

Timothy L. Griffith Attorney at Law
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September 6, 2019

Clerk of Court, South Carolina Supreme Court
Case # 2019-CP-43-0086

Marcus Antonio Nelson v State of South Carolina

Please see the included Notice of Appeal. I have also forwarded by separate mail copies to:

The Sumter County Clerk of Court
The Office of the Attorney General of South Carolina
SC Office of Indigent Defense / Commission of Indigent Defense
The Honorable Brooks P. Goldsmith

Please file the included NOTICE OF APPEAL for the case captioned.

Attorney Timothy L. Griffith was appointed as PCR Council and not retained and will not be handling the Appeal.

Thank You,



Timothy L. Griffith, Esquire

RECEIVED

SEP 09 2019

S.C. SUPREME COURT

**NOTICE OF APPEAL FROM A PCR DENIAL BY THE COURT OF
COMMON PLEAS**

THE STATE OF SOUTH CAROLINA
In Supreme Court of SC

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

Brooks P. Goldsmith, Circuit Court Judge

Case # 2019-CP-43-0086

RECEIVED

SEP 09 2019

S.C. SUPREME COURT

The State,

Respondent,

v.

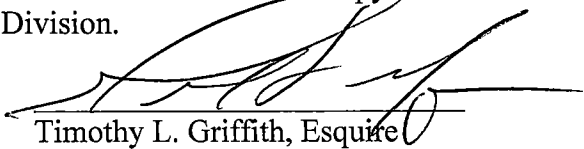
Marcus Antonio Nelson

Appellant.

NOTICE OF APPEAL

Marcus Antonio Nelson appeals the decision of the Court, on August 23, where Mr. Nelson was denied his request for Post Conviction Relief. Mr. Nelson was represented at the hearing by Timothy L. Griffith, Attorney at Law who files this notice on behalf of the Appellant. The order herein attached and a copy of which is also forwarded to the SCCID Appellate Division.

Dated 9/16/19


Timothy L. Griffith, Esquire
360 W. Wesmark Blvd,
Sumter, South Carolina 29150
Telephone: (803)607-9087
Attorney for Appellant (relieved)
Will not be representing on appeal

Other Counsel of Record:
Brianna L. Schill, Esquire
Assistant Attorney General
South Carolina Attorney General's Office
P.O. Box 11549
Columbia, S.C. 29211

PROOF OF SERVICE OF A NOTICE OF APPEAL

THE STATE OF SOUTH CAROLINA
In the South Carolina Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

Brooks P. Goldsmith, Circuit Court Judge

Case # 2019-CP-43-0086

The State,

Respondent,

v.

Marcus Antonio Nelson

Appellant.

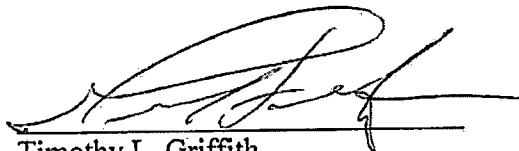
PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the Office of the Attorney General of South Carolina, PCR Division, by U.S. Postal Service, postage prepaid, to P.O. Box 11549, Columbia, S.C. 29211, on September 6, 2019

Date 9/9/19

I received a copy of the Notice of Appeal
on this ____ day of _____, 2019

Office of the Attorney General
PCR Division



Timothy L. Griffith
360 West Wesmark Blvd
Sumter, SC 29150
Telephone: (803) 607-9087
Attorney for Appellant

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)
))
Marcus Antonio Nelson, SCDC#262262,)
))
Applicant,)
))
v.)
))
State of South Carolina,)
))
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Case No.: 2019-CP-43-00086

ORDER OF DISMISSAL

CERTIFIED TRUE COPY
OF ORIGINAL FILED
[Signature]
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA
AUG 29 PM 3:00
RECORDED

This matter comes before the Court by way of Applicant's post-conviction relief (PCR) application filed January 22, 2019. Respondent made its return and motion for more definite statement on April 2, 2019. On July 29, 2019, Applicant filed an amended application for post-conviction relief. An evidentiary hearing on the matter was convened on July 31, 2019, at the Sumter County Courthouse before the undersigned. Timothy L. Griffith, Esquire, represented Applicant. Assistant Attorney General Brianna L. Schill of the South Carolina Attorney General's Office represented Respondent.

At the hearing, Applicant testified on his own behalf. Charles T. Brooks, III, Esquire, Applicant's plea counsel (Counsel), and Assistant Solicitor Bronwyn McElveen of the Third Circuit Solicitor's Office also testified. At the conclusion of the hearing, this Court denied and dismissed Applicant's application and dismissed the application with prejudice.

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections following his guilty plea in Sumter County. During its May 2018 term, the Sumter County Grand Jury indicted Applicant for two separate counts of distribution of crack cocaine (2018-GS-43-0512, -0514). Applicant was represented by Charles T.

Brooks, III, Esquire (Counsel). Assistant Solicitor Bronwyn K. McElveen (McElveen) of the Third Circuit Solicitor's Office prosecuted the case.

On August 21, 2018, Applicant appeared in the Sumter County Court of General Sessions before the Honorable R. Ferrell Cothran, Jr., where he pled guilty as indicted. Judge Cothran sentenced Applicant to ten years imprisonment for each count, with the sentences to be served concurrently. Applicant did not appeal his guilty pleas or sentences.¹

SUMMARY OF FACTS ADDUCED AT APPLICANT'S GUILTY PLEA HEARING

The facts giving rise to Applicant's drug charges were summarized at Applicant's guilty plea hearing as follows:

On May 8, 2017, a Sumter County confidential informant was supplied by Mr. Marcus Nelson an off-white rock-like substance, represented as crack cocaine, in exchange for a payment of \$80 in documented funds. The transaction occurred in the parking lot of the El Cheapo located on South Lafayette Drive. The drugs were entered into evidence and tested and determined to be .92 of a gram of crack cocaine or cocaine base. Mr. Nelson was identified by law enforcement and by the confidential informant and he was charged with distribution of crack cocaine, first offense.

On May 19, 2017, the Sumter County Sheriff's Office made a controlled purchase of a white rock-like substance represented as crack cocaine from Applicant, with a payment of \$100 in documented county funds. Once again, the transaction took place in the parking lot of the El Cheapo on South Lafayette Drive. The drugs were entered into evidence and were tested and were determined to be 1.48 grams of crack cocaine or cocaine base.

¹ At the same plea proceeding, Applicant also pled guilty to numerous other offenses (possession of a stolen pistol, possession of a stolen vehicle, and habitual traffic offender), but is not challenging any of those pleas or convictions in this application.

ALLEGATIONS RAISED

Applicant's original PCR application alleged the following claims:

1. "Whether counsel was ineffective for failing to render competent legal advice?"
2. "Whether counsel's performance was deemed reasonable?"
3. "Whether counsel was ineffective for the lack of communication about relevant law as required in the SCACR §401 1.4?"
4. "Whether counsel's performance was deemed a violation of the Petitioner's Sixth Amendment right to receive effective assistance?"
5. "Did counsel coerce the Petitioner into a plea involuntarily?"
6. "Whether counsel was ineffective for depriving the Petitioner of his Sixth and Fourteenth Amendment right to trial by jury when the Petitioner had insisted on going to trial?"
7. "Whether counsel was ineffective for failing to properly investigate or to present a defense?"
8. "Whether the actions of counsel was a violation of the Petitioner's Fourteenth Amendment Due Process Clause?"
9. "Whether counsel violated the rules of Professional Conduct and Responsibilities of Rule#407 1.1 Competence, 1.2 Representation between client and lawyer, 1.3 diligence, 1.4 Communication and 1.7 Conflict of interest?"
10. "Whether counsel's action prejudice the Petitioner?"
11. "Whether counsel rendered effective assistance when he deprived the Petitioner of his rights to appeal? See * Lozada V. Deeds, 498 U.S. 430, 112 L.Ed 2d. 956, 111 S.Ct. 860 (1991), and * Roe v. Flores-Ortega, 528 U.S. 470, 145 L.Ed. 2d. 985, 120 S.Ct. 1029 (2000)."
12. "Whether counsel was ineffective for failing to consult with the Petitioner about his options of going to trial?"
13. "Whether there was a conflict of interest between client and lawyer?"

On July 29, 2019, Applicant submitted to Respondent an amended application alleging the following claims:

1. "Failure to file an appeal."
2. "His right to see his discovery was denied. He never saw his Rule 5 and Brady on the drug charge."
3. "He told his attorney he did not want to plead to the drug charge but would to all the other charges. He was denied his right to trial."

At the outset of the hearing, PCR Counsel indicated Applicant was proceeding on the allegations contained in the amended PCR application. Accordingly, this Court finds all other

allegations raised in Applicant's original PCR application are waived and dismissed with prejudice.

TESTIMONY

Applicant's testimony

Applicant's Direct Examination

Applicant testified he agreed to plead guilty to some of his charges, but he did not want to plead guilty to the drug charges. Applicant testified he did not see any evidence relating to his drug charges. Applicant testified his first attorney, Jason Briggs, did not talk to him about his drug charges.

Applicant testified he was not aware of his drug charges at the outset, but he found out about his drug charges three months later. Applicant claims he found out about his drug charges when he was pulled over for a traffic violation.

Applicant testified he would like to go to trial on his drug charges because he did not want to plead guilty to a crime for which the State did not have sufficient evidence to convict him. Applicant testified he believes he is innocent. Applicant testified Counsel did not file an appeal on his behalf. Applicant testified his wife asked for an appeal.

Applicant later testified he was told there was video/audio relating to his drug charges, but that he did not see or hear either. Applicant testified he saw some evidence relating to his drug charges, to include copies of the currency.

Applicant's Cross-Examination

On cross-examination, Applicant testified he met with Counsel one time. Applicant stated he did not get discovery and he did not review discovery with his attorney. Applicant



claimed he received discovery after his guilty plea hearing. Applicant testified he took a class while in prison and learned how to obtain his discovery through that class.

Applicant testified Counsel did not discuss the advantages and disadvantages of going to trial. Applicant testified Counsel told him trial was "dangerous." Applicant testified Counsel did not explain the plea offer to him.

Applicant testified he believed the plea offer involved a zero-to-five open plea and that is all the information he was given regarding the guilty plea. Applicant testified he was being offered an open zero-to-five-year plea offer because he talked to Assistant Solicitor McElveen and McElveen said she would offer him zero-to-five years.

After receiving the guilty plea transcript, Applicant acknowledged the plea court told him he was facing up to fifteen years in prison for his drug charges. Applicant testified he recalled the plea court telling him at his guilty plea hearing that the plea court could impose consecutive sentences upon him. Applicant testified he recalled telling the plea court he did not have any questions for the court. Applicant testified he recalled giving up his constitutional rights at this guilty plea hearing. Applicant testified he recalled telling the plea court he was not threatened, coerced, or promised anything to plead guilty. Applicant recalled telling the plea court he was not suffering from any mental illnesses that would have prevented him from voluntarily pleading guilty. Applicant recalled telling the plea court he was not under the influence of any drugs or alcohol at the time of his guilty plea hearing. Applicant recalled telling the plea court he was satisfied with his representation from Counsel. Applicant recalled telling the plea court he did not need any more time to talk to Counsel.

Applicant testified he did not recall hearing facts summarized by Assistant Solicitor McElveen or recall agreeing with those facts. After being presented with the guilty plea transcript, Applicant testified he agreed with the facts.

Applicant recalled the plea court informing him of his right to appeal his guilty plea. Applicant testified his wife asked Counsel to file an appeal because she indicated to him that she was not happy with the sentence he received. Applicant testified Counsel said "his job was done," indicating that he would not file an appeal. Applicant testified he wants an appeal so the plea court could reconsider his sentence.

Counsel's Testimony

Counsel's Direct Examination

Counsel testified he has been practicing law since 1996 and a fair portion of his practice has been in criminal law. Counsel testified he has experience representing Applicant and is familiar with Applicant and his family.

Counsel testified he initially contacted McElveen to see if she would lift Applicant's bench warrant. Counsel testified McElveen said she would not lift Applicant's bench warrant because Applicant's case was listed on the trial list. Counsel testified Applicant had a number of charges. Counsel testified he visited with Applicant on a Monday and met with Applicant for approximately two hours to review discovery. Counsel testified Applicant admitted to some charges. Counsel testified he explained to Applicant what sentences he was facing. Counsel testified Applicant had a criminal record, and as such, he told Applicant the best thing to do was "shoot for" a five year sentence.

Counsel testified Applicant had a heart condition. Counsel testified Applicant said he did not commit the drug offenses. Counsel testified he believed Applicant could get five years because



Judge Cothran is traditionally lenient with respect to criminal sentences. Counsel testified Applicant had "so many charges" and also a criminal record. Counsel testified he told Applicant he could get five-years, but could also get ten-to-fifteen years. Counsel testified McElveen ultimately dismissed more charges than she initially indicated. Counsel testified Judge Cothran ultimately sentenced Applicant to ten years, which left Counsel and Applicant stunned. Counsel testified SCDC typically releases inmates early for good behavior. Counsel testified he thought that explained why Judge Cothran sentenced Applicant to ten years as opposed to five.

Counsel testified he could not recall any issue about an appeal. Counsel testified Applicant did not like the amount of prison time Judge Cothran gave him. Counsel testified he did not have a valid basis to file an appeal.

Counsel testified McElveen gave him one or two pounds worth of documents regarding Applicant's case. Counsel testified he reviewed the file with Applicant. Counsel testified that based on his experience, it does not benefit a defendant to plead guilty to some charges but not others when offered a package deal. Counsel testified if Applicant had plead guilty to all charges but the drug charges, he would have been worse off than he was by pleading guilty under the package deal that he was offered.

Counsel testified he did not promise Applicant anything. Counsel testified he told Applicant he was not going home and would have to face some jail time, and that their goal was to minimize his jail time the best they could. Counsel testified he believes it was in Applicant's best interest to plead guilty. Counsel testified it was ultimately Applicant's choice to plead guilty. Counsel testified that if Applicant wanted to go to trial, he would have taken Applicant's case to trial.

Counsel's Cross-Examination

Counsel testified Applicant's first defense attorney, Jason Bridges, did not receive discovery regarding Applicant's drug charges. Counsel testified that he received discovery regarding Applicant's drug charges. Counsel could not recall specifically what discovery he had received. Counsel testified he did not know what discovery Bridges received.

Counsel testified Applicant initially told him he did not want to plead guilty to drug charges. Counsel testified Applicant agreed to plead to all of the charges because it got him a package deal and because he otherwise faced a much longer sentence. Counsel testified he discussed with Applicant the additional issues his criminal record and medical challenges caused. Counsel testified he told Applicant the best outcome they could hope for was five years. Counsel testified he did not guarantee Applicant five years nor did he give Applicant an impression he would get five years.

Counsel testified he discussed the plea colloquy with Applicant. Counsel further testified Applicant was aware of the plea colloquy because this was not "his first rodeo" in terms of facing criminal charges. Counsel testified McElveen made clear what the plea offer was. Counsel testified McElveen recommended concurrent sentences and dropped several charges. Counsel testified McElveen told him she would not recommend a five year sentence. Counsel testified McElveen agreed to not speak negatively about Applicant at his plea hearing.

Counsel testified Applicant did not ask for an appeal. Counsel testified Applicant's wife might have asked for one, but he could not recall specifically. Counsel testified he did not have a valid basis to appeal Applicant's guilty plea hearing.

Counsel's Redirect Examination

Counsel testified Applicant understood the conversations he had with Applicant about Applicant's charges. Counsel testified he would have taken Applicant's case to trial if that is ultimately what Applicant wanted. Counsel reiterated he did not guarantee Applicant a five-year sentence. Counsel testified Applicant's sentence, although not ideal, was not an illegal sentence.

McElveen's Testimony

Direct Examination

McElveen testified she is currently employed at the Sumter County Solicitor's Office, and that she was the Assistant Solicitor assigned to Applicant's case. McElveen testified she received Brady / Rule 5 motions pertaining to Applicant's case and that she complied with those motions. McElveen testified Bridges represented Applicant on multiple charges before Applicant received the drug charges. McElveen testified her discovery file consisted of still shots from the confidential informant, pictures of the currency exchanged, photo-lineups, and other various documents. McElveen testified all of this discovery was given to Counsel. McElveen testified Bridges did not receive discovery related to Applicant's drug charges because Applicant had not been charged with the drug charges until after Counsel became his attorney.

McElveen testified she did not offer a zero-to-five year plea offer. McElveen testified on May 29, 2018, she sent Bridges a plea offer that would to dismiss two out of the five non-drug related charges and one of the three drug distribution charges, and also recommend a concurrent sentence. McElveen testified she also eventually sent the same offer to Counsel. McElveen testified this plea offer was a package deal and that she would have not made the same offer had Applicant opted to go to trial on certain charges. McElveen testified Applicant was facing a total of eighty-one years' imprisonment for all of his charges.

McElveen's Cross-Examination

On cross-examination, McElveen testified her file contained a photo-lineup relating to Applicant's drug charge, and this lineup was given to Counsel. McElveen testified Applicant was identified through video and audio recording of the drug transaction. Applicant testified pursuant to the Solicitor's Office policy, she would not have provided Applicant the video and audio footage in order to protect the identity of the confidential informant. McElveen testified Counsel would have had the opportunity to view any video and audio footage.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the relevant portions of the record and has heard the testimony and arguments presented at the PCR hearing. This Court also had before it the records of the Sumter County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the application, the State's Return, and the plea transcript. This Court has reviewed the plea court record and has heard the testimony of both Applicant, Counsel, and McElveen. This Court has therefore weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusion of law as required by S.C. Code Ann. Sec. 17-27-80 (2003).

In a post-conviction relief action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove "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. at 443, 334 S.E.2d at 814. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. The courts presume that counsel rendered adequate

assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 689. A PCR applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Id. (quoting Strickland, 466 U.S. at 688). Second, counsel's deficient performance must have prejudiced 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. When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985).

Allegation #1: Failure to File an Appeal

Applicant alleges counsel was deficient for failing to file an appeal. Pursuant to Roe v. Flores-Ortega, 528 U.S. 470, 480 (2000), "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.

This Court finds Counsel was not deficient for failing to file an appeal. In this case, Applicant's PCR arises out of a guilty plea. It is uncertain whether Applicant's wife even requested an appeal. As Counsel testified, Applicant did not request an appeal. Furthermore, Applicant indicated he only wanted to appeal his guilty plea because he was not happy with his sentence. As Counsel testified, the sentence Applicant received was not an illegal sentence. Counsel testified he did not have a basis for an appeal. This Court finds Counsel's testimony on this issue to be credible, while also finding Applicant's testimony is not credible. Accordingly, this Court finds Counsel had no legitimate basis for an appeal. Accordingly, this allegation is dismissed and denied with prejudice.

Allegation #2: Brady/ Rule 5 Violation

Applicant alleges a Brady/Rule 5 violation, stating that McElveen withheld material evidence. The Brady disclosure rule requires the prosecution to provide a defendant any evidence in the prosecution's possession that may be favorable to the accused and material to guilt or punishment. State v. Kennerly, 331 S.C. 442, 452, 503 S.E.2d 214, 220 (Ct. App. 1998) (citing Brady v. Maryland, 373 U.S. 83, 87 (1963)). Favorable evidence includes both exculpatory evidence and evidence which may be used for impeachment. United States v. Bagley, 473 U.S. 667, 676 (1985). "Impeachment or exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993). This Court finds that Applicant did not demonstrate a Brady violation.

Applicant testified he did not see any discovery relating to his drug charges. To the contrary, McElveen provided all favorable evidence, including photo lineups, pictures of the currency exchanged in the drug transaction, and still shots from the drug transaction. McElveen

would not have provided audio or video footage to Applicant due to the Solicitor's Office policy that plea offers are retracted once audio or video footage is provided to a defendant. Such a policy has been upheld by the Supreme Court of South Carolina. Hyman v. State, 397 S.C. 35 (2012), abrogated on other grounds by Smalls v. State, 422 S.C. 174 (2018). As McElveen testified, Counsel was able to view the audio/video evidence. Counsel testified he received discovery from McElveen and reviewed the discovery with Applicant. This Court finds credible the testimony of Counsel and McElveen, while also finding Applicant's testimony not credible. Accordingly, this allegation is dismissed and denied with prejudice.

Allegation #3: Involuntary Guilty Plea

Applicant alleges his guilty plea was not freely and voluntarily made. An Applicant alleging the guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill, 474 U.S. at 56. A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant and statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Edmonds v. Lewis, 546 F.2d 566, 568 (4th Cir. 1976) (citing Crawford v. U.S., 519 F.2d 347, 350 (4th Cir. 1975)).

In post-conviction relief cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Ai-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417 (2001).

Applicant asserts his guilty plea was not freely and voluntarily made. This Court disagrees.

McElveen testified she did not offer Applicant an open zero-to-five year sentence. Counsel also testified that he told Applicant the best they could hope for was five years. Counsel, however, did not promise Applicant he would receive five years or any sentence shorter than five years. Additionally, Applicant recalled telling the plea court he did not have any questions for the court. Applicant recalled telling the plea court he understood the drug charges carried a possible sentence of zero-to-fifteen years. Applicant also testified he recalled telling the plea court he understood the judge could choose to run his sentences consecutively. Applicant testified he recalled telling the plea court he was not threatened, coerced, or promised anything to plead guilty. Applicant recalled giving up his constitutional rights at his plea hearing. Applicant recalled telling the plea court he was not under the influence of any drugs or alcohol at his guilty plea hearing. Applicant recalled telling the plea court he was satisfied with his representation from Counsel. This Court finds credible the testimony of McElveen and Counsel, while also finding Applicant's testimony not credible. It is clear from the testimony and the record that Applicant's plea was freely and voluntarily made. Accordingly, this application is dismissed and denied with prejudice.

CONCLUSION

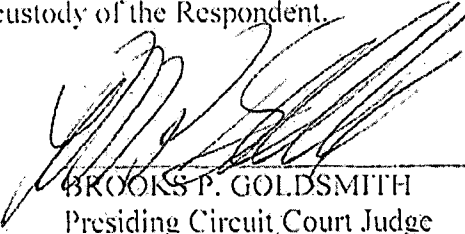
Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief. Counsel was not deficient in any manner, nor was Applicant prejudiced by Counsel's representation. Therefore, this application for post-conviction relief is denied and dismissed with prejudice.

Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR (providing the appropriate procedure to perfect an appeal). 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. Further, Rule 71.1(g), SCRCP, 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 Rule 243, SCACR, for the appropriate procedures for appealing a judgment in a PCR action.

IT IS THEREFORE ORDERED:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant shall be remanded to the custody of the Respondent.

AND IT IS SO ORDERED.



BROOKS P. GOLDSMITH
Presiding Circuit Court Judge
Third Judicial Circuit

August 23, 2019.

Rec'd 9/5/19

FORM 4

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

RECORDED

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2019CP4300086

Marcus Antonio Nelson

2019 AUG 30 4:09:12

South Carolina State of

CERTIFIED TRUE COPY
OF ORIGINAL FILED

Mary H. Hart
DEPUTY CLERK OF COURT

PLAINTIFF(S)

DEBTOR(S)

SUMTER COUNTY
SOUTH CAROLINA

Submitted by: Clerk of Court

Attorney for: Plaintiff Defendant
 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: See attached Order.

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.

8/30/2019

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

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

Marcus Antonio #262262 Nelson Allendale Correctional
Inst/C F-1 A -11 P O Box 1151 Fairfax, SC 29827
Timothy Lee Griffith 360 W Wesmark Blvd Second Floor
Sumter, SC 29150

Alan McCrory Wilson S.C. Attorney General's Office PO
Box 11549 Columbia, SC 29211-1549

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

James C. Campbell

Court Reporter

James C. Campbell - 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), SCRPC.

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.



RECORDED
AUG 29 PM 3:26
BRIANNA L. SCHILL
CLERK OF COURT
SUMTER COUNTY, S.C.

ALAN WILSON
ATTORNEY GENERAL

August 27, 2019

The Honorable James C. Campbell
Clerk of Court, Sumter County
215 North Harvin Street
Sumter, South Carolina 29150

Re: Marcus Antonio Nelson, #262262 v. State of South Carolina
2019-CP-43-00086

Dear Mr. Campbell:

Enclosed please find the original **Order of Dismissal**, signed by the Honorable Brooks P. Goldsmith, in the above-captioned case for filing in your office. Please forward a **time stamped copy** back to our office for our file.

Sincerely,

Brianna L. Schill
Assistant Attorney General

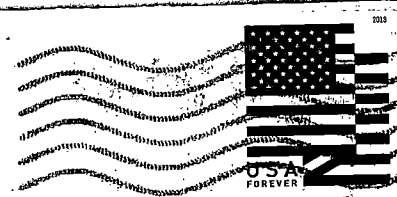
BI,S/ks
Enclosure(s)

cc: Timothy L. Griffith, Esquire

Timothy L. Griffith, Attorney at Law
360 West Wesmark Blvd, 2nd Floor
Sumter, SC 29150

COLUMBIA SC 290

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Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

29211-133030

