

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas  
THE HONORABLE W. Jeffrey Young

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CA No. 2011-CP-23-3184

SHANE L. MOORE,

APPELLANT,

vs.

STATE OF SOUTH CAROLINA

RESPONDENT.

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MAY 13 2013

S.C. SUPREME COURT

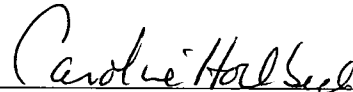
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FILED-CLERK OF COURT  
GREENVILLE CO. S.C.  
PAUL B. WICKENSIMMER

NOTICE OF APPEAL

Appellant SHANE L. MOORE, appeals from the Order of the Honorable W. Jeffrey Young, Circuit Court Judge clocked April 11, 2013.

Respectfully submitted,



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

Date: May 7, 2013

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

Shane L. Moore, )  
 )  
 )  
Appellant, )

C.A. No. 2011-CP-23-3184

-vs- )

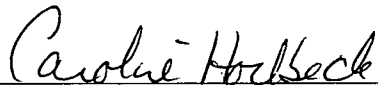
CERTIFICATE OF SERVICE

State of South Carolina, )  
 )  
 )  
Respondent. )

This is to certify that I am an employee in the law office of Caroline M. Horlbeck, attorneys for Appellant, and that I have this day caused to be served upon the person(s) named below Appellant'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  
P.O. Box 11433  
Columbia, SC 29211

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

  
Caroline M. Horlbeck

Greenville, South Carolina

May 7, 2013

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GREENVILLE )  
 )  
 Shane Lamar Moore, )  
 S.C.D.C. No. 342772, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 C.A. No. 2011-CP-23-3184

**ORDER OF DISMISSAL**

2013 APR 11 A 9:10

CLERK OF COURT  
 GREENVILLE, CO. S.C.  
 PAUL B. WICKENSIMPR

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed May 10, 2011. The Respondent made its return on August 18, 2011. An evidentiary hearing was held on February 15, 2013 at the Greenville County Courthouse. The Applicant was present 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 were Candice Grier (who testified over the telephone) and the Applicant's plea counsel, Dorothy A. Manigault, Esquire. The Court had before it the guilty plea transcript, the Greenville County Clerk of Court records, the South Carolina Department of Corrections records, the PCR application, the return, the appellate documents, and the Applicant's Exhibits 1-4.<sup>1</sup>

**PROCEDURAL HISTORY**

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted

<sup>1</sup> This Court originally held the record open in order to allow counsel for the Applicant to investigate whether the suppression hearing transcript was available. This Court subsequently determined the matter should be denied and dismissed without having the State bear the expense of providing this transcript.

at the April 2009 term of the Greenville County Grand Jury for trafficking cocaine base (2008-GS-23-8077). He was represented by Dorothy A. Manigault, Esquire.

On September 15, 2010, the Applicant pled guilty to trafficking cocaine base (more than 28 grams), second offense. The Honorable Edward W. Miller sentenced the Applicant to fifteen years imprisonment.

A notice of appeal was filed at the South Carolina Court of Appeals. By order dated January 5, 2011, the Court of Appeals dismissed the appeal based on counsel's failure to provide a written explanation as to what issues could be reviewed. See Rule 203(d)(1)(B)(iv), SCACR. Counsel filed a written explanation, which the Court of Appeals interpreted as a petition for rehearing. The Court of Appeals dismissed the appeal by order dated February 2, 2011, finding there were no preserved issues for appeal pursuant to Rule 203(d)(1)(B)(iv), SCACR.

### ALLEGATIONS

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

1. Ineffective assistance of counsel.
2. Involuntary guilty plea.

In his "Amended Petition for Post Conviction Relief" filed February 8, 2013, the Applicant made the following allegations:

1. Ineffective assistance of counsel:
  - a. Failed to prove that Trooper Chastain had no reason or probable cause to stop the Applicant.
  - b. Failed to properly challenge the second detention which was an illegal search and seizure that violated the Applicant's 4<sup>th</sup> Amendment rights.
  - c. Failed to raise the issue of racial profiling during the suppression hearing.
  - d. Failed to research and subpoena information regarding camera malfunction.



- e. Failed to give the Applicant a copy of his case file and State's response to the Applicant's discovery motions upon the Applicant's request.
- f. Failed to subpoena the Applicant's witness.
- g. Was not prepared for trial and the Applicant was coerced into pleading guilty.
- h. Failed to file a motion to quash the indictment.
- i. Failed to raise the issue that the State's own evidence reflects four different dates on which the incident allegedly occurred.
- j. Failed to challenge the time the State has to submit the indictment to the Grand Jury.

### **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/Involuntary Guilty Plea**

The Applicant alleges his guilty plea was involuntary and that 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).

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). 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. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000).

The Applicant stated plea counsel should have filed a motion to quash the indictment because it was issued more than a year after his arrest and when the Court of General Sessions was not in session. The Applicant stated plea counsel should have challenged the discrepancies between the dates listed in the arrest warrant, indictment, sentencing sheet, written warning, and tow report. The Applicant stated he was stopped for driving too slowly and following too closely but that this was untrue and not on the video. The Applicant stated he told the officer he was going to Raleigh to see his girlfriend, Candice, and the officer called her to confirm this. The Applicant stated plea counsel did not speak to Candice or subpoena the officer's cell phone records in order to challenge his credibility. The Applicant stated plea counsel should have challenged the search of his vehicle because he did not give consent but the officer called a K-9 unit to the scene. The Applicant stated plea counsel should have argued racial profiling at the suppression hearing. The Applicant stated he only pled guilty because both plea counsel and the plea judge said he could appeal the suppression hearing. The Applicant admitted, however, there

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were no such statements in the plea transcript.

Candice Grier stated he and the Applicant had a daughter together. Candice stated the Applicant was coming to Raleigh to stay for a week when he was arrested. Candice stated she told this to the officer who called her after stopping the Applicant. Candice stated she knew the Applicant had been arrested but admitted she did not call plea counsel to tell her the Applicant had been on the way to see her when he was stopped.

Plea counsel testified she was appointed in this case and filed discovery motions. Plea counsel testified she reviewed the discovery materials with the Applicant and discussed his version of events. Plea counsel confirmed the Applicant's testimony that the videotape did not show he was following too closely. Plea counsel testified she filed a motion to suppress the evidence and attached a copy of the officer's report to that motion. Plea counsel testified the motion hearing lasted several hours and was the same day as the plea hearing. Plea counsel testified the Applicant did not ask her to contact Candice, but that there was no need for her to do so because all of that information was in the officer's report. Plea counsel testified she did not recall a discrepancy in the dates on some of the documents but stated arguing this would not have changed the outcome of the case. Plea counsel testified she did not recall whether or not she argued racial profiling in the suppression hearing. Plea counsel testified the plea judge met with the attorneys midway through the suppression hearing and gave them time to discuss plea offers. Plea counsel testified the Applicant turned down a ten year offer based on advice from an investigator he had hired. Plea counsel testified she advised the Applicant against rejecting this offer. Plea counsel testified she explained to the Applicant both that he was pleading guilty without a recommendation and that he would not be able to raise issues related to the suppression hearing. Plea counsel testified the plea judge would not have told the Applicant that he could

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plead guilty and then appeal the suppression 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 her 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.6; p.8). 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.5-7). This Court finds the Applicant entered a knowing and voluntary guilty plea. See Boykin v. Alabama, 395 U.S. at 243-44, 89 S. Ct. at 1712.

This Court finds the Applicant failed to meet his burden of proving plea counsel should have filed a motion to quash the indictment. The Applicant's argument that the Grand Jury was not scheduled to convene when his indictment was issued is without merit. While terms of court are technically prescribed by statute, this Court notes general sessions matters may be transacted during common pleas terms of court and vice versa. See S.C. Code Ann. §§ 14-5-410, -420 (Supp. 2003). This Court also finds the Applicant failed to demonstrate plea counsel was deficient in not arguing that the indictment was issued well after he was arrested. See State v. Culbreath, 282 S.C. 38, 40, 316 S.E.2d 681, 681 (1984) ("[T]he failure of the solicitor to act upon a warrant within ninety (90) days . . . does not within itself invalidate a warrant or prevent subsequent prosecution."). Further, this Court finds the Applicant failed to provide evidence of any prejudice that resulted from the delay. See, e.g., State v. Pittman, 373 S.C. 527, 647 S.E.2d

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144 (2007) (noting one must prove prejudice in order to prevail on an allegation that one's speedy trial rights were violated).

This Court finds the Applicant failed to meet his burden of proving plea counsel was deficient in not arguing the discrepancies between the dates listed in the arrest warrant, indictment, sentencing sheet, written warning, and tow report. This Court finds the Applicant has failed to demonstrate these discrepancies were in any way fatal to the State's case. This Court agrees with plea counsel that these discrepancies did not affect the outcome of the case. This Court notes that, even if an incorrect date had been listed on the indictment, it is merely a notice document. See State v. Gentry, 363 S.C. 93, 102, 610 S.E.2d 494, 500 (2005). The indictment in this case was clearly sufficient to put the Applicant on notice of the charge he was facing. See State v. Tumbleston, 376 S.C. 90, 95-96, 654 S.E.2d 849, 852 (Ct. App. 2007).

This Court finds the Applicant failed to meet his burden of proving plea counsel should have contacted Candice Grier before the suppression hearing. The Applicant argued Candice could have been used to attack the officer's credibility. Plea counsel testified, however, that the information that Candice could have provided – that she spoke to the officer that day and verified the Applicant was staying with her in Raleigh that week – was also contained in the officer's report. This Court notes Candice was aware of the Applicant's arrest and did not contact plea counsel to relay any pertinent information. Regardless, this Court finds the Applicant has failed to demonstrate that plea counsel contacting Candice prior to the suppression hearing would have affected the Applicant's decision to plead guilty. See Hill v. Lockhart, 474 U.S. at 58-59, 106 S. Ct. at 370.

This Court finds the Applicant failed to meet his burden of proving plea counsel advised the Applicant that he could appeal the suppression hearing. Plea counsel testified she did not tell

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the Applicant he could enter a guilty plea and still appeal the denial of the motion to suppress. This Court finds plea counsel's testimony is more credible. Once the Applicant entered a guilty plea in this case, he waived the right to challenge the denial of the suppression motion. See State v. Tucker, 376 S.C. 412, 417, 656 S.E.2d 403, 406 (Ct. App. 2008) (noting "[g]uilty pleas generally act as a waiver of all non-jurisdictional defects and defenses"). This Court notes the plea judge advised the Applicant of such. (Plea transcript, p.10).

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 her 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. This Court also concludes the Applicant has failed to meet his burden of proving his guilty plea was not knowing and voluntary. 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. Furthermore, the Applicant's guilty plea was entered knowingly and voluntarily within the mandates of Boykin. 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 4 day of April, 2013.

  
\_\_\_\_\_  
W. Jeffrey Young  
Presiding Judge

Sumter, South Carolina.

CAROLINE M. HORLBECK  
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PCR

May 5, 2013

**Via Regular Mail**

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

**Re:** SHANE L. MOORE 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.

Yours very truly,

  
\_\_\_\_\_  
Caroline M. Horlbeck, Esq.

Enclosure

cc: Office of the Attorney General  
Office of Appellate Defense

**RECEIVED**

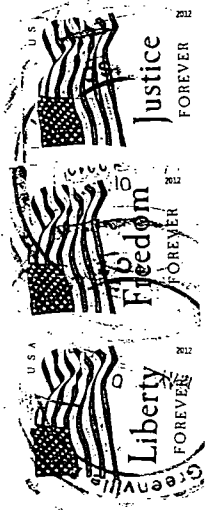
MAY 13 2013

**S.C. SUPREME COURT**

CAROLINE M. HORLBECK

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Via Regular Mail

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