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November 21, 2016

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

The Honorable Gwen T. Hyatt
Clerk of Court
301 W. Main Street
Dillon, SC 29536

RECEIVED

NOV 23 2016

S.C. SUPREME COURT

**RE: Anthony Cook, #328485, v. State of South Carolina
2014-CP-17-209**

Dear Mr. Shearouse and Ms. Hyatt:

Enclosed for filing is a Notice of Appeal in the above-referenced case. Also enclosed are the following:

- (1) Proof of Service of the Notice of Appeal;
- (2) A copy of the Order which is to be challenged on appeal; and
- (3) Prior Order of Appointment of Counsel.

As I was appointed to represent Mr. Cook in his PCR proceeding, I anticipate that the Office of Appellate Defense will represent Mr. Cook in this appeal.

Yours very truly,



Lance S. Boozer

Enclosures

cc: Justin Hunter, AAG
Loriene French, OAD
Anthony Cook, #328485

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

APPEAL FROM DILLON COUNTY
Court of Common Pleas

NOV 23 2016

The Honorable G. Thomas Cooper, Circuit Court Judge

S.C. SUPREME COURT

Case No. 2014-CP-17-209

Anthony Cook, #328485Petitioner,

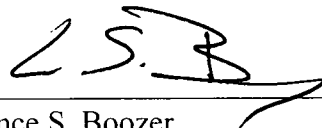
v.

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

NOTICE OF APPEAL

The Petitioner appeals the Honorable G. Thomas Cooper's Order dated November 3, 2016, denying post-conviction relief to the Petitioner. The Order was received by undersigned counsel on November 21, 2016. A copy of the Order on appeal is attached to this notice.

Respectfully submitted,



Lance S. Boozer
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November 21, 2016

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM DILLON COUNTY
Court of Common Pleas

The Honorable G. Thomas Cooper, Circuit Court Judge

Case No. 2014-CP-17-209

Anthony Cook, #328485Petitioner,

v.

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

PROOF OF SERVICE

I, Lance S. Boozer, appointed attorney for Petitioner, certify that I have today served within Notice of Appeal upon the Respondent by depositing a copy of it in the United States Mail, postage prepaid, addressed to Assistant Attorney General Justin Hunter, P.O. Box 11549, Columbia, SC 29211. I further certify that all parties required by Rule to be served have been served this 21st day of November, 2016.



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STATE OF SOUTH CAROLINA)
)
 COUNTY OF DILLON)
)
 Anthony Cook,)
 S.C.D.C. No. 328485,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 OF THE FOURTH JUDICIAL CIRCUIT

2014-CP-17-209

ORDER OF DISMISSAL

FILED
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 CLERK OF COURT
 DILLON COUNTY

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed May 21, 2014. Respondent made its Return on or about November 21, 2014+. An evidentiary hearing into the matter was convened on July 19, 2016, at the Chesterfield County Courthouse in Chesterfield, South Carolina. Applicant was present at the hearing and represented by Lance Boozer, Esquire. Justin Hunter, Esquire, of the South Carolina Attorney General's Office represented Respondent. At the hearing, Applicant testified on his own behalf. Nick Lewis, Esquire, testified. B. Scott Suggs, Esquire, also testified. This Court had before it a copy of Applicant's records from the Dillon County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the bench warrant transcript, status conference transcript, pre-trial transcript, the plea transcript, Applicant's PCR Application, and Respondent's Return.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Dillon County Clerk of Court. In June 2010, the Dillon County Grand Jury indicted Applicant for grand larceny (2010-GS-17-465), and second degree burglary, (2010-GS-17-468). In August 2013, the grand jury indicted Applicant for second degree burglary

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(2010-GS-17-469), receiving stolen goods (2013-GS-17-597), and criminal conspiracy (2013-GS-17-600). B. Scott Suggs, Esquire, represented Applicant. On September 4, 2013, Applicant pled guilty to the charges as indicted. In exchange for the plea, the State dismissed at least nine other pending charges. The Honorable R. Ferrell Cochran Jr. sentenced Applicant to twelve years for second degree burglary (violent); eight years, concurrent, for second degree burglary charge (non-violent); four years, concurrent, for criminal conspiracy; thirty days, concurrent, for receiving stolen goods; and two years, consecutive, for grand larceny. Applicant did not appeal his plea or sentence.

PCR Application

In his PCR application and the amendment made thereto, Applicant alleged the following grounds for relief:

1. Ineffective Assistance of Counsel
2. Involuntary Guilty Plea
3. Prosecutorial Misconduct
4. Solicitor committed prosecutorial misconduct when he continually coerced Applicant to plead guilty through an attorney he knew wasn't Applicant's counsel.
5. Plea counsel failed to advise Applicant to withdraw his guilty plea.
6. Counsel failed to object to Applicant being sentenced as a violent offender rather than non-violent offender when indictment was for a non-violent offense

II. SUMMARY OF THE TESTIMONY

Applicant's Testimony

Applicant testified that he retained B. Scott Suggs around April 2011. He testified that they met in May 2011 and discussed his case. He testified that Mr. Suggs had not yet received the Rule 5 discovery when they met. Applicant presented letters from Mr. Suggs to the Solicitor's Office and Public Defender's Office that evidenced his representation of Applicant. Applicant testified that he did not speak with Mr. Suggs from August 2011 until the beginning of 2013. He

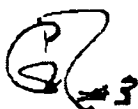


further testified that he did not review his case with Mr. Suggs or participate in any trial preparation with him. Applicant testified that he was never able to discuss the twelve-year non-violent plea offer with Mr. Suggs but was able to discuss it with his public defender.

Applicant testified that he had a bench warrant hearing in April 2013 and Mr. Suggs was not present. He testified that he had a status conference on April 22, 2013 and had to be represented by public defender Nicholas Lewis because Mr. Suggs failed to appear. Applicant testified that he did not know about this hearing. He testified that he spoke to Mr. Lewis at jail and told Mr. Lewis and the solicitor that he already had a private lawyer. He further testified that he discussed the state's plea offer with Mr. Lewis at the jail, but did not discuss it with Mr. Suggs. He alleged that the prosecution committed misconduct by failing to communicate with Mr. Suggs and communicating with Mr. Lewis instead. He testified that if he had discussed the twelve-year non-violent plea offer with Mr. Suggs then he would have accepted the offer. Applicant testified that he told Mr. Lewis to contact Mr. Suggs but Mr. Lewis refused to do so.

Applicant testified that he helped pick a jury with Mr. Lewis on September 3, 2013 and did not know where Mr. Suggs was at that time but talked to him that afternoon. He testified that he pled guilty on September 4, 2013 and met with Mr. Suggs that morning for an hour prior to the plea. He testified that he wanted to get a continuance but Mr. Suggs said he was ready to go. Applicant further testified that he told Mr. Suggs to appeal his guilty plea.

Applicant testified that he was sentenced improperly under indictment 2010-GS-17-469 because he should have been sentenced as a nonviolent offender rather than under second degree burglary (violent). He testified that his crime did not meet the elements of violent second degree burglary and Counsel should have objected to this.



Applicant testified that, during the plea colloquy, he agreed with the facts as stated by the solicitor but did not realize at the time that these facts were wrong and Mr. Suggs should have objected to the factual basis for his plea. He testified that he needed more time to talk to Mr. Suggs even though he told the plea judge that he did not need more time. He testified that he told the plea judge that he was satisfied with Mr. Suggs' representation but that was incorrect. Applicant further testified that he only pled guilty because he felt trapped and just went along with what the solicitor and Mr. Lewis wanted to do. He testified that he never discussed withdrawing his guilty plea with Mr. Suggs.

Counsel Nicholas Lewis' Testimony

Mr. Lewis testified that he was a public defender in Dillon County when he was appointed to represent Applicant. He testified that Applicant was facing charges in Dillon County and Marlboro County. Mr. Lewis testified that he met with Applicant four to five times and was never made aware by Applicant or anyone else at any point during his representation that Applicant had retained private counsel until the day of jury selection. He testified that Applicant had numerous charges and a plea deal would have encompassed many charges. Mr. Lewis testified that he discussed the facts and plea offer made by the solicitor's office, which was eight and one-half years (violent) or twelve years (non-violent). He testified that this plea offer was relayed at a status conference and Applicant did not want to take the plea deal. Mr. Lewis stressed that he went over the plea offer with Applicant many times.

Counsel B. Scott Suggs' Testimony

Mr. Suggs testified that he was first retained by Applicant in April or May 2011. He testified that he first met with Applicant shortly after being retained. He testified that Applicant had many charges but he was only representing him on four or five charges. Mr. Suggs testified



that during his meetings with Applicant, the two discussed the facts of Applicant's case, the applicable law, the potential sentences ranges, and the elements of the charges against Applicant. He testified that he reviewed the indictments with Applicant and discussed the difference between violent and non-violent time. He testified that he probably only met with Applicant one time during 2011 and talked with Applicant's wife many times.

Counsel testified that he reviewed the indictments with Applicant. Counsel testified that he discussed with Applicant that the facts of indictment 2010-GS-17-469 would fit violent second degree burglary because the crime occurred at nighttime. He testified that the indictment may have been amended.

Mr. Suggs testified that he was not aware of the April 10, 2013 bench warrant hearing or the April 22, 2013 status conference that took place. He testified that he was never contacted by the Solicitor's Office about the hearings but believed the confusion resulted from the fact that he was not representing Applicant on all of his charges. Mr. Suggs further testified that he never talked with the Solicitor's Office about plea negotiations. He testified that he would maybe advise Applicant to take the plea deal offered had he known about it, but was still ready to go to trial because there was not much evidence against him.

Mr. Suggs testified that he found out about the trial after the jury had been selected but was ready and prepared for the trial and did not need a continuance. He testified that Applicant did not want to plead guilty or go to trial but there was no third option. Mr. Suggs further testified that it was in Applicant's best interest to plead guilty.

III. APPLICABLE LAW

In a post-conviction relief action, the applicant bears the burden of proving the allegations in their 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, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 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, 386 S.E.2d at 625. 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, 386 S.E.2d at 625. 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).

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed 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 relevant transcripts, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

As a matter of general impression, this Court finds Mr. Suggs' and Mr. Lewis' testimonies to be credible and persuasive on all matters. This Court also finds that Applicant's testimony was not credible. These credibility findings have been applied to the Court's findings and conclusions set forth below.

Ineffective Assistance of Counsel

This Court finds that Mr. Suggs (hereinafter referred to as "Counsel") demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, 466 U.S. at 668; Butler, 286 S.C. 441, 334 S.E.2d 813.

Failure to Communicate and Convey Plea Offer

Applicant alleged that Counsel was ineffective for failing to communicate with him about his case and about the State's initial plea offer. To be successful on an allegation of an un conveyed plea offer, Applicant must prove: (1) trial counsel's failure to communicate the State's initial plea offer constituted deficient performance, and (2) Applicant was prejudiced by the deficient performance, or there was a reasonable probability that but for this deficient performance, he would have accepted the original plea offer. Davie v. State, 381 S.C. 601, 608, 675 S.E.2d 416, 420 (2009). This Court finds that Applicant has failed to prove that Counsel's communication constituted deficient performance. This Court finds that Counsel communicated with Applicant at the beginning of his representation and closer to the plea, and that Counsel



more often communicated through Applicant's wife. This Court finds that Counsel did not know of the initial plea offer because it was not communicated to him, but was communicated to Applicant's public defender, Mr. Lewis. This Court finds that the state's initial plea offer was communicated to Applicant through Mr. Lewis and Applicant's rejection of the offer was evidenced during the April 22, 2013 Status Conference by the assistant solicitor and Mr. Lewis.¹ This Court finds that although Counsel did not convey the offer, Applicant was still kept informed of the State's offer through represented counsel. This Court finds that Applicant did not adequately communicate to Mr. Lewis, the State, or the plea court pretrial that he was represented by Counsel and not Mr. Lewis and that all communication to Mr. Lewis should cease. Thus, Counsel was not ineffective in failing to communicate and relay the plea offer, as Counsel communicated all information known to him. This Court finds that Applicant suffered no prejudice as the offer was relayed by Mr. Lewis and was rejected by Applicant. Accordingly this allegation must be dismissed.

Failure to Prepare

To the extent that Applicant alleges that Counsel was ineffective for failing to prepare for Applicant's case, this Court finds that the allegation must be dismissed. See Davis v. State, 326 S.C. 283, 486 S.E.2d 747 (1997) (relief denied where applicant failed to present witnesses or specific testimony establishing applicant would have had a defense with additional time to prepare for trial); Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (applicant not entitled to

¹ During the April 22, 2013 Status Conference, the assistant solicitor informed the plea court:

The State offered a very nice deal of — I gave him a choice: Eight and a half violent or 12 non-violent to cover both my charges and Marlboro County's charges. I also told Mr. Cook that I would keep the federal government off of him because they're interested in the gun charge that he's got in Marlboro County.

Despite all of those offers he, quite fortunately, rejected all of those offers on Thursday I think it was, and so this status conference is to simply let the Court know that that offer is hereby rejected. There will be no more offers in this case.

(April 22, 2013 Status Conference Transcript p. 4, ll. 15-25)



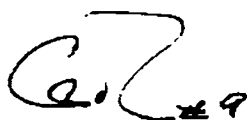
relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial). This Court finds that Applicant has failed to show what additional preparation was necessary or how any additional preparation would have led Applicant to go to trial instead of pleading guilty. Accordingly, this allegation must be dismissed.

Failure to Object to Solicitor's Recitation of Facts During Guilty Plea

Applicant alleged that Counsel was ineffective for failing to object to the solicitor's recitation of the facts during Applicant's guilty plea. This allegation is without merit. This Court finds, and the plea transcript reflects, that Applicant was asked by the plea court if he agreed with the State's recitation of the facts. Applicant replied, "Yes, sir." (September 4, 2013 Plea Transcript, p. 11, l. 2). This Court finds that Counsel was not ineffective for failing to object to the facts when Applicant himself agreed to the Court that the facts were stated correctly. Applicant has failed to show that he should depart from his statement to the plea court and has failed to show that the outcome of his plea would have been different had Counsel objected to the facts. Accordingly, this allegation must be dismissed.

Failure to Withdraw Guilty Plea

Applicant alleged that Counsel should have withdrawn Applicant's guilty plea. This Court finds that this allegation is without merit. Applicant testified that Counsel should have withdrawn his guilty plea, but also testified that he never discussed withdrawing his plea with Counsel. Given Applicant's testimony and the plea judge's colloquy with Applicant, this Court finds that Applicant has given no reason why Counsel should have withdrawn his guilty plea or should have known that Applicant wanted it withdrawn. Applicant has failed to prove that



Counsel was deficient in this regard and that he was prejudiced by Counsel's actions. Accordingly, this allegation must be dismissed.

Failure to Object to Indictment

Applicant alleged that Counsel should have objected to indictment 2010-GS-17-469 and Applicant being sentenced to violent second degree burglary instead of nonviolent second degree burglary. This Court finds Counsel's testimony credible that he explained the indictments and the supporting facts to Applicant. This Court finds that Counsel's performance was not deficient. This Court agrees with Counsel that indictment 2010-GS-17-469 may have been amended to the violent provision because the corresponding sentencing sheet lists the indictment as violent second degree burglary and the solicitor, Counsel, and plea judge explained to Applicant during the plea hearing that the indictment was violent. Counsel, the solicitor, and the plea judge explained in detail that Applicant was pleading to the violent subsection and the consequences of pleading accordingly. At no point during the plea hearing during the many mentions of the violent subsection did Applicant give any indication that he did not understand that he was pleading as to a violent offense. This Court finds that Applicant understood the offense he was pleading to and being sentenced for and Counsel's performance was not deficient. Additionally, this Court finds that Applicant did not suffer prejudice as he has failed to show that he would not have pled guilty but would rather have gone to trial but for Counsel's actions. Accordingly, this allegation must be dismissed.

Failure to Appeal Guilty Plea

Applicant alleged counsel was ineffective for failing to file a direct appeal. To waive a direct appeal, a defendant must make a knowing and intelligent decision not to pursue the appeal.

Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986); White v. State, 263 S.C. 110, 208 S.E.2d 35



(1974). While trial counsel is required to make certain the defendant is made fully aware of the right to appeal, the standard for a guilty plea differs. Turner v. State, 380 S.C. 223, 224, 670 S.E.2d 373, 374 (2008). Absent extraordinary circumstances, such as when there is reason to think a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal) or when the defendant reasonably demonstrated an interest in appealing, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea. Id. at 225, 670 S.E.2d at 374 (citing Roe v. Flores-Ortega, 528 U.S. 470, 120 S.Ct. 1029, 145 L.Ed.2d 985 (2000)); Weathers v. State, 319 S.C. 59, 459 S.E.2d 838 (1995)). "Acts inconsistent with the continued assertion of a right, such as a failure to insist upon the right, may constitute waiver." Bonnette v. State, 277 S.C. 17, 18, 282 S.E.2d 597, 598 (1981) (citing 92 C.J.S. Waiver, p. 1063 (1955)).

This Court finds that the only testimony presented on this allegation was that Applicant testified that he told Counsel to appeal his guilty plea. Counsel testified that he talked to Applicant after the guilty plea but gave no testimony concerning whether Applicant told him to file a direct appeal. This Court finds that Applicant has not shown that there were any grounds for appeal, any extraordinary circumstances that would warrant a direct appeal from his guilty plea, or that he was insistent upon Counsel filing the direct appeal. He has failed to prove that Counsel was deficient in this regard and that he was prejudiced by Counsel's actions. Accordingly, this allegation must be dismissed.

Involuntary Guilty Plea

Applicant further argues his plea was not given freely and voluntarily. This Court finds otherwise and concludes that Applicant's plea was entered freely and voluntarily. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full



understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709, 23 L.Ed.2d 274 (1969). A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Cl. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 97 S. Ct. 1621, 52 L.Ed.2d 136 (1977)). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. United States, 519 F.2d 347 (4th Cir.1975).

This Court finds, and the record reflects, Applicant was fully advised that he was pleading guilty and therefore waiving any challenges to the evidence against him. The plea court's thorough colloquy with Applicant demonstrates that he understood the consequences of pleading guilty. Applicant presented no credible evidence as to why he should be able to depart from his statements at the plea hearing. The record reflects Applicant fully admitted his guilt to the plea court. "A guilty plea constitutes a waiver of nonjurisdictional defects and claims of violations of constitutional rights." Jamison v. State, 410 S.C. 456, 467, 765 S.E.2d 123, 129 (2014) (citing State v. Rice, 401 S.C. 330, 331-32, 737 S.E.2d 485, 485-86 (2013); Hyman v. State, 397 S.C. 35, 44, 723 S.E.2d 375, 379 (2012)). Notably the South Carolina Supreme Court has held "[a] guilty plea represents a break in the chain of events which has preceded it in the

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criminal process." Id. (citations omitted). "When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea." Id. (citing Rice, 401 S.C. at 332, 737 S.E.2d at 486). After a full review of the record, this Court finds the plea judge correctly found Applicant's plea was freely, voluntary, and intelligently made, and this allegation must be dismissed.

Prosecutorial Misconduct

Applicant alleged that the Solicitor's Office committed prosecutorial misconduct by coercing Applicant to plead guilty through Mr. Lewis instead of communicating with Counsel. Applicant testified that he retained Counsel around April 2011; however he was represented by the public defender's office at a bench warrant hearing on April 10, 2013 and at a status conference on April 22, 2013. Mr. Lewis testified that he was appointed to represent Applicant and represented him throughout 2013. His representation included meeting with Applicant four to five times, conveying the State's plea offer, representing him at a status conference, and selecting a jury for trial. Mr. Lewis credibly testified that he was never made aware of the fact that Applicant also retained Counsel to represent him. The transcript from the status conference evidences the fact that the State believed Applicant "was potentially getting a private lawyer." (April 22, 2013 Status Conference Transcript, p. 5, l. 5). At no point during the status conference did Applicant notify the State, Mr. Lewis, or the court that he was actually represented by another attorney. This Court finds that Applicant has failed to show that the State committed prosecutorial misconduct in communicating with Applicant's attorneys. This Court finds that Applicant suffered no prejudice as he willingly remained represented by Mr. Lewis for months



without notifying Mr. Lewis of any other representation and even received the State's plea offer from Mr. Lewis. Accordingly, this allegation must be dismissed.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this order, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

V. CONCLUSION

Based on the foregoing facts, the Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Applicant failed to demonstrate that Counsel's performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). 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 (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRPC, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.



IT IS THEREFORE ORDERED THAT:

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

AND IT IS SO ORDERED this 5th day of November, 2016.

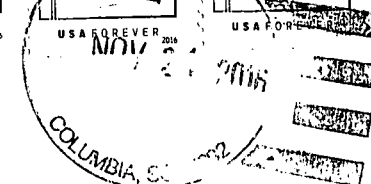
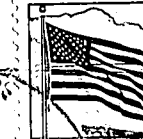
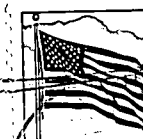
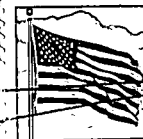
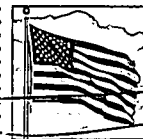


G. THOMAS COOPER
Presiding Judge
Fourth Judicial Circuit

COLUMBIA, South Carolina

THE BOOZER LAW FIRM, LLC

807 Gervais Street, Suite 203
Columbia, SC 29201



The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
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