

**RECEIVED**  
FEB 20 2020  
S.C. SUPREME COURT

February 18, 2020

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

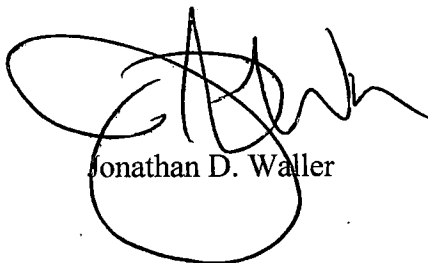
Re: Ar'Quivius McClee vs. State of South Carolina  
C/A No: 2018-CP-46-00334

Dear Mr. Shearouse:

Please find enclosed one (1) original and one (1) copy each of Applicant's Notice of Appeal and Certificate of Service in the above referenced case. I would appreciate you filing the original and returning the clocked copies in the enclosed envelope.

I was appointed to represent Mr. McClee in this matter and am also enclosing a copy of the Order of Dismissal. If you have any questions, please do not hesitate to ask. My telephone number is 803-520-7278.

Sincerely,



Jonathan D. Waller

Cc: Janell H. Gregory, South Carolina Office of Attorney General

Enclosures

Waller Law Group  
1116 Blanding Street, Suite 2B  
Columbia, SC 29201

803-520-7278  
www.wallerlawgroup.com  
jonathan@wallergroupsc.com

STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM YORK COUNTY  
Michael G. Nettles, Circuit Court Judge

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2018-CP-46-00334

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**RECEIVED**

FEB 20 2020

S.C. SUPREME COURT

Ar'Quivius McClee, # 372043,

Appellant,

v.

STATE OF SOUTH CAROLINA,

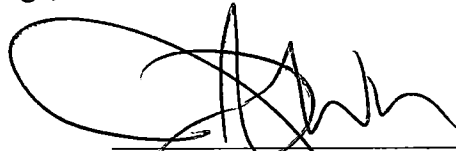
Respondent.

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NOTICE OF APPEAL

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Ar'Quivius McClee, # 372043, appeals the Order of Dismissal denying his Application for Post-Conviction Relief filed February 13, 2020, issued by the Honorable Michael G. Nettles, Presiding Judge, Sixteenth Judicial Circuit.



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Jonathan D. Waller

Waller Law Group  
SC Bar No.: 76290  
1116 Blanding Street  
Suite 2B  
Columbia, SC 29201  
803-520-7278 (phone)  
jonathan@wallergroupsc.com  
ATTORNEY FOR PETITIONER

February 18, 2020

Other Counsel of Record:  
Janell H. Gregory, Assistant Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3319

STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM YORK COUNTY  
Michael G. Nettles, Circuit Court Judge

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2018-CP-46-00334

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**RECEIVED**  
FEB 20 2020  
S.C. SUPREME COURT

Ar'Quivius McClee, # 372043,

Appellant,

v.

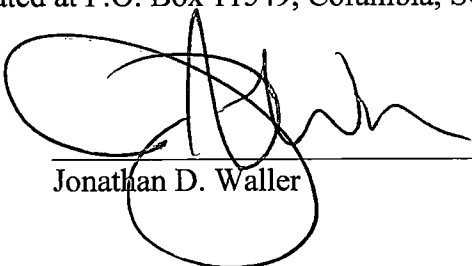
STATE OF SOUTH CAROLINA,

Respondent.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the Appellant's Notice of Appeal in the above-entitled case has been served upon opposing counsel, Janell H. Gregory, Assistant Attorney General, by mailing in an envelope properly addressed with postage prepaid on this day, to her office located at P.O. Box 11549, Columbia, SC 29211.

  
Jonathan D. Waller

February 18, 2020

FORM 4

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

JUDGMENT IN A CIVIL CASE  
 CASE NUMBER 2018CP4600334

Arquivius Mcclee		South Carolina State Of	
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PLAINTIFF(S)	DEFENDANT(S)
Submitted by: The Court	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 OF DISMISSAL

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.

*s/ Michael G. Nettles*

Circuit Court Judge

2140

Judge Code

2/7/2020

Date

**For Clerk of Court Office Use Only**

This judgment was entered on **February 13, 2020**, and a copy mailed first class or placed in the appropriate attorney's box on **February 13, 2020**, to attorneys of record or to parties (when appearing pro se) as follows:

**Jonathan D Waller** 1116 Blanding Street Suite 2B  
Columbia, SC 29201

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

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**ATTORNEY(S) FOR THE PLAINTIFF(S)**

---

**ATTORNEY(S) FOR THE DEFENDANT(S)**

*David Hamilton*

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**Court Reporter**

**David Hamilton - Clerk of Court**

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**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-Fileers or who are appearing pro se. See Rule 77(d), SCRCP.**

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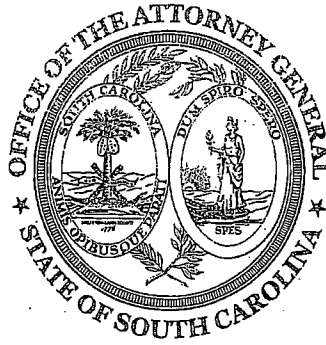
**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

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

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2020 FEB 13 PM 2:30  
DAVID HAMILTON  
C.C. CLERK  
YORK COUNTY, SC

FILED-RECEIVED

ALAN WILSON  
ATTORNEY GENERAL

February 11, 2020

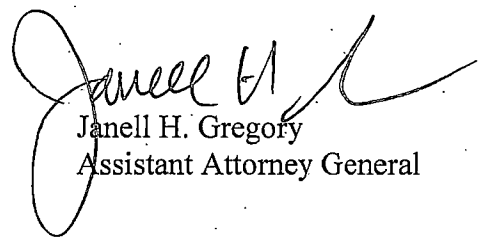
The Honorable David Hamilton  
York County Clerk of Court  
PO Box 649  
York, SC 29745

Re: Arquivius McClee, #37043 v. State of South Carolina  
2018-CP-46-0334

Dear Mr. Hamilton

Enclosed please find the original **Order of Dismissal** signed by the Honorable Michael G. Nettles, in the above-captioned case, for filing in your office. In addition, please return a copy in the enclosed self-addressed envelope.

Sincerely,



Janell H. Gregory  
Assistant Attorney General

JHG/jpg

cc: Jonathan D. Waller, Esquire (without enclosure)

STATE OF SOUTH CAROLINA )  
 COUNTY OF YORK )  
 )  
 ArQuivius McClee, #372043, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 FOR THE SIXTEENTH JUDICIAL CIRCUIT

2018-CP-46-0334

**ORDER OF DISMISSAL**

DAVID HORTON  
 C.C. CLERK  
 YORK COUNTY, SC

2020 FEB 13 PM 2:30

FILED-RECEIVED

This matter comes before this Court by way of an application for post-conviction relief filed on February 8, 2018, by ArQuivius McClee (Applicant). The State (Respondent) issued a Return on April 23, 2018, requesting an evidentiary hearing. An evidentiary hearing into the matter was convened on January 6, 2020, at the Moss Justice Center. Applicant was present at the hearing and represented by Jonathan D. Waller, Esquire. Assistant Attorney General Janell H. Gregory of the South Carolina Attorney General’s Office appeared on behalf of Respondent. At the hearing, Applicant testified on his own behalf. Nathan J. Sheldon Esquire (Sheldon), James M. Morton, Esquire (Morton), and John M. Shiflet, Esquire (Shiflet) also testified. After a review of the record and all evidence presented, this Court finds Applicant has failed to meet his requisite burden of proof and denies and dismisses this application with prejudice.

**PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. In June 2016, the York County Grand Jury indicted Applicant for possession of a firearm during the commission of a violent crime (2016-GS-46-1877), two counts of attempted murder (2016-GS-46-1873; 2016-GS-46-1874), armed robbery (2016-GS-46-1875), two counts of unlawful carrying of a pistol (2016-GS-46-

1876, -3769), kidnapping (2016-GS-46-1879) and criminal conspiracy (2016-GS-46-1878). The State also obtained a direct indictment against Applicant for murder. Sheldon, Morton, and Shiflet represented Applicant. Deputy Solicitor W. William Thompson, Jr. of the Sixteenth Circuit Solicitor's Office prosecuted the case.

On March 3, 2017, Applicant entered a guilty plea before the Honorable John C. Hayes, III, to possession of a firearm during the commission of a violent crime, strong armed robbery, and criminal conspiracy. In exchange for Applicant's guilty plea, the State dismissed the following charges: two counts of unlawful carrying of a pistol, kidnapping, and murder. Sentencing was deferred until March 31, 2017. When the parties reconvened for sentencing, pursuant to the State's recommendation, Judge Hayes sentenced Applicant to imprisonment for concurrent terms of ten years for strong arm robbery, five years for criminal conspiracy, five years each for attempted murder and possession of a firearm during the commission of a violent crime, along with credit for time served of 443 days. Applicant did not appeal his conviction or sentence.

#### **SUMMARY OF FACTS**

On November 29, 2015, Applicant and his friends drove his rented Nissan to Scoggins Street in Rock Hill to meet with "some guys" from Charlotte that they sold credit cards to in the past. (GP Tr. 14-15.) The purpose of the meeting was to again sell credit cards to the subjects from Charlotte. (GP Tr. 15.) During the drive, the group devised a plan to rob the subjects of their money if the meeting did not go as planned. (GP Tr. 15.) Applicant and his friends arrived at Scoggins Street – a house they were using to conduct their business – and waited for the Charlotte subjects to show up. (GP Tr. 15-16.) At the time of the meeting, Applicant and his friends were armed with firearms. (GP Tr. 16.) As one of the subjects entered the home, he was robbed of his cell phone and money at gunpoint by Applicant's friends. (GP Tr. 17.) The subject was then

bound with duct tape and put into a back bedroom. (GP Tr. 17.) At that point, Applicant's friends motioned for the second subject from Charlotte to enter the home. (GP Tr. 17.) As he entered the home, he was also held at gunpoint, but one of Applicant's friends fired at the subject barley missing him. (GP Tr. 17.) The subject fired back and killed one of Applicant's friends. (GP Tr. 17.) The subject fled the scene after his gun jammed and Applicant's other friend continued to fire at the subject as he fled. (GP Tr. 18.) During the commotion, Applicant's friend began firing at an innocent family who had just returned home believing they were associates of the Charlotte subjects. (GP Tr. 18.) No one in the truck was injured, however, numerous shots were fired into the truck. (GP Tr. 18.) Applicant drove one of his friends and another subject who resides at the Scoggins Street residence away from the scene. (GP Tr. 19.)

### **ALLEGATIONS RAISED**

In his original application for post-conviction relief, Applicant alleged he was being held in custody unlawfully for the following reason:

1. Ineffective Assistance of Counsel
  - a. Attorney failed to properly inform Applicant of how his parole would be affected by his plea agreement.

On December 13, 2019, Applicant filed an amended application alleging he was being held in custody unlawfully for the following reason:

1. Ineffective Assistance of Counsel
  - a. Counsel was ineffective for failing to object to the State's breach of the plea agreement, or in the alternative make a motion to withdraw Applicant's plea.

On January 6, 2020, Applicant's post-conviction relief hearing was held at the Moss Justice Center and Applicant proceeded in his evidentiary hearing solely on the issue set forth in his amended application.

## APPLICABLE LAW

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 300 S.C. 115. First, the applicant must prove counsel’s performance was deficient. Id. Under this prong, courts measure an attorney’s performance by its “reasonableness under prevailing professional norms.” Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Id. at 117-18, 300 S.C. 115.

## FINDINGS OF FACTS AND CONCLUSIONS OF LAW

This Court viewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject

convictions, the plea transcript, the exhibits provided during the hearing, the application for post-conviction relief, and the legal arguments made by the attorneys. Set forth below are the relevant findings of fact and conclusion of law as required by S.C. Code Ann. § 17-27-80 (2003).

**Ineffective Assistance of Counsel**

***Counsel was ineffective for failing to object to the State's breach of the plea agreement, or in the alternative make a motion to withdraw Applicant's plea.***

Applicant alleges he was told by Sheldon, Morton, and Shiflet that he would be pleading guilty to the unlawful carry of a weapon charge rather than the possession of a firearm during the commission of a violent crime charge. However, Applicant plead guilty to numerous charges including possession of a weapon during the commission of a violent crime and, pursuant to plea negotiations, several other charges were dismissed including Applicant's unlawful carry charge.

**Applicant's Testimony:**

At the post-conviction relief hearing, Applicant testified Sheldon was his first attorney and he hired Morton and Shiflet after his bond hearing. Applicant testified he rejected the first offer from the State because it was for ten to fifteen years and he believed that was too much time, since this is the first time he has been in trouble. Applicant testified he had minimum participation in the incident. Applicant testified that his first cousin was killed during the incident. Applicant testified his attorneys spoke to the State and got the first offer back on the table. Applicant testified the offer was for ten years for the strong armed robbery and five years for all of the other offenses. Applicant testified he was in possession of a gun, but it was in his glove box at the time and not on his person. Applicant testified his lawyers wanted him to plead guilty to the possession of a weapon during the commission of a violent crime charge, but Applicant testified he was not in possession of a firearm the night of the robbery.

Applicant testified his attorney gave him a print out of the SCDC calculation for his sentence. Applicant testified he told the lawyer the weapons charge was different than what he thought he was pleading to. Applicant testified his lawyer told him he would change it to the unlawful carry charge. Applicant testified he plead to the possession of a weapon during the commission of a violent crime charge. Applicant testified he signed the plea waiver form because he trusted his attorneys and had built a relationship with them. Applicant testified he did not have a chance to read the entire plea agreement before he signed it. Applicant testified he was told to say "yes" to everything so the judge would accept his plea. Applicant testified he wants the court to enforce the plea he understood he would receive.

On cross-examination, Applicant testified all of his attorneys were court appointed. Applicant testified he recalled the State explaining Applicant would be pleading guilty to the possession of a firearm during the commission of a violent crime charge, among other charges, at the outset of his plea hearing. Applicant testified and confirmed his initials on the plea waiver form where he detailed he was pleading guilty to numerous crimes including possession of a weapon during the commission of a violent crime. Applicant testified he did what he was told to do. Applicant testified he recalled telling the judge he wanted to plead guilty after the judge went over his charges and potential sentences. Applicant testified he recalled agreeing to the facts set forth during the plea by the State. Applicant testified he did not tell the court he was not supposed to be pleading to the possession of a weapon during the commission of a violent crime charge because he was told by his attorneys it would be fixed multiple times.

Applicant was shown his SCDC profile which confirms his earliest parole date is January 11, 2021, which Applicant testified he agreed it is a day earlier than the date provided on the SCDC calculation provided to him by Sheldon. Applicant testified he did not expect that to be the date.

During re-direct examination, Applicant confirms the possession of a weapon during the commission of a violent crime offense is not marked as a “no-parole” offense on the plea waiver form. Applicant testified he did not understand until now that the offense was a no-parole offense.

**Sheldon’s Testimony:**

Sheldon testified he has been practicing law for thirteen years and criminal defense was about half of his practice. Sheldon testified Morton and Shiflet assisted him in Applicant’s case. Sheldon testified he met with Applicant at least thirteen times during his representation. Sheldon testified Morton and Shiflet met with Applicant without him at times too, so overall, there were more meetings with Applicant than just Sheldon’s meetings.

Sheldon testified initially they received several versions of the story from Applicant. Sheldon testified they hired an investigator and had Applicant take a polygraph in order to determine the facts of the case.

Sheldon testified Applicant was interested in pleading if he could get five years. Sheldon testified he discussed a plea with the State and the prosecutor did not believe anyone involved in the incident was innocent. Sheldon testified the possession of a weapon during the commission of a violent crime was the anchor charge for the State. Sheldon testified that charge was day for day and that was definitely discussed with Applicant. Sheldon testified all of Applicant’s charges were “throw away” charges except for the strong armed robbery and the possession of a weapon during the commission of a violent crime charges. Sheldon testified he never discussed Applicant pleading guilty to the unlawful carry charge as that was always being dismissed as part of the plea agreement. Sheldon testified he explained the SCDC calculator to Applicant and Applicant understood he was going away for five years.

Sheldon identified an email he sent to the prosecutor and his co-counsel the day before Applicant's plea. Sheldon read the email to this Court and the letter was entered into evidence as State's exhibit 1. In the letter, Sheldon explained he had reviewed the charges Applicant was pleading to the following day, had reviewed Applicant's constitutional rights, and the day-for-day nature of Applicant's sentence. In the letter, it is clear the terms of Applicant's plea included the possession of a weapon during the commission of a violent crime charge and that the unlawful carry charge is being dismissed. Sheldon testified he was "extremely clear" with Applicant regarding the terms of his plea and the day-for-day nature of the weapons charge.

Sheldon testified he did not tell Applicant that he would fix his charges after his plea as there was nothing to fix. Sheldon testified it was Applicant's decision to plead guilty and it was in his best interest to plead guilty. Sheldon testified Applicant had numerous other charges that would have exposed him to a lot more time had he not accepted the plea. Sheldon testified if Applicant wanted to go to trial, he would have taken his case to trial.

On cross-examination, Sheldon testified his issue was Applicant being charged with murder when the group from Charlotte also involved in the incident was not charged with murder. Sheldon testified Applicant was still looking at some serious charges even without the murder charge. Sheldon testified he ran the numbers in the SCDC calculator the way he did because he knew the SCDC calculator had a "glitch" in it. Sheldon testified he knew the possession of a weapon during the commission of a violent crime charge was going to affect his sentence because it is day-for-day. Sheldon testified the point of the SCDC calculator was to show him the parole eligibility date. Sheldon testified he was trying to get the State to offer Applicant time served on the attempted murder charges, but the State was concerned about Applicant pleading to the

weapons charge without a violent crime. Sheldon testified he never told Applicant he was pleading to the unlawful carry charge.

**Morton's Testimony:**

Morton testified he has been practicing law for thirty-five years. Morton testified he originally represented Applicant for his bond, and then agreed to stay on with Shiflet to help Sheldon. Morton testified he met with Applicant more than fifteen times.

Morton testified Applicant originally told him that he was not present at the scene, but his story changed numerous times. Morton testified they hired private investigators, went to the scene, and met with the prosecutor. Morton testified he was involved in meeting with Applicant and his family a lot prior to Applicant's plea. Morton testified he believed Applicant understood their discussions during their meetings.

Morton identified State's exhibit 1 as an email he received from Sheldon outlining the terms of Applicant's plea agreement. Morton testified the email accurately set forth the terms of the plea offer and matched the charges and sentence that was imposed on Applicant the following day during his guilty plea. Morton testified there was nothing to "fix" after the plea hearing as Applicant pled to the charges they had discussed. Morton testified he was present at Applicant's sentencing hearing and he was sentenced properly based on the plea agreement with the State. Morton testified Applicant never asked him to withdraw his plea and never indicated he did not want to accept the plea.

**Shiflet's Testimony:**

Shiflet testified he was working with Morton at his practice at the time they represented Applicant. Shiflet testified he no longer practices law. Shiflet testified he practiced law for about eleven years and spent part of that time in prosecution and part of it in criminal defense. Shiflet

testified his role in this case was a “support” role. Shiflet testified he was with Morton during the meetings with Applicant and he never met with Applicant alone.

Shiflet testified he discussed the terms of Applicant’s plea with him and he appeared to understand their discussions. Shiflet identified State’s exhibit 1 and explained the email accurately set forth the terms of Applicant’s plea. Shiflet testified he was present for the plea hearing and the sentencing hearing. Shiflet testified he went over the plea waiver form with Applicant. Shiflet testified the plea waiver form detailed the terms of Applicant’s plea. Shiflet testified he went over the plea and the process with Applicant at great length. Shiflet testified he witnessed Applicant signing and initialing the form, including the part that explains Applicant was pleading to possession of a weapon during the commission of a violent crime.

Shiflet testified Applicant never asked him to withdraw the plea. Shiflet testified he never discussed “fixing” anything after the plea for Applicant, and there was nothing to “fix.” Shiflet testified he believed it was in Applicant’s best interest to plead guilty. Shiflet testified he and the other attorneys would have taken Applicant’s case to trial had Applicant wanted to pursue a trial.

On cross-examination, Shiflet testified he did not maintain an independent file of Applicant’s case, and the file was maintained by the law firm. Shiflet testified the plea waiver form does not have the possession of a weapon during the commission of a violent crime charge marked as a non-parole offense. However, Shiflet testified that he explained to Applicant the day-for-day nature of the possession of a weapon charge and that the weapons charge was a non-parole offense.

“[I]t is the prerogative of any person to waive his rights, confess, and plead guilty, under judicially defined safeguards, which are adequately enforced.” Reed v. Becka, 333 S.C. 676, 685, 511 S.E.2d 396, 401 (Ct. App. 1999). However, a defendant has no constitutional right to plea

bargain, nor is a trial judge required to accept a plea. Id. Nonetheless, once a defendant enters a guilty plea and the plea is accepted by the court, due process requires the plea bargain be honored. Id. at 686, 511 S.E.2d at 401. 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).

This Court finds the testimony of Sheldon, Morton, and Shiflet as to this allegation very credible and the testimony of Applicant not credible. This Court finds the plea and sentencing transcripts show the plea was freely and voluntarily entered. This Court finds Applicant was aware of what he was pleading to based on both transcripts and the sentencing sheets, which Applicant also signed. Further, Applicant signed a plea agreement and a plea waiver form, although the weapons charge was not marked as non-parole offense, it is clear from the credible testimony of Sheldon, Morton, and Shiflet that it was explained to him.

This Court finds Applicant's lawyers explained the terms and nature of the plea, the sentence Applicant was to receive, and that the possession of a weapon during the commission of a violent crime charge was the anchor charge for Applicant's plea. This Court finds Applicant was aware his sentence would be five years and the email from Sheldon confirms Applicant was aware of the terms of his plea. Further, this Court finds credible the testimony of Applicant's attorneys that Applicant never requested his plea be withdrawn after his guilty plea hearing or his sentencing hearing, and, therefore, his attorneys cannot be found deficient for failing to file such a motion in this case. This Court finds no manifest injustice has occurred in Applicant's case as he received

the plea agreement he bargained for based on the credible testimony of his attorneys. Therefore, based on the standard set forth above, this Court finds Applicant has failed to meet his requisite burden of establishing constitutional ineffectiveness of Sheldon, Morton, or Shiflet and Applicant's post-conviction relief application is denied and dismissed with prejudice.

**CONCLUSION**

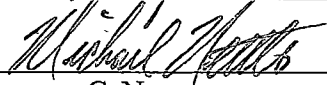
Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty days from post-conviction relief counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED THAT:**

1. The application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant is to remain in the custody of Respondent.

AND IT IS SO ORDERED this 7 day of February, 2020.

  
\_\_\_\_\_  
MICHAEL G. NETTLES  
Presiding Judge  
Sixteenth Judicial Circuit

Shance, South Carolina



\$1.80<sup>9</sup>  
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FIRST-CLASS



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29201  
00000647

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