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Aug 12 2022

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In The Supreme Court

CERTIORARI TO SPARTANBURG COUNTY
Court of Common Pleas
William A. McKinnon, Post-Conviction Relief Court Judge

Case No. 2021-CP-42-01878

Jimmy Williams Jr., SCDC # 384161Respondent,
v.
State of South Carolina, Petitioner.

NOTICE OF APPEAL

The State of South Carolina appeals the Honorable William A. McKinnon’s order granting post-conviction relief, filed July 8, 2022. The State filed a timely motion to reconsider, alter, or amend pursuant to Rule 59(e), SCRCPP, which was denied by Judge McKinnon by written order filed on August 11, 2022. Copies of the order granting post-conviction relief and the order denying the State’s motion to reconsider, alter, or amend are attached hereto.

August 12, 2022

Respectfully submitted,

ALAN WILSON
Attorney General

CHELSEY FAITH MARTO
Assistant Attorney General
S.C. Bar No. 104191

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Columbia, South Carolina 29211
(803) 734-3737

By: /s Chelsey F. Marto
Attorneys for Petitioner

Other counsel of record:
Tommy A. Thomas
P.O Box 88
Irmo, SC 29063
(803) 732-5507
Attorney for Respondent



THOMAS LAW

August 8, 2022

The Honorable M. Hope Blackley
Spartanburg County Clerk of Court
P.O. Box 3483
Spartanburg, SC 29304

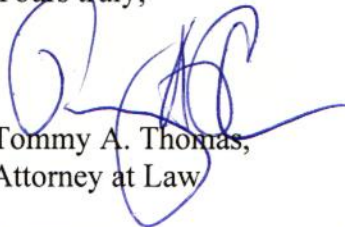
RE: Jimmy Dean Williams, Jr. #384161 v. State
Docket No.: 2021-CP-42-01878

Dear Ms. Blackley:

Enclosed please find for filing an original and a copy of the signed Order Denying Motion to Reconsider in the above referenced matter.

Kindly return the clocked copy to me in the enclosed envelope. Thank you for your assistance in this matter and please feel free to contact me should you have any questions.

Yours truly,



Tommy A. Thomas,
Attorney at Law

TAT/jem
cc: Chelsey Marto, Esq. – Email

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SPARTANBURG COUNTY
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STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)
)
)
Jimmy Williams, Jr., #384161,)
)
Applicant,)
)
vs.)
)
State of South Carolina,)
)
Respondent.)

IN THE COURT OF COMMON PLES
FOR THE SEVENTH JUDICIAL CIRCUIT

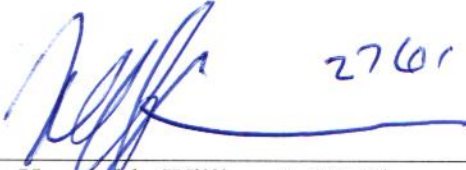
Case No.: 2021-CP-42-01878

Order Denying Motion to Reconsider

This matter comes before the Court by way of Respondent's Motion to Reconsider, Alter or Amend. The Motion to Reconsider, Alter or Amend is DENIED.

IT IS SO ORDERED.

Spartanburg, South Carolina
August 1, 2022

 2761

The Honorable William A. McKinnon
Circuit Judge

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SPARTANBURG COUNTY
AMY W. COX

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
 Jimmy D. Williams, Jr., #384161,)
 Applicant,)
)
 vs.)
)
 State of South Carolina,)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 OF THE SEVENTH JUDICIAL CIRCUIT

Case No.: 2021-CP-42-01878

**ORDER GRANTING
 POST-CONVICTION RELIEF**

The above-captioned matter come before the court via an application for post-conviction relief filed by Jimmy D. Williams, Jr. on June 16, 2021. This court convened an evidentiary hearing into the matter on June 7, 2022 before the Honorable William A. McKinnon. Applicant was present at the hearing and represented by Tommy A. Thomas, Esquire, and Chelsey Marto, Esquire of the South Carolina Attorney General’s Office represented Respondent.

The court had the opportunity to listen to testimony and rule on the witnesses’ credibility. This court also had before it a copy of the plea transcript, the record on appeal, the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant’s records from the South Carolina Department of Corrections, and the pleadings in this matter.

PROCEDURAL HISTORY

Applicant was indicted at the June 2020 term of the Spartanburg County Grand Jury for attempted murder and possession of a weapon during the commission of a violent crime (2020-GS-42-3092).

Applicant was represented on these charges by Charles W. Snyder III, Esquire (“Counsel”), and Assistant Solicitor James Edward Hunter prosecuted the case. Applicant pleaded guilty before the Honorable J. Mark Hayes, II on October 13, 2020 to the lesser included offense

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of assault and battery of a high and aggravated nature, and the weapons charge was dismissed. Applicant was sentenced to twenty years' imprisonment with credit for time served.

Applicant filed a timely notice of appeal. The South Carolina Court of Appeals dismissed the appeal on November 17, 2020 for failure to provide a sufficient explanation as required by Rule 203(d)(1)(B)(iv), SCACR. Remittitur was issued on January 15, 2021.

ALLEGATIONS

Applicant alleged the following grounds in his initial application:

1. Ineffective Assistance of Counsel
 - a. Attorney advise Applicant and the victim (Applicant's father) that Applicant would receive a suspended sentence with probation.
 - b. Attorney informed Applicant that the ABHAN would be dropped to an assault charge – non-violent and 65%. Attorney indicated that the Solicitor did not want Applicant to receive jail time and was in agreement to a suspended sentence and probation. After Applicant was sentenced, counsel told him it was not a paroleable offense and he would have to serve 85%.
 - c. Applicant asked counsel for a bond hearing. Counsel informed Applicant that it would be a waste of money because Applicant was looking at time served, suspended sentence, and probation. Applicant believes being released on bond would have allowed him to more effectively be involved in his defense.
2. Involuntary guilty plea.

Applicant filed an amendment on June 3, 2022 that alleged the following additional grounds:

1. Applicant would contend that his plea was not freely, voluntarily, knowingly, and intelligently given for the following reasons:
 - a. Applicant was informed by Defense Counsel that if he took the plea he would receive a probationary sentence with credit for time served in the detention center. Defense Counsel told Applicant that there was no need to overly prepare for the plea because he would go home that day.
2. The Applicant never signed an agreement to conduct the hearing via WebEx, nor does the record indicate a consent to plea via WebEx.
 - a. The Applicant was in the Court room, but everyone else including the Judge were in different locations and appeared via WebEx.
 - b. That the Witnesses that spoke against the Defendant actually called the hearing to speak.
 - c. The Applicant believes this virtual hearing prejudiced him.
3. Counsel was not prepared to mitigate the statements of Family members to the Judge.

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4. Any and all other issues that may arise from the PCR Trial.

Applicant seeks that his convictions be overturned and a set for a new trial.

TESTIMONY ADDUCED AT TRIAL

Applicant, Jimmy D. Williams, Jr.

Applicant began by testifying that he was appointed a public defender, did not make bond, and was in the detention center for 11 months before his plea. He testified that it was very hard to contact his lawyer as he had to use the kiosk in the detention center, and he only met with him over a monitor right before going to court, never in person. During that meeting, trial counsel advised Applicant he should enter a plea because he would get time served or a suspended sentence with probation, with which Applicant was satisfied. He knew there was a possibility of an ankle monitor. When asked by the Court if it seemed plausible that he would get time served for stabbing his father repeatedly, Applicant admitted it seemed unlikely but he trusted his attorney.

Applicant admitted that he was heavily using drugs at the time of the incident and did not realize the victim was actually his father. Despite this, his father was in favor a light sentence for Applicant and appeared at the plea hearing, as well as appeared at this evidentiary hearing. Meanwhile, Applicant's half-sister, sister-in-law, and brother, none of whom he was close with, spoke against him, stating he was a monster with horrible mental health issues.¹ Applicant testified that Counsel stated he thought the family statements would go really well, which made it clear that he never actually spoke with them. Applicant further testified that he received a copy of discovery a week before his plea, but it hurt him to see what he did to his father so he did not review it thoroughly.

¹ In the course of his prosecution and while at SCDC, he received no mental health evaluation and no concern about competence was raised.

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The day of the plea hearing, counsel did not speak with Applicant because it was via a video monitor and reception was poor. He testified that he was in the detention center in a little office with a TV monitor with Judge Hayes in the courtroom and everyone else seemed to be in their offices. Applicant testified that he understood he faced zero to twenty years' imprisonment but, based on the representation of Counsel, he went forward with the open plea. Applicant also testified that his attorney said a bond hearing was a waste of money because he thought they should go to court and get him out of jail.

Applicant testified that his counsel did not describe to him what to expect in a WebEx virtual hearing. He testified that he was not able to speak privately during the plea hearing, which was crucial because of the untrue statements his family members were making about him. He felt that these statements significantly contributed to the sentence he received but he was not able to make his attorney aware of this due to the virtual nature of the hearing.

On cross-examination, Applicant testified that he had no independent thoughts about whether he should plead or go to trial because he trusted his attorney's advice to plead guilty. He further testified that he understood he could receive twenty years by pleading and that he was aware of the rights he waived in doing so. When asked why he did not speak up to stop the hearing so he could speak to Counsel, Applicant testified that he was not aware that was an option, nor was he aware he could ask to wait and have the hearing in person.

At the close of cross-examination, this court expressed its concern regarding the inability of Applicant to speak with Counsel. This court referred to the Supreme Court's April 13, 2020 order regarding operation of the courts during the coronavirus emergency, which stated that, if the attorney and defendant were not in the same room, the court must ensure that the defendant has the ability to consult privately with counsel during the plea proceeding as may be necessary.

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Mr. Thomas, as Applicant's counsel, agreed with this assessment and Ms. Marto confirmed that the plea transcript did not reflect any private communications or phone calls between Applicant and Counsel, or that applicant was informed he had a right to communicate privately with counsel.

Defense Counsel, Charles W. Snyder, III

Mr. Snyder, Applicant's defense counsel at the entry of his plea, testified that he was appointed to represent Applicant via his employment at the office of the public defender. He testified that had personal contact with Applicant at least four times before his plea, and he attempted to maintain regular communication through virtual meetings and the kiosk system.² He testified that he first met Applicant in person at his preliminary hearing, which was shortly before the pandemic began. They ultimately waived that hearing. At their next meeting, counsel informed Applicant that he had been on probation at the time of the incident, which Applicant did not know. Applicant informed counsel that he was high on meth and thought his father was an intruder, which led to the altercation. Counsel further testified that he spoke with Applicant's father who did not want his son to go to prison, but also did not want Applicant living with him until he had shown he was a different person.

Counsel further testified regarding meetings with Applicant, including once a week before the plea via WebEx. He informed Applicant that he had been able to leverage his father's wishes to reduce the charge from attempted murder to ABHAN. Counsel testified that he knew before the hearing that family members were not going to speak in his favor. He was surprised that they said Applicant's own daughter was traumatized by the incident, but otherwise was aware of what family members would say.

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² These meetings would have occurred during 2020, the height of the coronavirus pandemic.

Counsel then testified that he explained to Applicant that, during the virtual hearing, everyone would be in different locations and he could not change that. Counsel testified that he did not see in the plea transcript what he thought of as a standard colloquy, which is that the defendant can speak to their lawyer at any time during the virtual hearing. He maintained that Applicant answered the questions during the plea hearing properly and he knew what was happening in advance, including the rights he was waiving. He also did not believe there was a reason for him to reach out to Applicant during the hearing. During the plea, he continued to request a suspended sentence or home detention. He testified that he thought it was possible Applicant would get a time-served sentence but what the prosecutor and Applicant's family said worked against him. Counsel testified that Applicant "had no business" going to trial and he still believed the plea was in Applicant's best interest. He further stated that Applicant had a bond hearing before the Honorable J. Derham Cole, which was denied.

On cross-examination, Counsel admitted that it is often a beneficial strategy to go before a judge with a defendant who has served some time when asking for his sentence to be suspended. Regardless, he took Applicant to a bond hearing. Regarding WebEx, Counsel testified that he hates WebEx and always wishes he could be next to his client, but he had no other option.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the records submitted to it by the parties and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80, the Court makes the following findings based upon all of the probative evidence presented.

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Sixth Amendment Violation

The Sixth and Fourteenth Amendments to the United States Constitution guarantee criminal defendants the right to the effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984). In this matter, unlike most post-conviction relief cases, the question is not about ineffective assistance of counsel but the complete lack of available counsel during the entry of his guilty plea. This court finds credible Applicant's testimony that he wanted to speak with Counsel regarding his family members' statements, but was not aware that he had the right or ability. This finding is bolstered by the lack of such information in the plea transcript and testimony from Counsel regarding the same.

This court is able to grant relief on this ground pursuant to S.C. Code Ann. § 17-27-20(A)(1) – “the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State.” Further, the lack of communication was in contravention of the South Carolina Supreme Court's order regarding operation of the courts during the pandemic, which required that a defendant must be able to consult privately with his attorney. This information was also not present in the plea transcript.

The right to speak privately with one's attorney is a well-accepted tenet of the Sixth Amendment to the U.S. Constitution. In fact, Federal courts have held that “the essence of the Sixth Amendment right is, indeed, privacy of communication with counsel.” *United States v. Rosner*, 485 F.2d 1213, 1224 (2d Cir. 1973), citing *Glasser v. United States*, 315 U.S. 60, 62 S.Ct. 457 (1942) (overruled on other grounds). “As a necessary part of the right to the assistance of counsel is the petitioner's right to consult and communicate with his attorney during the course of the proceedings.” See *United States v. Venuto*, 182 F.2d 519 (3d Cir. 1950). *Williams v. State*, A.L.R.3d 1360 (1966). “If the petitioner is not allowed the right of private consultation with his

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attorney, he is deprived of the effective aid of counsel.” *Coplon v. United States*, 89 U.S.App.D.C. 103, 191 F.2d 749 (1951). Based on the deprivation of private communication with his attorney, Applicant did not receive effective assistance of counsel as required by the Sixth Amendment. For these reasons, relief is granted and Applicant’s conviction is vacated.

Involuntary Guilty Plea

Because Applicant received ineffective and inadequate assistance of counsel, he could not have entered a voluntary guilty plea. A general idea in this state has been that, in order to reverse a guilty plea, an applicant must prove “something more” because “it would be wholly impractical to maintain a rule which requires the automatic reversal of a guilty plea without something more.” *Hunter v. State*, 316 S.C. 105, 109, 447 S.E.2d 203, 205 (1994). *Hunter* and the “something more” idea have been repeatedly cited in challenges of guilty pleas when it comes to satisfying the second prong of *Hill*, being that Applicant would have proceeded to trial but for counsel’s errors. *Hill*, 474 U.S. at 595. This was expressly adopted by South Carolina in *Roscoe v. State*, 345 S.C. 16, 546 S.E.2d 417 (2001).

It is abundantly clear that, in this matter, the inability of Applicant to speak with his attorney regarding what he knew to be incorrect statements by his family members led Applicant to plead guilty. It is apparent from the testimony that Applicant was not aware that he could stop the hearing in order to speak to his counsel because this information was not provided to him by either his counsel or the court. Applicant further testified that he wanted to speak alone to his attorney regarding his family’s statements but did not know this was an option. This court is satisfied that, because of the nature of the statements, a private conference between these gentlemen may have changed the outcome of the hearing. Regardless, “an allegation of ineffective assistance of counsel sets forth a *prima facie* violation of an appellant’s constitutional rights.”

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ANNEX ONE

Clayton v. State, 278 S.C. 654, 657, 301 S.E.2d 133, 134 (1983). After a required evidentiary hearing, this court finds that a fundamental Constitutional right was violated and, therefore, Applicant's guilty plea could not have been given freely, voluntarily, knowingly, or intelligently. Therefore, relief on this allegation is granted and Applicant's sentence is vacated.

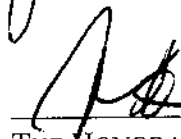
CONCLUSION

Based on the totality of information and evidence before this court, it is clear that Applicant's Sixth Amendment right to effective counsel was violated. Because of this, Applicant was induced to enter an involuntary guilty plea because he could not make it in a knowing, voluntary, intelligent, or free manner. Therefore, this court grants relief on both counts, vacates the conviction and sentence of the plea court, and remands Applicant and this charge to Spartanburg County for further proceedings.


IT IS THEREFORE ORDERED:

1. This court grants relief on the allegations of ineffective assistance of counsel and involuntary guilty plea;
2. Applicant's conviction and sentence are vacated; and
3. Applicant and his charge are remanded to Spartanburg County for further proceedings.

AND IT IS SO ORDERED this 30 day of June, 2022.



THE HONORABLE WILLIAM A. MCKINNON
Presiding Circuit Court Judge
First Judicial Circuit


_____, South Carolina

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 THOMAS LAW

July 5, 2022

The Honorable M. Hope Blackley
Spartanburg County Clerk of Court
P.O. Box 3483
Spartanburg, SC 29304

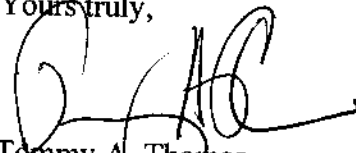
RE: Jimmy Dean Williams, Jr. #384161 v. State
Docket No.: 2021-CP-42-01878

Dear Ms. Blackley:

Enclosed please find for filing an original and a copy of a signed Order Granting Post-Conviction Relief and Certificate of Service in the above referenced matter.

Kindly return the clocked copy to me in the enclosed envelope. Thank you for your assistance in this matter and please feel free to contact me should you have any questions.

Yours truly,


Tommy A. Thomas,
Attorney at Law

TAT/jem
cc: Chelsey Marto, Esq. – Email

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