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PO BOX 88  
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(803) 732-6542

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April 4, 2019

APR 08 2019

S.C. SUPREME COURT

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

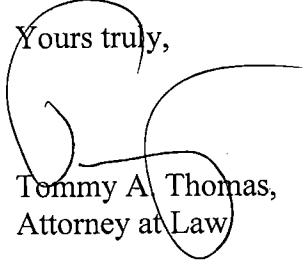
RE: Eric Adams #366880 v. State of South Carolina

Dear Sir or Madam:

Enclosed please find for filing an original and a copy of a Notice of Appeal and Certificate of Service.

Kindly return a clocked copy to me in the enclosed envelope. Please feel free to contact me should you have any questions. Thank you.

Yours truly,

  
Tommy A. Thomas,  
Attorney at Law

TAT/jem  
cc: Janell H. Gregory, Esq.  
Eric Adams #366880  
Appellate Defense

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM YORK COUNTY  
Court of Common Pleas  
Post Conviction Relief

Thomas A. Russo, Circuit Court Judge

Case No.: 2017-CP-46-02301

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S.C. SUPREME COURT

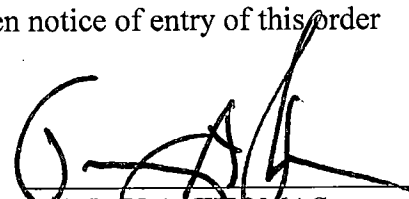
Eric Adams #366880,..... Petitioner,

vs.

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

NOTICE OF APPEAL

Eric Adams #366880 appeals the Order of the Honorable Thomas A. Russo, dated and filed on February 22, 2019. Appellant received written notice of entry of this order on March 6, 2019.

  
TOMMY A. THOMAS  
Attorney for Appellant  
P.O. Box 88  
Irmo, SC 29063  
(803) 732-5507

Other Counsel of Record:  
Janell H. Gregory, Esq.  
Assistant Attorney General  
P.O. Box 11549  
Columbia, SC 29211  
Attorney for Respondent

Irmo, South Carolina  
April 4, 2019

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM YORK COUNTY  
Court of Common Pleas  
Post Conviction Relief

Thomas A. Russo, Circuit Court Judge

Case No.: 2017-CP-46-02301

Eric Adams #366880,..... Petitioner,

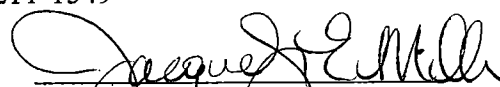
vs.

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

CERTIFICATE OF SERVICE

I, Jacquelyn E. Miller, secretary to Tommy A. Thomas, Attorney for the  
Applicante hereby certify that I placed in the United States Mail, a copy of a Notice of  
Appeal with postage prepaid and the return address clearly shown on said envelope to  
Janell H. Gregory, Esq. of the Attorney General's Office, at:

Janell H. Gregory, Esq.  
Attorney General's Office  
P.O. Box 11549  
Columbia, SC 29211-1549



Jacquelyn E. Miller  
Secretary to Tommy A. Thomas  
Attorney for Applicant  
P.O. Box 88  
Irmo, SC 29063  
(803) 732-5507

Irmo, SC  
April 4, 2019

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APR 08 2019

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA )  
 COUNTY OF YORK )  
 )  
 )  
 Eric Adams, #366880, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 FOR THE SIXTEENTH JUDICIAL CIRCUIT

2017-CP-46-02301

**ORDER OF DISMISSAL**

This matter comes before the Court by way of an application for post-conviction relief filed on August 7, 2017, by Eric Adams (Applicant). The State (Respondent) filed a Return and Motion to Dismiss on November 1, 2017, requesting the application be summarily dismissed asserting it was filed beyond the statute of limitations. Applicant filed a Return to the Conditional Order of Dismissal on December 6, 2017. An Amended Return and Motion to Dismiss all of Applicant's claims except his belated appeal claim was filed by Respondent on May 17, 2018. An evidentiary hearing into the matter was convened on January 29, 2018, at the Moss Justice Center. Applicant was present at the hearing and represented by Tommy A. Thomas, 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. Jack B. Swerling, Esquire (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 York County Clerk of Court's order of commitment. During the September 2015 term, the York County Grand Jury indicted Applicant for possession

with intent to distribute marijuana (PWID) (2015-GS-46-2742), trafficking in cocaine (over 200 grams) (2015-GS-46-2741), and trafficking in crack cocaine (2015-GS-46-2740). Counsel represented Applicant. Assistant Solicitor Ryan Newkirk of the Sixteenth Circuit Solicitor's Office prosecuted the case. Applicant appeared before the Honorable John C. Hayes, III and pled guilty to PWID cocaine and the lesser included offense of trafficking cocaine (28-100 grams, first offense). Pursuant to the negotiated plea, Applicant was sentenced to imprisonment for twelve years for trafficking crack cocaine, twelve years for trafficking cocaine, and five years for PWID marijuana to run concurrently. Applicant did not file a notice of appeal.

## **II. SUMMARY OF FACTS**

On March 12, 2015, officers were conducting surveillance on Wild Lane in the Clover area of York County because of numerous complaints from the community regarding drug activity. (GP Tr. 13.) A white Honda pulled out of the residence and officers initiated a traffic stop for following too closely. (GP Tr. 13.) Inside the car were Applicant's three co-defendants. (GP Tr. 13.) Officers could smell marijuana, and during a search, officers found a pill in one of the occupants' purse. (GP Tr. 13.) Officers found 4.5 grams of marijuana on the other occupant. (GP Tr. 13.) One co-defendant told officers she just came from Applicant's house. (GP Tr. 13.) Officers obtained and executed a search warrant on Applicant's Wild Lane residence. (GP Tr. 13.) Officers located 214 grams of cocaine, 142.7 grams of crack cocaine, 84.7 grams of marijuana, money, scales, and packing materials. (GP Tr. 13-14.) Officers found Applicant's driver's license next to the money and drugs they recovered. (GP Tr. 14.) During an interview, one of the co-defendants told officers Applicant was involved in the sale of narcotics. (GP Tr. 14.) The State also explained during the plea that if Applicant admitted all of the drugs were his, the charges against one of his co-defendants would be dismissed. (GP Tr. 14)

### **III. ALLEGATIONS RAISED**

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

1. Ineffective Assistance of Counsel
2. Involuntary Guilty Plea

Applicant filed a Return to the Conditional Order of Dismissal on December 6, 2017, alleging the following claims:

1. "That Plea Counsel did not adequately and properly investigate the case."
2. "That the Applicant never saw the discovery or the State's evidence against him and that Defense Counsel never went over the information with him prior to his plea."
3. "That he thought that his case was going to trial."
4. "That he was told as an incentive to plea that the drug laws were going to change from 85% to 65% and that he would be eligible for parole. That this was the major basis for his decision to accept the plea."
5. "That plea counsel failed to file an [*sic*] Notice of Appeal in this case."

An evidentiary hearing was held on January 29, 2019. Respondent renewed their motion to dismiss all of Applicant's claims other than his claim for a belated appeal.

### **IV. TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING**

#### *Applicant's Testimony*

During the evidentiary hearing, Applicant testified on his own behalf. Applicant testified he filed a post-conviction relief application through a "jailhouse lawyer" prior to the expiration of the one-year statute of limitations. Applicant testified he provided the other inmate with the envelope to mail the post-conviction relief application. Applicant contacted Mr. Thomas' office to see if he could see what was going on with Applicant's post-conviction relief application. Applicant testified he was told by Mr. Thomas that he did not have a pending application. Applicant testified Mr. Thomas then assisted him in filing an application, which was six months after the one-year statute of limitations deadline. Applicant testified he wants a hearing on all of his allegations because he feels like things could have been done differently in his case.

Applicant testified after his plea he believed Counsel filed an appeal. Applicant testified after his plea he asked Counsel how he could go about getting his sentence reduced. Applicant testified he did not recall the judge telling him he had ten days to appeal his case. Applicant testified Counsel did not tell Applicant of his right to appeal.

On cross-examination, Applicant testified Counsel told him he could file a post-conviction relief application. Applicant testified he used another inmate – “jailhouse lawyer” – to file the application on his behalf. Applicant testified he did not have a receipt or any other evidence that he filed a timely application for post-conviction relief. Applicant testified he did not recall signing the plea waiver form that explained Applicant had ten days to appeal his plea.

#### *Counsel's Testimony*

Counsel also testified at the post-conviction relief hearing. Counsel testified it is his typical practice to tell his client's about their right to appeal. Counsel testified he reviewed with Applicant his right to appeal and that is evident by the signed plea waiver form. Counsel testified Applicant did not ask him to file an appeal. Counsel testified had Applicant asked him to appeal he would have filed a notice of appeal on his behalf. Counsel testified he did not see any meritorious claims for Applicant to pursue on appeal.

#### **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).

### Statute of Limitations

This Court finds that all allegations except the allegation regarding a direct appeal should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10 to -160. S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). Applicant pled guilty to the offenses he challenges in this application on January 28, 2016. Applicant was, therefore, required to file his application on or before January 29, 2017. This Application was filed on August 7, 2017, which was past the time the statutory filing period had expired.

This Court has considered Applicant's argument that he should not be barred by the statute of limitations because he attempted to file an application through another inmate prior to the expiration of the statute of limitations. However, this Court finds Applicant has failed to provide any evidence that Applicant did attempt to file his application in a timely manner. Accordingly, Applicant's claims are barred by the statute of limitations.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ...

that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” Therefore, this Court summarily dismisses the application for post-conviction relief for failure to file within the time mandated by the Post-Conviction Procedure Act.

### **Ineffective Assistance of Counsel**

This Court finds Applicant has failed to meet his burden of proving he is entitled to a belated appeal due to the ineffective assistance of Counsel. Applicant has failed to prove both deficiency on the part of Counsel and any prejudice therefrom. 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 an appeal*

Applicant alleges Counsel was ineffective for failing to file an appeal on his behalf. The United States Supreme Court has rejected a bright-line rule counsel must always consult with the defendant regarding an appeal. Roe v. Flores-Ortega, 528 U.S. 470, 480 (2000). Instead, “counsel has a constitutionally imposed duty to consult with the 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 nonfrivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing.” Id. Further, “a highly relevant factor in this inquiry will be whether the conviction follows a trial or a guilty plea, both because a guilty plea reduces the scope of potentially appealable issues and because such a plea may indicate that the defendant seeks an end to judicial proceedings.” Id.

The South Carolina Supreme Court has held there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea, absent extraordinary circumstances. Turner v. State, 380 S.C. 223, 224, 670 S.E.2d 373, 374 (2008). However, the bare

assertion that a defendant was not advised of appellate rights is insufficient to grant relief. Weathers v. State, 319 S.C. 59, 61, 459 S.E.2d 838, 839 (1995). Instead, a defendant must offer proof that extraordinary circumstances exist such that he should have been advised of the right to appeal. Id. One situation in which extraordinary circumstances arise is when a defendant explicitly inquires about his right to appeal following a guilty plea. Jones v. State, 382 S.C. 589, 596, 677 S.E.2d 20, 23-24 (2009); Weathers, 319 S.C. at 61, 459 S.E.2d at 839.

In White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974), the South Carolina Supreme Court held that even if the post-conviction relief court finds the applicant never voluntarily and intelligently abandoned his appeal, the court has no jurisdiction to grant a belated appeal. Therefore, where an accused establishes in a post-conviction relief hearing he was unconstitutionally deprived of his statutory right to a direct appeal, the South Carolina Supreme Court, upon an appeal of the post-conviction relief decision, will review the trial record and pass upon all issues properly raised and argued as if the direct appeal has been perfected.

This Court finds Applicant has failed to meet his burden of proving he did not voluntarily and intelligently waive his right to appeal. This Court finds credible Counsel's testimony that Applicant did not ask him to appeal his guilty plea because, had Applicant asked, Counsel would have filed an appeal. Counsel testified his usual practice is to discuss his client's right to appeal during his representation. Counsel further testified he went over the plea waiver form with Applicant, which further reviews Applicant's right to appeal. Counsel testified he did not see any meritorious claims upon which Applicant could appeal his guilty plea. This Court finds Counsel's testimony credible, whereas Applicant's testimony is not credible. Therefore, Applicant's request for belated review of direct appeal issues pursuant to White is hereby denied, and the application is dismissed with prejudice.

## VII. CONCLUSION

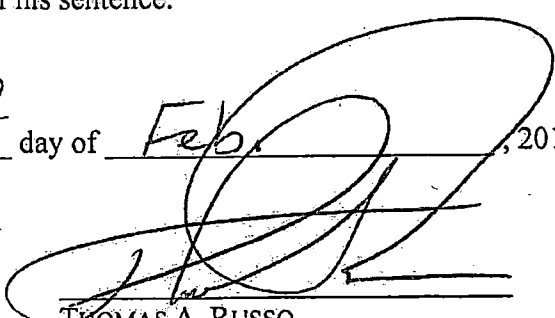
Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

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), SCRCP, provides that if 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 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 22<sup>nd</sup> day of Feb., 2019.

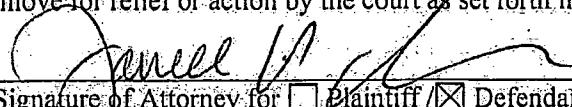
  
THOMAS A. RUSSO  
Presiding Judge  
Sixteenth Judicial Circuit

Florence, South Carolina

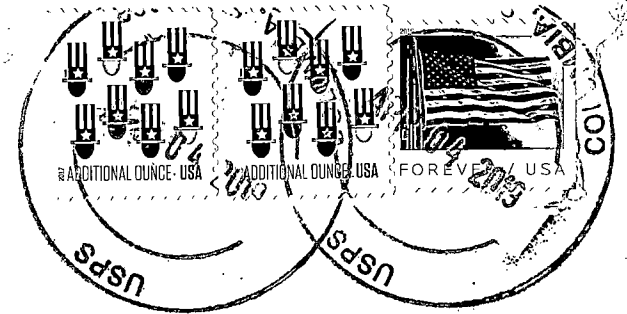
STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF YORK )  
 )  
 ERIC ADAMS, #366880 )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 STATE OF SOUTH CAROLINA )  
 )  
 Defendant. )

IN THE COURT OF COMMON PLEAS  
 SIXTEENTH JUDICIAL CIRCUIT  
 CASE NO.: 2017-CP-46-02301

**MOTION AND ORDER INFORMATION  
 FORM AND COVERSHEET**

Plaintiff's Attorney: Tommy A. Thomas, Bar No. _____ Address: Post Office Box 88 Irmo, South Carolina 29063 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)	
<b>SECTION I: Hearing Information</b>	
Nature of Motion: _____ Estimated Time Needed: _____ Court Reporter Needed: <input type="checkbox"/> YES / <input checked="" type="checkbox"/> NO	
<b>SECTION II: Motion/Order Type</b>	
<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	February 19, 2019 Date submitted
<b>SECTION III: Motion Fee</b>	
<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: _____	
<b>JUDGE'S SECTION</b>	
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE CODE _____ Date: _____
<b>CLERK'S VERIFICATION</b>	
Collected by: _____ Date Filed: _____ <input type="checkbox"/> MOTION FEE COLLECTED: \$ _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: \$ _____	

Tommy A. Thomas, P.C.  
ATTORNEY AND COUNSELOR AT LAW  
HARRINGTON BUILDING  
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