THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

Deadra L. Jefferson, Circuit Court Judge

Case No. 2012-CP-15-0673

Jacoby Fields, #349115 .... Appellant,

v.

State of South Carolina ....Respondent.

NOTICE OF APPEAL

Jacoby Fields appeals the Order of the Honorable Deadra L. Jefferson, filed January 21, 2014 dismissing his Application for Post Conviction Relief. This Appeal is being filed pursuant to *Austin v. State,* 305 S.C. 453, 409 S.E.2d 395(1991). Appellant's counsel files this belated Appeal pursuant to the Order in Civil Action Number 2016-CP-15-1572, filed on August 27, 2020, in which the Circuit Court Judge held that Applicant did not voluntarily waive his right to appeal the denial of his Application for Post Conviction Relief in Civil Action Number 2012-CP-15-0673. The Order granting

Appellant's request to file this Appeal was received by undersigned counsel on September 4, 2020.

September 9, 2020

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STATE OF SOUTH CAROLINA
COUNTY OF COLLETON

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT

Jacoby Fields, #349115,

Applicant,

v.

State of South Carolina,

Respondent.

2016-CP-15-1572

CONSENT ORDER GRANTING AN APPEAL PURSUANT TO <u>AUSTIN V. STATE</u>[1]

2020 AUG 27 AM 10:21
COLLETON COUNTY
COMMON PLEAS COURT

This matter comes before the Court pursuant to an application for post-conviction relief filed November 30, 2016. Respondent made its Return and Partial Motion to Dismiss on August 3, 2017. Leslie Sarji, Esquire, was appointed to represent Applicant by the Colleton County Clerk of Court. Before this Court are the records of the Colleton County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the records from Applicant's first PCR action. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in CoreCivic in Alabama. Originally, Applicant was confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Colleton County Clerk of Court. In October 2008, the Berkeley County Grand Jury indicted Applicant for murder (2008-GS-15-0885), four counts of burglary, first degree (2008-GS-15-0886; -0887; -0916; -0917), and burglary, second degree (2008-GS-15-0888). Boyd Young, Esquire, and Drew Carroll, Esquire, represented Applicant. Solicitor Duffie Stone, Esquire, prosecuted the case. Applicant was initially served with a Notice of the Solicitor's Intention to

[1] Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

Seek Death Penalty, pursuant to S.C. Code Ann. § 16-3-26 (1996). However, on December 21, 2011, Applicant accepted a plea offer of imprisonment for life without parole, and Applicant pleaded guilty as indicted, before the Honorable Carmen T. Mullen. Pursuant to a negotiated sentence, Judge Mullen sentenced Applicant to imprisonment for fifteen years for burglary, second degree, and life without parole for the remaining charges. Applicant did not appeal his conviction or sentence.

2012-CP-15-0673

Applicant filed an application for post-conviction relief on August 22, 2013, alleging that he was being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
2. Subject Matter Jurisdiction
3. Erroneous Admission of Inculpatory Statements
4. False Indictments
5. Due Process Violations
6. Violation of Fifth, Sixth, and Fourteenth Amendments

Respondent made its Return on February 21, 2013. An evidentiary hearing on the matter was convened on August 30, 2013 at the Beaufort County Courthouse. Applicant was present at the hearing and represented by Jeffrey M. Butler, Esquire. Ashleigh R. Wilson, Esquire, of the South Carolina Attorney General's Office, represented Respondent. On January 15, 2014, the Honorable Deadra L. Jefferson issued an order denying and dismissing Applicant's application for post-conviction relief. Applicant's attorney filed a Notice of Appeal, dated February 5, 2014. However, it was never received by the appellate court and no further action was taken by either party.

5:16-CV-00038-DCN

Applicant filed a *pro se* petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2254. Respondent filed a Return and Motion for Summary Judgment. Applicant filed a Response in

Opposition to Respondent's Motion for Summary Judgment on July 22, 2016. On July 28, 2016, Respondent filed a Reply. After consideration, the United States Magistrate Judge Kaymani D. West issued a Report and Recommendation, filed on August 31, 2016, recommending that Respondent's Motion for Summary Judgment be granted. On September 29, 2016, United States District Judge David C. Norton granted Respondent's Motion for Summary Judgment, thus affirming the magistrate judge's Report and Recommendation and denying Applicant's petition.

Attached to this Return and incorporated by reference are the records of the Colleton County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the plea transcript, Applicant's prior PCR records, Applicant's federal habeas corpus records, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II. CURRENT ACTION BEFORE THE COURT

Applicant filed the current application for post-conviction relief on November 30, 2016. In his current application for post-conviction relief, Applicant alleges he is being held in custody unlawfully on the following grounds:

1. Ineffective Assistance of Counsel
    a. "I am being held unlawfully because I pled guilty based on erroneous advice from my trial attorney..."
2. <u>Austin</u> Claim
    a. "Then my PCR attorney failed file a perfect appeal after violations of my 4th, 5th, 6th, and 14th Amendments."

In its Return, Respondent requested an evidentiary hearing to determine the validity of Applicant's <u>Austin</u> claim. However, the day before the Return was sent, Respondent received confirmation from plea counsel that he did not in fact file Applicant's appeal. Respondent consents to belated appellate review pursuant to <u>Austin</u>, as Applicant has waived his other allegations in this application.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

After review of the facts and circumstances surrounding the waiver of Applicant's right to appeal the denial of his post-conviction relief application, and based on Respondent's consent, this Court finds Applicant is entitled to appeal the denial of his post-conviction relief application (2013-CP-15-1086). Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), post-conviction relief applications may petition the South Carolina Supreme Court for discretionary review of the dismissal of their application. This Court finds that Applicant did not voluntarily waive his right to appeal the post-conviction relief court's denial and dismissal of his prior post-conviction relief action.

Based on the foregoing, this Court finds that the granting of an appeal of Applicant's first post-conviction relief action (2012-CP-15-0673) pursuant to Austin v. State is warranted.

IT IS THEREFORE ORDERED:

1. That Applicant be granted an appeal of case 2012-CP-15-0673 pursuant to Austin v. State; this second application for post-conviction relief is hereby denied and dismissed with prejudice;

2. Within thirty (30) days of the service of this Order, counsel for Applicant must file a Notice of Appeal to secure the appropriate appellate review of Applicant's first post-conviction relief action. Counsel and Applicant are directed to King v. State, 308 S.C. 348, 417 S.E.2d 868 (1992) and Rule 243, SCACR, for the appropriate procedure for a belated appeal; and

3. That Applicant remain in the custody of the South Carolina Department of Corrections.

4.

AND IT IS SO ORDERED this 20th day of August, 2020.

DEADRA L. JEFFERSON
Presiding Judge
Fourteenth Judicial Circuit

Chas., at Chambers, South Carolina.

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF COLLETON	)	2012–CP–15–0673
Jacoby Fields, #349115,	)	
Applicant,	)	
v.	)	**ORDER OF DISMISSAL**
State of South Carolina,	)	
Respondent.	)	

2014 JAN 21 AM 9:20
PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS

Presiding Judge:	Hon. Deadra L. Jefferson
Applicant's Attorney:	Jeffrey M. Butler, Esquire
Respondent's Attorney:	Ashleigh R. Wilson, Esquire
Plea Counsel:	S. Boyd Young, Esquire C. Andrew Carroll, Esquire
Date of Hearing:	August 30, 2013
Court Reporter:	Susan "Mia" Perron

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed August 22, 2013. The Respondent made its Return on February 21, 2013. An evidentiary hearing into the matter was convened on August 30, 2013 at the Beaufort County Courthouse. The Applicant was present at the hearing and represented by Jeffrey M. Butler, Esquire. Ashleigh R. Wilson, Esquire, of the South Carolina Attorney General's Office represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing, along with Charlene Fields and Travell Green. The Applicant's defense counsel, S. Boyd Young, Esquire, and C. Andrew Carroll, Esquire, also testified at the hearing. This Court had before it the guilty plea transcript, the records of the Colleton County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the PCR application, and Respondent's Return thereto.

ATTORNEY GENERALS OFFICE
RECEIVED 2/3/14
✓ ADMINISTRATIVE INSTRUCTIONS

scan to worldox
mail a copy to Jeffrey Butler
-return w/file
1/4/14

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Colleton County. The Applicant was indicted at the October 2008 term of the Colleton County Grand Jury for one (1) count of Murder (2008–GS–15–0885),[1] four (4) counts of Burglary-First Degree (2008–GS–15–0886, –0887, –0916, –0917),[2] and one (1) count of Burglary-Second Degree (2008–GS–15–0888).[3] The Applicant had been served with Notice of the Solicitor's Intention to Seek Death Penalty pursuant to SC CODE ANN. § 16–3–26 (1996). A plea offer of Life without Parole was extended and the Applicant pled guilty as indicted. The Honorable Carmen T. Mullen sentenced the Applicant to confinement of life without parole. The sentences were to run concurrently. The Applicant did not appeal the plea or sentences.

ALLEGATIONS

The Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
2. Subject matter jurisdiction.
3. Erroneous admission of inculpatory statements.
4. False indictments.
5. Due process violations.
6. Violation of the Fifth, Sixth, and Fourteenth Amendments.

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[1] The offense of Murder is a violent, most serious felony punishable by a maximum sentence of life imprisonment without possibility of parole or death and a mandatory minimum sentence of thirty (30) years imprisonment. See S.C. CODE ANN. § 16–3–20 (2010).

[2] The offense of Burglary-First Degree is a violent, most serious felony punishable by a maximum sentence of life imprisonment death and a mandatory minimum sentence of fifteen (15) years imprisonment. See S.C. CODE ANN. § 16–11–311 (1995).

[3] The offense of Burglary-Second Degree is a violent, most serious felony punishable by a maximum sentence of life imprisonment death and a mandatory minimum sentence of fifteen (15) years imprisonment. See S.C. CODE ANN. § 16–11–312(C)(2) (2010). An offender is not eligible for parole until he has served one-third (1/3) of the term of his sentence. See id.

At the hearing, the Applicant abandoned all grounds for relief except ineffective assistance of counsel for Counsel's advice to the Applicant that duress was not a viable defense.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon his or her credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. CODE ANN. § 17–27–80 (2003).

Summary of the Testimony

The Applicant was present and testified at the evidentiary hearing that he met with his attorneys frequently before he pled guilty. He further testified he reviewed discovery with his attorneys and discussed possible defenses. The Applicant testified his co-defendant Travis Harris threatened him, his family, and his pregnant girlfriend to coerce him into committing the crimes. The Applicant testified that Counsel told him that duress was not a viable defense to Murder and that if he went to trial he would receive a death sentence. The Applicant further testified he committed the crimes, but did not feel guilty at the time. He testified had he known duress was a defense he "never ever" would have given up his constitutional rights to plead guilty and would have gone to trial and risked the death penalty. He testified that it was his decision to plead guilty based on the circumstances.

The Applicant testified he discussed plea offers with his attorneys and he rejected a thirty (30) year plea offer because he wanted to go to trial. He testified he agreed with the facts presented by the State and waived his constitutional rights at his guilty plea. He also testified that

he told the Court that he was satisfied with his attorneys' representation.

The Applicant's mother, Charlene Fields testified at the hearing. Ms. Fields testified she met with the Applicant and his attorney before the guilty plea. She further testified that she was not present at all meetings when Counsel met with the Applicant. However, she testified that she met several times with Counsel at her home when the Applicant was in jail. She testified Counsel brought up the issue of the Applicant's co-defendant's threats. She testified that Boyd Young had a recording from the jail of the co-defendant's threats. Lastly, she testified, based on her understanding, duress was not an option for her son.

The Applicant also called Travell Green to testify. Green testified he knows the Applicant but not his co-defendant Harris. He testified he heard a conversation between the Applicant and Harris. He testified he was never contacted by the Applicant's attorneys, but if he had been contacted, he would have spoken with them.

Boyd Young, Esquire, also testified at the evidentiary hearing. Counsel testified he has been practicing law since 1999 and that all his experience has been in criminal law. Counsel testified he was appointed to represent the Applicant and met with him frequently. He testified he filed Brady and Rule 5 motions on the Applicant's behalf. Counsel testified he reviewed discovery material with the Applicant, his constitutional rights, discussed the elements of the charges, range of penalty, what the State was required to prove, and the Applicant's version of the facts.

Counsel testified he discussed all possible defenses with the Applicant and told the Applicant duress was not a viable defense to Murder. Counsel testified duress could have been a defense to some of the burglaries, but the Applicant's co-defendant had given the Applicant's mother a letter written by the Applicant which "would have ended any duress argument" if

presented at trial. He testified he also discussed the issues of identification and accomplice liability with the Applicant.

Counsel testified the Applicant gave him potential leads and witnesses to investigate. Counsel testified that since the State was seeking death, his investigation was two-fold. He testified he investigated the Applicant's background and the facts of the case and, as a part of his investigation, hired a private investigator to investigate the Applicant's life and track down witnesses. Counsel further testified that he spoke with the police officers, spoke with the Applicant's co-defendants and family, watched the video of the Applicant's confession, met with other experienced attorneys to discuss the case, and invited other prominent attorneys to speak with the Applicant.

Counsel testified they discussed cooperating with the State, but the State was seeking the death penalty and was not interested in negotiating. He testified that prior to trial, counsel conducted a Franks hearing and Judge Mullen threw out the search warrant for the Applicant's home, but not for the Applicant's car. Counsel testified that, although Counsel attempted to negotiate with the State for a thirty (30) year sentence closer to trial, the State offered the Applicant a time sensitive plea to life in prison without possibility of parole of which he had twenty-four (24) hours to respond. Counsel testified he advised the Applicant to take the plea offer because he was offered the minimum sentence for his offenses and had no viable defenses. He testified he communicated the offer to the Applicant and eventually the Applicant accepted the plea. He further testified before accepting the plea the Applicant wanted to consult with the NAACP representative. Counsel further testified that he also had Sean Kent, Esquire meet with the Applicant and his mother. Lastly, Counsel testified he informed the Applicant of the consequences of pleading guilty and of his constitutional rights. He testified ultimately it was the

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Applicant's decision to plead guilty.

C. Andrew Carroll, Esquire, also testified at the evidentiary hearing. Counsel testified he has been practicing law since 1997 and that one hundred (100) percent of his experience has been in criminal law. He testified regarding his employment history and that in 2010 he opened his own criminal law practice in Charleston, South Carolina. He testified Young contacted him about accepting the appointment to represent the Applicant because it was a capital case. He further testified that he met with the Applicant numerous times. Counsel testified he discussed with the Applicant his version of the facts, constitutional rights, range of penalty and possible defenses. Counsel testified he discussed duress in a "very thorough detailed manner" with the Applicant. He further testified that regarding duress he explained the "best and worst case scenarios and the totality of the situation" with the Applicant. Counsel testified that he told the Applicant that he did not think duress was a viable defense. He further testified that the Applicant felt duress was viable but he and Mr. Young did not agree with that assessment. Counsel testified that, looking at the best and worst case scenario, the State was aggressively pursuing his trial and the Applicant had no other defenses. He further testified that the mitigation investigator was also an attorney and that he had consulted with other attorneys as well regarding the viability of this case. He testified he always felt the case was going to trial, had lengthy discussions with the Applicant about going to trial, and was prepared to go to trial in this case. He further testified that the Solicitor was not amenable to any plea so the plea was hard fought to negotiate. Counsel testified they spoke with the Applicant at length about the consequences of pleading guilty and that it was ultimately the Applicant's decision to plead guilty. Counsel testified he did not recall being able to locate Travell Green prior to the Applicant's guilty plea. He testified that Green's testimony would not have made a difference in the case or changed his

advice to the Applicant to plead guilty.

Ineffective Assistance of Counsel

The Applicant alleges that he received ineffective assistance of counsel. In a post-conviction relief action, the applicant has the burden of proving the allegations in the application by a preponderance of the evidence. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 622, 300 S.E.2d 482, 483 (1983)). Where the Applicant 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, 686, 104 S. Ct. 2052, 2064 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 686, 104 S. Ct. at 2064).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. See Strickland at 690, 104 S. Ct. at 2066. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. See id. The 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).

Courts use a two-pronged test to evaluate allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. See id. at 117–18, 386 S.E.2d at 625. Under this prong, attorney performance is measured by its "'reasonableness under prevailing professional norms.'" Id. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 668, 104 S. Ct. at 2052). 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 (citing Strickland, 466 U.S. at 694, 104 S. Ct. at 2068). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland, 466 U.S. at 694, 104 S. Ct. at 2068). 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, 52, 106 S. Ct. 366, 366 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citing Lockhart, 474 U.S. at 52, 106 S. Ct. at 366; Jackson v. State, 342 S.C 95, 535 S.E.2d 926 (2000); Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000); Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994)).

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991) (citing State v. Hazel, 275 S.C. 392, 394, 271 S.E.2d 602, 602 (1980)). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Rolen v. State, 384 S.C. 409, 413, 683 S.E.2d 471, 474 (2009) (citing Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 650 (2000). See Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)). When a defendant pleads guilty on the advice of counsel, the plea may be attacked through only a claim of ineffective assistance of counsel. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2002) (citing Al-Shabazz v. State, 338 S.C. 354, 363–64, 527 S.E.2d 742, 747 (1999)).

The Applicant's attorneys are trial practitioners who have extensive experience in the

trial of serious offenses. Counsel conferred with the Applicant on numerous occasions. During conferences with the Applicant, Counsel discussed the pending charges, the elements of the charges and what the State was required to prove, the Applicant's constitutional rights, the Applicant's version of the facts, and possible defenses or lack thereof. This Court finds most persuasive the plea colloquy transcript and the record, which reflect that the Applicant desired to plead guilty to the charged offenses and entered his plea freely, voluntarily, intelligently, and knowingly. (Tr. 5: 23–6:1). The Applicant told the court that he had not taken medication, nor was he under the influence of alcohol within the last twenty-four (24) hours (Tr. 6:12–15) and that he does not suffer from any mental or physical illnesses or problems that would prevent him from understanding the plea proceedings. (Tr. 6:17–20). Further, the record reflects the Applicant's complete allocution to the facts, range of penalty, and guilt for each indicted offense. (Tr. 6:22–13:9; 26: 22–27:2). The Applicant also acknowledged that his plea to murder was a negotiated life without possibility of parole. (Tr. 8:15–22; 8:21–19:9). The Applicant was advised of and waived his right to a jury trial and accompanying constitutional rights, such as the right to confront witnesses and present witnesses in his defense. (Tr. 19:12–20:13). The Applicant further told the court that he was satisfied with his attorneys' services, had no complaints about his attorneys' services, and had adequate time to discuss possible defenses with his attorneys. (Tr. 22:9–14). The Applicant indicated to the court that he understood his right to appeal his guilty plea within ten (10) days and to have counsel appointed to represent him in his appeal. (Tr. 21:6–12). Finally, the Applicant told the court that he was not promised anything nor promised any hope of reward (Tr. 21:15–18), nor had anyone threatened or pressured him into pleading guilty. (Tr. 21:21–24).

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the

Applicant has failed to meet his burden of proof. This Court finds Counsel's testimony credible and the Applicant's testimony not credible. This Court finds that the Applicant's attorneys demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of attorneys who practice criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 5, 239 S.E.2d 750, 752 (1977); Strickland, 466 U.S. at 687–88, 104 S. Ct. 2052, 2064–65; Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 687–88, 104 S. Ct. at 2064–65, Turner v. Bass, 753 F.2d 342, 348 (4th Cir. 1985), *rev'd on other grounds*, Turner v. Murray, 106 S. Ct. 1683 (1986); Marzullo v. Maryland, 561 F.2d 540, 543 (4th Cir. 1977)). This Court further finds Counsel adequately conferred with the Applicant, conducted a proper investigation, and were thoroughly competent in their representation. This Court finds that Counsel's representation did not fall below an objective standard of reasonableness.

This Court finds that Counsel was not ineffective for advising the Applicant that duress was not a viable defense, nor a possible defense in his case. This Court finds Counsel's testimony credible while finding the Applicant's testimony not credible. This Court finds Counsel's advice to the Applicant that duress was not a viable defense in this case was sound, based on their investigation of the facts and circumstances surrounding the case. Both of the Applicant's attorneys testified they discussed duress with the Applicant extensively and felt that the defense was not available to the Applicant. Counsel testified that he possessed a letter written by the Applicant which would have completely eliminated duress as a viable defense.

This Court finds the Applicant was made aware by Counsel that duress was not a viable defense and simply wanted his attorneys to advance a theory that he thought would be viable. Based on this Court's observations, the defense of duress is rarely successful at trial and it is unlikely it would have been successful in this case. See State v. Rocheville, 310 S.C. 20, 26, 425

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S.E.2d 32, 35 (1993) ("duress is not a complete defense to murder" and "it cannot be used to mitigate the crime to voluntary manslaughter"). This Court finds the testimony presented by Charlene Fields and Travell Green at the evidentiary hearing would not have made duress a viable defense for the Applicant.

This Court also finds the Applicant's testimony that he would have proceeded to trial had he known duress was an available defense not credible. This Court finds that it is abundantly clear from the record that Counsel thoroughly discussed with the Applicant that duress was not an available defense numerous times and that the Applicant knew a duress defense was unavailable. Considering the Applicant was facing death if he proceeded to trial and duress was not a defense to his most serious charge of Murder, the lack of a duress defense likely was persuasive on the Applicant's decision to plead guilty and the voluntariness of his guilty plea. This Court finds that this allegation is without merit and the Applicant has failed to carry his burden of proving Counsel's advice about the viability of duress as a defense was improper.

Ultimately, this Court finds the Applicant had a full understanding of the consequences of his guilty plea at the time of the plea proceeding. Therefore, this Court finds that this allegation is without merit and the Applicant has failed to carry his burden of proving his guilty plea was not entered freely and voluntarily. Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test specifically that counsel failed to render reasonably effective assistance under prevailing professional norms. See Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). The Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in their representation of the Applicant. The Applicant failed to show that Counsel's performance was deficient. Therefore, this Court need not address whether the Applicant was prejudiced by

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Counsel's representation. See id. The Applicant's complaints concerning Counsel's performance are without merit and are denied and dismissed.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof. Therefore, all allegations are hereby denied and dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations occurring before or during his guilty plea and sentencing proceedings. Counsel were not deficient in any manner, nor was the Applicant prejudiced by Counsel's representation. Therefore, this application for PCR must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of written notice of entry of this Order to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely served and filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and

2. That the Applicant be remanded to the custody of the Respondent.

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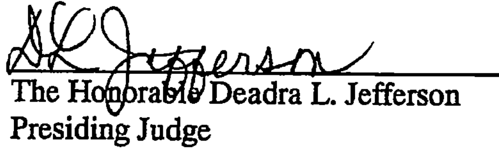
AND IT IS SO ORDERED this 15th day of Jan., 2014.



The Honorable Deadra L. Jefferson
Presiding Judge

Charleston, South Carolina
At Chambers