



# SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense  
1330 Lady Street, Suite 401  
Columbia, South Carolina 29201-3332  
Post Office Box 11589  
Columbia, South Carolina 29211-1589  
Telephone: (803) 734-1330  
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender  
Wanda H. Carter, Deputy Chief Appellate Defender

RECEIVED

MAR 5 2012

March 5, 2012

S.C. Supreme Court

Ms. April P. Herron  
Circuit Court Reporter  
P O Box 17675  
Greenville, SC 29606

Dear Ms. Herron:

Please provide us with the following transcript:

Larry Darnell Miller v. State of South Carolina      Case #:      10-CP-23-01716

County: Greenville      Date of Trial: November 9, 2011

Presiding Judge: Edward W. Miller

To ensure prompt payment, please sign and complete the enclosed CID FORM 3500 and include the original criminal case number (Indictment number) where the space is provided.

Please number the lines on the paper from 1-25, and include any and all recorded motions, pre and post-trial. Additionally, please transcribe the jury selection, and the State and defense counsel's opening and closing arguments.

If you are aware of any co-defendants or if the Attorney General's Office has already requested a transcript, please let us know.

Sincerely,

Sharon A. Graham  
Administrative Coordinator

cc: S.C. Supreme Court  
Attorney General's Office

PCR

# Law Office of Lawrence W. Crane

101 WHITSETT STREET  
GREENVILLE, SOUTH CAROLINA 29601

LAWRENCE W. CRANE, ESQ.  
ELIZABETH P. WIYGUL, ESQ.  
CAROLINE M. HORLBECK, ESQ.

TELEPHONE (864) 235-2900  
FAX (864) 467-1916  
TOLL FREE (800) 852-0899

January 28, 2012

**Via Regular Mail**

Mr. Daniel E. Shearouse  
Clerk, The S.C. Supreme Court  
Post Office Box 11330  
Columbia, South Carolina 29211

**Re:** LARRY D. MILLER v. State

Dear Mr. Shearouse:

Enclosed you will find the original Notice of Appeal in the above matter along with Proof of Service upon the Respondents. The Notice has been filed with the Greenville County Clerk of Court.

These matters are being referred to the Office of Appellate Defense in that we were participating as Court appointed counsel at trial.

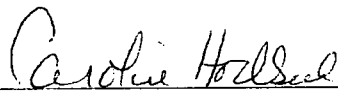
Thank you for your attention to this matter.

**RECEIVED**

JAN 01 2012

**S.C. SUPREME COURT**

Yours very truly,

  
Caroline M. Horlbeck, Esq.

Enclosure

cc: Office of the Attorney General  
Office of Appellate Defense

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas  
THE HONORABLE EDWARD W. MILLER

CA No. 2010-CP-23-1716

FILED-CLERK OF COURT  
GREENVILLE CO. S.C.  
PAUL B. WICKENSIMMER  
2012 JAN 18 P 2:08

LARRY D. MILLER,

APPELLANT,

vs.

STATE OF SOUTH CAROLINA

RESPONDENT.

NOTICE OF APPEAL

Appellant LARRY D. MILLER, appeals from the Order of the Honorable Edward W. Miller, Circuit Court Judge clocked December 29, 2011.

Respectfully submitted,

**RECEIVED**  
JAN 9 1 2012  
S.C. SUPREME COURT

Caroline M. Horlbeck  
Caroline M. Horlbeck, Esq.  
101 Whitsett St  
Greenville, SC 29601

Date: January 9, 2012

Other Counsel of Record: Karen Ratigan, Esq.  
Assistant Attorney General  
Post Office Box 11549  
Columbia, SC 29211

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

IN THE SUPREME COURT

Larry D. Miller, )  
 )  
Appellant, )

C.A. No. 2010-CP-23-1716

-vs- )

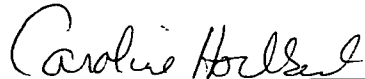
CERTIFICATE OF SERVICE

State of South Carolina, )  
 )  
Respondent. )

This is to certify that I am an employee in the law office of Lawrence W. Crane, attorneys for Applicant, and that I have this day caused to be served upon the person(s) named below Applicant's Notice of Appeal by placing copies of same in the United States mail, with adequate postage thereon, addressed as follows:

Ms. Lorie French  
S.C. Office of Appellate Defense  
1205 Pendleton St., Suite 306  
Columbia, SC 29201

Karen Ratigan, Esq.  
Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211

  
\_\_\_\_\_  
Caroline M. Horlbeck

Greenville, South Carolina

January 28, 2012

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

JUDGMENT IN A CIVIL CASE  
CASE NO: 2010CP2301716

FILED  
CLERK OF COURT  
GREENVILLE, SC  
DEC 29 2011  
PM 12:43

**Larry Darnell Miller vs. South Carolina State Of**

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.
- ACTION DISMISSED (CHECK REASON):**  
SCRPC (Vol. Nonsuit):  Rule 12(b), SCRPC:  Rule 41(a).  
 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: \_\_\_\_\_
- 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:  Statement of Judgment by the Court:

Dated at Greenville, South Carolina, this 29th day of December, 2011.

Court Reporter: \_\_\_\_\_

\_\_\_\_\_  
PRESIDING JUDGE - Edward W Miller

This judgment was entered on the 29th day of December, 2011, and a copy mailed first class this 29th day of December, 2011, to attorneys of record or to parties (when appearing pro se) as follows:

~~Larry Darnell Miller Lee Corr Instit 990 Wisacky  
Hwy Bishopville, SC 29210~~

~~Caroline M.W. Horlbeck Law Offices Of Lawrence  
W. Crane 101 Whitsett Street Greenville, SC 29601~~

Karen Christine Ratigan Attorney Generals Office  
Po Box 11549 Columbia, SC 29211

\_\_\_\_\_  
ATTORNEY(S) FOR THE PLAINTIFF(S)

\_\_\_\_\_  
ATTORNEY(S) FOR THE DEFENDANT(S)

\_\_\_\_\_  
Paul B. Wickensimer Greenville County Clerk Of Court  
- Clerk of Court

Voucher - D 36074

M-2010-01083

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GREENVILLE )  
 )  
 Larry Darnell Miller, )  
 S.C.D.C. No. 240651, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 C.A. No. 2010-CP-23-1716

**ORDER OF DISMISSAL**

FILED  
 2010 SEP 29 PM 12:43

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed March 3, 2010. The Respondent made its return on May 28, 2010. An evidentiary hearing into the matter was convened on November 9, 2011 at the Greenville County Courthouse. The Applicant was present at the hearing and represented by Caroline Horlbeck, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's plea counsel, Randall L. Chambers, Esquire. The Court had before it the transcript of the guilty plea hearing, the records of the Greenville County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the Respondent's return.

**PROCEDURAL HISTORY**

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted at the January 2009 term of the Greenville County Grand Jury for murder (2008-

GS-23-5476). He was represented by Randall L. Chambers, Esquire.

On September 9, 2009, the Applicant pled guilty to voluntary manslaughter. The Honorable G. Edward Welmaker sentenced the Applicant to twenty (20) years imprisonment. The Applicant did not appeal.

### ALLEGATIONS

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

1. Ineffective assistance of counsel.
2. Conviction obtained in violation of constitutional rights.
3. Subject matter jurisdiction.

### 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 their 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).

#### Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, “[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel’s ineffective

performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

The Applicant stated he only met with plea counsel twice and that they only really discussed his drug charge. The Applicant stated he and plea counsel never reviewed the State's evidence and that he was never able to see the videotape. The Applicant stated plea counsel did not prepare an adequate defense. The Applicant stated plea counsel never got statements from four (4) witnesses. The Applicant stated this was a self-defense case because the victim attacked and threatened him. The Applicant testified he decided to plead guilty on the day of trial. The Applicant testified he believed he was pleading guilty to involuntary manslaughter. The Applicant testified he understood he was pleading guilty pursuant to a twenty (20) year sentence recommendation. The Applicant testified plea counsel said he would file an appeal and failed to do so. The Applicant testified he wanted an appeal because he wanted the appellate court to review the evidence in his case.

Plea counsel testified he filed appropriate discovery motions and reviewed the discovery materials with the Applicant. Plea counsel testified they also discussed the Applicant's version of events. Plea counsel testified he viewed the videotape but was unable to play it for the Applicant because of a computer malfunction. Plea counsel testified, however, that he reviewed the tape's contents with the Applicant. Plea counsel confirmed the Applicant gave him the names of several witnesses. Plea counsel stated he spoke to these individuals and that, while he

could not recall these conversations, he would have told the Applicant if these witnesses would be helpful. Plea counsel stated he and the Applicant had discussed the viability of a self-defense argument. Plea counsel stated, however, that there were things in the videotape and in a witness statement that led him to believe it was not a clear self-defense case. Plea counsel stated they were preparing for trial up until the time the Applicant pled guilty. Plea counsel testified the assistant solicitor offered the plea recommendation in this case because he believed a jury would return a verdict for voluntary manslaughter. Plea counsel testified he explained the recommendation to the Applicant, who accepted it. Plea counsel testified that, while he had discussed the possibility of a plea to involuntary manslaughter with the assistant solicitor, the solicitor did not offer that charge. Plea counsel testified he did not recall the Applicant asking him to file an appeal, but that he would have done so if requested. Plea counsel testified he did not believe there were any appealable issues from the guilty plea hearing.

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 the Applicant's testimony is not credible, while also finding plea counsel's testimony is credible. This Court further finds plea counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his representation.

The Applicant admitted to the plea judge both that he was guilty and that the facts recited by the solicitor were true. (Plea transcript, p.9; p.12). The Applicant also told the plea judge that he understood the trial rights he was waiving in pleading guilty, was satisfied with counsel, and had not been coerced in any way. (Plea transcript, pp.10-12).

This Court finds the Applicant failed to meet his burden of proving plea counsel did not adequately prepare his case. This Court finds the Applicant and plea counsel had several

meetings in which they discussed the discovery materials, the State's case, the Applicant's version of events, and the possibility of arguing self-defense. Plea counsel testified that, upon further review of the State's evidence, he did not believe this was a clear case of self-defense. This Court finds the Applicant failed to identify what evidence counsel could have discovered or what other defenses could have been pursued had counsel more fully prepared. See Davis v. State, 326 S.C. 283, 486 S.E.2d 747 (1997) (denying relief where applicant failed to present witnesses or specific testimony establishing he would have had a defense with additional time to prepare for trial); Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (holding applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial).

This Court finds the Applicant failed to meet his burden of proving plea counsel was ineffective in interviewing and investigating possible witnesses. As these alleged witnesses did not testify at the evidentiary hearing, any discussion regarding what they would have testified about at trial is purely speculative. See Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (the South Carolina Supreme Court "has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial.") (emphasis in original).

This Court finds the Applicant failed to meet his burden of proving he was not properly advised about the plea recommendation. Plea counsel testified he received the offer from the assistant solicitor to reduce the charge to voluntary manslaughter in exchange for a twenty (20) year sentence recommendation. Plea counsel testified he conveyed the offer to his client, who accepted it. Plea counsel testified the solicitor never offered to reduce the charge to involuntary

manslaughter. This Court notes that, as the sentence recommendation was for twenty (20) years, this could not have been a plea to involuntary manslaughter. See S.C. Code Ann. 16-3-60 (Supp. 2003). This Court finds plea counsel's testimony is credible. At the guilty plea hearing, the recommendation was noted for the record and the Applicant did not object. (Plea transcript, p.11). The Applicant also did not object when he was advised the plea was for voluntary manslaughter. (Plea transcript, p.3; pp.6-7). Further, the Applicant admitted to signing the sentencing sheet before the plea hearing and that sheet clearly indicates both that the plea was for voluntary manslaughter.

This Court finds the Applicant failed to meet his burden of proving plea counsel did not file an appeal as requested. Plea counsel testified he did not recall the Applicant asking him to file an appeal, but that he would have done so if requested. This Court finds plea counsel's testimony is credible. Regardless, the Applicant failed to articulate a cognizable legal error that he wished to appeal. Rather, the Applicant argued that the appellate court would be able to review the evidence in his case. This is not the function of a direct appeal.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that plea counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that plea counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by plea counsel's performance.

This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

### 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 regarding them. Therefore, they are hereby denied and dismissed.

### CONCLUSION

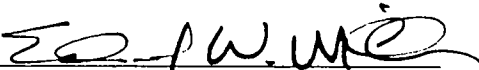
Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

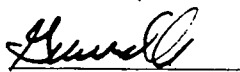
This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate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

AND IT IS SO ORDERED this 20 day of December, 2011.

  
Edward W. Miller  
Presiding Judge  
Thirteenth Judicial Circuit

, South Carolina.

Lawrence W. Crane

*Attorney At Law*

101 WHITSETT STREET  
GREENVILLE, SOUTH CAROLINA 29601

Larry D.  
Miller

Via Regular Mail

Mr. Daniel E. Shearouse  
Clerk, The S.C. Supreme Court  
Post Office Box 11330  
Columbia, South Carolina 29211

