CAUGHMAN LAW

Montford S. Caughman

Counselor at Law

May 1, 2012

Tanya Gee
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Beth Carrigg
Lexington County Clerk of Court
205 East Main Street
Lexington, South Carolina 29072

Re: Reid vs. State of South Carolina
2010-CP-32-5312

Dear Mrs. Gee and Carrigg:

Enclosed for filing please find the **Notice of Appeal, Motion to Proceed without Costs, Proof of Service**, and the trial court's **Order of Dismissal** in the above-captioned Post-Conviction Relief matter.

I thank you in advance.

With kindest personal regards, I remain,

Very truly yours,

Montford S. Caughman

MSC/lms
Enclosures
cc: **Kaelon E. May**
Office of the Attorney General, State of South Carolina
Post Office Box 11549
Columbia, South Carolina 29211-1549
Attorney for Respondent

Paul F. Reid

Post Office Box 518 Lexington South Carolina 29071
Telephone: 803.606.5411 Facsimile: 803.753.0142 Email: caughmanlaw@hotmail.com

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Eugene C. Griffith, Jr., Circuit Court Judge

Case No: 2010-CP-32-5312

Paul Fletcher Reid #127458, ... **Petitioner,**

v.

State of South Carolina, ... **Respondent.**

NOTICE OF APPEAL

Paul Fletcher Reid appeals the Order of the Honorable Eugene C. Griffith, Jr., dated March 21, 2012. Undersigned counsel for the Petitioner received written notice of entry of this order on April 4, 2012. A copy of the order on appeal is attached to this notice.

Respectfully submitted,

May 1, 2012

Montford S. Caughman
CAUGHMAN LAW
Post Office Box 518
Lexington, South Carolina 29071
(803)606-5411
Attorney for Petitioner

Other Counsel of Record:
Kaelon E. May
Office of the Attorney General, State of South Carolina
Post Office Box 11549
Columbia, South Carolina 29211-1549
Attorney for Respondent

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Eugene C. Griffith, Jr., Circuit Court Judge

Case No: 2010-CP-32-5312

Paul Fletcher Reid #127458, ... Petitioner,

v.

State of South Carolina, ... Respondent.

PROOF OF SERVICE

Enclosed please find a copy of the Notice of Appeal and Motion to Proceed Without Costs in reference to the above titled action.

I certify that I have served the above-named enclosure on this 1st day of May, 2012, by placing it in the United States Mail, postage prepaid, addressed to all counsel of record as follows:

Kaelon E. May
Office of the Attorney General, State of South Carolina
Post Office Box 11549
Columbia, South Carolina 29211-1549
Attorney for Respondent

May 1, 2012

Montford S. Caughman
CAUGHMAN LAW
Post Office Box 518
Lexington, South Carolina 29071
Attorney for Appellant

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Eugene C. Griffith, Jr., Circuit Court Judge

Case No: 2010-CP-32-5312

Paul Fletcher Reid #127458, ... **Petitioner,**

v.

State of South Carolina, ... **Respondent.**

MOTION TO PROCEED WITHOUT COSTS

The Appellant Paul Fletcher Reid, by and through his undersigned attorney, hereby moves this Court for its Order allowing him to proceed *in forma pauperis* without payment of the normally required One Hundred ($100.00) Dollar filing fee.

This motion is based upon the fact the Appellant is now, and has been for some time, incarcerated within the South Carolina Department of Corrections and is without funds to pay such fee. The Appellant understands that, while this matter is civil in nature rather than criminal, it is an appeal concerning the dismissal of his Post-Conviction Relief Application and therefore asks this Court for

whatever assistance it can provide in this matter.

May 1, 2012

Montford S. Caughman
CAUGHMAN LAW
Post Office Box 518
Lexington, South Carolina 29071
(803)606-5411
Attorney for Petitioner

Other Counsel of Record:
Kaelon E. May
Office of the Attorney General, State of South Carolina
Post Office Box 11549
Columbia, South Carolina 29211-1549
Attorney for Respondent

ORIGINAL

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	
	)	
	)	2010-CP-32-5312
	)	
Paul Fletcher Reid, # 127458,	)	
Applicant,	)	**ORDER OF DISMISSAL**
	)	
v.	)	
	)	
State of South Carolina,	)	
Respondent.	)	

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed December 14, 2010. Respondent made its Return on February 28, 2011. An evidentiary hearing into the matter was convened on January 30, 2012, at the Lexington County Courthouse. The Applicant was present at the hearing and was represented by Montford Caughman, Esquire. The Respondent was represented by Kaelon E. May of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. Additionally, the Applicant offered the testimony of Mary Langdale. The State offered the testimony of John Duncan, Esquire (Mr. Duncan) Applicant's plea counsel. 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.

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 October 2007 term of the Lexington County Grand Jury for Kidnapping (2007-GS-32-

3176), and three counts of Criminal Sexual Conduct—First Degree (2007-GS-32-3173, -3174, -3175). He was represented by Jack Duncan, Esquire. On January 30, 2008, the Applicant appeared in the Lexington County Courthouse and pled guilty as charged. He was sentenced by the Honorable J.C. Nicholson, Jr., to confinement for an aggregate period of thirty (30) years.

A timely notice of appeal was filed on the Applicant's behalf. The South Carolina Court of Appeals subsequently affirmed the Applicant's conviction by decision dated on or about February 1, 2010 (2010-UP-164). Remittitur was issued on or about February 24, 2010.

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

1. Ineffective Assistance of Counsel
   a. "Counsel was ineffective for not timely objecting to the court sentence of his client to the maximum 30 year sentence."
   b. "Blair Hearing"
   c. Failure to investigate possible defenses
   d. Failure to object to arrest warrants and indictments
   e. Failure to request Denno hearing
   f. Attorney promised Applicant would receive 20-25 year sentence
2. Involuntary Guilty Plea
   a. "Counsel informed defendant if he didn't accept the plea the state would be seeking a life without parole sentence."
3. Subject Matter Jurisdiction
   a. "Court lacked subject matter jurisdiction to accept an involuntary plea, Blair Hearing."

II. SUMMARY OF EVIDENCE AND TESTIMONY PRESENTED AT THE PCR EVIDENTIARY HEARING

Applicant's Testimony

At the PCR hearing Applicant testified that his attorney did not look at the issue of competency adequately. Applicant testified that he was arrested on May 9, 2007 and remained in jail for eight months prior to his guilty plea. Applicant testified that he was originally represented by Arie Bax, but that Applicant was not satisfied with Mr. Bax and Applicant then obtained Mr. Duncan's services. Applicant testified that counsel visited Applicant, that the first time they met counsel and Applicant discussed Applicant's background, the charges, Applicant's family, issues from Applicant's past, and Applicant's wife's death. Applicant testified that counsel spoke with Applicant's sister, that Applicant was initially denied bond, and that counsel thought he could get Applicant out on a bond. Applicant testified that on the second and last occasion he met with counsel that counsel informed Applicant the solicitor's office was offering to take life without parole off the table in exchange for a guilty plea and that Applicant would be looking at twenty to twenty-five years. Applicant testified that counsel explained Applicant was eligible for LWOP based on a 1984 conviction, that Applicant never saw the plea offer in writing, and that Applicant spoke with his sister about entering a plea. Applicant testified that counsel told Applicant there was a possibility of a thirty year sentence.

Applicant testified that counsel did not object to the length of his sentence, that counsel did ask the judge for a twenty to twenty-five year sentence, and that counsel did not file a motion to reconsider. Applicant testified that in May 2006, he was in drug rehabilitation, that Applicant suffered from heart conditions, and that he was self-medicating with cocaine, loritab, and alcohol.

Applicant testified that his mother died in 2003, then his wife died soon after due to complications from giving birth to Applicant's son. Applicant testified that he underwent a mental evaluation prior to the guilty plea, that Applicant discussed the results with counsel, and that counsel said the Doctor would be at the guilty plea hearing.

Applicant testified that on the morning in his guilty plea he was taking loritab, that when Applicant arrived at court he felt he was in a good state of mind, but that Applicant is not sure if he was actually competent the day of his plea. Applicant testified that he knew how the medication influenced his mind. Applicant testified that he had taken the medication for years prior to his guilty plea hearing.

Mary Langdale's Testimony

At the PCR hearing, Ms. Langdale testified that she is the Applicant's sister and that she hired Mr. Duncan to represent Applicant. Ms. Langdale testified that she served as a go-between Mr. Duncan and Applicant, and that she met with Mr. Duncan three to four times. Ms. Langdale testified that Mr. Duncan did not speak to her about the plea offer after the first visit, but that at the second visit Mr. Duncan mentioned Applicant pleading guilty with a maximum of twenty-five years. Ms. Langdale testified that Applicant decided pleading guilty and receiving twenty-five years was the best option.

Mr. Duncan's Testimony

At the PCR hearing counsel testified that the Applicant's sister, Ms. Langdale, retained counsel. Counsel testified that the initial meeting with Applicant, counsel reviewed Applicant's file, the discovery, Applicant's background, prior record with Applicant. Counsel testified that he and Applicant discussed seeking a bond but Applicant had limited means and any bond set would be

$10,000 to $15,000, and that Applicant would not able to afford such amount. Counsel testified that he discussed with Applicant the charges, criminal sexual conduct and kidnapping, and the potential of a life without parole sentence. Counsel testified that he discussed with Applicant that LWOP was a possibility, but that they had not received a notice of intent to seek LWOP from the solicitor's office, and that counsel believed Applicant would get thirty years instead of LWOP. Counsel testified that Applicant understood their discussions.

Counsel testified that the discovery materials consisted of, but not limited to, statements from the victim, Applicant's statements, incident reports, and witness statements. Counsel testified that he spoke with the officer who took Applicant's confession and that counsel reviewed Applicant's confession with Applicant. Counsel testified that the issues he had with Applicant's confession included the Applicant's level of intoxication at the time Applicant gave the statement, that Applicant drank the day before the incident and had been awake for days due to ingesting nine grams of cocaine. Counsel testified that he and Applicant discussed proceeding to trial, that counsel met with Applicant's sister at Applicant's request, and that counsel met with the arresting officer to ascertain his potential testimony. Counsel testified that based on his conversation with the arresting officer, counsel believed the officer would be very credible, articulate and would make a good witness for the state at trial. Counsel testified that he and Applicant discussed possible defenses. Counsel testified that with regard to an insanity defense and competency issues that based on Dr. Schwartz-Watts' evaluation, Applicant's mental illness issues did not approach the McNaughton standard. Counsel testified that he spoke with Dr. Schwartz-Watts at length about Applicant.

Counsel testified that he engaged in plea negotiations with the solicitor and that the solicitor informed counsel they would not seek LWOP, they would not press for the maximum and leave

sentencing up to the judge's discretion. Counsel testified that he never told Applicant that the solicitor would recommend twenty-five years, that the solicitor never put anything in writing, and that counsel discussed with Applicant's sister the best possible result as well as the maximum that Applicant could receive. Counsel testified that it was not indicated to the plea court that Applicant's plea was a negotiated plea, that counsel did not object to the sentence imposed because the sentence was being left to the judge's discretion. Counsel testified that Applicant was facing a total of 120 years for all the charges, that counsel never promised Applicant or Applicant's sister that Applicant would receive a specific sentence, and that Applicant made the decision to plead guilty.

Counsel testified that he reviewed Dr. Schwartz-Watts' evaluation report with Applicant and that Applicant was aware prior to the guilty plea that counsel would present the report to the plea judge. Counsel testified that the medical evaluation indicated that Applicant's actions were preventable, that Applicant had preexisting conditions, and that the doctor indicated Applicant was treatable absent drug abuse. Counsel testified that he was well aware of the difficulties faced by Applicant, that the plea judge was always 'big' on treatment possibilities and that this was one of the reasons counsel believed a twenty-five year sentence was possible. Counsel testified that he considered Dr. Schwartz-Watts as one of the best available doctors in South Carolina. Counsel testified that Applicant's family did not obtain Applicant's medical records concerning Applicant's charge in 1984 until after the guilty plea. Counsel testified that part of the victim's husband's statement at the guilty plea was not true but that counsel was not aware of that because counsel did not Applicant's parole board records until after the guilty plea.

2012

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 that 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.

1. Ineffective Assistance of Counsel

a. Failure to Object to Sentence

Applicant asserts that counsel was ineffective for failing to object to the court's sentence of thirty years. Applicant faced a maximum sentence of 120 years. Counsel testified that he never promised Applicant that Applicant was going to receive a twenty-five year sentence and that counsel discussed with Applicant the possible punishments for each charge. Counsel testified that he did not object to the court's thirty year sentence because it was not a negotiated plea and that sentencing was being left up to the judge's discretion, and that Applicant did not receive the maximum sentence possible. A trial court has broad discretion in imposing criminal sentences within the limits prescribed by law. State v. Franklin, 267 S.C. 240, 226 S.E.2d 896 (1976); Clark v. State, 259 S.C. 378, 192 S.E.2d 209 (1972). The courts normally have no jurisdiction to correct a sentence given within statutory limits. To be entitled to relief, the Applicant must prove that the alleged excessive sentence was the result of partiality, prejudice, oppression or corrupt motive, or that the sentence

constitutes cruel and unusual punishment per se. Clark, Id.; State v. Cogdell, 273 S.C. 563, 257 S.E.2d 748 (1979). This Court finds that Applicant did not receive a maximum sentence. Applicant has failed to provide any grounds on which counsel should have based an objection to Applicant's sentence on. Counsel provided a rational explanation as to why he did not object to Applicant's sentence and this Court accepts counsel's reasoning. Furthermore, there has been no showing by the Applicant that the outcome of his guilty plea would have been different if this objection has been made. This Court finds that Applicant has failed to show that counsel's performance was deficient and any resulting prejudice; therefore, this allegation is denied and dismissed.

b. Failure to Request Blair Hearing

Applicant asserts that counsel was ineffective for failing to request a competency hearing. At the PCR hearing Applicant testified that he was evaluated prior to his guilty plea. Applicant testified that on the day of his guilty plea he took his prescribed medication and that Applicant felt he was in a 'good state of mind.' Competency to enter a guilty plea is no more stringent than competency to stand trial. Jeter v. State, 308 S.C. 230, 417 S.E.2d 594 (1992). To sustain a claim of incompetency in fact at a plea, applicant in a PCR proceeding must show by the preponderance of the evidence he was incompetent at the time of plea. Id. To sustain a claim counsel was ineffective for failing to request a competency hearing, an applicant must show a reasonable probability that he would have been found incompetent. Id. This Court finds that the Applicant has failed to produce any evidence from any medical professional or produce any evidence other than his bare assertion that he did not comprehend what he doing at his guilty plea hearing because he was incompetent. The guilty plea transcript reflects that Applicant clearly understood the questions asked of him and that Applicant responded in an appropriate manner. Applicant was evaluated by Dr. Schwartz-Watts prior to his

guilty plea and was found to be competent to assist in his defense. This Court finds that Applicant failed to show counsel's performance was deficient and any resulting prejudice; therefore, this allegation is denied and dismissed.

c. Failure to Investigate Possible Defenses

Applicant asserts that counsel was ineffective for failing to investigate possible defenses. At the PCR hearing counsel testified that he reviewed the Applicant's confession with Applicant. Counsel testified that the voluntariness of Applicant's confession was a potential issue because of Applicant's level of intoxication and lack of sleep at the time Applicant gave the confession. Counsel testified that he interviewed the arresting officer concerning the procedures taken during Applicant's confession. The Applicant was evaluated and counsel testified that while Applicant had mental illness issues, nothing rose to the McNaughton standard. Counsel testified that he and Applicant discussed possible defenses based on a review of the discovery, the mental evaluation, and counsel's discussion with the arresting officer.

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). The "brevity of time spent in consultation, without more, does not establish that counsel was ineffective." Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980). When claims of ineffective assistance of counsel are based on lack of preparation time, an Applicant challenging his conviction must show specific prejudice resulting from counsel's alleged lack of time to prepare. United States v. Cronic, 466 U.S. 648 (1984); U. S. v. LaRouche, 896 F.2d 815 (4th Cir. 1990). Counsel testified that Applicant's family did not provide counsel with Applicant's records from his previous charge or Applicant's

parole board records until after the plea. However, the Applicant could not point to any specific matters counsel failed to discover which would have caused him to proceed with a jury trial instead of pleading guilty. This Court finds the Applicant offered no evidence at the PCR hearing that counsel could have found that would have been likely to have any outcome more favorable to the Applicant. The Applicant did not produce any witnesses or offer any other evidence from which this Court could conclude that the outcome of the case would likely have been different, had that evidence been developed. Therefore, this Court finds that this allegation is denied and dismissed.

2. Involuntary Guilty Plea

Applicant asserts that counsel informed Applicant that if Applicant did not accept the plea, that the state would be seeking life without parole, and that Applicant believed he would not receive more than twenty-five years. This Court finds that Applicant has failed to meet his burden of proof in showing that his guilty plea was involuntary. At the plea hearing Applicant indicated to the plea judge that the medication he was taking did not interfere with Applicant's thought process. (Tr. p.9-10). Counsel indicated to the plea court that he explained to Applicant the maximum time on each indictment was thirty (30) years. (Tr. p.4). The Applicant informed the plea judge that he had not been threatened or coerced by anyone into pleading guilty. (Tr. p.14). Applicant indicated to the plea judge that he was in fact guilty. (Tr. p.15). The plea judge asked Applicant if Applicant understood and knew about his right to a jury trial, and Applicant indicated that he did not want a jury trial. (Tr. p.13-14). The Applicant told the plea judge that he was satisfied with counsel's representation and that counsel had done everything Applicant asked of him. (Tr. p.10-11). Additionally, Applicant agreed with the facts as stated by the solicitor and Detective Russell. (Tr. p.16-20). Counsel presented Dr. Schwartz-Watts' evaluation to the plea court for review. This Court finds the

overwhelming evidence in the record and presented through the testimony of the witnesses at the hearing reflects that the plea was knowingly and voluntarily entered. Boykin v. Alabama, 395 U.S. 238 (1969); Vickery v. State, 258 S.C. 33, 186 S.E.2d 827 (1972). Therefore, this Court finds that this allegation is denied and dismissed.

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 21 day of March, 2012.

Eugene C. Griffith, Jr.
Presiding Judge

Newberry, South Carolina

2012