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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

The Honorable Clifton Newman, Circuit Court Judge

Case No. 2021-CP-21-1841

Randall Loyis Simpson,Petitioner,

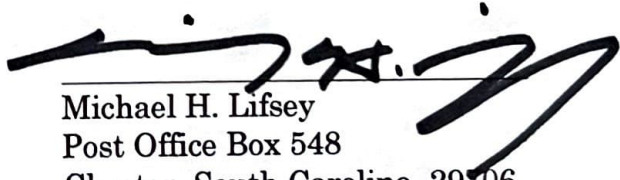
v.

State of South Carolina,Respondent.

NOTICE OF APPEAL

Petitioner, Randall Loyis Simpson, appeals the order of the Honorable Clifton Newman, dated July 30, 2024, and filed August 9, 2024. Petitioner received written notice of entry of this order on August 17, 2024.

8/17, 2024



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STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

CERTIFIED: A TRUE COPY
Ms. Paula Offner
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY

IN THE COURT OF COMMON PLEAS
FOR THE TWELFTH JUDICIAL CIRCUIT

Randall Loyis Simpson, #315061
Applicant,

Case No.: 2021-CP-21-1841

v.

ORDER OF DISMISSAL

State of South Carolina,
Respondent.

2024 AUG -9 AM 11:59
FILED

This matter is before the Court by way of an application for post-conviction relief (PCR) filed by Randall Loyis Simpson (Applicant) on August 23, 2021. On October 19, 2022, an evidentiary hearing convened before me. Applicant was present and represented by Michael H. Lifsey. Assistant Attorney General Danielle Dixon represented Respondent. At the hearing, Applicant testified on his behalf. Respondent called as a witness plea counsel Elizabeth Neyle. Following a thorough review of the records before this Court and the testimony and evidence presented at the hearing, this Court finds Applicant did not meet his burden of proof. Thus, this Court denies relief and dismisses this application with prejudice.

Procedural History

Applicant is presently confined in the South Carolina Department of Corrections serving a ten-year revoked sentence. In June 2019, the Florence County Grand Jury indicted Applicant for armed robbery, first-degree burglary, attempted murder, and unlawful possession of a weapon (2019-GS-21-00854). These charges arose from a home invasion on December 21, 2018.

On August 24, 2020, Applicant appeared before the Honorable D. Craig Brown and entered a negotiated plea to the the lesser-included offense on the attempted murder charge of assault and battery of a high and aggravated nature. Assistant Public Defender Elizabeth Neyle represented Applicant, and Assistant Solicitor J. Ryan White represented the State. Pursuant to the negotiated

plea, Judge Brown sentenced Applicant to twelve years' imprisonment, suspended to time-served and five years' probation.¹ Applicant did not appeal.

I. Current Application

On August 23, 2021, Applicant timely commenced this PCR action alleging he is being held in custody unlawfully due to the following:

1. Violation of 6th Amendment Constitutional Rights;
2. Ineffective Assistance of Counsel;
3. Not advised by my Attorney Elizabeth H. Neyle that I had any rights to appeal.

Prior to the PCR hearing, Applicant (through counsel) filed an amended application alleging counsel was ineffective due to the following:

- a. Failing to move for a speedy trial despite the request of Applicant;
- b. Failing to have a preliminary hearing;
- c. Informing Applicant he was not going to be able to have a trial any time in the foreseeable future and his only chance of being released was to plead guilty;
- d. Not informing Applicant the alleged victim in his case had died, thereby weakening the State's case against Applicant;
- e. Failing to inform Applicant that a conflict of interest existed between counsel and Applicant due to Applicant filing a lawsuit in Federal Court against counsel;
- f. Failing to inform Applicant that a conflict of interest existed between counsel and Applicant due to a complaint filed with the Office of Disciplinary Counsel by Applicant against counsel.

At the PCR hearing, Applicant proceeded on the allegations of his amended application.

¹ According to the public index, a probation revocation hearing was held December 9, 2022, on this underlying offense. According to Department of Corrections records, Applicant is currently serving a ten-year sentence on this offense. The probation revocation hearing itself is not before this Court.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Before this Court are the Florence County Clerk of Court records of the underlying conviction, Applicant's records from the Department of Corrections, the plea transcript, and the records of this PCR action. This Court has had the opportunity to review these records and has heard the testimony at the PCR 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 accordingly. After a careful review based on the Strickland standard set forth below, this Court finds Applicant has 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. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). To establish ineffective assistance of counsel, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness and (2) the applicant sustained prejudice as a result of counsel's deficient performance. Strickland v. Washington, 466 U.S. 668, 687-88 (1984). To prove prejudice following a guilty plea, the applicant "must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." Hill v. Lockhart, 474 U.S. 52, 59 (1985).

The test for determining the validity of a guilty plea is "whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." North Carolina v. Alford, 400 U.S. 25, 31 (1970). "[A] defendant entering a guilty plea must be aware of the nature and crucial elements of the offense, the maximum and any mandatory

minimum penalty, and the nature of the constitutional rights being waived.” Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999).

Failed to move for speedy trial²

Applicant first contends counsel was ineffective for not filing a motion for a speedy trial despite his request. He likewise contends counsel was ineffective for informing Applicant he would not have a trial any time in the foreseeable future, and his only chance of being released was to plead guilty. This Court finds Applicant did not prove counsel was ineffective in this regard.

At the hearing, Applicant testified he asked counsel to file a motion for a speedy trial in 2019, but she never did. As a result, he stated he filed his own motion for a speedy trial on June 12, 2019. He stated his trial was scheduled to begin March 16, 2020, but the COVID pandemic closed the courts down before his trial. Applicant testified counsel visited him in August 2020; at that time his trial was coming up, but counsel told him that with COVID, it could be years before his trial began. He stated she told him that if he accepted a plea offer to five years’ probation, he could go home. Applicant testified he agreed to the plea because he was ready to go home

Counsel testified Applicant was arrested in early January 2019, and she was appointed the case around February 2019. She stated she met with him multiple times—“in the double digits.” Counsel recalled Applicant requesting a motion for a speedy trial in June 2019. She stated that as part of her general practice, she speaks to clients when they request a speedy trial motion to explain the process to them, and she had “never had a client persist they wanted one” after she spoke to them. Counsel recalled speaking to Applicant about a speedy trial motion, and after their conversation, Applicant “didn’t wish to go forward with a speedy trial motion.” She did not recall Applicant requesting a speedy trial motion after March 2020.

² This section combines allegations (a) and (c) as set forth above.

Counsel testified Applicant's trial was set for a date-certain in mid-March 2020, but the COVID pandemic occurred the week before trial and shut everything down. She stated the courts suspended all jury trials. Counsel testified she sent Applicant a letter notifying him that trial had been suspended but informing him that she believed his trial would be scheduled for April 2020. However, she stated COVID delayed that further. She testified there was a lot of uncertainty surrounding COVID, and she was unsure when courts would resume.

This Court finds counsel's foregoing testimony credible. Based on counsel's credible testimony, this Court finds Applicant was part of the decision-making process related to the filing of the speedy-trial motion in 2019, and counsel's representation in this regard was not deficient. This Court likewise finds Applicant did not prove prejudice. Simply put, it is not clear how the filing of a speedy-trial motion would have changed his decision to plead guilty. Applicant thus has not met his burden of proving deficiency or prejudice in this regard.

This Court likewise finds credible counsel's testimony that the COVID pandemic suspended jury trials the week before Applicant's scheduled trial, and she did not have clear answers about when trials would resume. Given the uncertainty of that time, counsel's advice to Applicant about when trials would resume was reasonable under prevailing professional norms, and Applicant did not prove deficiency. Applicant likewise did not prove prejudice. Ultimately, Applicant pled guilty pursuant to negotiated sentence of probation because he wanted to go home, and Applicant entered his plea freely, knowingly, and voluntarily with an understanding of the constitutional rights he was waiving and the consequences he faced. Applicant thus has not shown a reasonable likelihood he would not have pled guilty, and this claim is denied.

Failed to request preliminary hearing

Applicant next contends counsel was ineffective for not requesting preliminary hearing. This Court finds Applicant did not prove counsel was ineffective in this regard.

At the hearing, Applicant testified he never had a preliminary hearing. Counsel testified that when her clients want a preliminary hearing, she will request it on their behalf. However, she stated Applicant did not request a preliminary hearing until June 2019. Counsel stated that at that time, it was too late.

This Court finds counsel's foregoing testimony credible. This Court further finds counsel correctly assessed that by the time Applicant requested a preliminary hearing in June 2019, it was too late.³ Thus, Applicant did not prove deficiency. Further, and critically, Applicant did not show how a preliminary hearing would have changed his ultimate decision to plead guilty and thus has not shown prejudice. Thus, this claim is denied.

Failed to inform Applicant the alleged victim had passed away

Applicant asserts counsel was ineffective for not advising him that the alleged victim had passed away, thereby weakening the State's case against Applicant. This Court finds Applicant did not prove counsel was ineffective in this regard.

At the hearing, Applicant testified counsel did not tell him the victim passed away before his plea, and Applicant was unaware the victim was deceased. He averred he would not have pled guilty if he knew the victim had passed away. On cross-examination, Applicant acknowledged he had previously worked for the victim, and the victim identified the intruder in the 911 call as "some guy named Randy."

³ Applicant was indicted June 6, 2019.

Counsel testified she learned in June 2020 that the victim had passed away, and she visited Applicant and relayed that information to him. She recalled discussing with Applicant “how this had changed a great deal of his case, and whether or not he wanted me to . . . try to get a better plea offer or . . . still proceed to trial.” Counsel testified Applicant indicated he was open to a plea because he wanted to go home. Counsel testified the State’s evidence included the victim’s 911 call, wherein the victim identified the intruder as “Randy or Randall” and stated the intruder had worked for him.

This Court finds credible counsel’s forgoing testimony that she informed Applicant in June 2020 that the victim had passed away. This Court further finds Applicant’s testimony that he did not know the victim had passed away until after his plea to be not credible. Based on counsel’s credible testimony, this Court finds counsel’s performance and advice in this regard was reasonable under prevailing norms and not deficient. Likewise, because Applicant was in fact informed the victim had passed away, he did not show prejudice. This claim is thus denied.

Conflict of Interest

Finally, Applicant contends counsel was ineffective for not advising him of a conflict of interest between Applicant and counsel based upon (1) a federal lawsuit Applicant filed against counsel and (2) a complaint Applicant filed against counsel with the Office of Disciplinary Counsel. This Court finds Applicant did not prove counsel was ineffective in this regard.

“To establish a violation of the Sixth Amendment right to effective counsel due to a conflict of interest arising from multiple representation, a defendant who did not object at trial must show an actual conflict of interest adversely affected his attorney's performance.” Lomax v. State, 379 S.C. 93, 101, 665 S.E.2d 164, 168 (2008), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018). “An actual conflict of interest occurs where an attorney owes a duty

to a party whose interests are adverse to the defendant's." Id. "The mere possibility defense counsel may have a conflict of interest is insufficient to impugn a criminal conviction." Id. "Additionally, the fact that counsel does not advise a defendant of the potential conflict of interest does not affect the constitutionality of the conviction." Id. "Moreover, the Rules of Professional Conduct have no bearing on the constitutionality of a criminal conviction." Id. "However, a defendant need not demonstrate prejudice if there is an actual conflict of interest." Id. at 102, 665 S.E.2d at 168. "But until a defendant shows that his counsel actively represented conflicting interests, he has not established the constitutional predicate for his claim of ineffective assistance." Id.

At the PCR hearing, Applicant testified he filed grievances against plea counsel prior to his plea, but the Office of Disciplinary Counsel (ODC) found "no faults." He stated he also filed a federal lawsuit against counsel and the solicitor. Applicant testified, "She just acted like nothing happened. She never said nothing to me about nothing, even when I filed the habeas corpus."

Counsel testified she was never served a federal lawsuit. She recalled Applicant wrote the court regarding her representation of him, and they had a hearing on that issue before Judge Russo on June 8, 2020. Counsel testified Applicant told Judge Russo he was satisfied with her representation. She stated that when a client files an ODC complaint against her, her general practice is to continue representing them, and the complaint does not change her representation.

This Court finds counsel's foregoing testimony credible. Based on counsel's credible testimony that she was never served a federal lawsuit, Applicant has not shown a conflict of interest in this regard. Likewise, Applicant has not shown a conflict of interest that adversely affected counsels' performance based on his filing of the ODC complaint. Initially, this Court finds credible counsel's testimony that the ODC complaint did not affect her representation of Applicant.⁴ To

⁴ This is evidenced by the fact counsel successfully negotiated a suspended sentence to probation and the dismissal of other related charges.

the extent any conflict existed, this Court finds Applicant waived any such conflict when he appeared before Judge Russo and relayed he was satisfied with counsel's representation. This claim is thus denied.

Conclusion

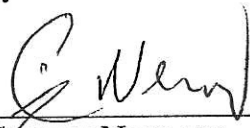
Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief. Thus, this application is denied and dismissed with prejudice.

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. An 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 (1991). If an applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on applicant's behalf. Rule 71.1(g), SCRCR. 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 must be remanded to and remain in the custody of the State.

AND IT IS SO ORDERED THIS 7 day of 30, 2024.



CLIFTON NEWMAN
Presiding Judge
Twelfth Judicial Circuit

Columbia, South Carolina

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