



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

April 3, 2012

RECEIVED

APR - 3 2012

The Honorable Daniel E. Shearouse
Clerk, S.C. Supreme Court
Post Office Box 11330
Columbia, SC 29211

S.C. Supreme Court

Dear Mr. Shearouse:

The following case falls under the 60 day rule for appeals, and the date we received the transcript is listed to the side.

Joseph Heyward v. State of South Carolina

3/30/2012

I would appreciate you beginning our time limits from the above date, and if you need additional information, or have any questions please contact me.

Thank you for your assistance in this matter.

Sincerely,

Loriene French
Legal Services Coordinator



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Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

March 22, 2012

Ms. Deborah Garrison
Circuit Court Reporter
P O Box 901
Johns Island, SC 29457-0901

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MAR 22 2012

S.C. Supreme Court

Dear Ms. Garrison:

Please provide us with the following transcript:

Joseph Heyward v. State of South Carolina Case #: 11-CP-10-04503

County: Charleston Date of Trial: January 10, 2012

Presiding Judge: R. Markley Dennis, Jr.

To ensure prompt payment, please sign and complete the enclosed CID FORM 3500 and include the original criminal case number (Indictment number) where the space is provided.

Please number the lines on the paper from 1-25, and include any and all recorded motions, pre and post-trial. Additionally, please transcribe the jury selection, and the State and defense counsel's opening and closing arguments.

If you are aware of any co-defendants or if the Attorney General's Office has already requested a transcript, please let us know.

Sincerely,

Lorlene French
Legal Services Coordinator

cc: S.C. Supreme Court
Attorney General's Office

PCR

BABB

LAW FIRM
Personal Injury and Family Law

March 7, 2010

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

RECEIVED
MAR 9 2012
S.C. Supreme Court

Re: Joseph Heyward v. State of South Carolina 2011-CP-10-4503
Appeal from Charleston County Common Pleas
Post Conviction Relief Appeal

Dear Mr. Shearouse:

Enclosed for filing in the above appeal are the following:

1. An original and two copies of the Notice of Appeal;
2. An original and two copies of the Certificate of Service on opposing counsel.

Please return the filed copies to me in the self-addressed, stamped envelope I have provided for your convenience. I have also included a copy of the Order of Dismissal for your records. I thank you in advance for your assistance.

Sincerely,



Kelly K. Morrow

encls.

cc: The Honorable Julie Armstrong (w/ encls.)
Joseph Heyward (w/ encls.)
Matthew Friedman, Esquire (w/ encls.)
South Carolina Center for Indigent Defense (w/encls.)

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Charleston County
R. Markley Dennis, Jr., Circuit Court Judge

THE STATE,
RESPONDENT.

v.

JOSEPH HEYWARD,
APPELLANT.

RECEIVED

MAR 9 2012

S.C. Supreme Court

NOTICE OF APPEAL

An Order of Dismissal was filed on February 22, 2012 from the Post Conviction Relief application filed by Mr. Heyward on June 27, 2011. The Order of Dismissal was received in Kelly K. Morrow's office at Babb Law Firm on or about February 27, 2012.

The Honorable R. Markley Dennis, Jr. heard the matter on January 10, 2012.

Mr. Matthew J. Friedman represented the Attorney General's Office.

Mr. Heyward wishes to appeal the Order of Dismissal in the above referenced matter.

Respectfully submitted this ^{7th KM} ~~6~~th day of March, 2012.

K. Morrow

Kelly K. Morrow, Esq.
Babb Law Firm
148 ½ East Bay Street
Charleston, SC 29401
843-406-7737

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Charleston County
R. Markley Dennis, Jr., Circuit Court Judge

THE STATE,
RESPONDENT.

v.

JOSEPH HEYWARD,
APPELLANT.

RECEIVED

MAR 9 2012

S.C. Supreme Court

CERTIFICATE OF SERVICE

I, Kelly K. Morrow, Esq., hereby certify that on March 6, 2012, I did serve the foregoing **NOTICE OF APPEAL** upon the Matthew Friedman, Esquire, Attorney of Record for the Attorney General's Office in the above referenced caption, by personally depositing a true copy thereof into the United States Mail at Charleston, South Carolina, with sufficient first-class postage affixed thereto and addressed as follows:

Matthew Friedman, Esquire
SC Attorney General's Office
PO Box 11549
Columbia, SC 29211

K. Morrow

Kelly K. Morrow, Esq.
Babb Law Firm
148 ½ East Bay Street
Charleston, SC 29401
843-406-7737

SUBSCRIBED AND SWORN TO before me
This 6th day of March, 2012.

Notary Public for South Carolina
My Commission Expires: 9-26-13

T
G
DL
SS

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
Joseph Heyward, #238182,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
2011-CP-10-4503

ORDER OF DISMISSAL

FILED
2012 FEB 22 AM 9:03
JULIE M. STRONG
CLERK OF COURT

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed June 27, 2011 and amended on June 27, 2011. The Respondent made its Return on October 7, 2011. An evidentiary hearing into the matter was convened on January 10, 2012 at the Charleston County Courthouse. The Applicant was present at the hearing and was represented by Kelly Morrow, Esquire. Matthew J. Friedman, Esquire, of the South Carolina Attorney General's Office represented the Respondent.

Applicant and plea counsel, Cantrell Frayer, Esquire, testified at the PCR hearing. This Court had before it the records of the Charleston County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the guilty plea transcript, the PCR application and amended application, and Respondent's Return thereto.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted at the April 2008 and July 2008 terms of the Charleston County Grand Jury for criminal solicitation of a minor (2008-GS-10-4179) and trafficking cocaine (100-200 grams) (2008-GS-10-6883). Cantrell Frayer, Esquire, represented the Applicant. On August 24, 2010, the

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Applicant pled guilty to the lesser-included offense of trafficking cocaine (28-100 grams) and as indicted to criminal solicitation of a minor. The Honorable J.C. Nicholson, Jr. sentenced him to confinement for eighteen (18) years for trafficking cocaine and ten (10) years suspended to five (5) years of probation for criminal solicitation of a minor. The Applicant did not appeal the conviction or sentence.

ALLEGATIONS

The Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel in that counsel
 - a. Was not thoroughly prepared by not producing any case law to support and defend Applicant's rights.
 - b. Did not investigate and properly inform Applicant of her results, where Applicant can upon trial counsel advice make an intelligent plea.
2. Involuntary guilty plea.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court had the opportunity to review the record in its entirety and hear 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 his or her 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).

The Applicant testified that counsel failed to investigate the motion to suppress she filed and the warrant for the solicitation charge. He asserted that if counsel had properly informed him and investigated properly, then he would have taken the original plea offer for fifteen (15) years. He admitted that he did not want to go to trial. Applicant testified that it was his decision and counsel's decision for him to reject the first two plea offers.

Plea counsel testified that she met with Applicant more than twenty times prior to the

plea hearing. She testified that the pre-trial motions, including the motion to suppress, were argued and denied and the opening statements would have been the next day, but Applicant informed counsel that he wanted to plead guilty. She testified that she contacted the solicitor, Megan Wines, and asked for another offer. Ms. Wines offered twenty (20) years, but counsel was able to talk her down to eighteen (18) years. Counsel testified that she communicated the original offer for fifteen (15) years to Applicant, and it was Applicant's decision to reject the offer. She asserted that the offer was kept open for nearly two years. Counsel testified that it was Applicant's decision to accept the offer for a recommendation of eighteen (18) years. She testified that she lacked client control in this case. Counsel testified that she explained to Applicant that the police properly obtained a second warrant. She researched the relevant law on warrants and argued a motion that she knew she could not win.

Ineffective Assistance of Counsel

The Applicant alleges that he received ineffective assistance of counsel. 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 (1984); Butler, 334 S.E.2d 813.

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. The applicant must overcome this

presumption in order to receive relief. Cherry, 386 S.E.2d 624.

Courts use a two-pronged test to evaluate 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." Id. at 625 (citing Strickland, 466 U.S. 668). 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." Id. 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). 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) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)). When a defendant pleads guilty on the advice of counsel, the plea may only be attacked through a claim of ineffective assistance of counsel. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2002) (citations omitted).

This Court finds that Applicant's testimony is not credible while also finding that

counsel's testimony is credible. This Court finds that counsel is a trial practitioner who has experience in the trial of serious offenses. Counsel conferred with the Applicant on numerous occasions. During conferences with the Applicant, counsel discussed the pending charges, the elements of the charges and what the State was required to prove, Applicant's constitutional rights, Applicant's version of the facts, and possible defenses or lack thereof.

This Court finds that the record reflects that Applicant's plea was entered freely, voluntarily, knowingly, and intelligently. Applicant acknowledged that he understood the nature of the charges and the possible punishments. He indicated that no one had threatened him or promised him anything to get him to plead guilty. He admitted that he was guilty of these offenses. Applicant told the court that he was satisfied with counsel's representation. This Court finds that it was Applicant's decision to plead guilty with a full understanding of the consequences of the plea.

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 that Applicant's attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, 466 U.S. at 668; Butler, 286 S.C. 441, 334 S.E.2d 813. This Court further finds counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in her representation. She obtained a favorable sentence for Applicant under the circumstances. This Court finds that counsel's representation did not fall below an objective standard of reasonableness.

This Court finds that counsel properly communicated each plea offer to Applicant. This Court finds counsel's testimony credible that Applicant decided to plead guilty after his pre-trial

motions were denied. This Court finds that counsel properly made a motion to suppress and explained to Applicant that the police had obtained a second search warrant. Applicant has failed to show that counsel was deficient or that any alleged deficiency would have changed the outcome of the proceedings.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test, specifically that counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that counsel committed either errors or omissions in her representation of the Applicant. The Applicant failed to show that counsel's performance was deficient. This Court also finds the Applicant has failed to prove the second prong of Strickland, specifically that he was prejudiced by plea counsel's performance. Applicant's complaints concerning counsel's performance are without merit and are denied and dismissed.

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, nor was the Applicant prejudiced by counsel's representation. Therefore, this application for PCR must be denied and

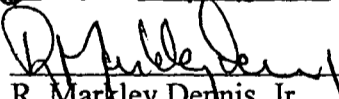
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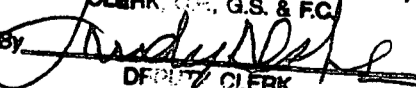
IT IS THEREFORE ORDERED:

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 16 day of Feb., 2012.


R. Markley Dennis, Jr.
Presiding Judge
9th Judicial Circuit

Charleston, South Carolina.

APPROVED: JULIE J. ARMSTRONG (SEAL)
CLERK, DE. G.S. & FC.
By: 
DEPUTY CLERK

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LAW FIRM
148 1/2 East Bay Street, Charleston, SC 29401



The Honorable Daniel E. Shearouse
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