

Ronnie L. Smith
W. Grady Jordan
C. Nicholas Lavery
Beth Manning Lee



James E. Sterling
Raymond T. Wooten*
**Licensed in SC and GA*

July 10, 2013

South Carolina Supreme Court
Daniel E. Shearhouse, Clerk of Court
Supreme Court Building
P.O. Box 11330
Columbia, South Carolina 29211

RECEIVED

JUL 15 2013

S.C. Supreme Court

**Re: Dewayne Christopher Hagins (S.C.D.C. No.: 298528) vs.
The State of South Carolina
C.A. No.: 2011-CP-39-1894**

Dear Mr. Shearhouse:

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

- (1) *Proof of service of the notice of appeal on the respondent[s].*
- (2) *A copy of the Order of Dismissal of Judge W. Jeffrey Young which is to be challenged on appeal.*

With kindest regards, I remain

Sincerely,

Raymond T. Wooten

RTW/sjc
Enclosures
cc: Client

Karen Christine Ratigan, Esquire(w/enclosures)
Attorney General's Office
Post Office Box 11549
Columbia, SC 29211
Attorney for Defendant

The Honorable Harold Welborn(w/enclosures)
Pickens County Clerk of Court
Post Office Box 215
Pickens, South Carolina 29671

1 | PAGE
LETTER TO SUPREME COURT

EASLEY o GREENVILLE o CLEMSON

Loriene French (w/enclosures)
SCCID - Appellate Defense
Post Office Box 11589
Columbia, SC 29211

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
APPEAL FROM PICKENS COUNTY
COURT OF COMMON PLEAS
W. Jeffrey Young, CIRCUIT COURT JUDGE

RECEIVED
JUL 15 2013
S.C. Supreme Court

C.A. No.: 2011-CP-39-1894

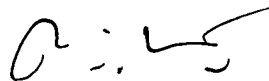
Dewayne Christopher Hagins.Appellant,
S.C.D.C. No.: 298528

vs.

State of South Carolina.Respondent,

NOTICE OF APPEAL

The Appellant Dewayne Christopher Hagins, appeals the Order of Dismissal of the Honorable W. Jeffrey Young, dated March 14, 2013, filed on March 25, 2013, and received by Appellant's counsel on June 24, 2013.



RAYMOND T. WOOTEN (S.C. Bar #081483)
SMITH, JORDAN, LAVERY & LEE, P.A.
1810 East Main Street
P.O. Box 1207
Easley, SC 29641
864-855-1661 (phone)
864-855-1685 (fax)
Wooten@smithjordan.com
Attorney for Appellant

Easley, South Carolina
Date: July 10th, 2013

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM PICKENS COUNTY
COURT OF COMMON PLEAS

W. Jeffrey Young, CIRCUIT COURT JUDGE

RECEIVED

JUL 15 2013

S.C. Supreme Court

C.A. No.: 2011-CP-39-1894

Dewayne Christopher Hagins.Appellant,
S.C.D.C. No.: 298528

vs.

State of South Carolina.Respondent,

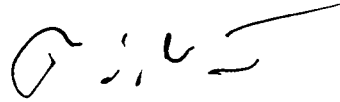
PROOF OF SERVICE

I certify that I have served the Notice of Appeal on all Counsel of Record and all other respondents, who are not represented to the addressed below, by depositing a copy of it in the United States Mail with postage prepaid on July 10th, 2013.

Karen Christine Ratigan, Esquire
Attorney General's Office
Post Office Box 11549
Columbia, SC 29211
Attorney for Defendant

The Honorable Harold Welborn
Pickens County Clerk of Court
Post Office Box 215
Pickens, South Carolina 29671

Loriene French
SCCID - Appellate Defense
Post Office Box 11589
Columbia, SC 29211



RAYMOND T. WOOTEN (S.C. Bar #081483)
SMITH, JORDAN, LAVERY & LEE, P.A.
1810 East Main Street
P.O. Box 1207
Easley, SC 29641
864-855-1661 (phone)
864-855-1685 (fax)
Wooten@smithjordan.com
Attorney for Appellant

Easley, South Carolina
Date: July 10th, 2013

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF PICKENS) C.A. No. 2011-CP-39-1894
) MAR 25 A 9 34
) Dewayne Christopher Hagins,)
) S.C.D.C. No. 298528,)
) Applicant,)
))
) v.)
))
) State of South Carolina,)
))
) Respondent.)

ORDER OF DISMISSAL

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed December 22, 2011. The Respondent made its return on May 31, 2012. An evidentiary hearing into the matter was convened on February 11, 2013 at the Pickens County Courthouse. The Applicant was present at the hearing and represented by Raymond T. Wooten, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's plea counsel, Scott D. Robinson, Esquire. The Court had before it the transcript of the guilty plea hearing, the records of the Pickens County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the Respondent's return, and the appellate records.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Pickens County Clerk of Court. The Applicant was indicted at the September 2010 term of the Pickens County Grand Jury for first-degree burglary (2010-GS-

39-0801) and eavesdropping or peeping tom (2010-GS-39-0802). He was represented by Scott D. Robinson, Esquire.

On May 17, 2011, the Applicant entered a plea of guilty but mentally ill. The Honorable Letitia H. Verdin sentenced the Applicant to concurrent terms of twenty (20) years for first-degree burglary and three (3) years for peeping tom.

A notice of appeal was filed on the Applicant's behalf at the South Carolina Court of Appeals. By order dated October 11, 2011, the Court of Appeals dismissed the appeal based on the Applicant's failure to provide a written explanation as to what issues could be reviewed. See Rule 203(d)(1)(B)(iv), SCACR.

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel:
 - a. Failed to request a second opinion regarding the Applicant's competency.
 - b. Failed to communicate a plea offer of fifteen (15) years suspended to ten (10) years.

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. 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 conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, “[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel’s ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). 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).

The Applicant stated he had a competency evaluation while represented by his first attorney. The Applicant stated he fired his appointed counsel in October 2010 and hired plea counsel one week later. The Applicant stated he had four meetings with plea counsel. The Applicant stated he and plea counsel reviewed the evidence and the impact his statement had on their case. The Applicant stated he understood his conversations with plea counsel. The Applicant stated plea counsel should have requested he undergo a second competency evaluation. The Applicant stated there was a plea offer from the State while he was represented by his first attorney and that he asked plea counsel if he could get this offer. The Applicant admitted he knew that plea offer had an expiration date. The Applicant also admitted he knew he was pleading guilty without a sentence recommendation but that plea counsel stated he would

“shoot for” fifteen years.

Plea counsel testified he was retained on December 16, 2010 and received the discovery materials from the prior attorney. Plea counsel testified he met with the Applicant four or five times and that the Applicant also met with his investigator. Plea counsel testified he reviewed the discovery materials with the Applicant, the Applicant’s version of events, and the impact the Applicant’s statement had on the case. Plea counsel testified he was aware of the prior plea offer but that it expired on July 12, 2010, which was five months before he was retained. Plea counsel testified he spoke to the State about another possible plea offer but the State would not make one. Plea counsel testified the Applicant had already undergone a competency evaluation and was found competent – but with voyeurism and anxiety issues. Plea counsel testified the Applicant understood their conversations, there were no red flags during his representation, and the Applicant did not need a second evaluation. Plea counsel testified he told the Applicant the sentence ranges for the offenses and that the Applicant was pleading guilty without a sentence recommendation.

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 the Applicant’s testimony is not credible, while also finding plea counsel’s testimony is credible. This Court further finds plea counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his representation.

The Applicant admitted to the plea judge that the facts recited by the solicitor were substantially true. (Plea transcript, p.15). The Applicant also told the plea judge that he understood the trial rights he was waiving in pleading guilty, was satisfied with counsel, and had not been coerced in any way. (Plea transcript, pp.9-10).

This Court finds the Applicant failed to meet his burden of proving plea counsel should have pursued a second competency evaluation for the Applicant. Plea counsel testified he was aware the Applicant had a prior competency evaluation but that he was found competent to stand trial. Plea counsel testified there were no red flags that concerned him during his representation and the Applicant appeared to understand their conversations. This Court finds plea counsel's testimony to be credible. This Court also notes the Applicant failed to present either a second competency evaluation or any expert testimony. As such, this Court cannot speculate about whether a second evaluation would have had any impact on the Applicant's case. See Dempsey v. State, 363 S.C. 365, 370, 610 S.E.2d 812, 815 (2005) (finding that, as the applicant failed to have an expert testify at the evidentiary hearing, "any finding of prejudice is merely speculative"); see also Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (holding applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial).

This Court finds the Applicant failed to meet his burden of proving plea counsel should have pursued plea negotiations with the State. Plea counsel testified he was aware of a prior plea offer but that this offer had expired five months before he was retained in this case. Plea counsel testified he attempted to pursue plea negotiations with the State but that the State would not make any offers. This Court finds plea counsel's testimony is credible. This Court notes plea counsel's testimony is, in large part, corroborated by the Applicants' testimony. The Applicant admitted the State made a plea offer for a plea of guilty but mentally ill to a fifteen year sentence suspended on the service of ten years while he was represented by his first attorney. The Applicant admitted the plea offer had an expiration date. This Court finds the original plea offer had expired well before plea counsel was retained and that this was known by both the Applicant

and plea counsel. This Court finds the Applicant has failed to articulate what more plea counsel should have done in order to secure a favorable plea offer. See Frasier v. State, 351 at 389, 570 S.E.2d at 174. The Applicant knew he was pleading guilty without a sentence recommendation. (Plea transcript, p.10). Regardless, this Court notes plea counsel asked the plea judge to levy the minimum available sentence in this case. (Plea transcript, p.18).

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that plea counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that plea counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by plea counsel’s performance.

This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

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 and the Applicant was not

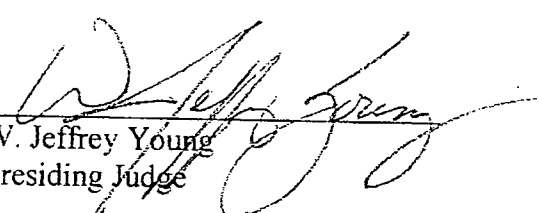
prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

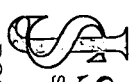
IT IS THEREFORE ORDERED:

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 14 day of March, 2013.


W. Jeffrey Young
Presiding Judge

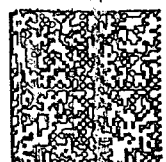
Sumter, South Carolina.

 **Smith Jordan**
Smith, Jordan, Lavery & Lee, P.A.
ATTORNEYS AT LAW
POST OFFICE BOX 1207
EASLEY, SOUTH CAROLINA 29641

South Carolina Supreme Court
Daniel E. Shearhouse, Clerk of Court
Supreme Court Building
P.O. Box 11330
Columbia, South Carolina 29211

12-0878E rtw

First Class Mail
ComBas Price



02 1P
0004170334 JUL 10 2013
MAILED FROM ZIP CODE 29640
UNITED STATES
\$002.550

