



LAW OFFICE OF  
**JEREMY A. THOMPSON**  
LLC

December 26, 2018

**RECEIVED**

DEC 28 2018

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

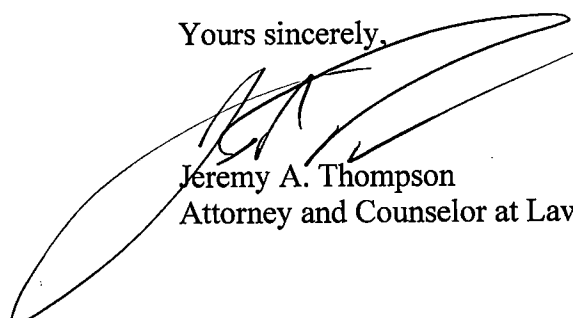
**S.C. SUPREME COURT**

RE: Donquavious Dashon Davis, #364690 v. State of South Carolina; 2016-CP-46-2450

Dear Mr. Shearouse:

Enclosed please find the original and two copies of my Notice of Appeal in the above-captioned action. I would appreciate your filing the original, clocking the copies, and returning the two clocked copies to me in the envelope provided. I would note that Judge Henderson issued a written Order of Dismissal in this case which was filed with the York County Clerk of Court's Office on November 19, 2018. A copy of that Order is also enclosed. I will not be continuing my representation of the Petitioner on appeal. The Petitioner has notified me that he intends to hire a new attorney to represent him on appeal. I will keep the Court apprised of further developments regarding the status of representation. With my thanks for your assistance in this matter and my best regards, I am,

Yours sincerely,



Jeremy A. Thompson  
Attorney and Counselor at Law

JAT/  
Enclosures

cc: Kelly Oppenheimer, Assistant Attorney General (w/ notice of appeal)  
Donquavious Dashon Davis, #364690 (w/ notice of appeal)  
Paul E. Robinson (w/ notice of appeal)

STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM YORK COUNTY  
Court of Common Pleas

Roger E. Henderson, Presiding Judge

2016-CP-46-2450

**RECEIVED**

DEC 28 2018

**S.C. SUPREME COURT**

DONQUAVIOUS DASHON DAVIS, #364690,

Petitioner,

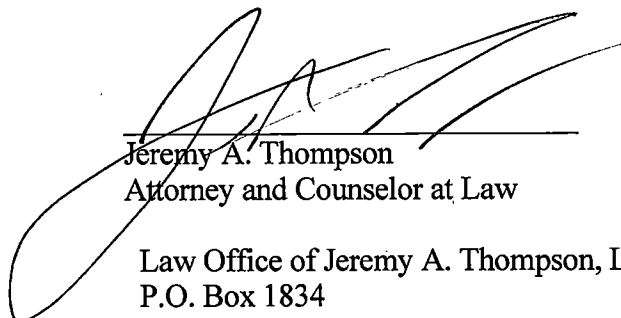
v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Donquavious Dashon Davis, #364690, appeals the Order of Dismissal denying his Application for Post-Conviction Relief filed November 19, 2018, and received by counsel on November 26, 2018, issued by the Honorable Roger E. Henderson, presiding judge.



Jeremy A. Thompson  
Attorney and Counselor at Law

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

ATTORNEY FOR PETITIONER

This 26<sup>th</sup> day of December, 2018.

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

STATE OF SOUTH CAROLINA  
In The Supreme Court

**RECEIVED**

APPEAL FROM YORK COUNTY  
Court of Common Pleas

DEC 28 2018

Roger E. Henderson, Presiding Judge

**S.C. SUPREME COURT**

2016-CP-46-2450

DONQUAVIOUS DASHON DAVIS, #364690,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

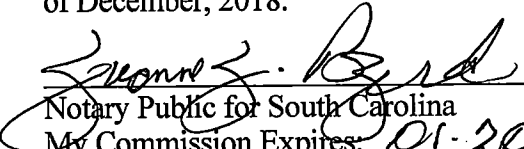
Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the Petitioner's Notice of Appeal in the above-entitled case has been served upon opposing counsel, Kelly Oppenheimer, Assistant Attorney General, P.O. Box 11549, Columbia, SC 29211, by mailing in an envelope properly addressed with postage prepaid on this 26<sup>th</sup> day of December, 2018.

  
Jeremy A. Thompson  
Attorney and Counselor at Law

SWORN TO BEFORE me this 26<sup>th</sup> day  
of December, 2018.

  
Notary Public for South Carolina

(L.S.)

My Commission Expires: 01-20-2019

**RECEIVED**

DEC 28 2018

STATE OF SOUTH CAROLINA )  
COUNTY OF YORK )

IN THE COURT OF COMMONS ~~AND~~ SUPREME COURT )  
FOR THE SIXTEENTH JUDICIAL CIRCUIT )

Donquavious Dashon Davis, #364690, )

Case No. 2016-CP-46-02450 )

Applicant, )

**ORDER OF DISMISSAL** )

v. )

State of South Carolina, )

Respondent. )

DAVID HAMILTON  
C.C.P. & GS  
YORK COUNTY, SC

2018 NOV 19 PM 4: 21

FILED-RECEIVED

This matter comes before the Court by way of an application for post-conviction relief filed August 18, 2016, by Donquavious Dashon Davis (Applicant). The State (Respondent) made its return on December 22, 2016, requesting an evidentiary hearing be held. An evidentiary hearing into the matter was convened on April 16, 2018, at the Moss Justice Center before the Honorable Roger E. Henderson. Applicant was present at the hearing and represented by Jeremy A. Thompson, Esquire. Assistant Attorney General Justin J. Hunter of the South Carolina Attorney General's Office represented Respondent.

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

**PROCEDURAL HISTORY**

The records before this Court indicate Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. During its November 2014 term, the York County Grand Jury indicted Applicant for murder (2014-GS-46-03509), possession of a firearm during the commission of a violent crime (2014-GS-46-03509a), and first-degree burglary (2014-GS-46-03510). Assistant Public

Defender Philip L. Smith and Circuit Public Defender Harry A. Dest, both of the Sixteenth Circuit Public Defender's Office, represented Applicant on these charges.<sup>1</sup> Sixteenth Circuit Solicitor Kevin S. Brackett and Deputy Solicitor Walter William Thompson, Sr. prosecuted the case. On July 1, 2015, Applicant appeared before the Honorable Daniel D. Hall and pled guilty to the lesser-included offense of voluntary manslaughter.<sup>2</sup> Applicant also pled guilty as indicted to first-degree burglary and the weapons charge. Judge Hall accepted the pleas and deferred sentencing. Subsequently, on July 13, 2015, Applicant appeared before the Honorable John C. Hayes, III, for sentencing. Pursuant to a recommendation by the State, Judge Hayes sentenced Applicant to a term of imprisonment of forty years for first-degree burglary, thirty years for voluntary manslaughter, and five years for the weapons charge. The sentences were to be served concurrently.

Applicant filed a timely notice of appeal. By written order dated October 23, 2015, the South Carolina Court of Appeals dismissed Applicant's appeal for failing to provide a sufficient explanation as required by Rule 203(d)(1)(B)(iv), SCACR. The remittitur was issued on December 8, 2015.

#### STATEMENT OF FACTS

Prior to June 29, 2014, Applicant was dating Elda Ashley, and they had a child together. Plea Tr. 19. On June 29, 2014, however, Ashley was dating Shantario McCoy<sup>3</sup> (Victim). Plea Tr. 19. On this particular night, Ashley and Victim were at Kadeem Cobb's house, where Cobb

---

<sup>1</sup> Initially, Applicant was represented by Assistant Public Defender Melissa A. Inzerillo, also of the Sixteenth Circuit Public Defender's Office. On November 20, 2014, Applicant appeared before the Honorable John C. Hayes, III, and moved to relieved Assistant Public Defender Inzerillo as his counsel. Judge Hayes granted that motion, but the next day, November 21, 2014, ordered the Public Defender's Office to appoint standby counsel for Applicant, at which point Assistant Public Defender Smith was appointed. Thereafter, on January 30, 2015, Applicant again appeared before Judge Hayes, and Judge Hayes appointed Assistant Public Defender Smith as counsel for Applicant.

<sup>2</sup> Applicant waived presentment to the Grand Jury on this charge.

<sup>3</sup> Prior to this incident night, Applicant had been sending texts to Victim, threatening to harm and kill Ashley, as well as Victim. Plea Tr. 25.



and Victim were playing videogames in the living room. Plea Tr. 19-20. Sometime around midnight, there was a knock at the sliding glass door in the living room. Plea Tr. 20. Victim went to answer the door, and Applicant came into the residence with a pistol in his hand. Plea Tr. 20-21. Applicant hit Victim in the head with the pistol,<sup>4</sup> then shot him in the chest while yelling something to Ashley at the time. Plea Tr. 21. Meanwhile, Victim was pleading with Applicant, stating "No Dashon, no Dashon<sup>5</sup>." Plea Tr. 21. Applicant then ran out of the house and fled. Plea Tr. 21.

911 was called; and when law enforcement arrived, Ashley immediately told them Applicant had shot Victim. Plea Tr. 21. Law enforcement, therefore, immediately went to Applicant's residence to find him. Plea Tr. 22. However, they did not locate Applicant there. Plea Tr. 22. Law enforcement then proceeded to Applicant's mother's home, but he was not there either. Plea Tr. 22. They continued to look for Applicant for a couple of days, until July 1, 2014, when Applicant turned himself in to law enforcement. Plea Tr. 22.

A few months later, Applicant called Mercedes Bland from the jail. Plea Tr. 22. Bland informed Applicant someone, who she referred to as "Brown," had been arrested with a gun. Plea Tr. 22. This information caused Applicant great concern. Plea Tr. 22. Detective Dalton, who heard the call between Applicant and Ms. Bland, then contacted the Rock Hill Police Department, informing them he suspected the gun "Brown" had been arrested with was the same gun Applicant used in this crime. Plea Tr. 22. The Rock Hill Police Department sent the gun to the South Carolina Law Enforcement Division (SLED), and the gun came back as a positive match to that used in this crime. Plea Tr. 22-23.

---

<sup>4</sup> The gun was not recovered initially. Plea Tr. 22.

<sup>5</sup> Cobb was also familiar with Applicant and identified him as the person who shot Victim. Plea Tr. 21.

Law enforcement also discovered "Brown," identified as Demetrius Graham, was a good friend of Applicant's. Plea Tr. 23. They interviewed Graham, who stated he, Rakisha Johnson, and Applicant were together that night, doing drugs. Plea Tr. 23. Graham also told law enforcement the three of them had gone out to a local convenience store to purchase some cigars; and on the way back, Applicant noticed Ashley's car in Cobb's driveway. Plea Tr. 23. Applicant stopped the car, stated "oh, hell no," and got out of the car with a gun in his hand. Plea Tr. 23. Graham and Johnson watched Applicant go up to the home and go inside. Plea Tr. 23. They immediately heard a woman screaming "no Dashon" and also heard one gunshot. Plea Tr. 23. They then observed Applicant run back out of the house. Plea Tr. 23. When Applicant got back into the car, Applicant told Graham and Johnson he had shot someone in the chest. Plea Tr. 23. All three then left, and Applicant gave the gun to Graham.<sup>6</sup> Plea Tr. 23.

### CURRENT APPLICATION

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

1. Ineffective Assistance of Counsel;
  - a. Failed to investigate the main elements of the case:
    - i. The elements of the gun found at the crime scene chain of custody and/or the disappearance of;
    - ii. Why was this gun at the crime scene;
    - iii. The fact that the house did not belong to the person indicated on the warrant;
    - iv. Proper evidence to prove that a burglary was not committed in this case/incident; [and]
    - v. Did not question witnesses to whether statements would have been material to the defendants [sic] defense and/or innocence [sic].
  - b. Failed to give sufficient advice to [Applicant]
    - i. Counsel advised [Applicant] to plea [sic] instead of going to trial and challenging:
      1. Fraudulent warrants and indictments;
      2. The elements of murder and burglary; [and]

---

<sup>6</sup> Johnson also confirmed this story. Plea Tr. 23-24.

3. All evidence and representation of the innocense [sic] of [Applicant].
  - c. Failed to challenge and/or object to the court to elicit whether [Applicant] committed every element of crime—[Applicant] made a statement about self-defense, but the court failed to go into further detail of the mentioning of this defense to see whether his plea was involuntary; [and]
  - d. Failed to challenge the State's evidence produced at [Applicant's] plea sentencing.
    - i. A statement by Mercedes Blond was produced at the plea sentencing [Applicant] did not have knowledge of this statement, and therefore did not have time to prepare a defense for this statement; [and]
    - ii. There was evidence presented at the plea sentencing which was completely unknown to [Applicant], and critical this was information about a weapon [Applicant] did not have time to prepare for the new information.
2. Prosecutorial Misconduct; [and]
  - a. Failed to disclose sufficient/material evidence that was relevant to a lesser offense—A gun was found at the scene of the crime, that was not placed into evidence or was suppressed which would have rendered the pela of self defense;
  - b. Prosecutor made improper comment about evidence or his testimony was false—Prosecutor introduced evidence about a weapon that cannot be proven by any legal documents or testimony; [and]
  - c. Failed to produce evidence, used in [Applicant's] guilty plea, to [Applicant]—A statement was produced on the day of [Applicant's] guilty plea therefore denying [Applicant] the right to prepare a defense.
3. Trial Court Error.
  - a. Failed to elicit whether [Applicant] committed every element of the crime—[Applicant] indicated that because of the circumstances he could not plea [sic] self-defense, but no one questioned [Applicant] to find out whether [Applicant] was making this plea voluntarily/actually committed the crimes a charged/warranted.

At the evidentiary hearing, Applicant proceeded forward the allegation counsel was ineffective for failing to advise Applicant of his ability to present self-defense at trial.



## TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

At the evidentiary hearing, Applicant testified on his own behalf. Respondent presented the testimony of Assistant Public Defender Smith (Counsel) and Deputy Solicitor Thompson. This Court also had before it a copy of Applicant's plea transcript, a copy of the transcript from Applicant's sentencing hearing, a copy of the transcript from the hearings on Applicant's motions to relieve counsel, the records of the York County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, Applicant's appellate records, and the records from this current post-conviction relief application.

During the evidentiary hearing, Applicant testified on his own behalf. Applicant testified his first attorney was Assistant Public Defender Inzerillo, but she only represented him for a few months. He elaborated he met with her a few times, and he asked her to do some "stuff." He further elaborated, however, it did not work out the way he wanted. Applicant explained he wanted her to speak with some witnesses based on inconsistencies in their statements. He further explained Assistant Public Defender Inzerillo's private investigator did not agree and did not think speaking with those witnesses would be helpful, so he did not speak with the witnesses. He further testified he relieved Assistant Public Defender Inzerillo, and he was *pro se* for approximately three-and-a-half to four-and-a-half months.

Applicant testified his intent was to proceed to trial in order to fight these charges. He testified he did not want to proceed to trial by himself, but rather he wanted to hire Counsel. He explained Counsel was initially shadow counsel. Applicant further testified he conveyed to Counsel his desire to proceed to trial.

He also testified he met with Counsel approximately three times when Counsel was his shadow counsel and three times when Counsel was his attorney. He described these meetings as



lasting between ten and fifteen minutes each. He also testified the longest meeting lasted for thirty to thirty-five minutes when he had a contact visit with his family. He testified he would tell Counsel the same "things" each time. He elaborated Counsel made no efforts towards what he wanted.

Applicant admitted to shooting the victim, but denied entering the home. He testified he was consistent to this fact during his plea and offered an *Alford*<sup>7</sup> plea to the burglary charge. He further testified the plea court asked him if he was aware of an *Alford* plea, which he was not aware of at the time. Applicant testified Counsel then explained an *Alford* plea to him. He further testified although he told Counsel he did not enter the home, he and Counsel did not discuss an *Alford* plea prior to the plea.

He further testified he did not agree with the facts. Applicant also testified he was with two friends that Friday evening, and they stopped by the house to see if his ex-girlfriend and mother of his child was there. He explained drugs are sold out of that house and if his child was there, he would want to get his child away from that house. He testified he was not driving, but he asked the driver to stop. He further testified this was a concern for trial. Applicant further testified he did not know whether or not his ex-girlfriend was at the house, but he saw her car in the driveway. He testified it was not his intent to harm anyone, but he had a gun due to the neighborhood in which he lived. He elaborated it is a violent area, so it is best to carry a gun if out at night. He further elaborated he armed himself in preparation of an attack. Applicant testified he knocked on the door and gave his name, and the victim came to the door to keep Applicant from coming inside. He testified he did <sup>not</sup> know the victim, but he had seen him twice and recognized him. He further testified the victim reached, causing Applicant to fire his gun. He elaborated as the victim saw Applicant, he reached towards the side of his body, and

<sup>7</sup> *North Carolina v. Alford*, 400 U.S. 25 (1970).

Applicant stated "I have a weapon" and fired, but did not shoot at the victim. He further elaborated he was afraid the victim was going to shoot him, and he feared for his life.

Applicant also testified he told Counsel what happened and also told Counsel he needed help with trial strategy. He testified he wrote Counsel multiple times. He further testified on the first day of his plea, he wanted to explain his side of the story. He also testified Counsel told him he was going to receive a life sentence, but he asked to take the case to trial. Applicant elaborated Counsel understood what Applicant wanted but told him a plea was best. He further elaborated Counsel overlooked the fact Applicant wanted to proceed to trial.

Applicant further testified he and Counsel did not discuss self-defense. He testified he had no choice but to agree with the facts at the plea. He also testified he would not agree to the facts for burglary, murder, and manslaughter. He explained he did not enter the home. Applicant testified he knew he could present self-defense through his testimony at trial, but he had no chance of proceeding to trial and asserting self-defense. He explained this was based on his own knowledge, not the advice of Counsel. He further explained he told Counsel he wanted to present self-defense, and he still wants to present self-defense. Applicant also testified he did not understand self-defense. He explained if he knew about self-defense, he would have proceeded to trial. He further explained because he did not know about self-defense, he pled guilty. He testified he wanted to raise self-defense at trial, but he and Counsel did not discuss the elements, reasonable doubt, or the fact that self-defense is a complete defense.

Applicant also testified he recalled the plea court reviewing his constitutional rights with him; and he told the court understanding those rights, he wanted to proceed with the plea. He elaborated, however, he did not tell the truth at that time because he did not know what he could say and felt as though he was stuck. He testified someone told him to plead guilty. He

elaborated that person told him not to explain his side of the story and that they would "handle it." He further elaborated that person told him to just say "yes." Applicant also testified he told the plea court he was satisfied with Counsel; but in the back of his mind, he was not satisfied. He explained he was weak and did not know what he could say. He further explained this was a hard decision to make, and he made the decision to plead guilty. He testified, however, he was influenced to take the plea.

Following Applicant's testimony, Applicant rested and Respondent presented the testimony of Counsel. Counsel testified he was appointed to represent Applicant, though Assistant Public Defender Inzerillo was initially assigned the case. He explained Applicant was not satisfied with her representation and asked to relieve Assistant Public Defender Inzerillo. He further explained at that time, Applicant was not appointed a new attorney and Applicant represented himself. Counsel further testified Judge Hayes appointed him as standby counsel in order to communicate negotiations, to discuss the discovery with the State, and to schedule the case for trial. He testified Applicant then requested Counsel be appointed to represent him, and he and Applicant discussed the case. He explained later, Applicant asked to relieve Counsel, but the court told him it would not relieve Counsel unless Applicant proceeded *pro se*, which Applicant did not want to do.

Counsel testified he met with Applicant numerous times, approximately ten times, and also met with Applicant's family. He further testified he received the discovery, and he explained the State's version of the facts to Applicant. He testified Applicant gave numerous versions of his side of the story, including an alibi, and Applicant withheld information from him. He explained Applicant told him he was not at the crime scenes and there were witnesses who could verify this. He further explained none of the witnesses Applicant provided to him

gave any beneficial information. He testified alibi was, therefore, abandoned as a defense. He further explained Applicant told him he was high or drunk and could not remember. Counsel also testified Applicant told him he was startled, the victim grabbed the gun, he saw someone with a gun, and that he did not see a gun but saw a motion. Counsel explained he was unsure which version of events Applicant would present at trial. He testified in one version of events, Applicant told him he fired a shot in self-defense and Applicant also indicated he saw the victim with a gun. Counsel testified he explained self-defense to Applicant in various forms. He further testified he explained the elements of self-defense to Applicant, particularly highlighting whether or not Applicant was in danger or at fault. He also testified he explained the burden of proof for self-defense to Applicant.

He also testified a gun was found at the residence, and Assistant Public Defender Inzerillo noticed it was not included in the list of evidence from the scene. He testified the gun found was a fake, pellet gun, so it was not taken into evidence. He further testified the gun was found many feet away from the shooting. Counsel explained had Applicant proceeded to trial, this was what they would be left with, and the odds of prevailing would have been difficult.

Counsel testified a theory of self-defense was difficult. He explained that theory did not match what the witnesses were saying, and he believed it would have been an ethical issue to put Applicant on the stand. He further explained there was no other way to present self-defense other than Applicant testifying, which he explained to Applicant and Applicant understood.

He testified Applicant discussed his issues regarding the burglary charge with him. He further testified he explained to Applicant even the slightest entry constituted a burglary and also explained even if he pushed in or reached inside to shoot, that would constitute a burglary. Counsel testified the first time Applicant ever indicated he stayed outside of the home was at the



evidentiary hearing, and Applicant never told him prior to the plea. He also testified the court stopped the plea at one point so that Counsel could explain an *Alford* plea to Applicant, which he did.

He further testified he entered into negotiations. He testified once the State was set with its evidence, the State did not move from its initial offer. He explained the State was not willing to change its offer, which would expose Applicant to a sentence of fifteen to fifty years, but would avoid a life sentence. He testified he explained this to Applicant. Counsel also testified he was concerned with Applicant's decisions, so he asked the Chief Public Defender to meet with Applicant. He testified he also explained he got Applicant's family involved. Counsel also testified as the trial neared, Applicant attempted to fire him, which was a catalyst to the plea.

He testified he explained the waiver form to Applicant, and Applicant understood what he was facing. He further testified although Applicant indicated many times he wanted to proceed to trial, Applicant did not indicate he wanted a trial when filling out the form. He also testified he did not coach Applicant at the plea, and he merely explained the questions the plea court would ask. Counsel testified Applicant understood the consequences, understood what was going on at the plea, and understood the recommendation.

Following Counsel's testimony, Deputy Solicitor Thompson testified. Deputy Solicitor Thompson testified he handles all homicide cases out of York County and was immediately involved in this case. He explained he was involved with the law enforcement officers from the beginning. He further testified it was clear Applicant was guilty of these crimes. He explained Applicant had a longstanding relationship with the woman who was now dating the victim, and the relationship between Applicant and this woman was volatile and abusive. He further explained there were text messages from Applicant threatening to kill this woman and the victim.



He also testified Applicant was with another man and woman that night, and they were driving around. He testified Applicant saw his ex-girlfriend's car at the victim's house, stated "oh hell no," and took the gun with him up to the home. He further testified the victim went to the door, and Applicant pushed his way inside and pulled the gun. He explained because it was a sliding glass door, if Applicant had not entered the home, he would have had to shoot through the blinds. Deputy Solicitor Thompson testified Applicant hit the victim in the head and fired a shot into his chest. He also testified the people in the car heard the commotion. He testified Applicant then ran out of the house and took off in the car.

Deputy Solicitor Thompson also testified Applicant gave the gun to the man in the car, who later was caught with the gun. He further testified there was a jail call, in which it was indicated "Brown" was arrested with the gun. He explained Applicant was concerned by this fact. He also testified "Brown" gave a statement to law enforcement, describing what he saw. He further testified the people in the car confirmed Applicant went inside the house and killed the victim.

He testified the gun at the residence was a pellet gun, which was found behind the couch, covered in clothing, and against the far wall from the shoot. He testified he did not ask law enforcement to collect that pellet gun into evidence. He assumed it had been collected, but he had photographs of the gun. He further testified the victim would not have known about the gun. He also testified it was not a real gun, so it would not have been considered a viable weapon in self-defense.

Deputy Solicitor Thompson testified he provided discovery first to Assistant Public Defender Inzerillo then to Counsel. He further testified he shared full discovery with the



defense, including all witness statements. He testified Assistant Public Defender Inzerillo asked him about the gun, and he relayed the information about the gun to her and to Counsel.

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

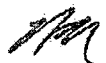
This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly.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

Applicant's sole allegation is ineffective assistance of counsel for failing to advise Applicant of his ability to present self-defense at trial.

#### *Ineffective Assistance of Counsel*

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

The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Butler*, 286 S.C. 441, 334 S.E.2d 813. The applicant must overcome this presumption to receive relief. *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 (1989).



Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." *Cherry*, 300 S.C. at 117, 385 S.E.2d at 625 (citing *Strickland*). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625. In order to satisfy the prejudice prong of this test following a guilty plea, the applicant "must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." *Hill v. Lockhart*, 474 U.S. 52, 59 (1985).

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

*Counsel's alleged failure to explain self-defense to Applicant*

Applicant contends Counsel was ineffective for failing to advise Applicant of the ability to present a defense of self-defense at trial. "Counsel's concern is the faithful representation of the interest of his client and such representation frequently involves highly practical considerations as well as specialized knowledge of the law." *Tollett v. Henderson*, 411 U.S. 258, 267-68 (1973). "A self-defense charge is not required unless it is supported by the evidence." *State v. Slater*, 373 S.C. 66, 69, 644 S.E.2d 50, 52 (2007) (citing *State v. Goodson*, 312 S.C. 278, 280, 440 S.E.2d 370, 372 (1994)). In order to establish a defense of self-defense, the defendant must: (1) be without fault in bringing on the difficulty; (2) have been in actual imminent danger of losing his life or sustaining serious bodily injury; (3) show that a reasonably prudent person of

ordinary firmness and courage would have entertain the belief he was actually in imminent danger and the circumstances were such as would warrant a person of ordinary prudence, firmness, and courage to strike the fatal blow in order to save himself from serious bodily harm or death, if the defense is based upon a defendant's belief of imminent danger; and (4) have had no other probable means of avoiding the danger. *Id.* at 69-70, 644 S.E.2d at 52. A defendant "who provokes or initiates an assault cannot claim self-defense unless he both withdraws from the conflict and communicates his withdrawal by word or act to his adversary." *State v. Jackson*, 384 S.C. 29, 36, 681 S.E.2d 17, 20-21 (Ct. App. 2009).

Here, Applicant testified as the victim went to the door, he reached for something towards the side of his body, causing Applicant to shoot at him. He further testified he did not shoot to kill. Applicant elaborated he thought the victim was going to shoot him, and he feared for his own life. Counsel, however, testified Applicant gave numerous versions of the events of that night, including an alibi defense and self-defense. He explained at times, Applicant would state he saw the victim grab a gun, saw someone else with a gun, and never saw a gun but rather saw a motion. He further explained based on these numerous stories, he explained self-defense to Applicant. Counsel also testified a defense of self-defense at trial would have been difficult, as Applicant's version did not comport with the other witnesses. He testified in order to present such a defense at trial, Applicant would have to testify, which he explained to Applicant.

This Court finds Counsel's testimony very credible, whereas Applicant's testimony is not credible. Moreover, by Applicant's own admission at the plea, he and Counsel had discussed possible defenses that might have been beneficial. Plea Tr. 15-16. Because Counsel fully explained the elements of self-defense to Applicant and explained the difficulties in presenting a

defense of self-defense at trial, this Court finds Applicant has failed to establish Counsel was deficient.

Similarly, this Court further finds Applicant has failed to establish any resulting prejudice from the alleged deficiency. Applicant voluntarily made the decision to plead guilty, indicating no one had promised him anything, threatened him, or coerced him into pleading guilty. Plea Tr. 26. He further indicated he was pleading guilty of his own free will and accord. Plea Tr. 26. Moreover, after the State had given its recitation of the facts, Applicant admitted to shooting the victim. Plea Tr. 27. He further admitted he did not have a good chance of presenting a defense of self-defense at trial. Plea Tr. 27. Applicant understood he could present this defense, yet chose to waive any and all defenses by pleading guilty. Based on all of the foregoing, this allegation must be denied and dismissed with prejudice.



## CONCLUSION

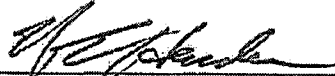
Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRPC, provides if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

### IT IS THEREFORE ORDERED:

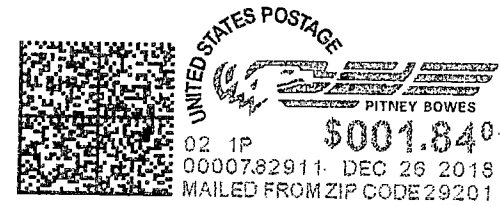
1. That this application for post-conviction relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to and remain in the custody of the State.

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

  
\_\_\_\_\_  
ROGER E. HENDERSON  
Presiding Judge  
Sixteenth Judicial Circuit

Chesapeake, South Carolina

hompson



---

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

---