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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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JAN 31 2019

S.C. SUPREME COURT

APPEAL FROM PICKENS COUNTY  
Court of Common Pleas

Alex Kinlaw, Circuit Court Judge

Case No. 2018-CP-39-777

Albert Laverne Taylor, #375218

Appellant,

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JAN 29 2019

SC Court of Appeals

WAA

-vs-

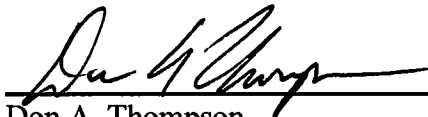
State of South Carolina,

Respondent.

NOTICE OF APPEAL

Albert Laverne Taylor appeals the order of the Honorable Alex Kinlaw, dated January 7, 2019. Appellant received written notice of entry of this order on January 15, 2019.

January 22, 2019



Don A. Thompson  
(S.C. Bar No. 5545)  
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APPEAL FROM PICKENS COUNTY  
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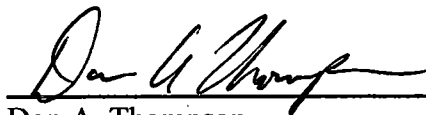
JAN 29 2019

SC Court of Appeals

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the State of South Carolina (respondent) by depositing a copy of it in the United States Mail, postage prepaid, on January 22, 2019, addressed to the State's attorney of record, Janell H. Gregory, Assistant Attorney General, S.C. Attorney General's Office, Post Office Box 11549, Columbia, South Carolina 29211.

January 22, 2019



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Attorney for Appellant

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM PICKENS COUNTY  
Court of Common Pleas

Alex Kinlaw, Circuit Court Judge

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Case No. 2018-CP-39-777

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Albert Lavern Taylor, #375218,

Appellant,

-vs-

State of South Carolina,

Respondent.

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JAN 29 2019  
SC Court of Appeals

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CERTIFICATION OF FILING

I certify that I have filed the Notice of Appeal and Proof of Service in this matter, in the office of the Clerk of Court for Pickens County, South Carolina, on January 22, 2019. Attached are copies of the same showing the clocking stamp of the Clerk of Court for Pickens County, South Carolina.

January 23, 2019



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January 23, 2019

The Honorable Jenny Abbott Kitchings  
Clerk, The South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, S.C. 29211

**RECEIVED**  
JAN 29 2019  
SC Court of Appeals

RE: Albert Laverne Taylor #375218, Appellant -vs- State of South Carolina, Respondent  
2018-CP-39-777

Dear Mrs. Kitchings:

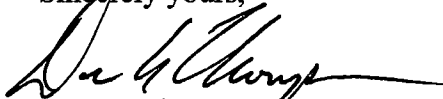
I was appointed to represent Mr. Taylor in a post-conviction relief action. Judge Kinlaw has denied him relief and dismissed the action. Mr. Taylor has instructed me to file an appeal.

Enclosed, for filing, please find the following relating to this matter:

- 1) A copy of Judge Kinlaw's written Order of Dismissal;
- 2) A Notice of Appeal;
- 3) A Proof of Service; and
- 4) A Certification of Filing (as to the filing of the Notice of Appeal and Proof of Service in the Pickens County Court).

I am turning this matter over to the Office of Appellate Defense for any further proceedings.

Sincerely yours,

  
Don A. Thompson

STATE OF SOUTH CAROLINA )  
COUNTY OF PICKENS )

IN THE COURT OF COMMON PLEAS  
FOR THE THIRTEENTH JUDICIAL CIRCUIT

Albert Lavern Taylor, #375218, )

2018-CP-39-0777

Applicant, )

ORDER OF DISMISSAL

v. )

State of South Carolina, )

Respondent. )

**RECEIVED**

JAN 29 2019

**SC Court of Appeals**

CLERK OF COURT  
PICKENS COUNTY  
SOUTH CAROLINA

2019 JAN 11 P 3:48

This matter comes before the Court by way of an application for post-conviction relief filed on July 12, 2018, by Albert Taylor (“Applicant”). The State (“Respondent”) filed a Return on October 31, 2018, requesting an evidentiary hearing. An evidentiary hearing into the matter was convened on December 17, 2018, at the Greenville County Courthouse. Applicant was present at the hearing and represented by Don Thompson, Esquire. Assistant Attorney General Janell H. Gregory of the South Carolina Attorney General’s Office appeared on behalf of Respondent. At the hearing, Applicant testified on his own behalf. Applicant’s plea counsel, Dorothy Manigault, Esquire (“Counsel”), also testified at the hearing. After a review of the record and all evidence presented, this Court finds Applicant has failed to meet his requisite burden of proof and denies this application.

I. PROCEDURAL HISTORY

The records before this Court establish Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Pickens County Clerk of Court’s order of commitment. During the October 2016 term, the Pickens County Grand Jury indicted Applicant for murder (2016-GS-39-2322). Counsel represented Applicant. Assistant Solicitor Baker Cleveland of the Thirteenth Circuit Solicitor’s Office prosecuted the case.

On January 25, 2018, Applicant appeared with Counsel before the Honorable Edward W. Miller and pled guilty as indicted. Based on a recommendation from the State, Judge Miller sentenced Applicant to imprisonment for thirty-two years. Applicant did not appeal his guilty plea or sentence.

## II. SUMMARY OF FACTS

On February 17, 2016, Applicant and his two co-defendants went to the Tri-City Lanes in Easley. The purpose of the trip was for one of the co-defendants to fight another juvenile, Bradley Burrell ("Burrell"). The fight had been arranged through messages on social media. Applicant and his co-defendants all had firearms, which they had posted pictures of on social media earlier that day. Upon arrival at the bowling alley, a crowd gathered in anticipation of the fight including Burrell and his friend, Kequan Brown ("Victim"). No one else at the bowling alley was armed that night other than Applicant and his co-defendants. At some point, the co-defendants presented their firearms to the crowd while Applicant remained in the vehicle. Burrell and one of the co-defendants began to argue and, once Victim became involved, Applicant exited the vehicle. Applicant walked around the rear of the vehicle and shot Victim in the chest. Victim was pronounced dead at the scene. Applicant and his co-defendants fled the scene and used a cell phone to delete the social media messages setting up the fight. They also hid their weapons, including the murder weapon, in Greenville County. Applicant and the co-defendants were arrested just hours later attempting to get gas in Dacusville. The weapons recovered by law enforcement included a .38 revolver, which was confirmed to be the murder weapon by SLED analysis. (GP Tr. 6-7.)

### III. ALLEGATIONS RAISED

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

1. Ineffective Assistance of Counsel:
  - a. Counsel failed to inform client about direct appeal;
  - b. Counsel failed to represent client to the best of her abilities.

An evidentiary hearing was held on December 17, 2018, Applicant informed this Court he intended to proceed on the following grounds for relief:

1. Ineffective Assistance of Counsel
  - a. Counsel failed to file a direct appeal on Applicant's behalf;
  - b. Counsel failed to advise Applicant on issues regarding voluntary manslaughter and self-defense.

### IV. TESTIMONY FROM POST-CONVICTION RELIEF HEARING

#### *Applicant's Testimony*

Applicant testified on his own behalf during the post-conviction relief hearing. Applicant testified the incident occurred in Pickens County at a bowling alley. Applicant testified the fight was arranged over social media, but he was not involved in setting it up. Applicant testified after the altercation began, he shot Victim who died as a result of his injuries. Applicant testified his three co-defendants gave statements against him after they were arrested. Applicant testified Counsel was appointed to represent him on his charge and he met with her four or five times. Applicant testified he was in jail the whole time prior to his guilty plea. Applicant testified Counsel did not discuss voluntary manslaughter or self-defense with him. Applicant testified he entered a guilty plea to hurry up and get his case over with. Applicant testified he admitted to the shooting and received thirty-two years. Applicant testified Counsel told him he could face life in prison. Applicant testified he asked Counsel to see if the State would allow him to plead guilty to a lesser offense. Applicant testified his Counsel told him the State would not agree to a lesser offense.



Applicant testified Counsel did not discuss his right to appeal his guilty plea. Applicant testified he knows a jury could still find him guilty of murder. Applicant testified he discussed getting a new trial with his PCR Counsel, Don Thompson, and understands he could get life in prison if he were to receive a new trial. Applicant testified he would like to take that chance.

On cross-examination, Applicant testified he reviewed discovery with Counsel and recalled waiving his constitutional rights. Applicant testified he recalled telling the plea judge he wanted to plead guilty and he was pleading guilty because he was guilty. Applicant testified he recalled telling the plea judge he was satisfied with Counsel and she had done everything he felt necessary to adequately prepare his defense. Applicant testified he recalled telling the plea judge that he had enough time to meet with Counsel prior to his plea.

#### *Counsel's Testimony*

Counsel also testified at the post-conviction relief hearing. Counsel testified she has been practicing law for thirty years and all of that time has been spent in criminal law. Counsel testified she was appointed to represent Applicant and represented him since the time of his arrest. Counsel testified she met with Applicant at least eight times. Counsel testified the facts of the case were that Applicant and his co-defendants arranged a fight at a bowling alley through social media. Counsel testified Applicant went to the bowling alley with his three co-defendants. Counsel testified at some point during the altercation at the bowling alley, Applicant got out of the vehicle and shot Victim who died as a result of his injuries.

Counsel testified she filed Rule 5 and Brady motions and reviewed discovery with Applicant. Counsel testified Applicant claimed he was not the shooter at first, and then he told her other people there had guns and were going to shoot him and his co-defendants. Counsel testified she did investigate Applicant's case. Counsel testified Applicant's co-defendants had provided

statements against Applicant to law enforcement and were going to testify against him at trial. Counsel testified Applicant brought up self-defense, but she did not see that as a viable defense based on the statements from the co-defendants. Counsel testified she attempted to get a plea of voluntary manslaughter for Applicant, but when she asked the State they “laughed at her.” Counsel testified the State offered Applicant a thirty year plea deal and kept it open for two months. Counsel testified she talked to Applicant about the plea offer three or four times and Applicant stated he wanted a better offer. Counsel testified, after the initial plea offer had expired, Applicant finally agreed to a plea offer of thirty-two years.

Counsel testified she reviewed Applicant’s constitutional rights with him prior to his guilty plea. Counsel testified she believes it was in Applicant’s best interest to plead guilty. Counsel testified Applicant was adamant he did not want a trial. Counsel testified she would have taken his case to trial if Applicant had elected to proceed to trial. Counsel testified Applicant never asked Counsel to appeal his guilty plea. Counsel testified she did not see any meritorious grounds to appeal Applicant’s plea.

On cross-examination, Counsel testified she did attempt to get the State to offer Applicant a voluntary manslaughter plea deal, but they refused. Counsel testified she told Applicant that at trial the judge could possibly give the jury a voluntary manslaughter charge, but Applicant was adamant that he did not want a trial. Counsel testified Applicant understood very well that at trial he could have gotten a voluntary manslaughter charge for the jury to consider.

#### V. APPLICABLE LAW

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove

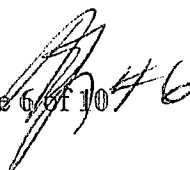
that “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order 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. Id. at 117, 300 S.C. 115. First, the applicant must prove counsel’s performance was deficient. Id. Under this prong, courts measure an attorney’s performance by its “reasonableness under prevailing professional norms.” Id. (citing Strickland, 466 U.S. at 688). Second, any 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.” Id. at 117-18, 300 S.C. 115. With respect to guilty plea counsel, the applicant must show 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, 59 (1985).

## VI. FINDINGS OF FACTS AND CONCLUSIONS OF LAW

This Court viewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the plea transcript, and Applicant’s records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the



attorneys. Set forth below are the relevant findings of fact and conclusion of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

This Court finds Applicant has failed to meet his burden of proving he is entitled to post-conviction relief on any of his allegations of ineffective assistance of counsel. Applicant has failed to prove both deficiency on the part of Counsel and any prejudice therefrom. Moreover, this Court notes the record reflects the knowing and voluntary nature of Applicant's guilty plea. Furthermore, after observing the witnesses and passing on their credibility, this court finds Counsel's testimony to be credible. By contrast, this Court finds Applicant's testimony lacks credibility.

*Counsel failed to file a direct appeal on Applicant's behalf*

Applicant alleges Counsel was ineffective for failing to file an appeal. Through post-conviction relief, an applicant can assert he is entitled to a belated review of direct appeal issues pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974), by asserting his counsel failed to file a direct appeal on his behalf when requested. When the question is whether counsel was ineffective in failing to file a direct appeal from a conviction and sentence, the United States Supreme Court has held that counsel has a constitutionally-imposed duty to consult with a defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal (for example, because there are non-frivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores-Ortega, 528 U.S. 470 (2000). There is no constitutional obligation necessitating plea counsel inform a criminal defendant of his right to appeal following a guilty plea. Weathers v. State. 319 S.C. 59,459 S.E.2d 838 (1995); See also Simuel v. State, 390 S.C. 267, 270 n. 1, 701 S.E.2d 738, 739 n. 1 (2010) (reaffirming the standard attorneys shall meet for appealing from

guilty pleas following the United States Supreme Court decision of Roe v. Flores-Ortega, 528 U.S. 470, (2000)).

This Court finds credible Counsel's testimony that Applicant did not ask her to file an appeal. This Court also finds credible Counsel's testimony that she did not see any meritorious grounds to appeal Applicant's guilty plea. This Court finds Counsel was not deficient in failing to appeal Applicant's guilty plea as Applicant has failed to show either condition under Roe existed. Therefore, Applicant has failed to meet his burden and this allegation must be denied and dismissed with prejudice.

*Counsel failed to advise Applicant on issues regarding voluntary manslaughter and self-defense*

Applicant alleges Counsel was constitutionally ineffective for failing to advise him on issues regarding voluntary manslaughter and self-defense. Applicant testified Counsel did not discuss voluntary manslaughter or self-defense with him during her representation. According to Counsel's testimony, Applicant's story changed a couple of times during her representation and at one point he claimed self-defense. Once Applicant's co-defendants provided statements to law enforcement regarding Applicant's involvement, self-defense was no longer a viable defense for Applicant. Additionally, Counsel testified she attempted to obtain a plea offer for voluntary manslaughter on Applicant's behalf, however, the State would not allow Applicant to plead to a lesser offense. Counsel testified she told Applicant if he proceeded to trial he could request a jury charge for voluntary manslaughter, but Applicant was adamant that he did not want to go to trial.

This Court finds credible Counsel's testimony that she did discuss self-defense with Applicant, but that was not a viable defense given the statements made by his co-defendants to law enforcement. This Court finds credible Counsel's testimony that she attempted to obtain a plea offer from the State for voluntary manslaughter. This Court also finds credible Counsel's

testimony that she discussed with Applicant the possibility of getting a jury charge of voluntary manslaughter at trial, however, Applicant did not want to proceed to trial. Applicant has failed to establish how Counsel was deficient in her representation as Counsel did discuss both self-defense and voluntary manslaughter with Applicant. Further, Applicant has failed to establish any resulting prejudice from Counsel's alleged deficiency, especially since this Court finds credible Counsel's testimony that Applicant did not want to proceed to trial. Therefore, this allegation must be denied and dismissed with prejudice.

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM PICKENS COUNTY  
Court of Common Pleas

CLERK OF COURT  
PICKENS COUNTY  
SOUTH CAROLINA

Alex Kinlaw, Circuit Court Judge

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Albert Laverne Taylor, #375218

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-vs-

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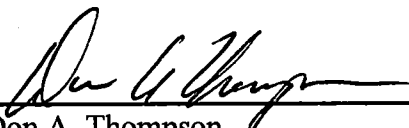
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January 22, 2019

  
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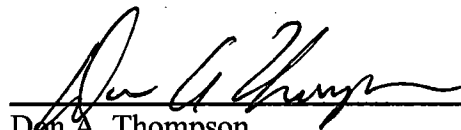
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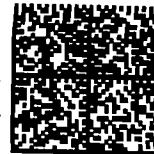


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The Honorable Jenny Abbott Kitchings  
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