

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM YORK COUNTY
Court of Common Pleas

John C. Hayes, III, Circuit Court Judge

No. 2012-CP-46-3615

Nicholas Antwan Stevenson,

Appellant,

VS.

State,

Respondent.

NOTICE OF APPEAL

Nicholas A. Stevenson appeals the 'Order' of the Honorable John C. Hayes, III, dated 5-21-13. Appellant received written notice of entry of the order on or about 5 June 2013.

June, 10 2013

S/

Nicholas A. Stevenson.
Nicholas A. Stevenson, 264792
Rt. 5, MU-112, POB 2039
Ridgeland, S.C. 29936

Other Counsel of Record:

James Rutledge Johnson
Ass. Attorney General
POB 71549
Columbia, S.C. 29211

STATE OF SOUTH CAROLINA
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John C. Hayes, III, Circuit Court Judge

No. 2012-CP-46-3615

Nicholas A. Stevenson,

YS

Appellant,

State,

Respondent

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the State by depositing a copy of it in the United States Mail, postage prepaid, on June 10, 2013, addressed to the State's attorney of record James R. Johnson, POB 11549, Columbia, S.C. 29211 and the clerk's office of York County

Hon. David Hamilton

P.O. Box 649

1675-16 York Highway

York, S.C. 29745

51 Nicholas A. Stevenson
Nicholas A. Stevenson, 264792

10 June 2013

Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re: Steyenson v. State, CA No. 2012-CP-46-3615

Dear Mr. Shearouse:

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

- (1) Proof of service of notice of appeal on respondent and clerk of court;
 - (2) A copy of the order which is to be challenged on appeal;
- He refers your office to SCA CR 203(d)(1)(B)(iii) as it refers to filing fee or cost.

RECEIVED

JUN 13 2013

S.C. SUPREME COURT

Respectfully submitted,
S/ Nicholas A. Stevenson
Nicholas A. Stevenson, 362792
P.O. Box 5112, P.O.B. 2039
Ridgeland, S.C. 29936

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Nicholas Antwan Stevenson, #264792,

C.A. No.: 2012-CP-46-3615

Applicant,

RECEIVED

v.

JUN 13 2013 ORDER

State of South Carolina,

Respondent.

S.C. SUPREME COURT

DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

FILED-RECEIVED
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Applicant filed his application for Post-Conviction Relief on October 11, 2012. The Court heard the motion May 16, 2013. Applicant appeared pro se. The State was represented by J. Rutledge Johnson, Esquire.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court's orders of commitment. The Applicant was indicted by the October 2011 term of York County Grand Jury for Threatening the life, person, or family of a Public official (2011-GS-46-3506). He was charged with Possession of Crack Cocaine (2011-GS-46-3538). The Applicant was represented by Phil Smith, Esquire. On October 17, 2011, the Applicant pled guilty to Threatening the Life of a Public Official as indicted, and he waived presentment to the grand jury and pled guilty to Possession of Crack Cocaine, 1st Offense. The Honorable William H. Seals, Jr. sentenced the Applicant to confinement for four (4) years for Threatening the Life of a Public Official, and one (1) year, consecutive, for Possession of Crack Cocaine. The Applicant did not appeal his conviction or sentence.

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

1. "Involuntary Plea for lack of better advice from my attorney"
 - a. "I informed my attorney that I didn't want to plead guilty."
2. "Ineffective Assistance of Counsel"
 - a. "Also, he failed to represent the office of Justice by failing to pursue a possible trial"

Where ineffective assistance of counsel is alleged as a ground for relief, the Petitioner 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 (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. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668, 104 S. Ct. 2052. The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used 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 v. State, 300 S.C. at 117, 386 S.E.2d at 625, *citing* Strickland v. Washington. 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, 386 S.E.2d at 625. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

The Applicant further alleges his guilty plea was not voluntarily made. 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).

Applicant testified that he did not want to plead and based his proceeding to plea on his trusting Phil Smith's assurance that he would receive only a ninety day sentence. Applicant repeatedly testified that trial counsel told Applicant to "trust me." However, trial counsel denied telling Applicant to trust him, but that he did think the trial judge would not have imposed the length of sentence he did.

Trial counsel testified he was aware of the fact that Applicant had been arrested on a warrant charging him with a violation that carried a maximum sentence of thirty days. (Warrant J-133406, charging a violation of Section 16-3-1040 (B), South Carolina Code of Laws, (1976).

Applicant has not raised as an issue in his application any issue regarding the indictment for Threatening the Life of a Public Official.

A review of the Trial Transcript reveals that Applicant was indicted for Threatening the Life of a Public Official (TR p. 2, LL 507), and that Applicant knew as indicted he was facing up to a five year sentence. (TR p. 3, LL 1-5). Additionally, in spite of his present concerns about trial counsel, he advised the plea judge that he was satisfied with trial counsel, "absolutely." (TR p. 3, LL 15-17). The difference in the charge set forth in the warrant for Applicant's arrest and that set forth in the Indictment to which he was pleading, was called to the attention of the plea judge in Applicant's presence. (TR p. 11, LL 13-23). The record reflects Applicant did not express concerns about the charge at that time nor at any time during his plea.

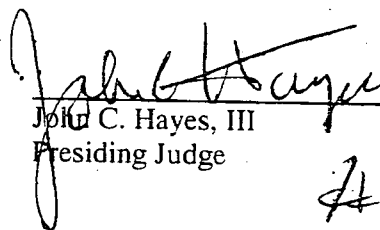
While the Court can fully understand Applicant's frustration and concerns about how his case concluded, he has not established to the Court's satisfaction that trial counsel was in any way ineffective, under the standards set by Strickland; supra; Butler, supra; or Cherry, supra.

Finding that Applicant has failed to carry his burden of proof as to his claim of ineffective assistance of counsel, the second prong, the prejudice prong, of Cherry, supra is not implicated.

Wherefore, Applicant's application for Post-Conviction Relief is denied and dismissed with prejudice.

This Court hereby advises Applicant that he must file and serve a Petition for Writ of Certiorari within thirty (30) days of the service of this Order to secure appellate review. See Rule 203 and 243, South Carolina Appellate Court Rules (SCACR). The Applicant's attention is directed to Rule 243, SCACR, for the procedures following the filing and service of the Petition.

IT IS SO ORDERED.

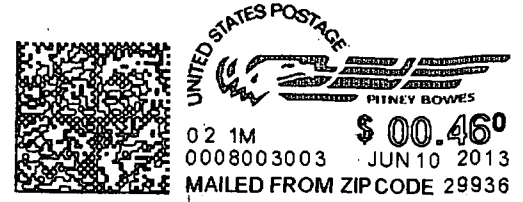


John C. Hayes, III
Presiding Judge

May 21st, 2013
York, South Carolina

AT

NICHOLAS A. STEVENSON, 264792
RUF, 5MU-112
P. O. BOX 2039
BRIDGELAND, S.C. 29936



HONORABLE DANIEL E. SHEAROUSE
CLERK, SOUTH CAROLINA SUPREME COURT
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COLUMBIA, SOUTH CAROLINA

SCDC Legal MAIL

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THE DEPARTMENT OF CORRECTIONS HAS NOT OPENED
THIS ITEM. THEREFORE, THE DEPARTMENT DOES NOT
ASSUME RESPONSIBILITY FOR ITS CONTENTS.
LEVERN COHEN, WARDEN
BRIDGELAND CORRECTIONAL INSTITUTION
S.C. DEPARTMENT OF CORRECTIONS