

McMAHAN & TAYLOR
ATTORNEYS LLC

RECEIVED

AUG 27 2019

S.C. SUPREME COURT

August 23, 2019

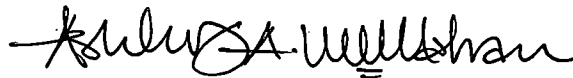
The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
Post Office Box 11330
Columbia, SC 29211

RE: Robert D. McGuffin, #319351, v. State of South Carolina
2017-CP-32-03216

Dear Mr. Shearouse:

Please find enclosed a Notice of Appeal along with the accompanying Order for the above-referenced matter. By way of this letter I am copying the Office of Appellate of Defense, as I was appointed to represent Mr. McGuffin.

Best regards,



ASHLEY A. McMAHAN
ATTORNEY AT LAW

AAM

cc: Robert D. McGuffin, #319351
Taylor Z. Smith, Asst. Attorney General
Lexington County Clerk of Court
Office of Appellate Offense

RECEIVED

AUG 27 2019

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

The Honorable Brooks P. Goldsmith, Circuit Court Judge

Case No. 2018-CP-32-03545

Robert D. McGuffin, #319351, Petitioner,

v.

State of South Carolina, Respondent.

NOTICE OF APPEAL

Applicant, Robert D. McGuffin, appeals the order of the Honorable Brooks P. Goldsmith, dated August 6, 2019, and filed August 13, 2019.

Aug 23rd, 2019

Ashley A. McMahan

ASHLEY A. MCMAHAN, ESQUIRE

MCMAHAN & TAYLOR ATTORNEYS, LLC

PO Box 5501

West Columbia, SC 29171

803-219-1110

ashley@macvance.com

SC Bar No. 71676

ATTORNEY FOR APPLICANT

Opposing Counsel:

Taylor Z. Smith, Asst, Attorney General

S.C. Attorney General's Office

PO Box 11549

Columbia, SC 29211-1549

RECEIVED

AUG 27 2019

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

The Honorable Brooks P. Goldsmith, Circuit Court Judge

Case No. 2018-CP-32-03545

Robert D. McGuffin, #319351, Petitioner,

v.

State of South Carolina, Respondent.

PROOF OF SERVICE

I, Ashley A. McMahan, certify that I have served the within Notice of Appeal on Respondent by depositing a copy of the same in the United States mail, postage prepaid, addressed to:

Taylor Z. Smith, Asst. Attorney General
S.C. Attorney General's Office
PO Box 11549
Columbia, SC 29211-1549

I further certify that all parties required by Rule to be served have been served.

Aug 23rd, 2019


ASHLEY A. McMAHAN, ESQUIRE

McMAHAN & TAYLOR, ATTORNEYS, LLC

PO Box 5501
West Columbia, SC 29171
803-219-1110

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

Robert D. McGuffin, #319351,

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) FOR THE ELEVENTH JUDICIAL CIRCUIT

) Case No. 2018-CP-32-03545

) ORDER OF DISMISSAL

FILED
CLERK OF COURT
LEXINGTON COUNTY
SOUTH CAROLINA

2019 AUG 13 AM 9:20

FILED

This matter comes before this Court by way of an Application for Post-Conviction filed on October 17, 2018, by Robert D. McGuffin (Applicant). The State (Respondent) filed its Return and Motion for a More Definite Statement on December 31, 2018. Applicant filed an Amended Post-Conviction Relief Application on June 20, 2019. An evidentiary hearing in the matter was held before the undersigned on June 27, 2019, at the Lexington County Courthouse. Applicant was present and was represented by Ashley A. McMahan, Esquire (PCR Counsel). Respondent was represented by Assistant Attorney General Taylor Z. Smith of the South Carolina Attorney General's Office. At the hearing, Applicant and his father testified on Applicant's behalf, and Ola A. Johnson, Esquire, (Counsel) testified on behalf of Respondent. Following a thorough review of the record in its entirety and the testimony and evidence presented at the evidentiary hearing, this Court finds that Applicant has failed to meet his requisite burden of proof and denies this application.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. On October 18, 2017, Applicant appeared before the Honorable William P. Keesley, waived presentment to the grand

jury for one count of forgery, less than \$10,000 (2017-GS-32-03679); one count of petit larceny, \$2,000 or less (2017-GS-32-03680); and one count of grand larceny, more than \$2,000 but less than \$10,000 (2017-GS-32-03684), and pleaded guilty to each charge. Counsel represented Applicant on these charges. Assistant Solicitor Melanie F. Graham, of the Eleventh Circuit Solicitor's Office, prosecuted the case. Judge Keesley accepted the pleas and sentenced Applicant to a term of imprisonment of five years for forgery, less than \$10,000; a concurrent term of imprisonment of eight years for petit larceny, \$2,000 or less; and a consecutive term of imprisonment of five years for grand larceny, more than \$2,000 but less than \$10,000. Applicant did not appeal his pleas or sentences.

CURRENT PROCEEDING

On October 17, 2018, Applicant filed an Application for Post-Conviction Relief, in which he made the following allegations:

1. "Ineffective Assist [sic] of Counsel USCA 6 – see attached"; and
2. "Denial of Due Process USCA 14 – see attached".¹

On June 20, 2019, Applicant filed an Amended Post-Conviction Relief Application, in which he raised the following allegations:

- I. Ineffective Assistance of Counsel:
 - a. "Counsel failed to file a motion to reconsider the sentence."
 - b. "Counsel failed to appeal the Applicant's conviction and sentence."
 - c. "Applicant was at court the day of the guilty plea for a bond revocation hearing, not a guilty plea hearing, and counsel coerced the Applicant into 'getting it over with' and pleading guilty that day."
 - d. "Counsel told the Applicant he could not get more than 5 years for the enhanced petit larceny and that he would most likely get the same sentence the co-defendant received earlier that day; Applicant pled guilty based on

¹ In the attachment to the Application, Applicant does not lay out any specific allegations, but merely states that he "carry such a burden" without the aid of appointed counsel.

this advice.”

- e. “Counsel was ineffective for failing to review the State’s evidence with the Applicant.”

At the start of the evidentiary hearing, Respondent requested that Applicant specify for the record the grounds upon which he intended to move forward in the PCR action. Applicant, through PCR Counsel, specified that he intended to move forward upon only the allegations and grounds raised in the Amended Post-Conviction Relief Application. Because the allegations in the amended application are the only grounds upon which Applicant moved forward at the evidentiary hearing, all other grounds are deemed to be waived and will not be addressed in this Order of Dismissal.

SUMMARY OF TESTIMONY AT PCR HEARING

Applicant's testimony

Applicant testified Counsel met with him only on one occasions before his PR hearing. He testified Counsel told him to plead guilty and “get it over with” so that Counsel’s caseload would get easier. He testified Counsel would not review all of the discovery in the case with him. He testified Counsel did not inform him that his prior criminal record would affect his sentence. He testified he did not know that the criminal offenses to which he pleaded guilty before Judge Keesley carried potential sentences greater than five years until after he had already been sentenced. He testified he asked Counsel to file an appeal after he was sentenced by Judge Keesley. He testified he mailed two letters to Counsel in which he repeated his request that Counsel file an appeal. He testified he asked his father to call Counsel on Applicant’s behalf in order to relay his request that Counsel file an appeal.

Robert McGuffin's testimony

Robert McGuffin (Father) testified he is Applicant’s father. He testified he did not receive any phone calls from Counsel following Applicant’s sentencing.

Counsel's testimony

Counsel testified he has practiced law in private practice since 2001. He testified he was appointed to represent Applicant in the underlying criminal cases in September of 2017 after Applicant's previous attorney had been conflicted out of representation. He testified he believed that Elizabeth C. Fullwood, Esquire, had been Applicant's public defender because her name was on the discovery motion that had been filed in the case prior to Counsel's appointment. He testified he had represented Applicant in a matter prior to the underlying criminal cases.

He testified the solicitor had filed for Applicant's bond revocation in August of 2017 after Applicant had been arrested again. He testified he did not receive all discovery from the solicitor until approximately one week before Applicant's bond revocation hearing. He testified he met with Applicant on September 29, 2017. He testified this was the only occasion on which he met with Applicant other than on the day of Applicant's bond revocation hearing. He testified he reviewed discovery with Applicant, explained the elements of the crimes for which Applicant had been charged, discussed potential defenses with Applicant, and told Applicant that he could be facing up to ten years' imprisonment for petit larceny due to the sentencing enhancement that applied because of Applicant's prior criminal record. He testified the evidence in the case was not complex and that the facts of the case were relatively straightforward. He testified Judge Keesley had given Applicant's codefendant a favorable sentence on the day of the bond revocation hearing. He testified Applicant decided to go ahead and plead guilty at the bond revocation hearing because he hoped to get a similarly favorable sentence from Judge Keesley.

He testified Applicant was mostly concerned about the length of the sentence that he would receive for his crimes and not necessarily whether or not he would be found guilty because Applicant believed that, based upon the evidence in the case, he would likely be found

guilty at trial. He testified the solicitor did not offer a sentencing recommendation at Applicant's plea hearing because the solicitors in Lexington County do not usually do so. He testified that, after the plea hearing, he explained to Applicant his right to appeal the plea and sentence and that Applicant did not request that he move for reconsideration of the sentence or file a Notice of Appeal. He testified Applicant did not indicate that he wanted to appeal and directed Counsel to talk to Applicant's father about the matter. Counsel testified he called Robert McGuffin, Applicant's father, within the ten-day window for filing a Notice of Appeal and explained Applicant's right to an appeal, but testified that Applicant's father did not indicate that Counsel should appeal or move for reconsideration.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has thoroughly reviewed the record in its entirety. Additionally, this Court heard the testimony presented at the evidentiary hearing and was able to observe the witnesses presented at the evidentiary hearing, which allowed the Court to scrutinize the credibility of all witnesses presented. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Applicant, like all other defendants, has a right to the assistance of effective counsel as provided by the Sixth Amendment to the United States Constitution. Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008). Applicant has the burden of proving the allegations in his post-conviction relief action, and when alleging that trial counsel was constitutionally ineffective, he must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that it cannot be relied upon as having produced a just result." Strickland, 466 U.S. at 686

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced Petitioner such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985). The "prejudice prong ordinarily requires more than simply a defendant's assertion that but for counsel's deficient performance he would not have pled but would have gone to trial." Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 595 (2009).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an

ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. 668. Moreover, Strickland does not require a finding of ineffectiveness merely for deviation from some rigid rule of representation. Rather, Strickland requires the post-conviction relief applicant to prove “counsel made errors so serious that counsel was not functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment.” Id. at 697. Therefore, the function of the post-conviction relief court is to determine if “in light of all the circumstances, the identified acts or omissions were outside the wide range of professional competent assistance” required of a criminal defense attorney. Id. at 690.

“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, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 74 (1977)). “Indeed, where a thorough colloquy is conducted, courts must exercise caution in setting aside the guilty plea.” Garren v. State, 423 S.C. 1, 12, 813 S.E.2d 704, 712 (2018); see Jamison v. State, 410 S.C. 456, 469-71, 765 S.E.2d 123, 129-30 (2014) (observing that “guilty plea[s] must be treated as final in the vast majority of cases” and instructing that caution must be exercised so as not to “undermine the solemn nature of a guilty plea and the finality that generally attaches to a guilty plea”).

Based on this standard set forth above, the testimony that is summarized above, and the reasoning below, this Court finds Applicant has failed to meet his requisite burden of establishing any constitutional ineffectiveness of counsel. The allegations are addressed fully below:



“Counsel failed to file a motion to reconsider the sentence.”

A sentencing court has discretion to sentence within the legal limits. State v. Sidell, 262 S.C. 397, 398, 205 S.E.2d 2, 3 (1974). Applicant alleges he asked that Counsel move for a reconsideration of Applicant’s sentence. Counsel’s testimony that neither Applicant nor Father requested that Counsel move for reconsideration is more credible than Applicant’s testimony. At his plea hearing, before the court issued its sentence or accepted Applicant’s pleas, Applicant affirmed to Judge Keesley that he understood that petit larceny carried a potential sentence of up to ten years, that forgery carried a potential sentence of up to five years, and that grand larceny carried a potential sentence of up to five years. This Court finds that Counsel was not constitutionally ineffective for failing to move for a reconsideration of Applicant’s sentence since Applicant has not shown any deficiency in Counsel’s performance or resulting prejudice. As such, this ground is denied and dismissed with prejudice.

“Counsel failed to appeal the Applicant’s conviction and sentence.”

Applicant testified he asked Counsel to file a Notice of Appeal to Applicant’s pleas and sentences within the ten-day window, but that Counsel did not do so. Counsel testified he advised Applicant within the ten-day window of his right to a direct appeal, but that Applicant did not indicate that he wanted to appeal. He testified he called Father and explained that Applicant had the right to a direct appeal, but that Father did not indicate that Counsel should appeal on Applicant’s behalf. Father testified he never got a phone call from Counsel.

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 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). When counsel has consulted with the defendant

regarding the right to appeal, "Counsel performs in a professionally unreasonable manner only by failing to follow the defendant's express instructions with respect to an appeal." Id. at 478 (emphasis added). In order to establish he was prejudiced by counsel's failure to file an appeal, Applicant must show he would have appealed absent counsel's deficient performance. See Id. at 484.

This Court finds that Counsel's testimony that he advised Applicant and Applicant's father of Applicant's right to a direct appeal is credible. Further, this Court finds that neither Applicant nor his father requested that Counsel file a Notice of Appeal. This Court finds that Counsel appropriately advised Applicant of his right to an appeal and that Counsel did not receive instructions to file an appeal; therefore, Applicant knowingly and voluntarily waived his right to a direct appeal. This Court finds that Counsel was not constitutionally ineffective for failing to appeal Applicant's pleas or sentences since Applicant has not shown any deficiency in Counsel's performance or resulting prejudice. As such, this ground is denied and dismissed with prejudice.

"Applicant was at court the day of the guilty plea for a bond revocation hearing, not a guilty plea hearing, and counsel coerced the Applicant into 'getting it over with' and pleading guilty that day."

An applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for trial's errors, the defendant would not have pleaded guilty, but would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993). To find that 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). 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 (Ct. 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).

The testimony from both Applicant and Counsel is in agreement that Applicant was in court on October 18, 2017, for a bond revocation hearing. Although Applicant now testifies that he did not have adequate time to consider the consequences of pleading guilty and that Counsel rushed him into pleading to make Counsel's workload easier. Applicant and Counsel agree that Applicant's codefendant had been sentenced shortly before Applicant's bond revocation hearing, and received what they both considered to be a favorable sentence. Counsel testified that, in light of the evidence against him, and with the hope that Judge Keesley would give Applicant a similarly favorable sentence, Applicant decided to plead guilty. Counsel asked for a similar sentence in mitigation during Applicant's plea hearing, but Judge Keesley stated that the situations of Applicant and his codefendant were materially different. Counsel's testimony was that there was nothing further in the case that Applicant had asked him to do that had been left undone. During his plea hearing, Applicant affirmed to Judge Keesley that he wished to plead

guilty, affirmed that he understood his trial rights and wished to waive them by pleading guilty, affirmed that he was guilty of the crimes as described by the solicitor, affirmed that he was pleading guilty of his own free will, affirmed that he was happy with Counsel's representation of him, and affirmed that Counsel had done everything that Applicant had wanted. Applicant could have stopped or delayed the plea hearing if he felt that he needed additional time or was being coerced into entering a plea; instead, Applicant made the knowing and voluntary decision to plead guilty. This Court finds that Counsel's testimony that he did not rush Applicant or coerce him into pleading guilty is more credible than Applicant's testimony. This Court finds that Counsel was not constitutionally ineffective for rushing Applicant or coercing him to plead guilty since Applicant has not shown any deficiency in Counsel's performance or resulting prejudice. As such, this ground is denied and dismissed with prejudice.

"Counsel told the Applicant he could not get more than 5 years for the enhanced petit larceny and that he would most likely get the same sentence the co-defendant received earlier that day; Applicant pled guilty based on this advice."

This Court finds that Applicant's testimony that he did not know that he could get a greater sentence than five years lacks credibility in light of his testimony during his plea hearing and Counsel's testimony at the evidentiary hearing. At the plea hearing, before the court issued its sentence or accepted Applicant's pleas, Applicant affirmed to Judge Keesley that he understood that petit larceny carried a potential sentence of up to ten years, that forgery carried a potential sentence of up to five years, and that grand larceny carried a potential sentence of up to five years. Applicant also affirmed to Judge Keesley that he understood that the petite larceny sentence would be enhanced. Counsel affirmed to Judge Keesley that he had informed Applicant of the possible punishment he could face if he pleaded guilty. This Court finds that Applicant was properly advised that he could be sentenced to imprisonment for as much for ten years for petit larceny, and that he nevertheless knowingly pleaded guilty. This Court finds that Counsel

was not constitutionally ineffective for improperly advising Applicant as to the potential sentences he was facing since Applicant has failed to show any deficiency in Counsel's performance or resulting prejudice. As such, this ground is denied and dismissed with prejudice.

"Counsel was ineffective for failing to review the State's evidence with the Applicant."

Applicant testified that Counsel did not show him all of the State's evidence in the case and review it with him. Counsel testified that he reviewed all of the State's evidence with Applicant except for a security camera video that showed Applicant carrying out the criminal offenses to which he pleaded guilty. Counsel believed the video to be harmful to Applicant's defense. Counsel testified that he reviewed the video and summarized its contents to Applicant, but that Applicant declined Counsel's offer to show the video to Applicant because Counsel's corroborated the acts that Applicant had performed in furtherance of his crimes. At his plea hearing, Applicant affirmed that he was guilty of the crimes as described by the solicitor, that he was happy with Counsel's representation of him, and that Counsel had done everything that Applicant had wanted

A defense attorney has a duty to undertake reasonable investigations or to make a decision that renders a particular investigation unnecessary. *Id.* at 691. Thus, "[a] criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State." McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). Moreover, counsel's decision not to investigate should be assessed for reasonableness under all the circumstances with heavy deference to counsel's judgment. Simpson v. Moore, 367 S.C. 587, 597, 627 S.E.2d 701, 706 (2006). "[C]ounsel's conversations with the defendant may be critical to a proper assessment of counsel's investigation

decisions. . .” Strickland, 466 U.S. at 691. “[A] court deciding an actual ineffectiveness claim must judge the reasonableness of counsel’s challenged conduct on the facts of the particular case, viewed as of the time of counsel’s conduct.” Id. at 690; Bagwell v. State, 410 S.C. 259, 265, 763 S.E.2d 630, 633-34 (Ct. App. 2014). A defense attorney’s “[f]ailure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result.” Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998) (citing Kibler v. State, 267 S.C. 250, 227 S.E.2d 199 (1976)). An applicant alleging that his attorney failed to prepare for the case must show how additional preparation would have resulted in a different outcome. Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997).

Counsel’s testimony as to his review of the evidence with Applicant is more credible than Applicant’s testimony. Furthermore, Applicant’s own testimony at the plea hearing undermines Applicant’s testimony at the evidentiary hearing. This Court finds that Counsel sufficiently reviewed the State’s evidence with Applicant and that Applicant has failed to demonstrate how his case would have benefitted from more time spent in reviewing the evidence. This Court finds that Counsel was not constitutionally ineffective for failing to adequately review the evidence with Applicant since Applicant has failed to show any deficiency in Counsel’s performance or resulting prejudice. As such, this ground is denied and dismissed with prejudice.

CONCLUSION

Based on all the foregoing, this Court finds Applicant has failed to demonstrate any deficiency in Counsel’s performance that induced Applicant to plead guilty when he would otherwise have proceeded to trial, and that Applicant has not established any constitutional



violations or deprivations that would require this Court to grant his Application for Post-conviction Relief. Therefore, this application is denied and dismissed with prejudice.

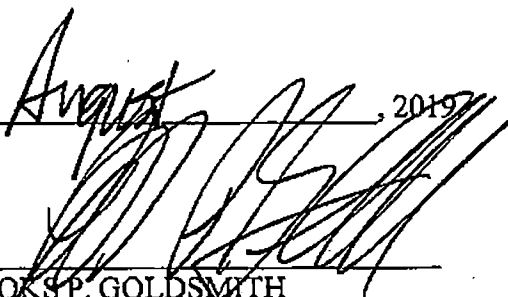
This Court notes Applicant must file and serve a notice of appeal within thirty days from the receipt of this Order by counsel of record to secure the appropriate appellate review. See Rule 203 and 243, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to an appellate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

IT IS THEREFORE ORDERED:

1. This application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the State within the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 6 day of August, 2019




BROOKS P. GOLDSMITH
Presiding Judge

_____, South Carolina

FORM 4

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

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2018CP3203545

Robert D McGuffin 319351		South Carolina State of	
--------------------------	--	-------------------------	--

PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

Judge Code

8/13/2019

Date

For Clerk of Court Office Use Only

This judgment was entered on August 13th 2019, and a copy mailed first class or placed in the appropriate attorney's box on August 13th 2019, to attorneys of record or to parties (when appearing pro se) as follows:

Ashley A. McMahan PO Box 5501 West Columbia, SC
29169

Taylor Zane Smith PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

LISA COMER/jp

Court Reporter

Lisa M. Comer - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCF.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

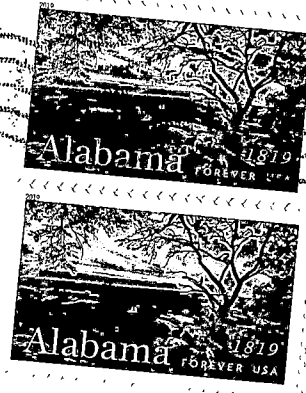
MCMAHAN TAYLOR

ATTORNEYS

PO Box 5501
West Columbia, SC
29171

COLUMBIA, SC 290

23 AUG 2019 PM 2 L



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

29211-133030

