

**FORM 7
PROOF OF SERVICE OF A NOTICE OF APPEAL**

THE STATE OF SOUTH CAROLINA In The Court of Appeals

APPEAL FROM RICHLAND COUNTY Court of Common Pleas

Alison Renee Lee, Circuit Court Judge
Case No. 2012CP4002614

Willie Goodwin, #181207,

Appellant

v.

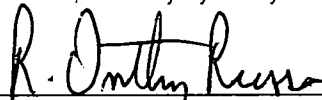
State of South Carolina,

Appellee

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on The Office of Appellate Defense by depositing a copy of it in the United States Mail, postage prepaid, on May 8, 2013, addressed to The Office of Appellate Defense, 1330 Lady Street, Suite 401, Columbia, SC 29201.

George Sink, P.A. Injury Lawyers



R. Anthony Russo, Court Appointed PCR attorney
1440 Broad River Road
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(803) 929-1920

Dated: May 8, 2013

RECEIVED

MAY 09 2013

SC Court of Appeals

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**FORM 8
LETTER TO THE APPELLATE COURT CLERK
FILING THE NOTICE OF APPEAL**

May 8, 2013

The Honorable Tanya A. Gee
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

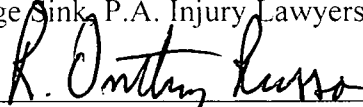
RE: RE: Willie Goodwin, #181207 v. State of South Carolina, Case No. 2012-CP-40-02614

Dear Ms. Gee :

Enclosed for filing is a notice of appeal in the above case. Also enclosed are the following:

- (1) Proof of service of the notice of appeal on the respondent[s].
- (2) A copy of the Order which is to be challenged on appeal.
- (3) No filing fee is enclosed because this is an appeal from a post-conviction relief case.

George Sink, P.A. Injury Lawyers



R. Anthony Russo, Court Appointed PCR attorney
1440 Broad River Road
Columbia, SC 29210
(803) 929-1920

cc: Office of Appellate Defense

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SC Court of Appeals

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS)
FIFTH JUDICIAL CIRCUIT)

Willie Goodwin, #181207,)
Applicant,)

DOCKET NO. 2012-CP-40-02614)

v.)

State of South Carolina,)
Respondent.)

RECEIVED)
ORDER OF DISMISSAL)
MAY 09 2013)

SC Court of Appeals)

JEANNETTE W. McBRIDE)
P. & S.)

2013 MAR 26 AM 9:24)

RICHLAND COUNTY)
FILED)

PROCEDURAL HISTORY

This matter comes before the Court by way of an application for Post-Conviction Relief (PCR) filed March 2, 2012. An evidentiary hearing into the matter was convened before this Court on Tuesday, March 5, 2013, at the Richland County Courthouse. Applicant was present at the hearing with counsel, Tony Russo, Esquire. Respondent was represented by Robert D. Corney of the South Carolina Attorney General's Office.

At the hearing, this Court also had before it a copy of the transcript of the proceedings against Applicant, the records of the Richland County Clerk of Court, the documents related to Applicant's direct appeal and Applicant's records from the South Carolina Department of Corrections.

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. Applicant was indicted at the January 2008 term of the Richland County Grand Jury for five (5) counts of Distribution of Marijuana (Third Offense) (2008-GS-40-11767 through -11771). Applicant was represented by J. Rhodes Bailey, Esquire, on the charges. On June 10, 2009, Applicant appeared before the Honorable J. Michelle Childs where he waived presentment to the grand jury on one count of Failure to Stop for a Blue Light (2009-GS-40-00831), and pled guilty to all six charges. He was sentenced to twelve (12) years imprisonment on each Distribution charge and eighteen (18) months imprisonment on the Failure to Stop, all to run concurrently. One count of Possession with Intent to Distribute Marijuana and one count of Simple Possession of Marijuana were both *nolle prossed* by the state in exchange for the plea. A

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hearing on Applicant's Motion to Reconsider was held October 22, 2009. Judge Childs denied the motion at the close of the hearing.

A Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. Applicant was represented by Kat Hudgins, Esquire, of the South Carolina Office of Appellate Defense. By Order filed February 29, 2012, the South Carolina Court of Appeals affirmed the convictions and sentences. The remittitur was issued March 19, 2010.

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

(a)	<u>Ineffective Counsel</u>
(b)	<u>Counsel fail to object to Court not advising minimum/mayor</u>
(c)	<u>Counsel made me plea to a charge i didn't do.</u>
10.	State concisely and in the same order the facts which support each of the grounds set out in (10):
(a)	<u>Ineffective Counsel</u>
(b)	<u>4th Amendment Right Violation</u>
(c)	<u></u>

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 (Rev. 2003).

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). 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).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel

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rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. See Butler, 286 S.C. at 442, 334 S.E.2d at 814. The Applicant must overcome this presumption to receive relief. See 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. First, the 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, 386 S.E.2d at 625 (citing Strickland). 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." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must "show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." Hill v. Lockhart, 474 U.S. 52, 62, 106 S.Ct. 366, 372, 88 L.Ed. 2d 203 (1985).

Involuntary Plea

Several of Applicant's claims ultimately amount to a claim that his plea was entered involuntarily and unintelligently as a result of counsel's ineffective representation and advice. Those allegations are addressed collectively in this section of the order.

Applicant testified at the PCR hearing he pled guilty and received a twelve (12) year jail sentence, which surprised him as he expected to receive much closer to the mandatory minimum five (5) year term. Applicant alleged there had been a previous plea offer from the State for a five (5) year sentence that was given to his previous attorney, but said he chose not to accept the offer upon counsel's advice to reject it. Applicant noted the State requested that the plea judge impose a fifteen (15) year sentence under the plea, but said based on his discussions with counsel, that he believed he would likely receive a five (5) year sentence. Applicant also alleged he was unaware he would be required to serve eight-five percent (85%) of his sentence before becoming parole eligible. Had he known these things, Applicant said he would not have pled, but instead would have insisted on proceeding to trial.

When asked about his discussions with counsel in preparation for trial, Applicant said he and counsel never really discussed a trial strategy because Applicant "knew [he] was guilty" of the charges, so he "didn't really have a defense" to be presented as to the Distribution charges.

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As to the Failure to Stop charge, Applicant alleged he was not guilty of that crime, which he had told counsel in their meetings. Applicant finished by recounting the denial of his motion to reconsider sentence, and said had he received the five (5) year sentence he thought he would, his release would be scheduled for October of this year.

On cross-examination, Applicant agreed that he told the plea judge he was entering into the plea without reliance on any promises and without anyone forcing or coercing him to do so. Applicant also agreed that he told the plea judge he was making an "informed and intelligent decision" to enter the plea. He further acknowledged it was his decision alone whether to enter a plea or proceed to trial, and he was aware that by pleading guilty he would be waiving his right to jury trial on the charges. When asked about his admission of guilt at the plea hearing to the Failure to Stop charge in contradiction with his PCR testimony claiming actual innocence of such, Applicant admitted he "told a story" to the plea judge under oath. Applicant further acknowledged if he were granted relief, there would be no guarantee he would receive any less of a sentence than the twelve (12) years he was currently facing, and in fact he could receive *more time*.

Counsel testified he recalled his representation of Applicant and this particular case well. He said at the time of Applicant's case, he had been with the Public Defender's Office for roughly two (2) years and had "a fair amount" of clients at that time, including other clients facing drug charges. Counsel said this was a "particularly odd" case because Applicant had prior drug offenses on his record and the prosecuting solicitor seemed agitated by Applicant and determined to get Applicant a long prison sentence. Counsel also noted there seemed to be a lot of pressure from the community to prosecute Applicant sternly.

Counsel noted Applicant's case was set for trial the day following the plea, which counsel said he was fully prepared for at the time of the plea. He went on to say the "only real argument" that was feasible for trial was a "jury nullification" argument because five or six of the drug buys were on videotape and clearly showed Applicant. Counsel testified Applicant did not want to plead guilty to the charges at the outset of the case, and said he did not believe it was in Applicant's best interest to plead guilty early on in the case.

When the trial date came, counsel said that the Solicitor agreed to drop some charges in exchange for a plea, at which time he advised Applicant to take the plea as Applicant would likely lose the trial and receive a fairly lengthy sentence if he proceeded. Counsel said he made

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clear to Applicant he was ready and willing to proceed to trial, and it was Applicant's decision whether to plead or go to trial. He noted he told Applicant they would request the five (5) year mandatory sentence from the plea judge, but never guaranteed Applicant any particular sentence if he pled. Counsel said he was sure he told Applicant his sentence would require service of "85%, hard time" before becoming eligible for any early release, and counsel reiterated that he never promised or guaranteed Applicant a particular sentence if he pled.

On cross-examination, counsel testified he recalled his pre-trial meetings with Applicant where he was able to review with Applicant the maximum and minimum sentences he was facing on the charges. He noted it was very important for Applicant to understand that sentencing range, so he made sure Applicant was aware of it. Counsel stated Applicant was a "smart guy" whom he never had any problems communicating with. Counsel said he recalled trying to negotiate with the Solicitor's Office for a while to obtain a beneficial plea offer, but that the Solicitor's Office refused to offer anything other than a "straight up plea" for the maximum sentences. Specifically, counsel said that he did not recall there ever being a five (5) year offer extended by the Solicitor's Office as alleged by Applicant.

Counsel stated prior to the plea, he told Applicant he would *ask* for the mandatory five (5) year minimum and felt confident he could argue for a sentence less than ten (10) years, but never guaranteed Applicant any sentence. Counsel finished by saying he was certain Applicant was aware of the maximum and minimum sentences he was facing, that there were no guarantees as to the sentence he would receive if he pled, and that it was ultimately his decision whether to plead or not.

After a thorough review of the record and the testimony presented, this Court finds this allegation to be without merit. As a preliminary note, this Court finds Applicant's testimony to be entirely **not** credible as to the existence of a five (5) year plea offer from the state, his discussions with counsel prior to the plea, his claims of innocence to the charges, his alleged understanding of the sentence he expected to receive upon entry of the plea, and his testimony that he would have proceeded to trial but for counsel's advice regarding a potential five (5) year sentence. Conversely, this Court finds counsel's testimony as to his discussions with Applicant and recollection of the case to be entirely **credible**.

In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999).

A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

With the credible testimony before this Court and the record of the plea hearing, it is clear Applicant was adequately advised of all relevant issues related to his case sufficient to make an intelligent, informed and voluntary decision whether to plead or go to trial. Further, Applicant was well aware that he was not guaranteed any specific sentence upon entry of the guilty plea. Rather, counsel made it abundantly clear to Applicant the maximum sentences that could be imposed. Applicant, fully aware of such, made the voluntary and independent decision to enter the pleas rather than proceed to trial where he would likely receive much harsher sentences.

Therefore, Applicant has failed entirely to carry his burden in showing how counsel was deficient in his representation, or how such alleged deficient representation rendered his plea involuntarily and unintelligently entered. Rather, the testimony and record leave this Court firmly convinced Applicant's plea was entered freely, voluntarily and intelligently in accordance with the mandates of Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969).

Additionally, this Court finds Applicant's claim that but-for counsel's alleged deficient performance, he would not have pled but proceeded to trial is **not** entirely credible. Applicant was facing significant time on the five indicted counts of Distribution (Third Offense), with each carrying a mandatory minimum of five (5) years imprisonment. Counsel's credible testimony makes it clear there was extremely condemning evidence against Applicant that would have been produced at trial, and that the prosecuting solicitor was "determined" to pursue a severe penalty

upon conviction. With these things in mind, this Court finds Applicant's testimony to that end to be not credible. Therefore, he has failed to prove resulting prejudice.

Community Concerns / Solicitor's "Trafficking" Commentary

Applicant additionally contends counsel was ineffective in addressing the Solicitor's commentary at the plea hearing regarding the community's concerns in the matter and when there was mention of the word "trafficking".

Applicant provided very little testimony regarding this allegation, other than to say he did recall counsel filing a motion for reconsideration of his sentence in which counsel argued the Solicitor's comments were improper and should not have been considered by the judge in sentencing.

Counsel testified the charges stemmed from numerous drug purchases through an undercover law enforcement officer that resulted in a cumulative weight of roughly eight (8) ounces of marijuana when considered altogether. He noted the Solicitor stated he felt a lot of pressure from the community at-large to get a conviction and long sentence for Applicant because of the concerns about drug activity in the community. In retrospect, counsel said, he felt he may have misjudged the State's intentions to advocate so strongly for a harsh sentence and at the time believed he would be able to convince the judge that a fifteen (15) year sentence was simply unreasonable. He also stated he wished he would have made a stronger argument to rebut the Solicitor's commentary about trafficking in marijuana, as the threshold weight for trafficking is significantly more than what Applicant purchased.

On cross-examination, counsel agreed his regrets were only made in hindsight knowing the results of the plea and said Applicant always knew it would be a gamble to plead guilty as there was the potential he could receive the maximum sentences. Counsel said he did make those arguments at the plea hearing and expounded upon them at the reconsideration hearing, but said he wished he made stronger arguments to rebut those issues to the plea judge. Counsel further read into the record Judge Childs's commentary from the transcript of the reconsideration hearing where Her Honor specifically noted she had not considered either the community's concerns, or the solicitor's remarks about trafficking, in her sentencing of Applicant.

Based upon a review of the record and the testimony presented, this Court finds counsel was not ineffective in this regard. Counsel undertook diligent steps to rebut the comments and issues he believed were improperly presented to the plea court during the course of the plea

hearing. Thereafter, he further argued the issues at the motion for reconsideration hearing, ensuring the matter was properly preserved for appellate review. Counsel's reservations about the arguments he made at the plea hearing are clouded with the benefit of hindsight as the result of the plea is now apparent. This Court, in accordance with Strickland v. Washington, must evaluate counsel's performance under an objective standard of reasonableness with "every effort made to eliminate the distorting effects of hindsight." See Strickland v. Washington, at 669, 104 S.Ct. at 2055. With that in mind, this Court cannot find counsel's performance in addressing the Solicitor's remarks to be objectively unreasonable under prevailing professional norms. Therefore, this Court finds Applicant's performance was not deficient.

Further, this Court finds any alleged deficiency in this regard did not result in prejudice to Applicant's case. The plea judge specifically noted at the motion to reconsider that she considered neither the community members' concerns, nor the Solicitor's comment about trafficking, in crafting Applicant's sentence. Therefore, this Court can find **no** reasonable probability that had counsel argued the issues differently, the sentence imposed by Judge Childs would have been different. Accordingly, Applicant has failed to prove resulting prejudice.

CONCLUSION

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

This Court notes Applicant must file and serve a Notice of Appeal within thirty (30) days from the receipt by counsel 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), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

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IT IS THEREFORE ORDERED:

1. The application for Post-Conviction Relief is denied and dismissed **with prejudice**; and
2. The Applicant is remanded to the custody of the Respondent.

AND IT IS SO ORDERED.



ALISON RENEE LEE
Presiding Judge
Fifth Judicial Circuit.

March 25, 2013
Columbia, South Carolina.