

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LEXINGTON COUNTY
Common Pleas Court

W. Jeffrey Young, Circuit Court Judge

Case No. 2010-CP-32-4588

RECEIVED

APR 24 2013

S.C. Supreme Court

Casio M. Richardson, #339735.....Appellant,

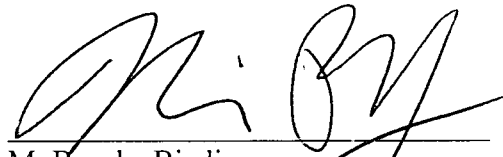
v.

State of South Carolina,.....Respondent.

NOTICE OF APPEAL

Casio M. Richardson hereby appeals the Order denying Post-Conviction Relief of the Honorable W. Jeffrey Young, filed on March 28, 2013. Counsel for Appellant received the written notice of the order on April 2, 2013. A copy of this Order is attached as Exhibit 1.

April 24, 2013



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v.

State of South Carolina,.....Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the Respondent, by depositing a copy of it in the United States Mail, postage prepaid, on April 24, 2013, addressed to their attorneys of record:

John W. Whitmire, Esquire
Assistant Attorney General
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April 24, 2013.



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FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2010CP3204588

Casio Mack Richardson #339735	State of South Carolina
PLAINTIFF(S)	DEFENDANT(S)

Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <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.
- 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: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other:

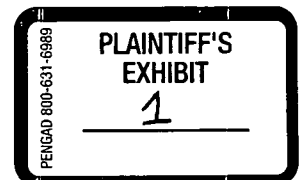
NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order: (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk:



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.**

Circuit Court Judge	2156	3/29/2013
	Judge Code	Date

For Clerk of Court Office Use Only

This judgment was entered on **n/a**, and a copy mailed first class or placed in the appropriate attorney's box on **29th day of March 2013**, to attorneys of record or to parties (when appearing pro se) as follows:

James Edward Bradley PO Box 5709 West Columbia, SC 29171

John Walter Whitmire 1301 Heidt St. Columbia, SC 29204

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg/wh

Beth A. Carrigg - Clerk of Court

Court Reporter

2

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON) ELEVENTH JUDICIAL CIRCUIT

LMC
FILED

Casio M. Richardson, #339735, 2013 MAR 28 A 11: 47 Case No. 2010-CP-32-4588

Applicant, BETH A. CARRIGG)
CLERK OF COURT)
LEXINGTON, SC) **ORDER OF DISMISSAL**

v.

State of South Carolina,)

Respondent.)

This matter comes before the Court by way of an Application for Post-Conviction Relief filed October 22, 2010. Respondent made its Return on December 30, 2010. An evidentiary hearing into the matter was convened on August 13, 2012, at the Lexington County Courthouse. M. Brooks Biediger, Esquire, represented Applicant. Kaelon E. May, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, Applicant testified on his own behalf. Casey D. Cornwell, Esquire, also testified. This Court also had before it a copy of the records of the Lexington County Clerk of Court, records from the South Carolina Department of Corrections, and the guilty plea transcript.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. Applicant was indicted at the march 2010 term of the Lexington County Grand Jury for Assault and Battery with Intent to Kill (2010-GS-32-0872) and Conspiracy (2010-GS-32-0874). He was represented by Casey Cornwell, Esquire. On March 11, 2010, the Applicant pled guilty as charged. He was sentenced to confinement for a period of thirteen (13) years for Assault and Battery and five (5) years for

conspiracy, sentences to run concurrently. Applicant did not appeal his guilty plea or sentences.

At the PCR hearing, Applicant proceeded on two grounds of ineffective assistance of counsel: (1) Plea counsel failed to advise Applicant of self-defense; (2) Plea counsel failed to file an appeal.

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 at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

Ineffective Assistance of Counsel

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) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged 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, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. Applicant must overcome this presumption to receive relief.

Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, *citing* Strickland. Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

Involuntary Guilty Plea

Applicant alleges his plea was involuntary. 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, 89 S.Ct. 1709, 23 L.Ed.2d 274 (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 at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984). Further, because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. U.S., 519 F.2d 317 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993).

Summary of testimony

At the PCR hearing Applicant testified. Applicant alleged plea counsel was ineffective for failing to advise him on the utility of self-defense during representation. Applicant stated that he shot the victim in self-defense. Applicant stated that plea counsel never shared discovery materials with him. Applicant testified that he met with counsel twice prior to the plea hearing, and that a guilty plea was the only option discussed by plea counsel. Applicant stated plea counsel never discussed proceeding to trial. Applicant stated that plea counsel never discussed his rights with him. Applicant further testified he pled guilty on the advice of counsel, and that he would not have pled guilty if counsel had discussed proceeding to trial and arguing self-defense. He further testified that he was diagnosed with various mental health issues as a child. On cross-examination, Applicant testified that he did remember the guilty plea judge asking if he waived any claim he might have to self-defense. He further testified that he recalled telling the judge at the plea that he wanted to give up his right to assert a self-defense claim. Applicant also acknowledged that he apologized at the guilty plea hearing for everything that had happened.

Regarding Applicant's second allegation, Applicant alleged plea counsel was ineffective for failing to file an appeal on his behalf. Applicant testified that he asked plea counsel to file an appeal and that plea counsel failed to honor his request.

At the PCR hearing, plea counsel was present and testified. Plea counsel met with Applicant twice. He further testified that Applicant's previous attorney's had already met with him three or four times. Plea counsel testified that he discussed the elements of the charges with the Applicant, as well as the burden of proof and possible sentences. Plea counsel stated that it is his general procedure upon an initial consultation with a client to review the charges and prison exposure with the client. Plea counsel stated that he makes certain the client fully comprehends the charges and their constitutional rights during the initial consultation. Plea counsel testified that he had no concerns with Applicant's mental health because he presented himself as an intelligent client. Plea counsel testified that he filed discovery motions and went over discovery materials with Applicant, but he could not recall whether he provided Applicant with copies of everything. Plea counsel stated discovery consisted of medical records, incident reports, investigative summaries, and forensic reports.

Plea counsel testified he discussed Applicant's version of the offense with him. Plea counsel testified that there was never a question whether Applicant shot the victim. Plea counsel testified that he discussed proceeding to trial on a claim of self-defense with Applicant. Plea counsel stated that he did not think a claim of self-defense would be successful because the victim was shot in the back while running away from Applicant. Plea counsel testified that he candidly advised Applicant on the inapplicability of self-defense in his case.

Plea counsel gave testimony regarding guilty plea negotiations with the solicitor. Plea counsel stated that he attempted to obtain an offer of ten years imprisonment, but the solicitor refused. Plea counsel testified that he discussed the consequences of pleading guilty with Applicant prior to entering the guilty plea hearing. Plea counsel testified that it was Petitioner's decision to plead guilty. Plea counsel stated that it is not his practice to push a guilty plea on a

client because the client alone reaps the consequences of the sentence. Plea counsel testified that if Applicant desired a jury trial, he would have proceeded accordingly.

Plea counsel testified that subsequent to the guilty plea hearing, he filed a motion to reconsider the sentence. Plea counsel testified that there were no notations in Applicant's file showing that Applicant requested an appeal. Plea counsel stated that he would have filed a notice of appeal. Last plea counsel stated that there was no factual or legal basis to appeal Applicant's guilty plea.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court finds in regards to the allegations of ineffective assistance of counsel and involuntary guilty plea that plea counsel's testimony is more credible than Applicant's testimony. This Court further finds plea counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his representation. This Court also finds that the record in this case fully demonstrates that Applicant understood the nature of his plea, and that his plea was made freely and voluntarily. This Court finds, Applicant waived the right to present a defense when he entered his guilty plea.

This Court finds plea counsel provided sound legal advice regarding the utility of self-defense. 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. Applicant failed to present specific and compelling evidence that plea counsel committed either errors or omissions in her representation. Plea counsel reasonably assessed that self-defense would have proved unfruitful at trial. The Record shows Applicant shot the victim from behind while victim was attempting to flee the scene. Therefore, this Court finds This Court also finds Applicant has failed to prove the second prong of Strickland – that he

was prejudiced by plea counsel's performance. This Court concludes Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. Therefore, this allegation is denied.

Regarding Applicant's second allegation, This Court further finds Applicant failed to prove plea counsel was ineffective for failing to file an appeal. This Court finds plea counsel's testimony more credible than Applicant's on this issue. "[C]ounsel has a constitutionally imposed duty to consult with the defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal (for example, because there are non-frivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing." Roe v. Flores-Ortega, 528 U.S. 470, 480, 120 S.Ct. 1029 (2000).

First, plea counsel succinctly outlined his procedures on filing appeals for his clients. This Court can find no reason why plea counsel would not have filed a notice of appeal if so requested. Applicant has presented no evidence to corroborate his assertion that he asked plea counsel to file an appeal on his behalf.

Second, upon a review of the Record, this Court finds Applicant failed to present a meritorious issue that could have been appealed. Therefore, this Court finds that there was no viable issue which a rational defendant would want to appeal. Accordingly this allegation is denied.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that 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

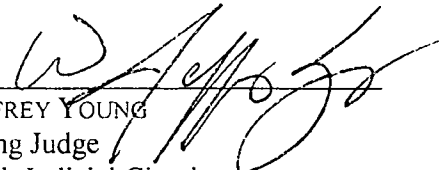
with prejudice.

Except as discussed above, this Court finds that Applicant failed to raise the remaining allegations set forth in his application at the hearing and has, thereby, waived them. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). Applicant's failure to address these issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be DENIED AND DISMISSED WITH PREJUDICE; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 13 day of March, 2013



W. JEFFREY YOUNG
Presiding Judge
Eleventh Judicial Circuit

Sumter, South Carolina.

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

2013 MAR 28 A 11:47

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FILED

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April 24, 2013

The Honorable Daniel E. Shearouse
Supreme Court Clerk of Court
1231 Gervais Street
Columbia, SC 29201

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APR 24 2013

Re: Casio Mack Richardson vs. State of South Carolina
Common Pleas Case No.: 2010-CP-32-4588

S.C. Supreme Court

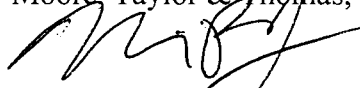
Dear Mr. Shearouse:

Enclosed for filing is a Notice of Appeal in the above-referenced matter. Also enclosed are the following:

- (1) Proof of service of the notice of appeal on the respondent[s].
- (2) A copy of the written notice of the Order to be challenged on appeal.

Thank you very much for your attention and cooperation in this matter.

Respectfully yours,
Moore, Taylor & Thomas, P.A.



M. Brooks Biediger

MBB: amw
Enclosures
cc w/encls: The Honorable W. Jeffrey Young
John W. Whitmire, Esquire
Ms. Sharon Graham