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FILED

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS
FOR THE TWELFTH JUDICIAL CIRCUIT

2023 JUL 11 AM 11:24

Larenzoe Tyshawn Epps, #374808)
COUNCIL O'HARA)
CCCP & CS)
FLORENCE COUNTY, SC)
Applicant,)

21-3077
2018-CP-29-1087

ORDER OF DISMISSAL

v.)

State of South Carolina,)
Respondent.)

This matter is before the Court by way of an application for post-conviction relief (PCR) filed by Laronzoe Tyshawn Epps (Applicant) on November 28, 2018. On December 12, 2022, an evidentiary hearing convened before the Honorable George M. McFaddin, Jr. Applicant was present and represented by Joshua A. Bailey. Assistant Attorney General Danielle Dixon represented Respondent. Following a thorough review of the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant did not meet his burden of proof. Thus, this Court denies relief and dismisses this application with prejudice.

Procedural History

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. In June 2016, the Florence County Grand Jury indicted Applicant for trafficking heroin (twenty-eight grams or more), trafficking cocaine base (ten to twenty-eight grams), trafficking cocaine (ten to twenty-eight grams), possession of a stolen pistol, and possession of a stolen vehicle. (2016-GS-21-0804).

On December 4, 2017, Applicant pled guilty before the Honorable D. Craig Brown to the lesser-included offense of trafficking heroin (four to fourteen grams).¹ Applicant was represented by Scott P. Floyd, Esquire. Deputy Solicitor John C. Jepertinger represented the

¹ Applicant pled guilty after a jury was selected for his case.

CERTIFIED: A TRUE COPY
Lara Paula Ottara
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

State. Applicant entered his plea pursuant to a negotiated sentence of fourteen years' imprisonment, and the State dropped the remaining charges in exchange for the plea. Judge Brown accepted Applicant's plea and sentenced him as negotiated. Applicant did not appeal.

State's Summary of Evidence

According to the State's recitation of facts from the plea hearing, Applicant and a sixteen-year-old (Minor) were occupying room 109 at the Palmetto Inn on January 2, 2016; the room was booked under the name Herbert Wilson. While servicing the air conditioner in Room 109, the Inn's maintenance man notice a large amount of drugs in the open. The maintenance man notified law enforcement. (Tr. 28).

Deputy Austin Meggs arrived at the Inn and knocked on Room 109's door. Minor answered the door, and Deputy Meggs smelled marijuana in the room. Deputy Meggs asked to enter the room, and Applicant and Minor both consented. Upon entry, Deputy Meggs viewed in plain-sight what appeared to be either heroin or cocaine base sitting on the sink counter. Thereafter, Deputy Meggs arrested Applicant and Minor. (Tr. 28-29).

Current Application

Applicant alleges he is being held in custody unlawfully due to:

- 1) Ineffective assistance of counsel for failure to investigate;
- 2) Plea counsel's failure to investigate redered his guilty plea involuntary; and
- 3) Fourteenth Amendment and *Brady* violations.

Prior to the PCR hearing, Applicant amended his application to allege:

(a) Involuntary guilty plea: "Petitioner was not advised prior to jury selection and the entry of his guilty plea that the receipt for the hotel room was not in his name but that of someone with a lengthy criminal history involving drugs. Additionally, Petitioner was not advised that his fingerprints were not located on any of the evidence collected by law enforcement."

(b) Ineffective assistance of counsel – Failure to communicate, prepare a defense, or investigate the facts of Applicant's case:

“Following the release from the Florence County Detention Center on bond, Petitioner was residing in the state of Georgia and only met with his trial/plea counsel once before jury selection. Trial/plea counsel did not discuss any defenses with Petitioner including the law relating to actual and constructive possession and mere presence.”

At the evidentiary hearing, Applicant proceeded only on the allegations in his amended application.

Testimony presented at the PCR hearing

Applicant testified he was arrested for these charges on January 2, 2016, and he initially hired Todd Rutherford to represent him. However, Rutherford he had a conflict of interest, so Scott Floyd (trial counsel) began representing him September 2016. Applicant stated Rutherford did not review discovery with him, and Applicant had trouble getting in touch with Rutherford.

Applicant stated he was on bond and only met with Floyd once at Floyd's office. He recalled Floyd showed him pictures of a car engine but stated Floyd did not review any other discovery with him. Applicant stated he received discovery after he was incarcerated and learned police recovered two guns. He testified law enforcement recovered fingerprints from those guns, but he was excluded. He claimed he did not know anything about the prints prior to his plea.

Applicant testified he did not rent Room 109, and the room's receipt had the name "Wilson" on it. He stated he learned about the receipt after he received discovery. Applicant testified he did not know "Wilson" but could not recall whether he told Floyd he did not know Wilson. Applicant testified Floyd never discussed the defense of mere presence with him. He stated he would have proceeded to trial rather than plead guilty had he known there were records showing the hotel room was rented by someone else. When asked on cross-examination how he



ended up in the room, he stated he was dropped off there for a party. He recalled telling his attorney that the hotel room was not his room.

Trial counsel testified he met with Applicant either the day Rutherford was released or the following day. He stated he knew the case would be on the trial roster soon, so he obtained the discovery. Counsel testified he had phone contact with Applicant, and he reviewed all of the discovery with Applicant in-person on November 9. He recalled Applicant had to appear on November 27, and his trial was scheduled for the following week.

Regarding the room, trial counsel stated Applicant identified the person who rented the room by a street name. When asked whether he investigated Wilson, counsel stated Wilson was being represented by Rutherford; however, counsel was aware Rutherford had pending drug charges. Counsel stated he explained to Applicant the difference between constructive and actual possession. He further stated he would have requested a mere presence charge if the case had proceeded to trial. Counsel averred he had sufficient time to prepare for trial. He testified he did not have any concerns about Applicant's ability to understand.

Trial counsel testified he did not have any concerns about the makeup of the jury. He testified it was not an all-white jury; rather, it contained four African-American jurors. He stated it was ultimately Applicant's decision to plead guilty.

Findings of Fact and Conclusions of Law

Before this Court are the Florence County Clerk of Court records for the subject conviction; Applicant's records from the South Carolina Department of Corrections; the plea transcript (including the jury selection); and the records of this PCR action. This Court has had the opportunity to review the records and listen to the testimony at the PCR hearing. This Court has further had the opportunity to observe the witnesses, closely pass upon their credibility, and

weigh their testimony. After a careful review based on the Strickland standard set forth below, this Court finds Applicant has failed to carry his burden of proof. Below are this Court's findings of facts and conclusions of law as required by section 17-27-80 of the South Carolina Code (2017).

Ineffective Assistance of Counsel / Involuntary Guilty Plea

In a PCR action, an applicant bears the burden of proving the allegations. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). An applicant alleging ineffective assistance of counsel must prove "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, 286 S.C. at 441, 334 S.E.2d at 813. "The test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases." Watson v. State, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985). Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. at 441, 334 S.E.2d at 813. An applicant must overcome this presumption to received relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

To establish ineffective assistance of counsel, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness and (2) the applicant sustained prejudice as a result of counsel's deficient performance. Strickland, 466 U.S. at 687-88; Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A PCR applicant 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 applicant would not have pled



guilty and would have insisted on going to trial.” Dalton v. State, 376 S.C. 130, 136, 654 S.E.2d 870, 873 (Ct. App. 2007).

A defendant who entered a guilty plea with the advice of counsel, may only attack the voluntary and intelligent nature of the plea. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). For a plea to be knowing and voluntary, a defendant “must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived.” Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999). To prove prejudice, the applicant must show a reasonable probability he would not have pleaded guilty and would have insisted on going to trial absent plea counsel’s alleged deficiency. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

Involuntary Guilty Plea

Applicant first contends his plea was involuntary because he “was not advised prior to jury selection and the entry of his guilty plea that the receipt for the hotel room was not in his name but that of someone with a lengthy criminal history involving drugs.” He further contends he “was not advised that his fingerprints were not located on any of the evidence collected by law enforcement.” This Court finds Applicant has not shown counsel was ineffective in this regard or that his guilty plea was involuntary.

Critically, this Court finds credible trial counsel’s PCR testimony that he reviewed all of the discovery with Applicant. Likewise, this court finds not credible Applicant’s testimony that trial counsel did not review the fingerprint evidence with him or tell him the hotel receipt was in someone else’s name. Because this Court finds counsel credibly testified he reviewed all the discovery with Applicant, Applicant has not shown his plea was involuntary. Rather, this Court finds Applicant pled guilty after having reviewed all discovery. Further, Applicant was advised

by the plea court of the constitutional rights he was waiving and the sentence he faced. Thus, this Court finds Applicant pled guilty knowingly and voluntarily, and this claim is denied and dismissed with prejudice.

Ineffective assistance of Counsel

Applicant contends counsel was ineffective for failing to communicate, prepare a defense, or investigate the facts of Applicant's case. Specifically, he contends, "Following the release from the Florence County Detention Center on bond, Petitioner was residing in the state of Georgia and only met with his trial/plea counsel once before jury selection. Trial/plea counsel did not discuss any defenses with Petitioner including the law relating to actual and constructive possession and mere presence." This Court finds Applicant has failed to prove counsel was ineffective in this regard.

This Court finds credible trial counsel's testimony that he met with Applicant either the day Rutherford was relieved or the following day, he had phone contact with Applicant, and he met with Applicant in-person on November 9 and reviewed all the discovery with Applicant. This Court further finds credible trial counsel's testimony that he discussed with Applicant the person who rented the room (which Applicant identified by a street name), he explained to Applicant the difference between constructive and actual possession, and he would have requested a mere presence charge had this case proceeded to trial. Overall, this Court finds counsel's communication with Applicant, his preparation of a defense, and his investigation was reasonable under prevailing professional norms and thus counsel was not deficient. Likewise, Applicant has not shown a reasonable probability exists that he would have proceeded to trial rather than plead guilty had counsel communication differently, investigated differently, or prepared a defense differently. Thus, this claim is denied and dismissed with prejudice.



Conclusion

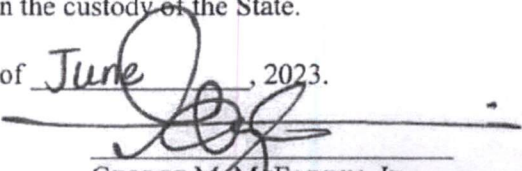
Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief. Thus, this application is denied and dismissed with prejudice.

Should Applicant wish to secure appellate review, he must file and serve a notice of appeal within thirty days of receipt by counsel of written notice of entry of judgment. See Rule 203, SCACR. If Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on applicant's behalf. See Rule 71.1(g), SCRCP. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an applicant has the right to the assistance of counsel in seeking review of the denial of PCR. Attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for PCR is denied and dismissed with prejudice; and
2. Applicant must be remanded to and remain in the custody of the State.

AND IT IS SO ORDERED THIS 20th day of June, 2023.



GEORGE M. MCFADDIN, JR.
Presiding Judge
Twelfth Judicial Circuit

FILED

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2018CP2103077

Larenzoe Tyshawn Epps
2023 JUL 11 AM 11:25
South Carolina State Of
DORIS POULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

PLAINTIFF(S) DEFENDANT(S)
Submitted by: Attorney for: Plaintiff Defendant
 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: _____
- STAYED DUE TO BANKRUPTCY
- 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: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

Judge Code

7/11/2023

Date

For Clerk of Court Office Use Only

This judgment was entered on July 11, 2023, and a copy mailed first class or placed in the appropriate attorney's box on July 12, 2023, to attorneys of record or to parties (when appearing pro se) as follows:

CERTIFIED: A TRUE COPY

Doris Poulos O'Hara
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

Joshua A. Bailey PO Box 555 Florence, SC 29503

D Russell Barlow II PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Doris P O'Hara

Court Reporter

Doris Poulos O'Hara - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.