LAW OFFICE OF

Kristy Grafton Goldberg, LLC

ATTORNEY AT LAW

January 21, 2020

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

Re: David Keith McElveen, SCDC # 321043
Docket Number 2016-CP-40-04676

Dear Mr. Shearouse,

Enclosed for filing is a Notice of Appeal in the above referenced case. Also enclosed are a certificate of service and a copy of the original court order which is to be challenged on appeal. I would appreciate it if you could file the Notice of Appeal and mail a date-stamped copy back to me in the enclosed pre-stamped envelope.

By copy of this letter I am informing the Office of Appellate Defense of this Appeal. I was **retained** to represent Mr. McElveen in his PCR matter; however, I would request that he be screened for indigency to see if he qualifies for appointed counsel for his appellate action. I **do not represent him on his appellate case.**

Please let me know if you have any questions or concerns regarding this matter.

Respectfully,

Kristy Goldberg

CC: Lindsey McCallister
Assistant Attorney General
Post Office Box 11549
Columbia, South Carolina 29211-1549

David Keith McElveen, SCDC # 321043
Broad River Correctional Institution
4460 Broad River Road
Columbia, South Carolina 29210

Jeanette McBride

1720 MAIN STREET • SUITE 303 • COLUMBIA, SOUTH CAROLINA 29201
PHONE (803) 667-6633 • FACSIMILE (803) 799-4059

Richland County Clerk of Court
Post Office Box 2766
Columbia, South Carolina 29202

Office of Appellate Defense
Chief Appellate Defender – Robert Dudek
PO Box 11433
Columbia, SC 29211-1433

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

JAN 24 2020

S.C. SUPREME COURT

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

DeAndera Benjamin, Circuit Court Judge

Case No. 2016-CP-40-4676

David Keith McElveen, SCDC # 321043, ... Appellant

v.

State of South Carolina, ... Respondent.

NOTICE OF APPEAL

Applicant David McElveen hereby appeals from the Order of the Honorable DeAndrea Benjamin, presiding Judge for the 5th Judicial Circuit, filed January 7, 2020 and received on January 8, 2020.

January 21, 2020

Kristy Goldberg
Attorney for Plaintiff

3600 Forest Drive, Suite 204
Columbia, South Carolina 29204
kggoldberg@wjlaw.net

Other Counsel of Record:
Assistant Attorney General, Lindsey McCallister
Office of the Attorney General

Post Office Box 11549
Columbia, South Carolina 29211

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

DeAndera Benjamin, Circuit Court Judge

Case No. 2016-CP-40-4676

David Keith McElveen, SCDC # 321043, ... Appellant

v.

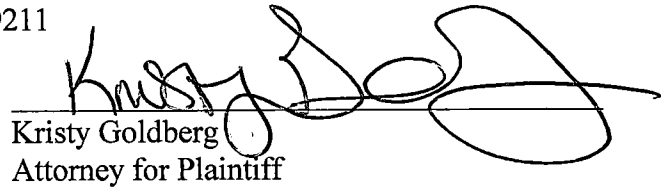
State of South Carolina, ... Respondent.

PROOF OF SERVICE

Personally appeared before me, Kristy Goldberg, Esquire, who being duly sworn, deposes and states:

She was the counsel of record for Applicant during the PCR matter;
Service by mail is proper in this instance; and
She has served the NOTICE OF APPEAL on the following party on January 21, 2020 by depositing one copy in the U.S. Mail, postage prepaid:

Assistant Attorney General, Lindsey McCallister
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211



Kristy Goldberg
Attorney for Plaintiff

3600 Forest Drive, Suite 204

Columbia, South Carolina 29204
kggoldberg@wjlaw.net

Other Counsel of Record:
Assistant Attorney General, Lindsey McCallister
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT
David Keith McElveen, #321043, Applicant, v. State of South Carolina, Respondent.	)	C.A. No. 2016-CP-40-4676 **ORDER OF DISMISSAL**

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed by David Keith McElveen (Applicant) on August 3, 2016, and amended, through counsel, on June 19, 2018. Respondent made its Return on May 18, 2017. An evidentiary hearing into the matter was convened on July 16, 2018, at the Richland County Courthouse before the undersigned. Kristy Grafton Goldberg, Esquire, represented Applicant. Assistant Attorney General Lindsey A. McCallister represented Respondent.

At the hearing, Applicant testified on his own behalf. Mark Schnee, Esquire, Applicant's plea counsel, was also called to testify. This Court also had before it a copy of the records of the Richland County Clerk of Court, records from the South Carolina Department of Corrections, the application and amendments, Respondent's Return, and the plea transcript.

PROCEDURAL HISTORY

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Richland County Clerk of Court's orders of commitment. Applicant was indicted by the April 2015 term of the Richland County Grand Jury for armed robbery (2015-GS-40-01590) and first-degree burglary (2015-GS-40-01599). Mark E. Schnee (Counsel), Esquire, represented Applicant.

Assistant Solicitor Margaret Bodman prosecuted the case on behalf of the State. On March 14, 2016, Applicant appeared before the Honorable Clifton Newman and pled guilty as indicted to both charges. In return, the State dismissed a pending armed robbery charge as well as a pending charge of assault and battery in the first degree. Judge Newman sentenced Applicant, without negotiation or recommendation, to eighteen years' imprisonment for armed robbery and twenty-two years for burglary, with the sentences to run concurrently. Applicant did not appeal his convictions or sentences.

ALLEGATIONS

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

1. Ineffective Assistance of Counsel
    a. "Trial Counsel prejudice applicant by failing to filed a timely direct notice of appeal"
    b. "Trial Counsel was ineffective for failing to prepare and to conduct a proper pre-trial investigation"
    c. "Trial counsel prejudiced applicant by failing file motion for reconsider after guilty plea"
    d. "Trial counsel prejudiced applicant by failing to adequately investigate, research, and evaluate my case and request continuance.

In his amended application filed June 19, 2018, Applicant additionally alleges:

1. "Ineffective assistance of counsel in failing to adequately advise and assist the Applicant during the pendency of the case"
    a. "Counsel failed to review discovery with client, failed to explain plea offers and deadlines for plea offers, failed to explain strengths and weaknesses of the case, and generally failed to assist the Applicant in handling this case in an appropriate manner."
2. "Ineffective assistance of counsel for failure to object during the guilty plea when the State breached the plea agreement."
    a. "Counsel failed to object and move to withdraw plea when the State requested a substantial prison sentence in violation of the agreement that the Applicant would be entering into a 'straight up plea.'"

3. "Ineffective assistance of counsel for failure to file a Motion to Reconsider as requested by the Applicant."
4. "Ineffective assistance of counsel for failure to file a Notice of Appeal as request[ed] by the Applicant."

At the evidentiary hearing, counsel indicated Applicant wished to proceed solely on the allegations contained in his amended application. Therefore, to the extent the allegations outlined in Applicant's original application constitute separate issues for relief, this Court finds those allegations are voluntarily waived and abandoned. As such, those allegations are hereby denied and dismissed with prejudice.

SUMMARY OF TESTIMONY

Applicant testified he originally had a different attorney on these charges, but Counsel was appointed after a conflict arose with the Public Defender's Office. Applicant testified Counsel sent him a letter notifying him of the appointment, and they subsequently met for the first time at Applicant's preliminary hearing in January 2015. Applicant testified they met again briefly in May 2015, but Counsel did not have much, if any, discovery at that point. Applicant explained he asked Counsel about a potential bond reduction and informed Counsel he would accept a plea agreement of zero-to-ten years of nonviolent time. Applicant further testified Counsel was able to arrange a bond hearing, and his bond was reduced by half. According to Applicant, Counsel conveyed the State's offer of fifteen-to-twenty-five years at the bond hearing, but Counsel told Applicant he would get a better offer towards the end of the case, so Applicant did not accept it. Applicant further testified he was never told if the offer had an expiration date.

Applicant testified he next saw Counsel at a hearing regarding the State's request for DNA, and at that time, discovery was still outstanding regarding the search of Applicant's phone. Applicant informed Counsel at the DNA hearing he would plead guilty if Counsel could obtain a

favorable offer, and Applicant reiterated his request for something in the range of zero-to-ten years of nonviolent time. Applicant testified he and Counsel spoke at a second bond reduction hearing in January 2016, but Applicant did not receive any further information about a plea. Instead, according to Applicant, Counsel informed him a trial was set for March 14, 2016, and Counsel said he would come to the detention center to review the case with Applicant. Applicant testified he did not expect to receive a trial date because he had not asked for a trial.

Applicant further testified he met with Counsel on March 9, 2016, and the trial remained scheduled to begin on March 14. At that time, Counsel informed Applicant his codefendants would testify against him, and Counsel felt Applicant did not have a good chance of prevailing at trial. According to Applicant, he wanted the State to dismiss the first-degree burglary charge in exchange for a ten-year sentence on the armed robbery, and Counsel told him he would try to get the State to agree. Applicant testified he did not know if the fifteen-to-twenty-five year offer was still on the table at that point, and he did not ask Counsel about any other plea offers.

Applicant then testified Counsel returned to the detention center the next day and reviewed his statement and the codefendants' statements with Applicant. Applicant testified Counsel asked whether he wanted to plead guilty or go to trial and again told Applicant he did not think Applicant had a good chance of winning the case. Counsel also informed Applicant he could get up to life without parole if convicted of the first-degree burglary charge. Applicant further testified he next saw Counsel on the day of trial, and Counsel told him the State had not made any further offers, and the case was ready for trial. According to Applicant, Counsel told him the judge was "reasonable" and there was no reason for the judge not to give Applicant the minimum sentence if Applicant wanted to plead guilty. Applicant testified he pleaded guilty based on Counsel's advice,

and he understood the terms of the plea to be without recommendation from the State, such that the possible sentencing range was fifteen years to life. Applicant also acknowledged signing the sentencing sheet with this information.

However, Applicant contended he would not have entered the plea if he had known the State was going to ask for a substantial sentence. Applicant testified he believed Counsel should have shared the strengths and weaknesses of the case with him and should have objected when the State asked for substantial time. Further, Applicant testified he did not accept the original plea offer of fifteen to twenty-five years because Counsel advised he would receive a better offer later. Applicant also noted the defense had not received all of the discovery at the time the first offer was made, which made it hard for Applicant to decide what to do.

Finally, Applicant testified he and Counsel discussed the possibility of filing both a motion to reconsider and a notice of appeal. Applicant testified he understood these were two different things, but Counsel talked about them at the same time. Applicant testified he wanted Counsel to file a motion to reconsider his sentence, and Counsel said he would file one "later," after Applicant's codefendants had been sentenced. According to Applicant, Counsel also told him he would file a notice of appeal "later," and Applicant did not know it had to be filed within ten days until he was already in the South Carolina Department of Corrections.

Counsel testified he had primarily practiced in criminal defense work since 2006, and he was appointed to this case in either late 2014 or early 2015. Counsel testified his first priority was to resolve Applicant's bond because it is helpful to have the client out of the detention center when preparing a case. Counsel also testified he met with Applicant numerous times to discuss the elements of each offense and review discovery, including police reports, photo lineups, and

statements given by various witnesses and the codefendants. Counsel testified the discovery also included phone calls between Applicant and the male codefendant, as well as some DNA evidence. Counsel further testified he and Applicant discussed the evidence and discovery on several occasions including what was missing from the file, potential problems with the case, and all of the facts and details of the incident. Counsel testified they also discussed potential issues with Applicant's statement and the possibility of suppression, but he did not recall any red flags regarding the voluntariness of the statement.

According to Counsel, Applicant wanted to plead guilty immediately, but Counsel advised him to wait because he felt the fifteen-to-twenty-five year offer was not very good. Counsel testified he probably did not advise Applicant the offer could expire. However, Counsel testified he always expected the case to end with a guilty plea because Applicant never wanted a trial. Counsel further explained he negotiated for the State to dismiss the first-degree burglary charge, particularly because that charge was based on DNA evidence which was not received until closer to trial, at the end of 2015. Counsel also testified he advised Applicant to consent to the State's motion for a DNA sample because he hoped Applicant's cooperation would help in negotiations and Applicant's DNA was already in the database, so everyone knew what the results of the testing would be.

Counsel testified he did not fight the State over when to notice the case for trial except before he received all of the discovery. Counsel testified he received the required ten days' notice of trial. Counsel testified when Applicant decided to plead guilty, he explained the ramifications of a "straight up" plea and informed Applicant the State was not offering any specific sentence, the sentencing range would be fifteen years to life, and the judge could sentence him to anything

within that range. Counsel testified although he did not know exactly what the State was going to say during sentencing, he assumed the solicitor would ask for more than fifteen years because, otherwise, the State would have agreed to that determinate sentence. Counsel further testified Applicant knew the potential sentencing range and knew he was not promised anything specific as to the length of the sentence.

Counsel testified he did not believe the State violated the agreement, and he did not object to anything the State said during the plea because he had no legal basis to do so. Counsel testified, in his professional opinion, there was no restriction on the sentence the State could request. Counsel further testified withdrawing the plea would have been problematic because the case would have gone straight to trial. Counsel recalled discussing the possibility of a motion to reconsider the sentence with Applicant, and he told Applicant he would review the file to see if the solicitor had said anything improper, but he did not know if there would be a basis for the motion. Counsel testified he looked through the discovery to make sure the State had not misled the court in anyway and determined there was no basis to file the motion. Finally, Counsel testified he did not recall Applicant requesting him to file a notice of appeal, and if Applicant had done so, Counsel would have explained he had not made any objections during the plea, so there would not be any preserved issues for an appeal. Counsel further acknowledged he is required to file such notice if Applicant requested it, and he testified he would have done so.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the record and heard the testimony at the PCR hearing. This Court has observed the witnesses presented at the evidentiary hearing, judged their credibility, and

weighed their testimony accordingly in its discussion below. Set forth below are findings of facts and conclusions of law as required by section 17-27-80 of the South Carolina Code of Laws.

Applicant alleges he received ineffective assistance of counsel. In a post-conviction relief action, the 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. The courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 689. 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 plea counsel. Id. at 117, 386 S.E.2d at 625. First, the 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 (1984)). Second, counsel's 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. When there has been a guilty plea, the applicant must prove counsel's representation was below the standard of reasonableness and

that, but for counsel's unprofessional errors, there is a reasonable probability he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

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.

This Court finds Applicant has failed to prove Counsel's performance was deficient in any way. Counsel met with Applicant and reviewed him the elements of the crime charged, possible penalties, the evidence and discovery in the case, and Applicant's version of the facts. Therefore, for the reasons stated below, the Court denies relief and dismisses the allegations with prejudice.

1. Failure to adequately advise and assist Applicant

Applicant alleges Counsel was ineffective for failing to review discovery with him, failing to explain plea offers and deadlines for plea offers, failing to explain the strengths and weaknesses of the case, and generally failing to assist Applicant in handling this case in an appropriate manner. This Court disagrees and finds Counsel provided effective assistance in this case.

To find a guilty plea is voluntarily and knowingly entered into, the record must establish Applicant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, an applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63 (1977). Statements made during a guilty plea should be considered conclusive, unless an applicant presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975) overruled on other grounds by U.S. v. Whitley, 759 F.2d 327 (4th Cir. 1985).

It is undisputed that Counsel conveyed the fifteen-to-twenty-give year plea offer to Applicant, and on Counsel's advice, Applicant decided not to accept it. Applicant explained they had not yet seen all of the discovery at that time, and Applicant wanted Counsel to negotiate for dismissal of the first-degree burglary charge and a nonviolent sentence. This Court finds said testimony credible. This Court also finds credible Counsel's testimony he reviewed Applicant's constitutional rights, the State's evidence, the potential strengths and weaknesses of each side's case, and the possible penalties with Applicant prior to the plea. Further, Counsel testified he explained the ramifications of a "straight up" plea to Applicant and informed Applicant the State was not offering any specific sentence, the sentencing range would be fifteen-years-to-life imprisonment, and the plea judge could sentence him to anything within that range.

Additionally, the plea transcript reflects the judge engaged in a detailed recitation of Applicant's constitutional rights during the plea colloquy, including the right to a jury trial, the State's burden of proof at trial, and Applicant's right to present a defense. Tr. pp. 5-6. The plea court clearly informed Applicant of the potential sentencing range for each charge, including the mandatory minimum sentences. Tr. p. 3. Applicant affirmed he had enough time to talk with Counsel, understood the nature of charges and possible punishments, and represented no promises had been made to induce him to plead. Tr. p. 4. Applicant also informed the plea court he was

satisfied with Counsel's services. Tr. p. 4. Accordingly, this Court finds Counsel's representation of Applicant was not deficient.

Finally, as noted above, Applicant ultimately received a sentence of twenty-two years on the first-degree burglary charge. Applicant testified the only plea offer communicated to him was a range of fifteen to twenty-five years, within which his sentence falls. Therefore, Applicant suffered no prejudice, even if Counsel was deficient in conveying the offer. For these reasons, this Court finds Applicant has failed to meet his burden of proof as to deficiency or prejudice as to the allegation Counsel failed to adequately advise and assist him in resolving this case in an appropriate manner. Counsel met with Applicant on multiple occasions to review discovery, discuss the facts of the case, and explain Applicant's constitutional rights and options for resolving the case. Further, the plea transcript reflects Applicant entered into the guilty plea freely and voluntarily. Therefore, this Court denies relief and dismisses this allegation with prejudice.

2. Failure to object to the State's alleged breach of plea agreement

Applicant next alleges the State breached the agreement to allow Applicant to enter a "straight up plea" by asking for a substantial sentence, and Counsel was ineffective for failing to object and move to withdraw the plea. This Court finds the State did not breach the agreement, and therefore, Counsel was not ineffective because he was not deficient, as there was no legal basis to object or move to withdraw the plea.

The Court finds State v. Rikard, 371 S.C. 295, 638 S.E.2d 72 (Ct. App. 2006), instructive. As the Court of Appeals explained in Rikard, "[t]he sentencing sheet offers three alternatives to designate the nature or status of the plea. Those alternatives provide that the plea is: (1) without negotiations or recommendation; (2) a negotiated sentence; or (3) a recommendation by the State." Id. at 302, 638 S.E.2d at 76. In Rikard, the option of "without negotiations or recommendation"

was selected and signed by the solicitor, Rikard, and Rikard's plea counsel. Id. The Court of Appeals held "[i]t is axiomatic that the phrase 'without negotiations or recommendation' means that the State and the defendant have not agreed on sentencing. Therefore, either party is free to request a favorable sentence." Id.; cf. Smith v. State, 413 S.C. 194, 775 S.E.2d 696 (2015) (finding plea counsel ineffective for failing to object when the State asked for the maximum sentence because the plea agreement included a condition that the State remaining silent at sentencing).

Here, Counsel testified he did not believe the State had violated the agreement, and he did not object to anything the State said during the plea because he had no legal basis to do so. Counsel testified, in his professional opinion, there was no restriction on the sentence the State could request. This Court agrees with Counsel's assessment, applying the case law cited above. Counsel also testified when Applicant decided to plead guilty, he explained the ramifications of a "straight up" plea and informed Applicant the State was not offering any specific sentence. Counsel further testified Applicant knew the potential sentencing range and knew he was not promised anything specific as to the length of the sentence. The Court finds this testimony is credible and supported by the plea transcript. During the plea hearing, Applicant addressed the judge himself and through Counsel, and Applicant never indicated he wished to withdraw the plea or that he felt the State had not upheld its end of the agreement. Tr. pp. 17-21, 23. Based upon Counsel's credible testimony and this Court's review of the plea transcript, the Court finds Counsel was not deficient for failing to object to the State's request for a substantial sentence because the State did not breach the agreement by making that request.

Accordingly, this Court finds Counsel had no basis for an objection on that ground, and he cannot be deficient for failing to make such an objection. Because this Court finds Counsel was

not deficient in failing to object or failing to move to withdraw the plea, this allegation is denied and dismissed with prejudice.

3. Failure to file Motion to Reconsider/ Failure to file Notice of Appeal

Applicant also alleges Counsel was ineffective for failing to file a motion to reconsider or a notice of appeal after Applicant requested he do so. Specifically, Applicant testified he and Counsel discussed the options of filing a motion to reconsider and/or a notice of appeal, and Counsel told him he would file them "later." Counsel recalled telling Applicant he would review the file after the plea to ensure the solicitor had not misrepresented any facts, which Counsel testified he did and determined there was no basis for the motion. Counsel further testified he did not recall any discussion wherein Applicant asked for a notice of appeal to be filed, and he was aware of his obligation to file one upon Applicant's request. Counsel also testified if Applicant had asked, he would have explained to Applicant there was no basis for an appeal because neither Applicant nor Counsel made any objections during the plea, so nothing was preserved for appellate review. Further, Applicant indicated his agreement with the facts of the case as presented by the State during the plea hearing, and neither Applicant nor Counsel ever indicated any disagreement regarding the facts or the State's conduct during the plea. Tr. pp. 10, 13, 15-16, 17-21.

This Court therefore finds Applicant has failed to meet his burden of proof as to ineffective assistance of counsel for failure to file a motion to reconsider or a notice of appeal. The Court finds credible Counsel's assertion he reviewed the file after the plea and could not discern any basis to file a motion to reconsider. The Court also finds credible Counsel's testimony that Applicant did not ask him to file a notice of appeal. Therefore, this Court finds Counsel's conduct was not deficient, and, accordingly, Counsel did not render ineffective assistance. This allegation shall be denied and dismissed 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 must be 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.

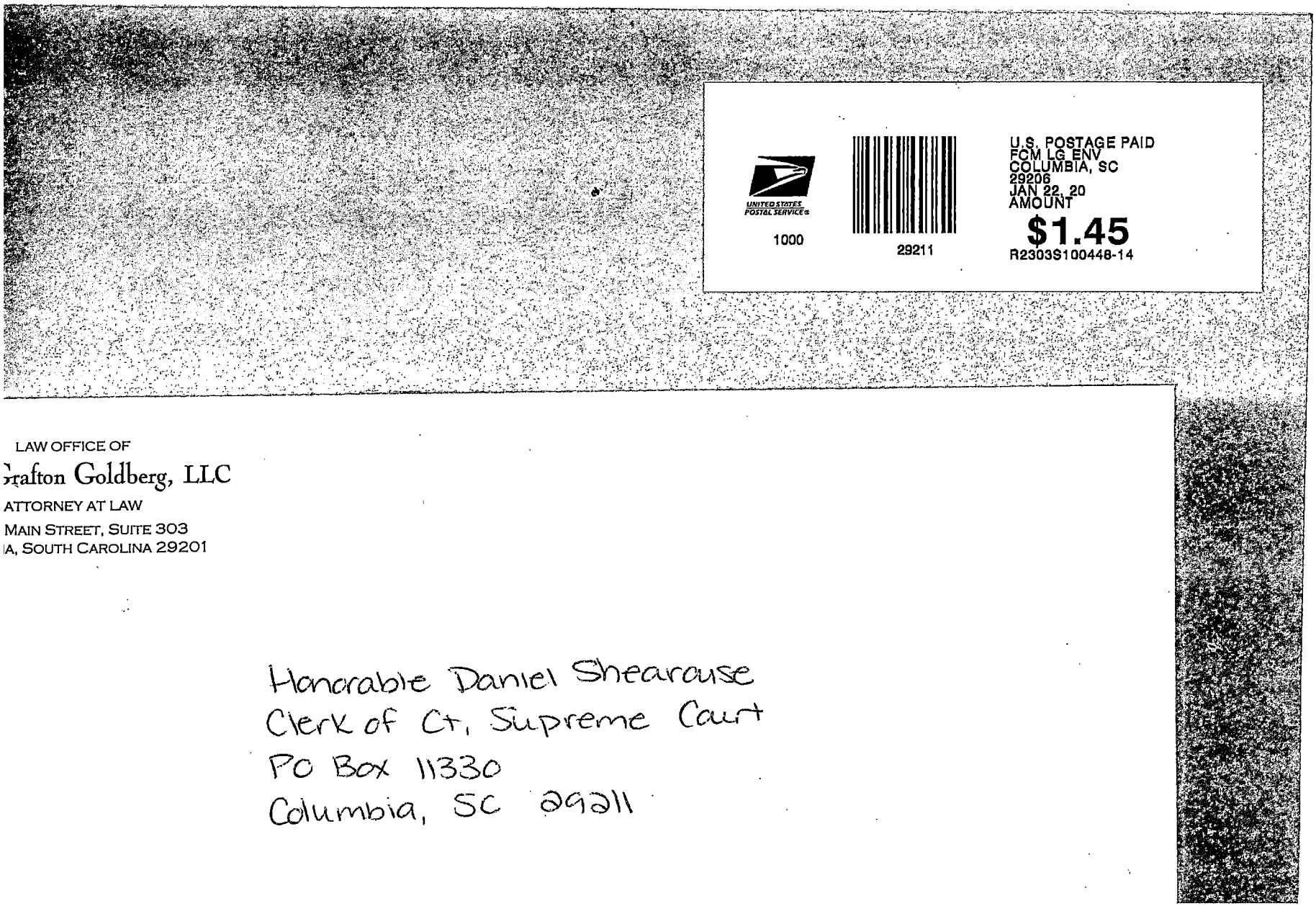
IT IS THEREFORE ORDERED:

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.

The Honorable DeAndrea G. Benjamin
Presiding Circuit Court Judge
Fifth Judicial Circuit

Columbia, S.C.
1-3, 2020



LAW OFFICE OF
Grafton Goldberg, LLC
ATTORNEY AT LAW
MAIN STREET, SUITE 303
IA, SOUTH CAROLINA 29201

Honorable Daniel Shearouse
Clerk of Ct. Supreme Court
PO Box 11330
Columbia, SC 29211