STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) FIFTEENTH JUDICIAL CIRCUIT

Meleik L. Roach, # 336878,) 2010-CP-26-7929

Applicant,

v.

State of South Carolina,

Respondent.

ORDER DENYING POST-CONVICTION RELIEF

11 MAR -1 AM 10:21
CLERK OF COURT HORRY

This matter came before the Court pursuant to an Application for post-conviction relief filed August 26, 2010, by Meleik L. Roach. Respondent made a Return on October 25, 2010. An evidentiary hearing was convened at the Horry County Courthouse on January 31, 2011. The Applicant was present in court and represented by J. Marshall Biddle, Esquire. Respondent was represented by Christina J. Catoe, Assistant Attorney General.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to convictions from Horry County. In August 2006, the Applicant was indicted for assault and battery of a high and aggravated nature ("ABHAN") (2006-GS-26-3680). In April 2009, the Applicant was indicted for two counts of armed robbery (2009-GS-26-1720; -1722). On September 8, 2009, the Applicant pled guilty before the Honorable Steven H. John. The Applicant was represented by James C. Galmore, Esquire. The State recommended a total sentence of eighteen (18) years and agreed to dismiss all of the other pending charges against the Applicant, including another count of ABHAN; two counts of possession of a weapon during the commission of a violent crime; two counts of bank fraud; two counts of forgery in an amount over $5,000; and use of a vehicle without the owner's permission. Judge John imposed a

sentence of 15 years on each count of armed robbery and 10 years for ABHAN, with the sentences to run concurrently. No direct appeal was filed.

STANDARD OF REVIEW

In a post-conviction relief proceeding, the applicant bears the burden of proving his allegations by a preponderance of the evidence. Caprood v. State, 338 S.C. 103, 109-110, 525 S.E.2d 514, 517 (2000); Rule 71.1(e). 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 correct measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, supra. "There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in a case." Caprood, supra, at 109, 525 S.E.2d at 517 (citations omitted). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. 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. In order to receive relief, the applicant must

prove both ineffective assistance and resulting prejudice. See Suber v. State, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007).

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 (1985). However, a guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. See Dalton v. State, 376 S.C. 130, 654 S.E.2d 870 (2007). Statements made during a plea should be considered conclusive unless the defendant presents persuasive reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

Allegations

In his PCR Application, Mr. Roach alleged that his custody was unlawful for the following reasons:

(1) Ineffective assistance of counsel; and
(2) Involuntary guilty plea.

The Applicant listed only James C. Galmore, Esquire, as his counsel. (See PCR Application, page 5, question # 18). The Applicant stated that he was seeking to have his conviction and sentence vacated or reversed and remanded.

Review of PCR Hearing

At the PCR hearing, this Court had before it the Applicant's PCR file, including all pleadings filed, the records of the Horry County Clerk of Court regarding the convictions, the Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript. The Applicant also introduced the following exhibits, without objection: Applicant's Exhibit # 1 – letter from William H. Monckton, dated July 17, 2007, regarding being retained on the charge of ABHAN (I-763582); Applicant's Exhibit # 2 – motion for medical records

submitted by William H. Monckton; and Applicant's Exhibit # 3 – discovery motion submitted by William H. Monckton.

The Applicant testified on his own behalf at the hearing. The Applicant stated that James Galmore was his attorney on the two armed robbery charges, but William Monckton was his attorney on the 2006 ABHAN charge. The Applicant testified that he hired Mr. Monckton to represent him on the ABHAN charge. However, he did not have a "substitution of counsel" order replacing Mr. Galmore with Mr. Monckton. The Applicant stated that Mr. Monckton was not present at the guilty plea on September 8, 2009, despite the fact that he had been retained and paid. He testified that Attorney Monckton had led him to believe that the ABHAN case had been thrown out. The Applicant stated that at the guilty plea, Attorney Galmore told him that Mr. Monckton "left him out to dry" on the ABHAN charge.

The Applicant testified that his guilty plea was involuntary because Attorney Galmore told him that he had to plead guilty or else he would face an immediate trial, which he would lose since his co-defendants were prepared to testify against him. The Applicant testified that Mr. Galmore was not prepared for trial and did not even know how old he was. The Applicant further stated that Mr. Galmore told him that all of the co-defendants were pleading guilty "on paper" to 18 years but that they would all actually get 10 years. The Applicant testified that Mr. Galmore told him that if he didn't plead guilty like the other co-defendants for a 10-year sentence, he would get a life sentence.

The Applicant testified that he met with Attorney Galmore a total of two times. He stated that Mr. Galmore gave him a copy of a videotape that was provided as a part of the discovery. He stated that Mr. Galmore also mailed him a copy of the discovery materials prior to the guilty plea, but never reviewed the discovery with him. The Applicant testified that Mr. Galmore never mentioned to him the discrepancies in the suspect descriptions and never mentioned any defenses

based upon them. The Applicant stated that he told Mr. Galmore about his co-defendants, but they never discussed any defenses to the charges. He stated that he had a defense of alibi, and that he had a witness who could place him away from the scene of the crime. The Applicant stated that he wanted to tell Mr. Galmore about this alibi defense, but he could never get him on the telephone. He said he called so much that the Public Defender's Office receptionist knew him by his voice. The Applicant stated that Mr. Galmore told him that he had filed a speedy trial motion, but that the case would be called at the discretion of the prosecutors. The Applicant testified that he really wanted a trial, but Mr. Galmore told him that "the deck was stacked against him."

The Applicant stated that Mr. Galmore was not prepared for trial since he had over 3,000 clients he was representing. He stated that his case sat around for more than a year and then Mr. Galmore was "blindsided" by prosecutor Debusk. The Applicant testified that Mr. Galmore became his attorney on the ABHAN charge at the plea because Mr. Monckton did not show up. He stated that Mr. Galmore told him that he did not have the ABHAN file with him since Mr. Monckton had it. He stated that he and Mr. Galmore never discussed the ABHAN charge at all, and that Mr. Galmore had no information regarding the ABHAN charge. He said that Mr. Galmore told him to plead to all three charges concurrent, and told him that everyone agreed he would get 10 years. The Applicant testified that Mr. Galmore's advice to plead guilty was improper. Finally, he testified that he was seeking a trial on these charges.

On cross-examination, the Applicant acknowledged that he never mentioned anything to the plea judge about having another lawyer on the ABHAN charge. He also told the judge he was pleading guilty freely and voluntarily and that he was satisfied with Mr. Galmore's services as his attorney. The Applicant denied that he explained his guilt to the judge in great detail. (See Plea Transcript, pages 12-13).

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Following the Applicant's testimony, James C. Galmore, Esquire, was called to the stand. Mr. Galmore testified that he represented the Applicant when he pled guilty to three charges as part of a plea deal on September 8, 2009. However, he stated that he had not been counsel of record on the ABHAN charge. He was initially appointed on the ABHAN charge on September 12, 2006. He did have a file regarding this charge and had discussed the case with the Applicant on a few different occasions. After the Applicant was released on bond on this charge, the case became less of a priority. Then, around July 17, 2007, Mr. Galmore received a letter from Attorney William Monckton (see Applicant's Exhibit # 1) indicating that Mr. Monckton had been retained to represent the Applicant on the ABHAN charge. Mr. Galmore stated that although there was no order of substitution of counsel done, the letter was sufficient to inform him that Mr. Monckton had taken over the case. Mr. Galmore did not do any further work on the ABHAN charge until later, when it became part of the plea with two armed robbery charges.

Mr. Galmore stated that he was appointed to represent the Applicant on the two armed robbery charges on January 16, 2008. He was also appointed to represent the Applicant on several other pending charges at various times, including another unrelated count of ABHAN; two counts of possession of a weapon during the commission of a violent crime;[1] two counts of bank fraud; two counts of forgery in an amount over $5,000; and use of a vehicle without the owner's permission. Mr. Galmore explained that the first ABHAN charge became part of the plea because the solicitor specifically included that charge in his plea offer. He stated that the plea offer would have gone away if the Applicant had not agreed to plead to the ABHAN as a part of it. Mr. Galmore testified that because the armed robbery charges were much more serious, he felt that it was in the Applicant's best interests to accept the plea to all three charges, rather than taking the cases to trial. He testified that the solicitor was prepared to try all cases

[1] The two weapon possession charges were associated with the two armed robbery charges.

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and that they had a jury waiting downstairs. Mr. Galmore stated that although he was prepared to try the cases, he did not want to try them because he believed that the Applicant would be convicted and receive a significant prison sentence. He advised the Applicant of this and told him that if convicted at trial, he would face the maximum sentences. He also advised the Applicant that there was a potential for a "life without parole" sentence because armed robbery was considered a "most serious" offense and the Applicant had two of these charges. Mr. Galmore stated that he did not recall any deals regarding the co-defendants, and did not recall any deal wherein they would all plead to 18 years but get 10 years. However, he did advise the Applicant that the co-defendants would likely point him out as one of the persons involved in the armed robberies.

Mr. Galmore testified that, although the Applicant failed to show up for several scheduled meetings, he was eventually able to review the discovery with the Applicant at his office. He stated that he gave him a copy of the incriminating videotape. It was Mr. Galmore's opinion that the person in the videotape looked like the Applicant, and that the videotape would be very damaging evidence at a trial. Mr. Galmore did not recall the Applicant ever denying that he was depicted on the videotape. In addition, when the police apprehended the robbers shortly after the crimes were committed, they found the Applicant in the driver's seat of the getaway car and the gun used in the robberies underneath his seat. Mr. Galmore stated that the Applicant never told him about an alibi defense or any other defense.

Mr. Galmore advised the Applicant not to take the cases to trial, and told him that he believed that the plea offer would be in his best interests. Nevertheless, he left the ultimate decision up to the Applicant. The Applicant made his own choice to accept the plea deal to the three charges, and he understood that the plea deal resolving the two armed robbery charges was dependent upon the ABHAN charge being included. Mr. Galmore acknowledged that he might

not have been prepared for a trial on the ABHAN charge. However, he pointed out that he did not have to try that case; instead, the State conditioned the plea bargain upon that charge being included. Although the Applicant did ask Mr. Galmore about why Attorney Monckton was not present, he thereafter agreed to go forward on the plea with Mr. Galmore representing him. Mr. Galmore stated that the Applicant never mentioned to the plea judge that he had another lawyer and instead told the plea judge that he was satisfied with Mr. Galmore's representation.

Although the Applicant hoped that the judge would impose a lower sentence, he understood that the State was recommending a total sentence of 18 years. Further, the Applicant understood that the State would be dismissing all of the other pending charges against him, including the two weapon possession charges which were associated with the armed robbery charges, two forgery charges, another count of ABHAN, two bank fraud charges, and use of vehicle without the owner's permission. In his mitigation presentation, Mr. Galmore requested that the judge impose the mandatory minimum sentence of 10 years. Ultimately, the plea judge decided to go below the State's sentence recommendation and sentence the Applicant to 15 years.

Set forth below are the relevant findings of fact and conclusions of law, as required by S.C. Code Ann. § 17-27-80 (2003):

FINDINGS OF FACT AND CONCLUSIONS OF LAW

State's Motion to Re-Open the Record

Following the evidentiary hearing, this Court took the Applicant's case under advisement. Two days after the hearing, the State submitted a Motion to Re-Open the PCR Record to include the testimony of Attorney William Monckton. The State contended that since the PCR application listed only James C. Galmore as the Applicant's attorney, Mr. Monckton

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was not subpoenaed to the PCR hearing. The State asserted that it would be appropriate to supplement the PCR record with Mr. Monckton's testimony.

This Court hereby DENIES the State's motion. This Court finds and concludes that, for reasons discussed below, Mr. Monckton's testimony is not necessary to the Court's resolution of the issues in this case.

Ineffective Assistance of Counsel/Involuntary Guilty Plea Claims

After careful consideration of the entire record, this Court concludes that the Applicant has failed to meet his burden of proof in this matter. First, the Applicant's contention regarding Mr. Monckton's failure to appear at the guilty plea hearing is without merit. The Applicant willingly proceeded with his guilty plea to all three charges with full knowledge that Mr. Monckton was not present.[2] He agreed to proceed with Mr. Galmore as his attorney at the plea, and he told the plea judge that he was satisfied with Mr. Galmore's help and representation. (See Plea Transcript, pages 7-8). At no time did the Applicant suggest he had any problem with the arrangement. Further, Mr. Galmore agreed to represent the Applicant as to the three charges included in the plea that day. Therefore, regardless of any previous contract with Mr. Monckton regarding representation on the ABHAN charge, Mr. Galmore served as the Applicant's counsel on the day of the plea as to the charges to which the Applicant pled guilty.[3] This conclusion is supported by the fact that the Applicant listed only James C. Galmore as his attorney in his PCR Application. The PCR court is not the proper forum for the Applicant to resolve his contract dispute with Mr. Monckton.

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[2] The Applicant presented no evidence to explain why Mr. Monckton was not present. There is no evidence in the record that Mr. Monckton was ever properly notified that a plea involving the ABHAN charge would be taking place that day.

[3] Notably, the Applicant failed to explain how he qualified as "indigent," and thus entitled to a public defender, in spite of the fact that he was financially able to retain private counsel as to one charge.

This Court further finds that the Applicant freely and voluntarily chose to plead guilty pursuant to the plea offer made by the solicitor that day. He knew that the plea would include both armed robbery charges as well as the ABHAN charge. He also knew that the plea included dismissal of all pending charges against him. Finally, the Applicant knew that the State would recommend an 18-year sentence and that he was facing a possible sentence of 30 years for each armed robbery and 10 years for ABHAN. The plea transcript reflects that he was aware that the judge did not have to accept the State's recommendation as to the sentence. The Applicant freely admitted his guilt on all three charges and apologized to the court, stating that he "screwed up bad." (See Plea Transcript, p. 5, lines 12-15; p. 7, lines 6-12; p. 11, line 16 – p. 14, line 4; p. 16, line 6). He also stated that he had told Mr. Galmore everything he needed to tell him about these charges and that he needed no further time to discuss the cases with him. (See Plea Transcript, pages 7-8).

This Court further finds that Attorney Galmore's advice to accept the plea bargain including all three charges was entirely reasonable under the circumstances. Based upon the evidence, Mr. Galmore believed that the Applicant would very likely have been convicted of all charges had he taken the cases to trial. There were no plausible defenses regarding the two armed robbery charges, and the State had videotape evidence and other evidence that Mr. Galmore believed would have incriminated the Applicant. Since the armed robbery charges were the most serious charges that the Applicant was facing, and since he was looking at a possible sentence of 30 years on each charge (or a possible life without parole sentence pursuant to S.C. Code § 17-25-45 if the cases were tried successively), the Applicant had good reason to accept the plea offer notwithstanding the fact that it included the unrelated ABHAN charge. Moreover, the plea resolved all of the numerous outstanding charges against the Applicant.

Under these circumstances, this Court concludes that Mr. Galmore's advice was reasonable and that the Applicant failed to prove his guilty plea was involuntary in any respect.

In addition, this Court finds that the Applicant failed to prove prejudice where he did not credibly establish that he would have gone to trial on any of his charges rather than pleading guilty. See Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) ("A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of a plea by showing that counsel's representation fell below an objective standard of reasonableness *and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty but would have insisted on going to trial.*") (emphasis added). This Court did not find the Applicant's PCR hearing testimony to be credible - especially his testimony regarding his purported alibi - considering very candid admissions at the plea hearing. (See Plea Transcript, pages 12-14). Notably, he failed to present his alleged alibi witness at the PCR hearing. See Dempsey v. State, 363 S.C. 365, 369, 610 S.E.2d 812, 814 (2005) (A PCR applicant cannot show prejudice where an allegedly favorable witness does not testify at the PCR hearing.) Furthermore, although he complained about Attorney Monckton's absence at the plea, he did not establish that he would have rejected the favorable plea offer even if Attorney Monckton had been present.

In sum, this Court finds no evidence of ineffective assistance of counsel and no evidence that the Applicant's guilty plea was involuntary. The Applicant was fully informed regarding all relevant matters and made a free and voluntary decision to accept the plea offer, believing it to be in his best interests. This Court finds no persuasive reasons for allowing the Applicant to depart from the sworn statements he made at his guilty plea. See Dalton v. State, 376 S.C. 130, 654 S.E.2d 870 (2007).

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CONCLUSION

For all of the reasons discussed above, this Court finds and concludes that the Applicant failed to prove any entitlement to post-conviction relief. Therefore, the PCR Application must be denied and dismissed with prejudice for failure to meet the burden of proof under Strickland v. Washington, 466 U.S. 668 (1984), and Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

Counsel's attention is directed to Marlar v. State, 375 S.C. 407, 653 S.E.2d 266 (2007), and Rule 59(e), SCRCP, regarding the filing of a Motion to Alter or Amend should counsel believe this Order fails to adequately address all issues raised as required by S.C. Code Ann. § 17-27-80 (2003). This Court further advises that if Applicant desires to secure appellate review of this Order, a notice of appeal must be filed and served **within thirty (30) days** of the service of this Order. Applicant and counsel are directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of appeal has been timely filed.

IT IS THEREFORE ORDERED THAT:

1. The Application for post-conviction relief is **DENIED and DISMISSED with PREJUDICE.**

2. The Applicant must remain in the custody of the State for completion of his sentence.

AND, IT IS SO ORDERED this 23rd day of Feb, 2011.

[signature]

Benjamin H. Culbertson
Presiding Judge
Fifteenth Judicial Circuit

Conway, South Carolina

STATE OF SOUTH CARO[illegible]A) IN [illegible] COURT OF COMMON PLEAS
COUNTY OF HORRY) 15TH JUDICIAL CIRCUIT
Meleik Lamont Roach,) CASE NO.: 2011CP2610362
Plaintiff(s),) APPOINTMENT OF COUNSEL OR GAL
-vs-) (*Select one.*)
South Carolina Horry County of,) ☒ ORDER
Defendant(s).) ☐ AMENDED ORDER

TYPE OF CASE/PROCEEDING: (*Check one.*)

☒ Post-Conviction Relief (PCR)/habeas case ☐ Adoption ☐ Juvenile
☐ SVP case ☐ Custody and/or Visitation ☐ Abuse and Neglect
☐ Minor Name Change ☐ Other: Post Convict Rel 500

It appears Meleik Lamont Roach, who is a litigant in this case, is entitled to court-appointed counsel or a guardian ad litem.

It further appears that: (*Select only one.*)

☒ counsel/guardian ad litem has not yet been appointed by the court; therefore, an appointment for counsel/guardian ad litem is necessary.

☐ counsel or a guardian ad litem was previously appointed by the court but has indicated either a possible conflict of interest, an entitlement to exemption, or other good cause warranting the appointment of new counsel or guardian ad litem based on:

☐ counsel was previously appointed by the court but has not indicated that the litigant has retained private counsel and is no longer entitled to appointed counsel.

☐ court appointed counsel has obtained , Esquire as substitute counsel pursuant to Rule 608(h)(2); provided, however, only the member who originally received the appointment and who sought substitute counsel shall receive credit.

☐ Other: .

Therefore, it is ordered that BRANA WILLIAMS hereby is appointed as (*Select one.*)

☒ counsel ☐ lead counsel (*if capital PCR case*) ☐ guardian ad litem

for the above-named person. Any counsel or GAL previously appointed is/are hereby relieved.

☐ (*If Death Penalty PCR Case*) It is further ordered that , Esquire, is hereby appointed as second counsel in this capital PCR case.

HORRY [illegible]
2012 JAN -9 AM 11:20
MELANIE HUGGINS-WARD
CLERK OF COURT

The clerk of court is directed to forward a copy of this order to all persons entitled to notice.

IT IS SO ORDERED
January 9, 2012

Melanie Huggins-Ward

☐ Circuit Judge ☒ Clerk of Court

Plaintiff Attorney:

BRANA WILLIAMS	
889 INLET SQUARE DRIVE	
MURRELLS INLET, SC 29576	

Defendant Attorney:

Alan McCrory Wilson	
Attorney General's Office	
PO Box 11549	
Columbia, SC 29201	

NOTICE: SC Supreme Court Order of September 29, 2006, requires appointed counsel entitled to payment from the Office of Indigent Defense (OID) to register the case online with OID within fifteen (15) days of this appointment at www.sccid.sc.gov, and further directs that reimbursement vouchers be submitted directly to SCCID and not to the trial judge or clerk of court. See SCCID website for further details.

CP20 (08/08)
SCCA/267 (03/07)