

LAW OFFICE

THE HENDERSON LAW FIRM, P.C.

Carson M. Henderson

ATTORNEY AND COUNSELOR AT LAW

109-B Oak Avenue
Greenwood, South Carolina 29646

Telephone: (864) 229-8000
Facsimile: (864) 229-8001

February 22, 2019

Hon. Daniel E. Shearouse
Clerk of Court
S.C. Supreme Court
1231 Gervais Street
P.O. Box 11330
Columbia, S.C. 29211

RECEIVED

FEB 26 2019

S.C. SUPREME COURT

Re: Bryantavious Murray (#356248) v. State of South Carolina
Greenwood C/A No. 2014-CP-24-887

Dear Clerk Shearouse:

Please file the enclosed Notice of Appeal and Proof of Service and return clocked copies of both documents to me in the enclosed envelope provided for your convenience. Also enclosed is Circuit Judge Brian M. Gibbons' Order of Dismissal dated February 4, 2019.

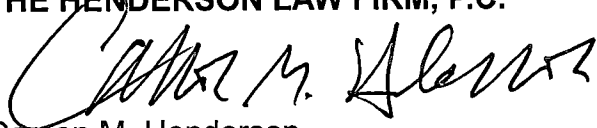
My email address is carson@carsonhendersonlawfirm.com.

Thank you for your assistance and cooperation in this matter.

★ 1

Cordially yours,

THE HENDERSON LAW FIRM, P.C.


Carson M. Henderson

CMH/lhc

Enclosures as indicated

Cc: Janell Gregory, Esquire
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

S.C. Commission on Indigent Defense
Appellate Division
1330 Lady Street, Suite 401
Columbia, S.C. 29201

Bryantavious K. Murray (#356248)
Kirkland Correctional Institution
4344 Broad River Road
Columbia, S.C. 29210

#2

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GREENWOOD COUNTY
Court of Common Pleas

Brian M. Gibbons, Presiding Circuit Judge – Greenwood County

C/A No. 2014-CP-24-887

BRYANTAVIOUS MURRAY (#356248),

Appellant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Bryantavious Murray appeals the Order of Dismissal issued by the Honorable Brian M. Gibbons on February 4, 2019. This matter was heard in Greenwood County on October 15, 2018. The Appellant's trial counsel received the Order of Dismissal from the Office of the Attorney General on Tuesday, February 19, 2019.

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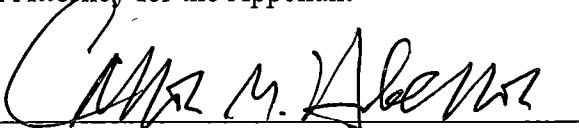
FEB 26 2019

S.C. SUPREME COURT

THE HENDERSON LAW FIRM, P.C.

Trial Attorney for the Appellant

By:


Carson M. Henderson
109-B Oak Avenue
Greenwood, S.C. 29646
Phone: (864) 229-8000
Fax: (864) 229-8001

Greenwood, South Carolina

February 22, 2019

Other Counsel of Record:

Janell Gregory, Esquire
S.C. Attorney General's Office
P.O. Box 11549
Columbia, S.C. 29211

S.C. Commission on Indigent Defense
Appellate Division
1330 Lady Street, Suite 401
Columbia, S.C. 29201

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GREENWOOD COUNTY
Court of Common Pleas

Brian M. Gibbons, Presiding Circuit Judge – Greenwood County

C/A No. 2014-CP-24-887

BRYANTAVIOUS MURRAY (#356248),

Appellant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

RECEIVED

FEB 26 2019

S.C. SUPREME COURT

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the Respondent, State of South Carolina, by depositing a copy of it in the United States Mail, postage prepaid, on February 22, 2019, addressed to its attorney of record, Janell Gregory, Esquire, S.C. Attorney General's Office, P.O. Box 11549, Columbia, S.C. 29211, with a copy also being mailed to S.C. Commission on Indigent Defense, Appellate Division, 1330 Lady Street, Suite 401, Columbia, S.C. 29201.

THE HENDERSON LAW FIRM, P.C.

Trial Attorney for the Appellant

By: 

Carson M. Henderson
109-B Oak Avenue
Greenwood, S.C. 29646
Phone: (864) 229-8000
Fax: (864) 229-8001

Greenwood, South Carolina

February 22, 2019

COPY



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ALAN WILSON
ATTORNEY GENERAL

February 15, 2019

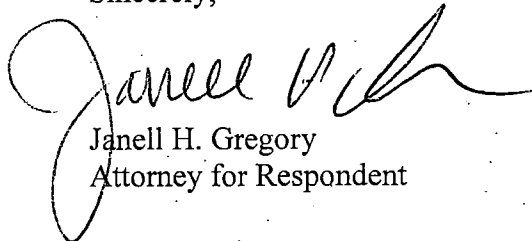
Carson M. Henderson, Esquire
The Henderson Law Firm, PC
109-B Oak Avenue
Greenwood, South Carolina 29646

Re: Bryantavious Murray, #356248 v. State of South Carolina
2014-CP-24-0887

Dear Mr. Henderson:

Enclosed please find a copy of the signed and filed **Order of Dismissal** in the above mentioned post-conviction relief case. With this letter, we are closing our file in this matter.

Sincerely,



Janell H. Gregory
Attorney for Respondent

JHG/clw
Enclosure(s)

STATE OF SOUTH CAROLINA)
COUNTY OF GREENWOOD)

Bryantavious Murray, #356248,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE EIGHTH JUDICIAL CIRCUIT

2014-CP-24-887

ORDER OF DISMISSAL

This matter comes before the Court by way of an application for post-conviction relief filed on July 10, 2014, by Bryantavious Murray ("Applicant"). The State ("Respondent") filed a Return on December 16, 2014, requesting an evidentiary hearing. An evidentiary hearing into the matter was convened on October 15, 2018, at the Greenwood County Courthouse. Applicant was present at the hearing and represented by Carson Henderson, 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. Public Defender Janna Nelson of the Eighth Circuit Public Defender's Office, ("Counsel") also testified. 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 Greenwood County Clerk of Court's order of commitment. During the January 2013 term, the Greenwood County Grand Jury indicted Applicant for failure to stop for a law enforcement vehicle (2013-GS-24-0123). Applicant was also indicted during the February 2013 term of the Greenwood County Grand Jury for assault and

battery by mob (third degree). Applicant was also charged with attempted armed robbery and waived presentment to the grand jury on this charge¹. Counsel represented Applicant. Assistant Solicitor Elizabeth White of the Eighth Circuit Solicitor's Office prosecuted the case.

On July 23, 2013, Applicant appeared with Counsel before the Honorable Eugene C. Griffith, Jr., and pled guilty to all three charges. Pursuant to a negotiated sentence, Judge Griffith sentenced Applicant to ten years for attempted armed robbery, thirty days for assault and battery (third degree), and time served on the failure to stop for law enforcement charge. Additionally, five related charges were dismissed pursuant to the plea agreement. Applicant did not appeal his guilty plea.

II. SUMMARY OF FACTS

Attempted Armed Robbery

On May 12, 2012, Applicant and Tashina Morton ("Victim") had been communicating on Facebook about a necklace Victim was trying to sell. (GP Tr. 9.) Applicant and Victim agreed to meet at Georgetown Apartments in Greenwood County. (GP Tr. 9.) Applicant and another individual arrived at the location and asked to see the necklace. (GP Tr. 9.) Victim showed Applicant the necklace. (GP Tr. 9.) After conferring with the Applicant, the other individual pulled a gun on Victim and put it in her face. (GP Tr. 9.) Applicant snatched the necklace from Victim and took off running. (GP Tr. 9.) Applicant was wearing the necklace and charm when he was arrested about a month later. (GP Tr. 9.)

¹ During the guilty plea, the State dismissed the following charges against Applicant: armed robbery (12-GS-24-1432), larceny (12-GS-24-1433, armed robbery (12-GS-24-1218), carrying pistol unlawfully (13-GS-24-121), and possession of pistol without a serial number (13-GS-21-122). Applicant did not challenge these indictments in his applicant for post-conviction relief.



Failure to Stop for Law Enforcement Vehicle

On October 4, 2012, Applicant was driving a moped down behind the jail in Greenwood County. (GP Tr. 9.) An officer attempted to stop Applicant because of an anonymous complaint, but when the officer turned on his blue lights, Applicant cut across the front of the courthouse, ran a stop sign, and eventually fled from the officer on foot. (GP Tr. 9.) Applicant was arrested short distance away. (GP Tr. 10.)

Assault and Battery, Third Degree

On October 21, 2012, Applicant was incarcerated in the Greenwood Detention Center. While incarcerated, Applicant and his co-defendant struck another inmate with closed fists. (GP Tr. 10.) The other inmate had been yelling racial slurs at the time. (GP Tr. 10.)

On April 28, 2013, Applicant threatened the family of a detention center officer. (GP Tr. 10.) Applicant told the officer when he got out he was going to do various terrible things to the officer's wife and children. (GP Tr. 10.)

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. "Amendment Violation of the S.C.U.S Constitution: 14th, 5th, 4th, 6th"

An evidentiary hearing was held on October 15, 2018, Applicant informed this Court he intended to proceed on the following grounds for relief:

1. Ineffective Assistance of Counsel
 - a. Counsel allowed Applicant to plead guilty to a charge that is inconsistent with the facts set forth in the indictment.



IV. TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

Applicant's Testimony

During the evidentiary hearing, Applicant testified on his own behalf. Applicant testified he wants a new trial because he never had a gun. Applicant testified Victim handed him the necklace two times and then he saw the gun and took off running. Applicant testified he is not guilty of armed robbery or attempted armed robbery. Applicant testified if he had known he was pleading guilty to being armed with a weapon he would not have gone forward. Applicant testified he met with Counsel at least two times and he did not have enough time to work on the case with Counsel. Applicant testified he never reviewed discovery with Counsel. Applicant testified Counsel never read the indictment or explained it. Applicant testified he signed the indictment but never read it. Applicant testified he thought attempt was a non-violent conviction. Applicant testified he never gave Counsel any defenses, but tried to get the charge dropped to strong armed robbery because he did not have a gun. Applicant entered Victim's written statement to law enforcement as an exhibit during the hearing. In the statement Victim wrote in part, "we exchange[d] the chain twice, on the second time [Applicant's co-defendant] pulled out a gun, and aimed it at me in the car."

Applicant testified he recalled telling the judge he was pleading guilty because he was guilty, but he really was not guilty. Applicant testified he recalled agreeing with the facts presented by the State. Applicant testified he recalled telling the plea judge that he was pleading guilty freely, voluntarily, and was not threatened by anyone.

Counsel's Testimony

Counsel also testified at the post-conviction relief hearing. Counsel testified the State was moving forward with armed robbery charge until July 15, 2013. Counsel testified she was able to



get a reduction to the armed robbery charge to attempted armed robbery, which is a lesser included offense to Applicant's original charge. Counsel testified the State offered a negotiated ten year sentence for the attempted armed robbery deal. Counsel testified she tried to get a strong armed robbery deal, but the State would not budge. Counsel testified it did not appear Applicant was armed, but his co-defendant had a gun. Counsel testified Victim believed both Applicant and his co-defendant had a gun and she would have testified at trial that Applicant had a gun. Counsel testified she and her investigator talked to Victim and the passenger in her vehicle at the time of the incident. Counsel testified, to her knowledge, no one else was arrested in this case, but Applicant eventually told law enforcement who his co-defendant was, but she did not believe he had been arrested. Counsel testified at the time of Applicant's arrest he was wearing the stolen necklace.

Counsel testified at the plea hearing the State's version of the facts indicated Applicant did not have a gun. Counsel testified the facts admitted do not support what Applicant pled to during the plea. Counsel testified Applicant waived presentment on the attempted armed robbery indictment and she signed and witnessed the document. Counsel testified she does not think she read the indictment to Applicant because she usually explains it to her clients in laymen's terms. Counsel testified the summary of the incident in the indictment is a completed armed robbery and not an attempted armed robbery. Counsel testified, according to the summary provided in the indictment, Applicant was indicted as a principal and not as an accomplice or co-conspirator. Counsel testified she believed Applicant would have easily been convicted under hand of one, hand of all theory at trial.

On cross-examination, Counsel testified she has been practicing law since 2002 and all of that has been in criminal defense. Counsel testified Applicant was originally charged with armed

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robbery, but the State eventually allowed him to plead to attempted armed robbery with a minimum ten year sentence. Counsel testified Applicant got what he bargained for in the plea. Counsel testified it was a negotiated plea and she prefers those because the defendant is aware of what their sentence will be from the court. Counsel testified she advised Applicant of his options and told him if he did not take the offer he could get up to thirty years at trial. Counsel testified she would have taken Applicant's case to trial if he wanted a trial. Counsel testified she obtained discovery and reviewed it with Applicant. Counsel testified she investigated Applicant's case and interviewed Victim and the passenger in her vehicle. Counsel testified she reviewed Applicant's constitutional rights with him prior to the plea. Counsel testified she explained Applicant had the ability to have the grand jury hear his charge and he wanted to waive presentment.

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).

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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).

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,

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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 allowed Applicant to plead guilty to a charge that is inconsistent with the facts set forth in the indictment

Applicant alleges Counsel was ineffective for allowing him to plead guilty to an indictment for attempted armed robbery when the summary of the facts in the indictment alleges Applicant was armed with a weapon, which was contrary to the facts provided to the plea court by the State.

An indictment is a notice document and the sufficiency of an indictment is determined by:

1) the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, and the defendant to know what he is called upon to answer and whether he may plead an acquittal or conviction thereon; and 2) whether it apprises the defendant of the elements of the offense that is intended to be charged.

State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005).

The scope of the jurisdiction conferred by an indictment is limited to the charged offense and any lesser-included offenses. State v. Gunn, 313 S.C. 124, 437 S.E.2d 75 (1993); State v. Tyndall, 336 S.C. 8, 518 S.E.2d 278 (Ct.App.1999). Where an attempt crime exists, it is properly considered a lesser included offense of the completed offense, so long as the completed offense is a felony. State v. Green, 406 S.C. 589, 753 S.E.2d 259 (2014). "It is well-settled that a defendant may be convicted on a theory of accomplice liability pursuant to an indictment charging him only with the principal offense." State v. Dickman, 341 S.C. 293, 534 S.E.2d 268 (2000).

The indictment in this case, although it charges Applicant with attempted armed robbery while the facts provided by the State describe a completed armed robbery, was valid. This Court finds the charge and facts set forth in the indictment were sufficient enough to put Applicant on notice for his offense and adequately apprised Applicant of the elements of that offense.



Additionally, Applicant voluntarily pled guilty to attempted armed robbery, which is a lesser included offense of armed robbery even though presentment was waived on this indictment. This Court finds Applicant voluntarily waived presentment of the indictment and pled guilty to receive the benefit of a negotiated ten year sentence and the ability to plead to the lesser included offense of attempted armed robbery.

This Court also finds credible Counsel's testimony that Applicant could have easily been convicted at trial for armed robbery under an accomplice liability theory and could have faced up to thirty years in prison. This Court finds credible Counsel's testimony that she reviewed Applicant's constitutional rights with him prior to his guilty plea. This Court finds Applicant has failed to establish how Counsel was deficient since the indictment sufficiently put Applicant on notice of his offense and the elements of the offense. Applicant has also failed to establish any resulting prejudice from Counsel's alleged deficiency. Based on the foregoing, Applicant has failed to meet his burden and this allegation must be denied and dismissed with prejudice.

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 post-conviction relief 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, post-conviction relief counsel must serve and file a notice of appeal on

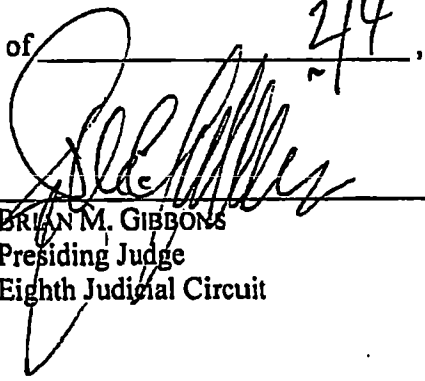
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Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant will remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this _____ day of _____, 2019.



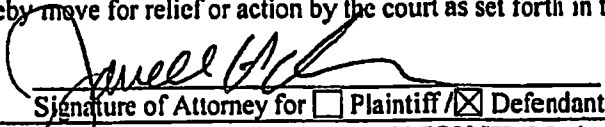
BRIAN M. GIBBONS
Presiding Judge
Eighth Judicial Circuit

_____, South Carolina

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENWOOD)
)
BRYANTAVIOUS MURRAY, #356248)
 Plaintiff,)
 vs.)
)
STATE OF SOUTH CAROLINA)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 EIGHTH JUDICIAL CIRCUIT
 CASE NO.: 2014-CP-24-887
 MOTION AND ORDER INFORMATION
 FORM AND COVERSHEET

Filed CP 8th Jud Cir Greenwood, SC
 2019 FEB 11 AM 11:17

Plaintiff's Attorney: Carson M. Henderson, Bar No. _____ Address: 109-B Oak Avenue Greenwood, South Carolina 29646 Phone: _____ Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: Janell H. Gregory, Bar No. _____ Address: Post Office Box 11549 Columbia, South Carolina 29211 Phone: _____ Fax _____ E-mail: _____ Other: _____
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input checked="" type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input checked="" type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: _____ Estimated Time Needed: _____ Court Reporter Needed: <input type="checkbox"/> YES / <input checked="" type="checkbox"/> NO	
SECTION II: Motion/Order Type	
<input type="checkbox"/> Written motion attached <input checked="" type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
Signature of Attorney for <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant 	January 31, 2019 Date submitted
SECTION III: Motion Fee	
<input type="checkbox"/> PAID - AMOUNT: \$ _____ <input checked="" type="checkbox"/> EXEMPT: (check reason)	
<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input checked="" type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ <input type="checkbox"/> Other: _____	
JUDGE'S SECTION <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE CODE _____ Date: _____
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____ <input type="checkbox"/> MOTION FEE COLLECTED: \$ _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: \$ _____	

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

BRYANTAVIOUS MURRAY,

Applicant,

v.

STATE OF SOUTH CAROLINA,

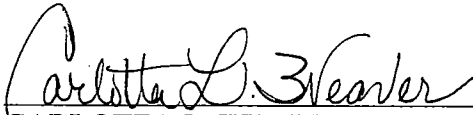
Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Order of Dismissal** has been served upon the applicant by mailing one (1) copy in the United States mail, postage prepaid, addressed to:

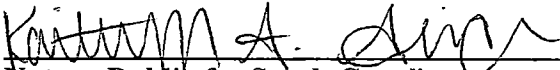
**Carson M. Henderson, Esquire
The Henderson Law Firm, PC
109-B Oak Avenue
Greenwood, South Carolina 29646**

This 15th day of February, 2019.

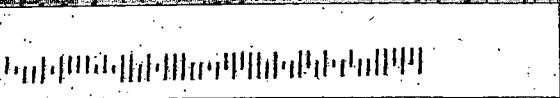


CARLOTTA L. WEAVER
Legal Assistant for Respondent

SWORN to before me this 15th day of February, 2019.



Notary Public for South Carolina
My Commission Expires: 10/1/2025



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GREENWOOD, SC
29646
FEB 22, 19
AMOUNT

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aw Firm, P.C.
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29646

Hon. Daniel E. Shearouse
Clerk of Court
S.C. Supreme Court
1231 Gervais Street
P.O. Box 11330
Columbia, S.C. 29211