

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas
Post Conviction Relief

H. STEVEN DeBERRY, IV, Circuit Court Judge

Lower Court Case No.: 2020-CP-26-03324

Randy G. Robinson #307498,..... Petitioner

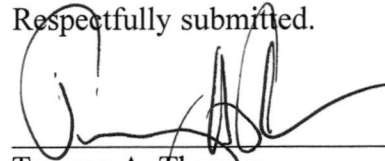
vs.

State of South Carolina,Respondent.

NOTICE OF APPEAL

The Appellant, Randy G. Robinson, appeals the Order of Dismissal signed by the Honorable H. Steven DeBerry, IV on August 3, 2022 and filed on August 10, 2022. Appellant received written notice of entry of this order on August 15, 2022.

Respectfully submitted.



Tommy A. Thomas
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August 15, 2022

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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA)
 COUNTY OF HORRY)
)
)
 Randy Robinson, #370498,)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 FOR THE FIFTEENTH JUDICIAL CIRCUIT

Case No.: 2020-CP-26-03324

ORDER OF DISMISSAL

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 HORRY COUNTY S.C.

This matter comes before this Court by way of Applicant's post-conviction relief application filed June 1, 2020. Respondent made its return on March 4, 2021, requesting an evidentiary hearing be convened. An evidentiary hearing was held on May 31, 2022, at the Horry County Courthouse. Tommy A. Thomas, Esquire, represented Applicant. Assistant Attorney General Chelsey F. Marto represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Counsels L. Morgan Martin and Rose Mary Parham, Esquires, also testified. After reviewing all records and evidence before this Court, this Court finds Applicant cannot meet his requisite burden of proof of establishing he is entitled to post-conviction relief and denies and dismisses this application with prejudice. Findings of fact and conclusions of law are set forth below.

Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Horry County Clerk of Court. During its September 2014 term, the Horry County Grand Jury indicted Applicant for obstruction of justice (2014-GS-26-03751) and murder (2014-GS-26-03752). Applicant was represented by L. Morgan Martin and Rosemary Parham, Esquires. Kevin S. Brackett, Esquire, of the Fifteenth Circuit Solicitor's Office prosecuted the case. On November 8, 2016, Applicant appeared before the Honorable

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Steven H. John, circuit court judge, and pled guilty pursuant to plea negotiations, consisting of dropping the murder charge down to voluntary manslaughter with a sentencing range between twenty-five- and forty-years' imprisonment. On November 14, 2016, Judge John sentenced Applicant to thirty years' imprisonment for voluntary manslaughter and ten years for obstruction of justice, sentences running consecutively. Applicant did not pursue a direct appeal.

Summary of Relevant Facts

On January 16, 2014, the victim, Angela Pipkin, met her friend, Dominique Sessions, to get a ride to Applicant's house. (Plea Tr. 16-17). Several hours later, Applicant called his friend Thomas Suggs, and stated he needed help disposing of a body. (Plea Tr. 18). The next day, Applicant called Suggs again, asking if he could drop by Suggs' home. (Plea Tr. 18-19). Applicant stated he had "hog parts" in his trunk and asked for help getting rid of them. (Plea Tr. 19). They went down to the river and Applicant started throwing things out of garbage bags into the river. (Plea Tr. 19). At one point, Suggs' saw what appeared to be a human leg. (Plea Tr. 19). The men rode back to Suggs' house, where Applicant burned his clothes, the garbage can, and garbage bags. (Plea Tr. 19). Shortly thereafter, Pipkin was reported missing. (Plea Tr. 20).

In May of 2014, a worker working down by the river located the remains of a human torso in the brush of the banks of the river. (Plea Tr. 20). The body was identified as Pipkin's and the autopsy showed she died a violent death and was sawed up with a power tool used to separate her limbs from her head and torso. (Plea Tr. 21).

Current Action Before this Court

In his current PCR application, Applicant alleges he is being held in custody unlawfully because of ineffective assistance of counsel in that:

1. Belated Direct Appeal
 - a. Requested counsel file a direct appeal and one was not filed.

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At the PCR hearing, Applicant proceeded forward on the above allegation. Any and all other potential allegations are deemed waived and abandoned and, accordingly, will not be addressed in this order.

Summary of the Testimony

Applicant Testimony

Applicant stated he was sentenced to thirty years' imprisonment, which he must serve day for day. Applicant stated that Counsel Martin handled the case largely by himself, but Counsel Parham was brought on due to an allegation a fellow inmate made that he was conspiring to commit another crime. He stated he pled while represented by Counsels Martin and Parham. He stated he calculated the maximum sentences on all charges but decided to plead because he thought it was the "lesser of two evils." Applicant stated he was hoping for concurrent, not consecutive sentences. He stated he wanted a lesser sentence and thought he would receive one by pleading. He stated that he effectively received a life sentence because of his health issues and age.

Concerning preparation for the plea, he stated he discussed the plea with Counsels and stated he was not given any guarantees concerning sentencing. He stated that, in retrospect, he would have proceeded to trial. He stated that he did not receive a direct appeal or file his PCR application on time. He stated he wanted a direct appeal. Applicant stated he spoke to Counsels after the plea and was under the assumption he would hear from Counsels. He stated that Counsel Parham stated that she would see him soon. He stated he was somewhat prepared for the forty-year sentence, but that he was not expecting such a stiff sentence. He stated he remembered being advised by the Judge about his right to appeal. He stated he wanted to appeal because he effectively received a life sentence. He stated he did not recall discussing the right to appeal with

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Counsel, but stated he thought it was suggested. Applicant requested the Court grant relief so he can have another shot at life.

On cross-examination, Applicant stated that he assumed Counsels would file a notice of appeal on his behalf without him specifically requesting they do so. He stated he took Counsel Parham saying that she would see him soon as confirmation that they would file an appeal. He stated he pled to a range of twenty-five to forty years' imprisonment but did not think he would have to serve a full forty. He stated he was requesting an appeal so he could serve less time.

On re-direct, Applicant stated that he did not remember how Counsels reacted to a forty-year sentence being imposed, but that he was upset because he was effectively sentenced to a forty-year sentence. Applicant stated that he thought Counsels confirmed they would file an appeal when they said they would see him soon.

Counsel Martin Testimony

Counsel Martin testified he represented Applicant from the inception of the case. He stated that trial was always on the table, but a plea was the best option available. He stated he pled to voluntary manslaughter instead of murder. He stated that they spent a lot of time discussing the case, the differences in sentencing ranges regarding murder and voluntary manslaughter. He stated he told Applicant if he pled, he could potentially only serve twenty-five to forty years, but if he was convicted of murder then he would never max out. He stated Applicant pled knowing he could be sentenced to up to forty years' imprisonment. He stated he did not recall discussing Applicant's right to plead with him. He stated they hoped for a better sentence but did not get it. He stated that if Applicant requested a plea, he would have filed a notice of appeal. He stated it is his general practice to file an appeal upon request, but that he was not sure what could be appealed from a plea where the sentence imposed is within the range

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agreed upon through negotiations.

On cross-examination, Counsel Martin testified that it is his general practice to talk to his client after sentencing. He stated he was not surprised by the forty years imposed. He stated that he hoped his eloquence in mitigation could have secured a better sentence, but that the facts of the case were too bad. He stated that he did not remember whether an appeal was discussed, but that if one was requested, he would have filed the notice of appeal.

Counsel Parham Testimony

Counsel Parham testified that she was second chair in this case and was present during plea negotiations. She stated that Applicant pled to a range of twenty-five to forty years and understood he could face up to forty years imprisonment. She stated they discussed the sentence after it was imposed. She stated she did not recall Counsel asking for an appeal, nor did she recall telling Applicant she would see him soon. She stated she did not think she gave Applicant any indication that she was going to file an appeal. She stated she was disappointed in the sentence imposed. She stated she did not think an appeal would be fruitful in this case.

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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. Before this Court are the Horry County Clerk of Court Records, Applicant's South Carolina Department of Corrections Records, the plea and sentencing transcripts, and this PCR action's records. 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 conclusion of law as required by South Carolina Code Annotated Section 17-27-80 (2003).

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All Allegations Beyond *White* Relief are Barred by the Statute of Limitations

This Court finds that all claims brought beyond the claim for a belated appeal pursuant to *White* are barred for untimeliness under the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160. Specifically, the Act requires as follows:

An application for relief . . . must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision on appeal, whichever is later.

S.C. Code Ann. § 17-27-45(A).

The South Carolina Supreme Court has held the statute of limitations applies to applications filed after July 1, 1996. *Peloquin v. State*, 321 S.C. 468, 469 S.E.2d 606 (1996). A motion for summary judgment may be used to raise the statute of limitations defense. *McDonnell v. Consolidated School District of Aiken*, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) authorizes this Court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.”

Applicant pled to the charges on November 8, 2016 and did not pursue a direct appeal. Thus, the application was due by November 9, 2017. The application was filed on June 1, 2020; after the filing period expired. Thus, all cognizable PCR claims beyond the *White* relief issue are procedurally barred for untimeliness.

White Relief Issue

Applicant alleges he was denied his right to a direct appeal based on ineffective assistance of plea counsel. The one-year limitations period to file a PCR petition does not apply where the defendant alleges, he was denied a direct appeal due to ineffective assistance of counsel. *Wilson v. State*, 348 S.C. 215, 218, 559 S.E.2d 581, 582-83 (2002).

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Applicant claims he was denied effective assistance of counsel because he effectively assumed Counsel would file a notice of appeal even without Applicant explicitly requesting he do so. However, in *White v. State*, our Supreme Court held that even if the post-conviction relief court found the applicant never voluntarily and intelligently abandoned his appeal, the court has no jurisdiction over granting a belated appeal. *Id.* at 119, 108 S.E.2d at 39-40. However, where an applicant establishes in a PCR hearing that he was unconstitutionally deprived of his statutory right to a direct appeal, upon an appeal of the PCR decision, our Supreme Court will review the trial record and pass upon all issues properly raised and argued as if the direct appeal was perfected. *Id.*

Here, Applicant was not unconstitutionally deprived of his right to a direct appeal. At the plea hearing, Applicant was informed he had ten days to appeal. (Plea Tr. 24). Both Counsels credibly testified that they did not recall Applicant requesting an appeal and that they would have filed a notice of appeal if requested to do so. Counsels credibly testified that because Applicant entered an otherwise valid plea and was sentenced within the negotiated range, they did not think Applicant would be successful on appeal. Accordingly, this Court finds Applicant was aware of his right to appeal and seemingly waived that right by letting the deadline lapse. Thus, relief is denied in this case.

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 PCR application must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty days of receipt by counsel of the judgment entry's written notice to secure appropriate

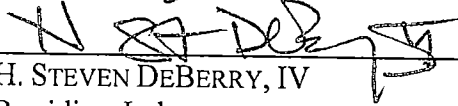
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appellate review. *See* Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has the right to appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate appellate procedures.

IT IS THEREFORE ORDERED:

1. The PCR application be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 8th day of August, 2022.


H. STEVEN DEBERRY, IV
Presiding Judge
Fifteenth Judicial Circuit

Florence, South Carolina.

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