pachak, Esquire, of the South Carolina Office of Appellate Defense on September 14, 2006. The State filed its return on December 14, 2007. On January 23, 2008, the South Carolina Supreme Court denied Applicant's Petition. The Remittitur was issued on February 8, 2008.

Second PCR Application (2008-CP-9097)

Applicant filed his second application for PCR on or about December 29, 2008, in which he alleged he was being held unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
2. Prior post-conviction relief judge failed to hear and rule on each issue presented in his application

The State made its return and motion to dismiss on or about October 15, 2009, requesting the Court summarily dismiss the application. A conditional order of dismissal was issued by the Honorable James R. Barber, III as Chief Administrative Judge for the Court of Common Pleas for the Fifth Circuit on October 19, 2009. Applicant did not object to the conditional order of dismissal, and Judge Barber signed a final order of dismissal on December 9, 2009, which was filed on December 10, 2009. In the meantime, on December 8, 2009, Applicant filed a response to the conditional order of dismissal. Because the documents passed each other in the mail, a hearing was set so that Applicant could argue his reasoning. The Honorable Alison Renee Lee issued a Form 4 Order on June 24, 2010 allowing a continuance because Applicant had not been

transported from SCDC. The parties ultimately appeared before the Honorable J. Ernest Kinard, Jr. on September 10, 2010, whereupon the Court ruled Applicant had not timely objected to the conditional order of dismissal, and there was no reason for the case to proceed. While Applicant's second application was being processed, Applicant subsequently filed a third application on January 2, 2009 (2009-CP-40-0272)². In the third application, Applicant alleged the "trial court was without jurisdiction to impose sentence." Respondent moved to have both applications merged and on December 14, 2010, Judge Kinard consolidated and merged the cases under the 2008 case number, and then denied and dismissed both applications with prejudice.

A letter was received by the Supreme Court of South Carolina that alleged Applicant had filed a Rule 59(e) motion to alter or amend the judgment of the Court. This correspondence was forwarded to the State on January 24, 2011. No further action was taken on this letter or alleged motion, and Applicant did not appeal the 2010 dismissal.

Third PCR Application (2013-CP-40-2062)

Applicant filed his third application for PCR on or about April 5, 2013, in which he alleged he was being held unlawfully for the following reasons:

1. Ineffective assistance of counsel at Initial Collateral Post-Conviction Review pursuant to Ryan v. Martinez
2. "Applicant was denied effective assistance of trial counsel as guaranteed me pursuant to the Sixth Amendment of the United States Constitution."
 - a. Failure to advise of the full range of possible consequences of entering a guilty plea.

¹ Johnson v. State, 294, S.C. 310, 364 S.E.2d 201 (1998).

² The application filed is the only document that bears this number, which is not associated with Applicant in the public index. Every other reference bears the case number 2009-CP-0512.

- b. "Failed to advise me that I would be required to register as a sexual offender in pleading guilty to kidnapping and failed to move for a judicial finding of such applicability."
 - c. "Failed to object to the carjacking indictment and "plea as indicted," which alleged serious bodily harm in jury, and the state conceded, no serious bodily harm, or injury resulted as supported by medical test result (DNA)."
 - d. "Failed to object to factual overlapping contained in the carjacking and kidnapping indictments requiring the same acts in violation of the double jeopardy clause."
 - e. "Failed object that the sentence structure was invalid where the trial judge imposed first a smaller sentence, and later several larger sentences, and pronounced them all to run concurrently."
 - f. "Trial counsel and victim were both attendants of University of South Carolina where victim was a teacher, thus counsel actively represented a conflict of interest."
 - g. "Failed to object to acceptance of the plea where the State presented no evidence or testimony on the penetration element of criminal sexual conduct 1st degree thus no factual basis existed."
 - h. "Failed to move to be allowed to withdraw the plea when applicant conditioned his plea upon understanding that he did not intend to 'commit the offense.'"
 - i. "Failed to object to or otherwise challenge the carjacking statute, which was void-for-vagueness."
3. "Applicant was denied effective assistance of appellate counsel as guaranteed to me pursuant to the Sixth Amendment of the United States Constitution."
- a. "Failed to raise on appeal the circuit court's lack of subject-matter jurisdiction"
 - b. "Failed to raise on appeal violation of double jeopardy clause."
4. Due process violations because of unconstitutionally vague carjacking statute.
- a. "The indictments for the offenses and carjacking state the same facts to prove each of the crimes and are thus duplicitous or multiplicitous." (sic)
 - b. "The carjacking statute is void-for-vagueness, and each requisite act of the corpus delicti mirrors those for kidnapping"
5. Guilty plea was not knowingly, voluntarily, and intelligently entered.
- a. "Based upon all the proceeding matters, the collective effect is that Applicant would not have pleaded guilty to [any] of the charges had he been fully aware of the consequences of his pleas and had he known his rights were violated or that the court lacked jurisdiction as to any

- one of the alleged indicted offenses. (New facts not previously presented).”
6. Violation of the double jeopardy clause
 7. Circuit court lacked subject matter jurisdiction.
 - a. “The circuit court had no jurisdiction to accept the plea to carjacking “as indicted” where the indictment alleged a statutory provision requiring proof of serious bodily injury/harm and the state conceded that no serious bodily injury or harm resulted.”
 - b. “The circuit court had no factual basis to accept the guilty pleas where the state presented no evidence of battery and penetration. Necessary elements to support the criminal sexual conduct first degree guilty plea.”

Applicant further alleged agents of the State, specifically correctional officers with SCDC, took legal documents belonging to him that were in another’s inmate’s possession, and he was entitled to their return. Similarly, he moved for a tolling of the statute of limitations or for leave to refile the application upon return of these documents. The State made its return and motion to dismiss on September 17, 2013. A conditional order of dismissal was signed by the Honorable L. Casey Manning on September 19, 2013. Applicant made no objection to the conditional order, and a final order of dismissal was signed by Judge Manning on March 27, 2014.

II. ALLEGATIONS

In his fourth and current PCR application, filed December 16, 2014, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. “Newly discovered evidence pursuant to 17-27-45(c)”
2. “Involuntary guilty plea”
3. “Due process violation”

At the call of the case, because all necessary witnesses were present and the testimony to be taken on the motion to dismiss also related directly to the merits of Applicant’s allegations,

the court instructed the parties to proceed with the evidentiary hearing. Applicant seemed to merge his involuntary guilty plea and newly discovered evidence allegations, and only presented evidence as to those claims.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the evidentiary hearing. The Court has further had the opportunity to observe the witnesses who testified at the hearing, and to closely pass upon their credibility. The Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80.

Involuntary Guilty Plea Due to Newly Discovered Evidence

At the hearing on the State's Return and Motion to Dismiss, Applicant testified that, at the time of his plea he knew that his DNA was found on boxer shorts in the victim's car. Applicant alleged, however, that Trial Counsel failed to inform him the sample actually contained a mixture of DNA, or to explain the significance of that information. Applicant averred he did not discover the DNA sample was positive for a mixture of individuals, including him, until he later wrote the Public Defender's Office and received packets of information from his case file. Applicant contended that, had he known the DNA match was a mixture, he would not have pled guilty and would have proceeded to trial. Applicant stated his take away from the DNA report was that, "it was, basically saying there was no evidence of DNA, no evidence of sexual assault, nothing. Basically saying that nothing happened. . . [Counsel] never discussed any of that with me." During cross-examination by the State, Applicant acknowledged Trial Counsel discussed the issue with him; however, he alleged he never received the actual results of the

DNA test and did not know Trial Counsel had consulted with a DNA expert.

During the hearing, Trial Counsel explained there were stains on a pair of underwear that were located in the back of the victim's car that came back with a match to Applicant, and the sample indicated the presence of DNA in addition to Applicant's. Trial Counsel testified that, while she did not have an independent recollection of speaking with Applicant and telling him the DNA results indicated a mixture was present, her notes indicated speaking to Applicant about many things, possibly including the specifics of the DNA results. Trial Counsel also testified that, although she did not specifically remember giving Applicant a copy of the DNA report, it would be her practice to have told him the results. Trial Counsel testified it would have been "bizarre" for her not to have mentioned to Applicant that she consulted a DNA expert in the case. Trial Counsel stated that she took twelve pages of notes during her meeting with Applicant, and that a specific reference to the DNA mixture was present in her notes; however, she could not specifically say what they discussed. Critically, Trial Counsel noted the fact the DNA sample was a mixture would not have changed her recommendation to Applicant that he take the State's plea offer. Trial Counsel stated the fact Applicant's DNA match also reflected a mixture of individuals was, "one minor good fact in the context of a number of very difficult facts."

In Jamison v. State, 410 S.C. 456, 765 S.E.2d 123 (2014), the South Carolina Supreme Court elucidated the correct standard in PCR cases involving an allegation of newly discovered evidence, ruling:

Guided by the language of section 17-27-20(A)(4) of the PCR act, we hold that, when a PCR applicant seeks relief on the basis of newly discovered evidence following a guilty plea, relief is appropriate only where the applicant presents evidence that (1) the newly discovered evidence was discovered after the entry of the plea and, in the exercise of reasonable diligence, could not have been discovered prior to the entry of the plea, and (2) the newly

discovered evidence is of such a weight and quality that, under the facts and circumstances of that particular case, the 'interest of justice' requires the applicant's guilty plea to be vacated. In other words, a PCR applicant may successfully disavow his or her guilty plea only where the interests of justice outweigh the waiver and solemn admission of guilt encompassed in a plea of guilty and the compelling interests in maintaining the finality of guilty-plea convictions. In so holding, we caution that it will be the rare case indeed where the interests of justice will require that a knowing and voluntary guilty plea be vacated through post-conviction relief on the basis of newly discovered evidence, for an unconditional guilty plea involving an admission of guilt and a waiver of trial and all defenses will generally preclude any subsequent challenge to factual guilt.

410 S.C. at 471, 765 S.E.2d at 130.

This Court finds Applicant has failed to prove both prongs of the test enumerated in Jamison. First, the DNA evidence at issue is not "newly discovered." Trial Counsel consulted with an expert and was aware the DNA evidence against Applicant was a mixture. While Trial Counsel did not have an independent recollection of discussing this particular fact with Applicant, she testified the notes of her meeting with Applicant contained a specific reference to the DNA mixture, it would be her standard practice to discuss the DNA results, and it would have been "bizarre" for her not to inform Applicant she consulted with a DNA expert. The Court finds Trial Counsel's testimony on this matter credible and finds all evidence about the particular nature and strength of the DNA evidence was known at the time of the guilty plea.

Second, the fact that the DNA evidence contained a mixture of individuals was not of such a weight and quality that the "interest of justice" requires Applicant's guilty plea to be vacated. In addition to the fact that the victim identified Applicant as the perpetrator, Applicant was unable to offer any plausible explanation as to why boxer shorts bearing his DNA were present in the victim's car. The fact the DNA sample was a mixture would not have substantially affected the probative value of this very significant evidence against Applicant. As was noted by

Trial Counsel, the DNA sample containing a mixture was “one minor good fact in the context of a number of very difficult facts.” This Court finds Trial Counsel’s testimony that she still would have advised Applicant to plead guilty regardless of whether the DNA sample was a mixture because of the strength of the State’s case to be credible. The Court notes Applicant’s testimony on this matter was not credible, as, at the PCR hearing, Applicant seemed to misconstrue the DNA evidence as exonerative. This Court does not believe Applicant’s claim that a better explanation of the DNA evidence would have resulted in his choosing not to plead guilty and going to trial.

Because Applicant failed to satisfy the evidentiary standard for newly discovered evidence, this Court finds Applicant’s guilty plea was entered freely, knowingly, 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). 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). As discussed *infra*, Applicant has failed to present valid reasons why he should be allowed to depart from the truth of his statements at the plea. The record

reflects Applicant fully admitted his guilt to the plea court. Therefore, this Court finds the plea judge correctly found Applicant's plea was freely, voluntarily, and intelligently made.

IV. CONCLUSION

Based on the foregoing, the 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.


The Court notes Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt 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, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRPC, provides that if Applicant wishes to seek appellate review, PCR 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.

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IT IS THEREFORE ORDERED THAT:

1. the Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant shall be remanded to the custody of the Department of Corrections to complete service of his sentence.

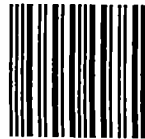
AND IT IS SO ORDERED this 9 day of Oct., 2018.


D. CRAIG BROWN
Presiding Judge
Fifth Judicial Circuit

Florence, South Carolina



1000



29211

U.S. POSTAGE PAID
FCM LG ENV
COLUMBIA, SC
29205
DEC 14, 18
AMOUNT

\$1.84
R2305M145700-3

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