

Compton Law Firm, P.A.

Attorneys
212 Grace Street
Greenwood, South Carolina 29649

John DeVore Compton, III (SC & GA)
Alecia T. Compton (of counsel)

July 24, 2013

The Honorable Daniel E. Shearouse
Clerk, Supreme Court
Supreme Court Building
1231 Gervais Street
Columbia, SC 29201

RE: The State of South Carolina, Respondent, v. Dennis T. Deal, Appellant
Case No. 2012-CP-24-0837

Dear Clerk Shearouse:

Enclosed for filing is an original and one (1) copy of a notice of appeal and proof of service in the above case. Please return a clocked-copy in the enclosed stamped envelope.

Copies of the orders which are to be challenged on appeal are also enclosed.

This appeal is being filed with the Supreme Court to preserve Mr. Miller's rights to appeal a final Judgment.

Very truly yours,

John DeVore Compton, III

JDC/dsj

cc: J. Rutledge Johnson, Esq.
Post Office Box 11549
Columbia, SC 29202
Attorney for Respondent

SC Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

RECEIVED

JUL 26 2013

S.C. SUPREME COURT

Phone: (864) 942-0518
Facsimile: (864) 942-0815
www.comptonlawfirm.com

NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
In the Court of Appeals
(In The Supreme Court)

APPEAL FROM GREENWOOD COUNTY
Court of Common Pleas

Eugene C. Griffith, Jr., Circuit Court Judge

Case No. 2012-CP-24-0837

RECEIVED

JUL 26 2013

S.C. SUPREME COURT

The State of South Carolina,

Respondent,

v.

Dennis T. Deal,

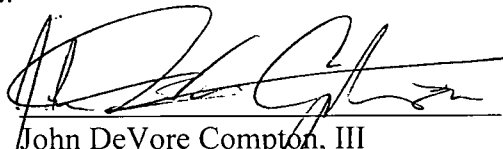
Appellant.

NOTICE OF APPEAL

Dennis T. Deal appeals the Order of the Honorable Eugene C. Griffith, Jr., dated July 1, 2013. Appellant received written notice of the Order on July 11, 2013.

The undersigned attorney was appointed to represent the Appellant on a Post-Conviction Relief Application on October 23, 2012.

July 24, 2013


John DeVore Compton, III
212 Grace St.
Greenwood, SC 29649
(864) 942-0518
Attorney for Appellant

Other Counsel of Record:
J. Rutledge Johnson, Esq.
Post Office Box 11549
Columbia, SC 29202
Attorney for Respondent
(803) 734-1343

THE STATE OF SOUTH CAROLINA
In the Court of Appeals
(In The Supreme Court)

APPEAL FROM GREENWOOD COUNTY
Court of Common Pleas

Eugene C. Griffith, Jr., Circuit Court Judge

Case No. 2012-CP-24-0837

The State of South Carolina,

v.

Respondent,

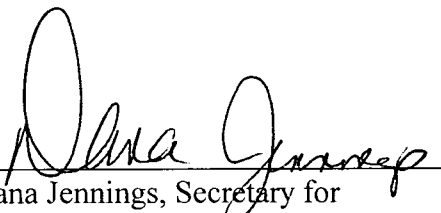
Dennis T. Deal,

Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on The State of South Carolina by depositing a copy of it in the United States Mail, postage prepaid, addressed to its attorney of record, J. Rutledge Johnson, Post Office Box 11549, Columbia, South Carolina 29202 on July 24, 2013.

July 24, 2013


Dana Jennings, Secretary for
John DeVore Compton, III
212 Grace St.
Greenwood, SC 29649
(864) 942-0518
Attorney for Appellant

STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

Dennis T. Deal, #294446,

2012-CP-24-0837

Applicant,

ORDER OF DISMISSAL

v.

State of South Carolina,

Respondent.

This matter comes before the Court by way of an Application for Post-Conviction Relief filed July 24, 2012. The Respondent made its Return on November 8, 2012. An evidentiary hearing into the matter was convened on June 3, 2013, at the Laurens County Courthouse. John D. Compton, Esquire represented the Applicant. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. Janna Nelson, Esquire also testified. This Court also had before it a copy of the records of the Greenwood County Clerk of Court, records from the South Carolina Department of Corrections, and the guilty plea transcript.

PROCEDURAL HISTORY

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenwood County Clerk of Court's orders of commitment. The Applicant was indicted by the May 2011 term of the Greenwood County Grand Jury for Assault & Battery 2nd Degree (2011-GS-24-1111) and Criminal Domestic Violence, 2nd Offense (2011-GS-24-1110). The Applicant was represented by Janna A. Nelson, Esquire. On June 16, 2011, the Applicant pled guilty to Assault and

Battery, 2nd degree and Criminal Domestic Violence, Second Offense. The Honorable Frank R. Addy, Jr. sentenced the Applicant to imprisonment for three (3) years, suspended to 179 days and five (5) years' probation for Assault and Battery, 2nd Degree and one (1) year suspended to 179 days and five (5) years' probation.

The Applicant was also charged with Assault and Battery 1st Degree (2011-GS-24-2264) and Shoplifting (2011-GS-24-2265). The Applicant waived presentment to the Grand Jury and pled guilty to both charges. On December 16, 2011, the Honorable Frank R. Addy, Jr. sentenced the Applicant to ten (10) years for Assault and Battery, 1st Degree and ten (10) years for Shoplifting/Enhancement for 3rd or Subsequent Offense, sentences to run consecutively. The Applicant's probation was also revoked for one (1) year for the Criminal Domestic Violence sentence and two (2) years for the Assault and Battery, 2nd Degree sentence, both to run concurrently with the Applicant's ten-year sentence. The Applicant did not appeal his convictions or sentences.

In his application for post-conviction relief, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assitant [sic] of Counsel"
2. "Coerced Involuntary Plea"
3. "Violation of Applicant Due Process Rights"

At the PCR hearing, the Applicant proceeded on his claim that Counsel was ineffective for not arguing for less than fifteen years' incarceration at the plea hearing.

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 at the post conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony

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accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to 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) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged 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 v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 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).

Plea Offer

At the hearing, the Applicant testified the State reneged on its initial plea offer and that he was under the influence of crack cocaine at the plea hearing. He stated he would have pled to a ten-year or twelve-year, non-violent plea agreement. However, the Applicant pled to a fifteen-year offer, with the caveat that he be able to return home for two days to arrange his affairs before serving his sentence in the department of corrections. During these two days, the Applicant used crack cocaine and failed a urine test upon returning to court. Judge Addy specifically instructed him during the guilty plea that if Applicant used drugs during the two day period, he would sentence Applicant to consecutive sentences, totaling twenty years.

On cross-examination, the Applicant admitted that he lied at the guilty plea hearing when he told Judge Addy that he was not under the influence of any drugs or alcohol. He also admitted that he pled on his own free will and was guilty of the offenses.

Counsel testified this case was originally charged as Attempted Murder but was reduced to Assault and Battery, 1st degree. Counsel stated Applicant always wanted a plea deal, so she negotiated with the solicitor. She testified the Victim wanted Applicant to serve eight years, but the solicitor would recommend fifteen years. She asserted the State did not renege on any plea offer, but only recommended fifteen years. Counsel also stated the plea offer was a recommendation so the plea judge had the option of increasing the sentence if Applicant did not appear two days later for sentencing. Counsel further testified she did not challenge the results of the urine test because

Applicant admitted he had used crack cocaine during the two-day period.

This Court has reviewed the evidence presented at the hearing as well as the plea transcript and other records. This Court finds Applicant's testimony not credible, especially considering Applicant admitted to lying to the plea court, and finds Counsel's testimony credible.

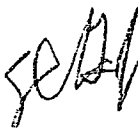
This Court finds the Applicant has failed to prove the State reneged on an initial plea offer. Counsel testified the State did not renege on any offers, and the offer that Applicant accepted was for a recommendation of fifteen years. Counsel negotiated with the solicitor to get the Attempted Murder charge reduced to Assault and Battery, 1st degree. The Applicant also pled guilty, according to the record, freely and voluntarily. Furthermore, the Applicant specifically stated, under oath, he had not been promised anything besides the State recommending a fifteen-year sentence. The only reason Applicant received twenty years is due to his own actions. Judge Addy made it painfully clear what ramifications would follow if Applicant used drugs in the two-day period between the guilty plea and sentencing. Unfortunately, Applicant chose to break his promise.

Enhancement

Applicant also asserted Counsel was ineffective for not objecting to the enhancement of his shoplifting charge as a third or subsequent offense based convictions which occurred over twenty years ago. On cross-examination, Applicant admitted he has shoplifting convictions from 1981, 1982, and 1985 on his criminal record.

Counsel testified Applicant had at least two prior shoplifting convictions, and the State had a factual basis to charge Applicant with a third or subsequent offense. She also stated she would have challenged the charge if Applicant did not have two prior shoplifting convictions.

This Court finds Counsel was not ineffective for not challenging or objecting to the State's



charge of a third or subsequent shoplifting offense as the State had a factual basis for the charge. Any challenge to this charge would have been frivolous.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in her representation of the Applicant.

This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. Therefore, these allegations are denied.

CONCLUSION

Based on all the foregoing, 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. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

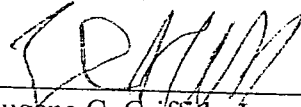
This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.



IT IS THEREFORE ORDERED:

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

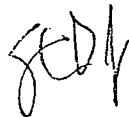
AND IT IS SO ORDERED!



Eugene C. Griffith, Jr.
Presiding Circuit Court Judge
Eighth Judicial Circuit

July 1st, 2013

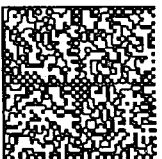
Newberry, South Carolina



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Greenwood, SC 29649

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Columbia, SC 29201



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