

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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Apr 15 2024

S.C. SUPREME COURT

Appeal from Charleston County
Court of Common Pleas

Honorable Diane S. Goodstein, Circuit Court Judge

Case No.: 2019-CP-10-04694

DE' ANDRE MURPHY, # 378303 Appellant,

v.

THE STATE Respondent.

NOTICE OF APPEAL

De'Andre Murphy, #378303, appeals the order dated March 12, 2024, of the Honorable Diane S. Goodstein denying and dismissing his Post-Conviction Relief application. Appellant received written notice of entry of this order on March 21, 2024.

April 15, 2024



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Att
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STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
De'Andre Murphy, #378303,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT

) CASE NO. 2019-CP-10-4694

ORDER OF DISMISSAL
WITH PREJUDICE

BY DSC

JULIE J. ARNOLD
CLERK OF COURT

2024 MAR 18 PM 12:53

FILED

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed by De'Andre Murphy (Applicant) on September 11, 2019. Respondent made its return requesting an evidentiary hearing. On November 3, 2022, an evidentiary hearing convened before the Honorable Diane S. Goodstein. Applicant was present and represented by James K. Falk, Esquire. Assistant Attorney General Samantha J. Weidauer represented Respondent. At the hearing, Applicant testified on his behalf. Respondent called as witnesses plea counsel Lori Proctor and investigator Harry Long. After hearing the testimony at the PCR hearing and reviewing the records, this Court finds that Applicant did not meet his burden of proof and dismisses this application with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections serving a thirty-year sentence. In ^D May 2018, the Charleston County Grand Jury indicted Applicant for murder (2018-GS-10-02636). These charges arose from the fatal shooting of Eric S. Brantley on April 20, 2016. On April 1, 2019, Applicant appeared before the Honorable R. Markley Dennis and pled guilty to the lesser included offense of voluntary manslaughter. Lorelle Proctor and Teresa Norris, Esquires, represented Applicant, and Assistant Solicitor Edward Regin Corvey III

represented the State. Judge Dennis sentenced Applicant to thirty years. Applicant did not appeal.

CURRENT APPLICATION

On September 11, 2019, Applicant filed the current PCR application alleging:

“Ineffective Assistance of Counsel”

1. “Due process violation of 4th, 5th, 6th, and 14th Amendment rights”
2. Involuntary Plea

At the evidentiary hearing, Applicant proceeded on allegations of involuntary guilty plea and ineffective assistance of counsel based on counsel’s failure to investigate.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the records before it, including the Charleston County Clerk of Court records of the underlying conviction, Applicant’s records from the Department of Corrections, and the plea transcript. This Court also had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony. After a careful review based on the Strickland standard set forth below, this Court finds Applicant failed to carry his burden of proof. Below are this Court’s findings of facts and conclusions of law as required by section 17-27-80 of the South Carolina Code (2017).

Ineffective Assistance of Counsel

In a PCR action, an applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). In evaluating allegations of ineffective assistance of counsel, courts apply the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668 (1984). First, an applicant must prove counsel’s performance was deficient. Id. Under this prong, courts measure an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the

exercise of reasonable professional judgment,” and an applicant must overcome this presumption to receive relief. *Id.* at 117-18, 386 S.E.2d at 625. Second, an applicant must prove counsel’s deficiency 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.*

In the context of a guilty plea, the analysis of counsel’s performance under the first prong of Strickland remains unchanged: the applicant must show counsel’s representation fell below an objective standard of reasonableness. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985). To show prejudice, an applicant must “must show that there is a reasonable probability that, but for [plea] counsel’s [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial.” *Id.* at 59.

To find a guilty plea is knowing and voluntary, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 385 U.S. 238, 89 S. Ct. 1709 (1969); Dover v. State, 304 S.C. 433, S.E.2d 391 (1991). Courts can consider the guilty plea transcript as well as evidence at PCR hearing when determining guilty plea issues. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

Involuntary Plea

Applicant first contends his plea was not voluntarily entered because it was entered based on the advice of counsel and not because he wanted to. Applicant did not prove this ground.

At the PCR hearing, Applicant testified counsel advised him to plea due to the weight of evidence against him, and he pled because he felt like his only choice was prison or pleading guilty. Plea counsel testified she advised Applicant to plead because she believed, based on her investigation, Applicant would not win at trial and would potentially receive life imprisonment. She explained the State’s evidence included a surveillance video capturing Applicant on video at the crime scene as well as expected testimony of three co-defendants. As part of her preparation,

counsel stated she watched the trial of one of Applicant's co-defendants; she stated Applicant's name was mentioned repeatedly at that trial, and based on her observation, she believed there was a 99% chance they would lose at trial. However, counsel testified she made Applicant aware of the nature of the charges against him, discussed all relevant evidence with him prior to plea, and would have gone to trial without hesitation if Applicant wanted to.

Initially, this Court finds counsel's foregoing testimony credible. Based on this testimony, this Court finds counsel's advice to plead guilty was reasonable under prevailing professional norms and not deficient. Likewise, this Court finds Applicant pled guilty knowingly and voluntarily. Initially, this Court finds credible counsel's testimony that she explained the plea to Applicant and the constitutional rights he was waiving. Further, the plea court apprised Applicant of the nature of charges against him and possible sentences. (Tr. 2-5). The Court also advised Applicant of the constitutional rights he was waiving, including the right to a jury trial, the right to confront his accusers, and the right to remain silent. (Tr. 8-9). Based on the foregoing, this Court finds counsel's advice was not ineffective, and Applicant entered his plea knowingly and voluntarily. Thus, this claim is denied.

Failure to Investigate

Applicant next contends plea counsel was ineffective for failing to thoroughly investigate evidence related to Applicant's location at time of crime and physical appearance, which Applicant asserts induced him to plead guilty. This Court finds Applicant did not prove this ground.

Initially, this Court finds credible plea counsel's testimony regarding her investigation. Specifically, counsel credibly testified she hired an investigator and investigated potential alibis; visited the crime scene multiple times; reviewed co-defendant's statements to law enforcement; attended a co-defendant's trial to assess the State's case; and had the investigator look into

evidence concerning key card swipes and Applicants blonde hair. Investigator Harry Long credibly testified he interviewed all possible alibis and conducted an investigation. Based on the foregoing, counsel's investigation was reasonable within prevailing professional norms and not deficient. Further—and critically—Applicant did not introduce any credible evidence (through, for example, the testimony of one of his alleged alibis) of what counsel would have uncovered upon a further investigation and thus did not prove prejudice. Thus, this claim is denied.

CONCLUSION

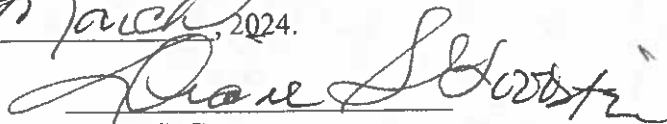
Based on the foregoing, this Court concludes Applicant has not established any constitutional violations that would require this Court to grant relief. Thus, this application is denied and dismissed with prejudice.

Should Applicant wish to secure appellate review, he must file and serve a notice of appeal within thirty days of receipt by counsel of written notice of entry of judgment. See Rule 203, SCACR. Applicant has the right to an appellate counsel's assistance in seeking review of the denial of PCR. Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). If Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on applicant's behalf. Rule 71.1(g), SCRCF. Attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

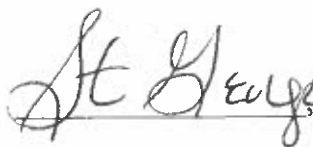
IT IS THEREFORE ORDERED:

1. This application for PCR is denied and dismissed with prejudice; and
2. Applicant shall be remanded to and remain in the custody of the State.

AND IT IS SO ORDERED THIS 12 day of March, 2024.



DIANE S. GOODSTEIN
Presiding Judge
Ninth Judicial Circuit



St. George, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

De'Andre Murphy, #378303,

Applicant,

v.

State of South Carolina,

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Order of Dismissal with Prejudice has been served upon the applicant by mailing one copy in the United States mail, postage prepaid, addressed to:

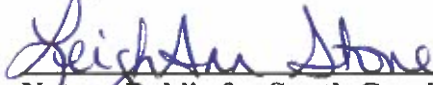
**Hervery B.O. Young, Esquire
S.C. Commission on Indigent Defense
PO Box 11433
Columbia, SC 29211-1433**

This 20th day of March, 2024.



Vickie Hall, Legal Assistant
for Respondent

SWORN to before me this 20th day of March, 2024.



Notary Public for South Carolina.

My Commission Expires: May 16, 2029