

FORM 4
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Nov 27 2023

Erick Edward #281942 Wells

State of South Carolina

S.C. SUPREME COURT

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.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Non Suit); 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 : _____

INFORMATION FOR THE PUBLIC 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
		\$
		\$
		\$

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.

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 5 September 2019 to attorneys of record or to parties (when appearing pro se) as follows:

Erick Edward Wells #281962

Anna Rawl Browder

Lindsey Ann McCallister

Erick Edward Wells #281962

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court

Jeanette W. McBride

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)
 Erick Edward Wells, #281942,)
 Applicant,)
 v.)
 State of South Carolina,)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE FIFTH JUDICIAL CIRCUIT

14-40-4545
 Case No. ~~2016-CP-23-3282~~

**ORDER GRANTING
 POST-CONVICTION RELIEF**

RICHLAND COUNTY
 FILED
 2019 SEP -5 AM 8:38
 JEANNETTE W. MCBRIDE
 C.C.P. & C.S.

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed July 22, 2014. Respondent made its return on March 1, 2016. An evidentiary hearing on the matter was convened on December 7, 2016, at the Richland County Courthouse. Applicant was present at the hearing and represented by Anna Good, Esquire. Jessica E. Kinard, Esquire, of the South Carolina Office of the Attorney General represented Respondent.

Applicant testified on his own behalf. Theodore N. Lupton, Esquire, testified for Respondent. The Court had before it the plea transcript, the Richland County Clerk of Court records, Applicant's records from the South Carolina Department of Corrections, the pleadings, and Applicant's appellate records, as well as exhibits introduced during the hearing.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. In February 2014, the Richland County Grand Jury indicted Applicant for trafficking crack cocaine – ten to twenty-eight grams, third or subsequent offense (2014-GS-40-00724). In April 2014, the Richland County Grand Jury indicted Applicant for failure to stop blue light/siren – first offense (2014-GS-40-01713). Additionally, Applicant waived presentment of one count of possession/attempt to possess crack cocaine – first

offense (2014-GS-40-01711). Theodore N. Lupton, Esquire represented Applicant. On April 2, 2014, Applicant pleaded guilty to possession of less than one gram of meth or cocaine base – third offense; failure to stop for a blue light/siren; and trafficking crack cocaine – more than ten grams but less than twenty-eight grams, second offense. The Honorable R. Ferrell Cothran, Jr., sentenced Applicant to ten years for possession of less than one gram of meth or cocaine, three years for failure to stop for a blue light, and fifteen years for trafficking, to be served concurrently.

A notice of appeal was filed at the South Carolina Court of Appeals. Theodore N. Lupton, Esquire perfected the appeal in the form of an Anders¹ brief. The Court of Appeals affirmed the Applicant's conviction and sentence on June 27, 2014. State v. Erick Wells, Op. No. 2014-000853 (S.C. Ct. App. filed June 27, 2014). The Remittitur was sent on July 15, 2014.

FACTS GIVING RISE TO GUILTY PLEA

On August 2, 2013, Richland County Sheriff's Deputies served a search warrant at Applicant's home. Applicant was standing by the stove in the kitchen when officers entered, and as he ran from the room, he threw a small baggie, which was tested and found to contain crack cocaine. Applicant had been in the process of cooking more crack at the stove when the officers served the warrant, and a search of the house revealed scales, money, and an additional small amount of cocaine. In total, officers seized twenty-three grams of crack and four grams of cocaine. While Applicant was in jail awaiting disposition of the charges, he admitted on a taped phone call that he had been in the process of cooking crack when law enforcement arrived. Plea Tr. p. 7.

Additionally, on December 11, 2013, a Richland County Sheriff's Deputy spotted Applicant driving a black Mercedes and attempted to stop Applicant for speeding. Instead, Applicant fled from the deputy and led a chase from Farrow Road onto SC-277, narrowly avoiding several other cars.

¹ Anders v. California, 386 U.S. 738 (1967).

Applicant eventually pulled to the side of the road, threw his keys out of the driver's side window, and surrendered to law enforcement. A search of the car found 0.12 grams of crack cocaine. Plea Tr. pp. 7-8.

ALLEGATIONS

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

1. "Ineffective Assistance Counsel
 - a. "Failed to properly research and investigate the laws, the state alleged facts and my facts surrounding the entitlement of my cases."
 - b. "Counsel Lupton refused to talk to me on any kind of defense leveles [sp]."
 - c. "Counsel further prejudiced me when he did not fully go over my Rule (5) evidence with me."
2. Involuntary Guilty Plea
 - a. "I did not at my plea understand the true facts surrounding my cases nor or the necessary elements."

SUMMARY OF TESTIMONY AT EVIDENTIARY HEARING

Applicant testified he met with Counsel twice at the detention center from the time Counsel was appointed in October 2013 and the date of his guilty plea in April 2014. Applicant testified he never reviewed any discovery with Counsel, and Counsel told Applicant he did not have any discovery. Applicant further testified the State extended a plea offer of ten-to-twenty years in March 2014, and he and Counsel discussed it. However, Applicant told Counsel he had a bad record and did not want to accept the offer. At that time, according to Applicant, Counsel had some discovery, but Counsel did not show it to Applicant. Applicant testified, after their meeting in March, Counsel filed a motion to compel discovery.

Applicant further testified when he entered into the plea agreement, he still had not seen any discovery. According to Applicant, he agreed to plead guilty because Counsel told him Counsel

would argue for ten years, and in Counsel's opinion, it was best to accept the offer. Applicant testified he told the judge during the plea he was satisfied with Counsel and answered questions in the affirmative because of Counsel's advice that this was a "good judge." Applicant testified he did not receive any discovery documents until after his plea in June or July 2014, and if he had seen a fully copy of his file beforehand, he would not have entered the plea because there were issues which were not researched or addressed. Applicant testified he did not believe Counsel ever received the documents requested in the motion to compel, and Applicant specifically asked for and did not receive paperwork documenting the chain of custody of evidence seized pursuant to a search warrant.

However, on cross-examination, Applicant conceded he and Counsel never focused on a trial, and his concern was negotiating with the State in the hope the trafficking charge would be dropped. Additionally, Applicant testified he told the plea judge he understood the trial rights he was giving up, he was satisfied with his attorney, and he and Counsel had reviewed discovery together. However, Applicant testified he did so because he was expecting to receive a ten-year sentence, which he ultimately did not receive.

Counsel testified he received Applicant's case as a conflict appointment from the Public Defender's Office, and Applicant had a total of three separate cases, which the State was treating as one case for purposes of plea negotiations. Counsel testified he received partial discovery on the trafficking charge almost immediately, likely when the Public Defender's Office sent their file to him. Counsel explained he met with Applicant and went over the discovery he had received, and Applicant informed him of the circumstances of law enforcement's entry into the home, including the accidental discharge of one of the officers' firearms. Counsel testified he felt that information was relevant and helpful to explain some of Applicant's actions, but there was no information about the incident included in the discovery he had received at that time. Counsel further testified although Applicant

had three cases progressing simultaneously, Counsel was focused on the trafficking case because the State was looking to take it to trial quickly.

Counsel testified he filed the motion to compel not just to obtain information, but also to try to point out to the prosecutor the issues Counsel's saw with the State's case, in an attempt to negotiate a more favorable plea offer at Applicant's request. Counsel testified the focus of the motion to compel was documentation relating to the accidental discharge of the firearm, and he received a short, two-paragraph report a few days after the motion was filed. According to Counsel, he had the information he needed regarding the elements of trafficking, but he felt there was additional information regarding the surrounding circumstances of the shooting that the State had not yet provided, such as documentation regarding an internal investigation. Ultimately, Counsel testified, he was able to find out the requested information regarding an internal investigation was not provided because it did not exist. Counsel explained he believed the two-paragraph report was the only written documentation the Sheriff's Office had regarding the shooting, but he did receive further oral information to the effect that a traditional investigation had not been conducted, at the direction of the Sheriff's Office general counsel. Counsel further testified he would have brought up the discovery issues at trial, had the case gotten that far; however, he felt it was not worth the risk of pressing for a trial because the discovery issues did not go to the substance of whether Applicant was guilty or innocent. Counsel also testified he explained this legal assessment to Applicant, and Applicant was aware of the potential arguments Counsel could raise at trial, but Applicant decided he would rather plead guilty in hopes the judge would agree to a ten-year sentence.

Counsel further testified he discussed the situation with Applicant, including describing the information the defense had and the information Counsel had requested. Counsel testified he also discussed with Applicant some of the items he thought they were likely to receive and explained the

items he felt the State would be unlikely to be ordered to turn over. Counsel testified he explained to Applicant the potential defenses they had based on the lack of information and how they could use that to Applicant's advantage during a trial, specifically the possibility of arguing the Sheriff's Department had not properly investigated the negligent discharge of a firearm by its officer. Additionally, Counsel testified he explained to Applicant the potential sentence Applicant was facing at trial was a mandatory minimum of twenty-five years, and Counsel felt Applicant's record of six previous drug offenses would be problematic. Counsel testified he further explained Applicant's constitutional rights to a trial and how a trial would work, but ultimately supported Applicant's decision to plead guilty because he felt Judge Cothran would be fair and because unless the defense was successful on every legal issue, Counsel felt "there was no question [Applicant] would be convicted at trial." Finally, Counsel denied promising Applicant a specific sentence of ten 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, evidence, and arguments presented at the PCR hearing. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. Sec. 17-27-80 (2003).

A. Ineffective Assistance of Counsel/Involuntary Guilty Plea

Applicant alleges he received ineffective assistance of counsel. In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant 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 443, 334 S.E.2d at 814. The proper measure of performance is whether the attorney provided representation within the range

of competence required in criminal cases. The courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 689. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Id. (quoting Strickland, 466 U.S. at 688 (1984)). 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 117-18; 386 S.E.2d at 625. With respect to guilty plea counsel, 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, 59 (1985).

In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citing Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993); Hyman v. State, 278 S.C. 501, 299 S.E.2d 330 (1983)). An applicant who pleads guilty with the advice of counsel may collaterally attack the plea only by showing (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citing Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000); Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000); Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994); Hill, 474 at 52). An applicant alleging his guilty plea was induced

by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill, 474 U.S. at 56.

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between the court and defendant, between the court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). "[T]he voluntariness of a guilty plea is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing." Dalton, 376 S.C. at 138, 654 S.E.2d at 874 (quoting Harres v. Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984)).

The Court finds Counsel was ineffective, and this ineffectiveness was induced by law enforcement's failure to answer Counsel's legitimate requests for information – particularly regarding the discharge of one of the officers' firearm during the service of the search warrant. This Court finds Applicant's plea was not voluntarily given because said failure deprived Applicant of the benefit of full discovery prior to entering his plea. Therefore, this Court finds Applicant's request for relief due to an involuntary guilty plea should be granted. The appropriate remedy is to send the case back to the trial court for a new trial. United States v. Morrison, 449 U.S. 361, 364 (1981) (recognizing the remedy for a violation of the Sixth Amendment right to counsel "should be tailored to the injury suffered from the constitutional violation and should not unnecessarily infringe on competing interests").


CONCLUSION

Based on all the forgoing, this Court finds Applicant has established a constitutional deprivation which requires this Court to grant relief in regards to his allegation Counsel was ineffective due to the State's failure to produce requested documents in discovery, thereby rendering Applicant's plea involuntary. Therefore, this PCR application is granted, and Applicant's case should be remanded to General Sessions for disposition.

IT IS THEREFORE ORDERED:

1. The application be granted based on Applicant's involuntary guilty plea;
2. Applicant's sentence shall be vacated and his case remanded to General Sessions court for a new trial.

AND IT IS SO ORDERED this 28th day of August, 2019.


JEAN HOFER TOAL
Presiding Judge
Fifth Judicial Circuit

Columbia, South Carolina.