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June 25, 2013

RECEIVED
JUN 26 2013
SC Court of Appeals

Tanya Gee, Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

RE: Gregory Mark Crolley #271217 v. The State of South Carolina
2011CP32-0295

Dear Ms. Gee:

I enclose the original and one copy of the Notice of Intent to Appeal along with proof of service in the above referenced matter with the request that you file the original and return a clocked copy to me in the stamped envelope provided.

Sincerely,


John E. Duncan

JED/ rct

Cc: Appellate Defense
Gregory Mark Crolley

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JUL 01 2013

S.C. Supreme Court

FORM 1
NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
[In The Supreme Court]

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Case No. 2011CP-32-0295

Gregory Mark Crolley #
271217

Respondent,

v.

State of South Carolina,

Appellant.

NOTICE OF APPEAL

Gregory Mark Crolley appeals the order of the R. Lawton McIntosh, dated April 4, 2013,
and received on June 25, 2013.

s/ John E. Duncan
John E. Duncan
137 East Butler Street Suite 3
Lexington, South Carolina 29072
Attorney for Appellant

Other Counsel of Record:
Assistant Attorney General J. Walter Whitmire

June 25, 2013

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SC Court of Appeals

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JUL 01 2013

S.C. Supreme Court

**FORM 7
PROOF OF SERVICE OF NOTICE OF APPEAL**

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
[In The Supreme Court]

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

R. Lawton McIntosh., Circuit Court Judge

Case No. 2011-CP-32-0295

Gregory Mark Crolley
#271217,

Applicant

v.

State of South Carolina,

Respondent.

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SC Court of Appeals

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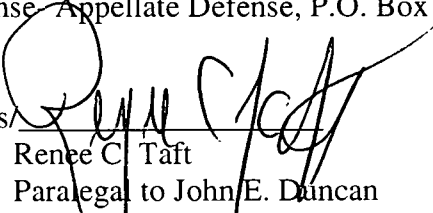
S.C. Supreme Court

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Office of Indigent Defense- Appellate Defense by depositing a copy of it in the United States Mail, postage prepaid, on June 25, 2013, addressed to South Carolina Office of Indigent Defense- Appellate Defense, P.O. Box 11433, Columbia South Carolina 29211.

June 25, 2013

s/


Renee C. Taft
Paralegal to John E. Duncan
137 East Butler Street Suite 3
Lexington South Carolina 29072

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

COUNTY OF LEXINGTON)

Case No: 2011-CP-32-0295

Gregory Mark Crolley,
S.C.D.C. No. 271217,

Applicant,

v.

State of South Carolina,

Respondent.

ORDER OF DISMISSAL

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JUN 26 2013
SC Court of Appeals

This matter comes before the Court pursuant to an Application for Post-Conviction Relief (PCR) filed January 25, 2011. Respondent made its Return on September 7, 2011. An evidentiary hearing into the matter was convened on January 31, 2013 at the Lexington County Courthouse. Applicant was present at the hearing and was represented by John E. Duncan, Esquire. Respondent was represented by Walt Whitmire, Esquire, of the South Carolina Attorney General's Office.

At the hearing, Applicant testified on his own behalf. Donna Schwartz-Watts, M.D., testified on behalf of the Applicant. Plea counsel, Richard Bolen, Esquire, testified. This Court also had before it the records of the Lexington County Clerk of Court, the transcript of the proceedings against the Applicant, and the Applicant's records from the South Carolina Department of Corrections. Additionally, this Court had before it Exhibits entered into evidence.

I. PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. The Applicant was indicted at the August 2009, term of the Lexington County Grand Jury for assault with intent to

kill (2009-GS-32-2216). Applicant was represented by David Mauldin, Esquire and Richard Bolen, Esquire. On May 25, 2010, Applicant pled guilty as charged. Applicant was sentenced by the Honorable Clifton Newman to confinement for a period of ten years. Applicant did not appeal his conviction or sentence.

At the PCR hearing, Applicant proceeded on one claim of ineffective assistance of counsel for plea counsel's failure to investigate and have Applicant undergo a criminal responsibility evaluation.

II. SUMMARY OF TESTIMONY

At the PCR hearing, Applicant testified that he committed the assault with intent to kill offenses because he was suicidal. Applicant stated that he had a history of mental illness. Applicant stated that he provided plea counsel with medical documentation of his previous conditions and treatments. Applicant stated that he had been placed on Social Security Disability since 1999 as a result of his mental illness. Applicant stated that plea counsel never discussed a possible guilty but mentally ill ("GBMI") defense. Applicant stated that if knew of the possibility of "GBMI," he would have pursued a jury trial instead of entering the guilty plea.

Upon cross-examination, Applicant first stated that he had previously been convicted for committing a similar offense for attempting assault a motorcyclist while operating a motor vehicle. Second, Applicant stated that he was heavily intoxicated while committing the offenses. Third, Applicant stated that he had an extensive criminal history of committing crimes while intoxicated. Last, Applicant stated that he pled guilty in order to receive the best possible prison sentence.

At the PCR hearing, Dr. Schwartz-Watts testified. Dr. Schwartz-Watts conducted a psychiatric evaluation of Applicant on December 31, 2012, in preparation for his PCR hearing.

Dr. Schwartz-Watts examined Applicant prior to this PCR hearing. Dr. Schwartz-Watts testified Applicant had a history of chronic mental illness. Applicant had various diagnoses including Schiz-Affective Disorder. Dr. Schwartz-Watts observed Applicant momentarily would become psychotic and paranoid, but that Applicant could control symptoms if he stayed on his medication regimen. Dr. Schwartz-Watts testified Applicant has currently been housed with other mentally inmates in S.C.D.C. Dr. Schwartz-Watts testified that Applicant does not suffer from a substance-induced psychosis but instead suffers from continuing mental illness manifested in divergent symptoms. Dr. Schwartz-Watts testified to Applicant's family history of mental illness. Dr. Schwartz-Watts testified that upon review of the State's evidence, Applicant attempted a "suicide by cop" while intoxicated. As a result of her evaluation, Dr. Schwartz-Watts found Applicant's actions during the offenses were driven by mental illness.

Upon cross-examination, Dr. Schwartz-Watts testified Applicant knew right from wrong but could not conform his conduct to comply with the law. Dr. Schwartz-Watts testified the combination of alcohol abuse and mental illness rendered Applicant "GBMI." Dr. Schwartz-Watts testified she would have reached the same conclusions in 2010 prior to Applicant's guilty plea. However, Dr. Schwartz-Watts testified the conclusions reached in her report are applicable from December 2012 forward.

At the PCR hearing, plea counsel testified. Plea counsel stated he inherited Applicant's case. Upon reviewing Applicant's case, plea counsel learned of Applicant's mental health history, prior diagnosis, treatments, and institutionalizations. After reviewing the discovery with Applicant, plea counsel reasoned that Applicant would inevitably lose at trial due to the strength of the State's evidence. The offense was captured by dash cam. Plea counsel testified he

reasoned Applicant understood their consultations. Plea counsel testified that he advised Applicant that voluntary intoxication was not a defense in this jurisdiction.

As a result of investigating Applicant's mental health files, plea counsel filed a motion for Applicant to undergo a psychiatric evaluation for competency at the Department of Mental Health (DMH). Plea counsel testified that it was the solicitor's position that Applicant could undergo either a competency evaluation or a criminal responsibility evaluation, but not both. Plea counsel stated, both he and the solicitor shared similar concerns regarding Applicant's possible incompetency to stand trial. Furthermore, plea counsel considered a "GBMI" defense, but stated the posture had little benefit to Applicant's case. Plea counsel testified that he could not recall but believes that he advised Applicant on pursuing a "GBMI" guilty plea.

Subsequent to Applicant being found competent to stand trial, plea counsel testified his trial strategy was to obtain a favorable plea offer for Applicant. Applicant was potentially facing a twenty plus year prison sentence. Plea counsel testified Applicant was susceptible to a potential consecutive sentence due to the aggravating factors of the offenses. Plea counsel testified Applicant had previously committed other violent crimes.

Plea counsel stated that the solicitor offered to plead Applicant to one of the assault with intent to kill charges in exchange for nolle prosequing the other two charges. The offer entailed a maximum ten year prison sentence. Plea counsel testified that he believed this was the best guilty plea offer that he would have been able to obtain for Applicant. Plea counsel conveyed the offer to Applicant and thoroughly discussed its consequences with him.

Plea counsel testified that he had no reason to doubt Dr. Gassen's findings. Thus, plea counsel testified he did not consult a second expert. Plea counsel stated that Dr. Gassen found that Applicant had a history of substance abuse, a history of substance abuse related crime, and

that he met the diagnostic criteria for having substance-related disorders. Furthermore, plea counsel stated that Applicant had previously undergone a competency and criminal responsibility evaluation in 2002 while awaiting adjudication on Arson charges. Plea counsel testified that after conducting a cost/benefit analysis on the matter, he reasoned that a second psychiatric evaluation for criminal responsibility was not warranted. Instead it was plea counsel's strategy to present Applicant's mental health history in mitigation during the guilty plea hearing.

Last, plea counsel testified that it was Applicant's decision to accept the solicitor's guilty plea offer. Due to Applicant's mental health history, plea counsel undertook additional discussions with Applicant on the consequences of pleading guilty prior to the guilty plea hearing. During the guilty plea hearing, plea counsel concisely presented mitigation. Plea counsel testified he pursued this strategy subsequent to noticing the sentencing judge's impatience and anger towards Applicant. Plea counsel stated that Dr. Gassen's evaluation and the video recording of the offenses were submitted to the sentencing judge at the guilty plea hearing

Last, plea counsel testified that in hindsight, he believed that a beneficial finding on criminal responsibility would have had little impact on the sentencing judge's pronouncement. Plea counsel testified the sentencing judge commented that he desired imposing a harsher sentence on Applicant after he imposed the maximum term of incarceration

III. APPLICABLE LAW

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel 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, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (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 v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. 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 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985).

IV. 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 reviewed the Clerk of Court records regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the transcripts and documents from the prior proceedings,

the exhibits introduced into evidence at the hearing, and legal arguments of counsel. Pursuant to S.C. Code Ann. §17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

Applicant alleges that counsel was ineffective for failing to investigate a “GBMI” defense and request an additional psychiatric evaluation for criminal responsibility. This Court finds Applicant has failed to meet his burden of proof. Furthermore, this Court finds plea counsel’s testimony to be credible.

To establish counsel was inadequately prepared, an Applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel been more fully prepared. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998). Rompilla v. Beard emphasizes that the duty to investigate does not force defense lawyers to scour the globe on the off chance something will turn up; reasonably diligent counsel may draw a line when they have good reason to think further investigation would be a waste. Rompilla v. Beard, 125 S.Ct. 2456 (2005). The South Carolina Supreme Court in McKnight v. State stated, “this Court has recognized that strategic choices made by counsel after an incomplete investigation are reasonable only to the extent that reasonable professional judgment supports the limitations on the investigation. McKnight v. State, 378 S.C. 33, 45, 661 S.E.2d 354, 360 (2008) (quoting Von Dohlen v. State, 360 S.C. 598, 607, 602 S.E.2d 738, 743 (2004). There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in a case. Caprood v. State, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000). Where trial counsel articulates a valid reason for employing certain trial strategy, counsel will not be deemed ineffective. Roseboro v. State, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995).

First, this Court finds that Applicant failed to prove plea counsel was ineffective for failing to pursue a second psychiatric interview. This Court finds plea counsel effectively

investigated Applicant's mental history and reasonably investigated the viable known defenses. Dr. Gassen's evaluation stated that Applicant's mental health detriments were related to substance abuse. Despite the findings of the accomplished and venerable Dr. Schwartz-Watts two years subsequent to Applicant's conviction, it was reasonable for plea counsel, during the course of representation, to believe a second psychiatric evaluation for criminal responsibility would not have yielded any benefit to Applicant's case. Criminal defense attorneys are not under the duty to be experts in psychiatry. Applicant failed to request plea counsel to pursue a second psychiatric evaluation. Furthermore, Applicant had previously undergone a criminal responsibility evaluation for an Arson conviction of which he failed to prove that yielded a benefit that should have placed plea counsel on notice of the necessity to have Applicant evaluated for criminal responsibility. Therefore, considering the costs and potential diminished returns, plea counsel's decision not to pursue an additional evaluation was reasonable.

Moreover, this Court finds that plea counsel's strategy to present Applicant's mental health history during mitigation phase of the guilty plea hearing reasonable and effective. At the guilty plea hearing, plea counsel conveyed to the sentencing court Applicant's brain damage, history of mental illness and accompanying disability status, medication regimen, suicide attempt, current proclivity for non-violence, and ability to reintegrate into society. (Tr. p. 14, line 8; p. 14, lines 14-19; p. 14, lines 20-25; p. 15, lines 3-15; p. 17, lines 6-9, p. 16, lines 14-23).

Second, this Court finds that Applicant failed to prove that the alleged ineffective assistance allegation amounted to prejudice. Any benefit realized from criminal responsibility evaluation would have only gone to mitigation in sentencing. "GBMI" does not absolve a criminal defendant from guilt. Horsby, (326 S.C. 121). SCT 17-24-70 "GBMI" verdict only appertains to the conditions of confinement and other collateral matters post-convictions.

Furthermore, the record clearly shows that any benefits realized from a criminal responsibility examination prior to adjudication would have been negligible in the disposition in Applicant's case. Therefore, this Court is denying this allegation for post-conviction relief.

All Other Claims

Except as discussed above, this Court finds that the Applicant affirmatively waived the remaining allegations set forth in his application at the hearing. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

V. CONCLUSION

Based on all the forgoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

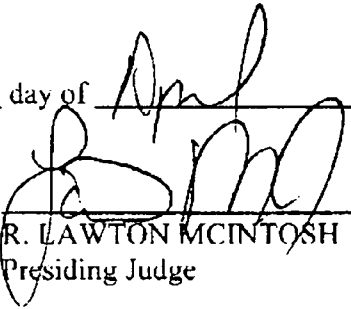
This Court notes that Applicant must file and serve a notice of intent to appeal within thirty (30) days from receipt of this Order to secure the appropriate appellate review. See Rule 203, SCACR. Rule 71.1(g), SCRCP; Bray v. State, 336 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant's counsel to file and serve notice of appeal. The Applicant's attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice

has been timely filed.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of Respondent

AND IT IS SO ORDERED this 4 day of April, 2013.



R. LAWTON MCINTOSH
Presiding Judge

Anderson, South Carolina

FILED
CLERK OF COURT
LEXINGTON, SC

APR 11 2 55

FILED

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2011CP3200295

Gregory Mark Crolley
#271217

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: Plaintiff Defendant
or
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other:

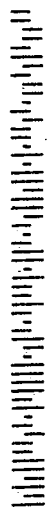
NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order: (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk:



Attorney at Law - Abogado
 137 East Butler Street, Suite 3
 Lexington, South Carolina 29072

SC Court of Appeals
 1015 Sumner Street
 Columbia SC 29201

