

Per

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Charles T. Brooks, III
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Irma R. Brooks
Attorney

September 3, 2013

South Carolina Supreme Court
PO Box 11330
Columbia, SC 29211

RE: Taveio R. B. Boston v State of South Carolina
Case No. 2012-CP-16-0544

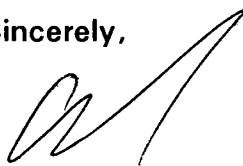
Dear Sir or Madam:

Enclosed herewith you will find the Notice of Appeal, Order of Dismissal, along with a Proof of Service in reference to the above named Applicant.

If you have any questions or concerns, please contact my office at the number stated above.

With kind regards, I am

Sincerely,



Charles T. Brooks, III
CTB/jlb

RECEIVED

SEP 06 2013

S.C. SUPREME COURT

Enclosed as stated

Cc: Karen Ratigan, Office of Attorney's General
South Carolina Office of Appellate Defense
Taveio R. B. Boston, 347753

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM DARLINGTON COUNTY
Court of Common Pleas
Honorable R. Ferrell Cothran, Circuit Court Judge

Case No: 2012-CP-16-0544

Taveio R. B. Boston,..... Appellant
S.C.D.C. No.: 347753


v.

The State..... Respondent

NOTICE OF APPEAL

Taveio Raoul Bilal Boston, appeals his Denial for Post Conviction Relief in this case. The Order of Dismissal was imposed and signed by the Honorable R. Ferrell Cothran, on August 19, 2013, which I, Charles T. Brooks, III, received on August 30, 2013.

August 30, 2013



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Attorney for Appellant

Other Counsel on Record:
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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM DARLINGTON COUNTY
Court of Common Pleas
Honorable R. Ferrell Cothran, Circuit Court Judge

Case No: 2012-CP-16-0544

Taveio Raoul Bilal Boston..... Appellant
S.C.D.C. No.:347753

v.
The State..... Respondent

PROOF OF SERVICE

I, the undersigned, do hereby certify that on this 30th day of August, 2013, I served the foregoing **Notice of Appeal, Order of Dismissal**, as well as **Proof of Service** in this matter by depositing a true copy of it in the United States Mail, postage prepaid, on August 30, 2013, addressed to the following as indicated below:

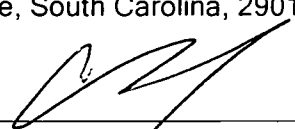
South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

South Carolina Office of Appellate Defense
1330 Lady Street, Suite 401
PO Box 11589
Columbia, SC 29211-1589

Office of Attorney's General
Attn: Karen C. Ratigan, Esquire
Post Office Box 11549
Columbia, South Carolina 29211-1549

Taveio Raoul Bilal Boston, 347753
Lee Correctional Institution
990 Wisacky Highway
Bishopville, South Carolina, 29010

Dated: August 30, 2013


Charles T. Brooks, III
Attorney for the Appellant
309 Broad Street
Sumter, South Carolina 29150
(803) 418-5708

STATE OF SOUTH CAROLINA)
)
 COUNTY OF DARLINGTON)
)
 Taveio Raoul Bilal Boston,)
 S.C.D.C. No. 347753,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS

2012-CP-16-0544

ORDER OF DISMISSAL

FILED
 2013 AUG 27 PM 2:09
 SCOTT B. SUGGS
 CLERK OF COURT/R.M.C.
 DARLINGTON COUNTY, S.C.

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed June 12, 2012. The Respondent made its return on August 23, 2012. An evidentiary hearing into the matter was convened on July 15, 2013 at the Darlington County Courthouse. The Applicant was present at the hearing and represented by Charles T. Brooks, III, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's plea counsel, J. Richard Jones, Esquire. The Court had before it the transcript of the guilty plea hearing, the Darlington County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, and the return.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Darlington County Clerk of Court. The Applicant was indicted at the March 2011 term of the Darlington County Grand Jury for assault and battery with intent to kill (ABWIK) (2011-GS-16-0370) and two counts of murder (2011-GS-16-0371, -0372). He

TRUE CERTIFIED COPY,
Scott B. Suggs
CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

was represented by J. Richard Jones, Esquire.

On September 14, 2011, the Applicant pled guilty to the charges as indicted. He was sentenced by the Honorable Paul M. Burch to concurrent terms of twenty years for ABWIK and thirty-six years for each count of murder. The Applicant did not file an appeal

ALLEGATIONS

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

1. Ineffective assistance of counsel:
 - a. Failed to review the discovery materials "after repeated demands."
 - b. Failed to "give Applicant Rule 5 and failure to advise applicant on evidence in discovery."
 - c. Failed to explain "in depth the full meaning of trial."
 - d. Advised the Applicant "to plea without disclosure of Rule 5."
 - e. Advised the Applicant to "falsely answer the questions."
 - f. Gave "erroneous advice that [the Applicant] would receive a maximum of 2 consecutive life sentences if he proceeded [to] trial."
 - g. Failed to "investigate [the Applicant]'s medications when . . . asked numerous times."
 - h. Failed to "adequately prepare" the Applicant's case.
 - i. Advised the Applicant he would receive two consecutive life sentences if he went to trial.
 - j. After his March 9, 2011 bond hearing, the plea counsel and another individual tried to convince him to plead guilty. The Applicant "felt like he was being rushed."
 - k. "[F]ailed to look inside medical history, evaluation, and life history."
 - l. Failed to return [phone] calls.
 - m. "Failed to discuss case with [the Applicant]."
 - n. Told the Applicant "he had three choices and the choices were 'an open plea 30 to life, 40 years, and a recommendation of 40 years But when [the Applicant] got in from of the judge on his sentencing day the judge said 'now you know by this recommendation of 40 years I can either give you over 40 years or under 40 years.'"
 - o. Told the Applicant "your going to end up like my other 17 year-old client . . . because he waited to long to plea and he got 45 years."
2. Involuntary guilty plea.

3. Prosecutorial misconduct:
 - a. “[P]rosecutor threaten and forced [the Applicant] to plea.”
 - b. Prosecutor stated if the Applicant did not plead guilty that day, he would “give [him] the 180 days that the judge gave [him] to await another bond hearing to think bout [his] plea offer.” But that, if the Applicant did not plead guilty within those 180 days he “will take [him] to trial.”

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 and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

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

Ineffective Assistance of Counsel/Involuntary Guilty Plea

The Applicant alleges his guilty plea was involuntary and that 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).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel’s ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). When there has been a guilty plea, the applicant must prove that counsel’s representation was below the standard of reasonableness and that, but for counsel’s unprofessional errors, there is a reasonable probability that he would not

have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)).

The Applicant stated he had three meetings with plea counsel but that they never reviewed the evidence in his case. The Applicant admitted, however, that he reviewed his confession with plea counsel – and that it was damaging to his case – but the Applicant stated the confession was coerced because he was fourteen years-old at the time. The Applicant stated plea counsel did not challenge his confession and only wanted him to plead guilty. The Applicant stated plea counsel told him he would receive two consecutive life sentences if he went to trial but that the State's recommendation was that he would receive forty years or less. The Applicant stated plea counsel should have looked into the medications he was taking. The Applicant stated he told the plea judge he was guilty of the charges and satisfied with plea counsel because that was how plea counsel told him to answer those questions. The Applicant stated that, even with the evidence against him, he wanted to go to trial.

Plea counsel testified he was the second public defender who handled the Applicant's case. Plea counsel testified they had more than three meetings and reviewed the evidence numerous times. Plea counsel testified they reviewed the Applicant's confession and that his

sister's identification and statement were damaging. Plea counsel testified they had not reached the point of challenging the confession but that he had told the Applicant they could argue that he was "very young at the time" at a trial. Plea counsel testified the first public defender on this case looked into competency issues and noted the Applicant had undergone two competency evaluations. Plea counsel testified he did not have any problems communicating with the Applicant and that the Applicant never said he did not understand their discussions. Plea counsel testified he prepared the Applicant twice for the plea hearing and told the Applicant to answer the plea judge's questions truthfully. Plea counsel testified the Applicant did not waver during the plea hearing.

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds the Applicant's testimony is not credible, while also finding plea counsel's testimony is credible. This Court further finds plea counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his representation.

The Applicant admitted to the plea judge that he was guilty. (Plea transcript, p.11). The Applicant also told the plea judge that he understood the trial rights he was waiving in pleading guilty, was satisfied with counsel, and had not been coerced in any way. (Plea transcript, pp.8-11). This Court finds there is no evidence in the guilty plea transcript to support the Applicant's assertion that he was pressured into entering a guilty plea; therefore the transcript has refuted this allegation. See Stalk v. State, 375 S.C. 289, 300, 652 S.E.2d 402, 407 (Ct. App. 2007); see also Rayford v. State, 314 S.C. 46, 48-49, 443 S.E.2d 805, 806 (1994) (where transcript of guilty plea proceeding refuted applicant's claim that he did not understand the terms of a plea bargain, grant of PCR was inappropriate notwithstanding applicant's claim lawyer misadvised him). This

Court finds the Applicant entered a knowing and voluntary guilty plea. See Boykin v. Alabama, 395 U.S. at 243-44, 89 S. Ct. at 1712.

This Court finds the Applicant failed to meet his burden of proving plea counsel did not review the discovery materials with him. Plea counsel testified he was not the first attorney who was appointed in this case, and that the discovery materials had already been received prior to his representation. Plea counsel testified he reviewed the discovery materials with the Applicant and explained the State's case against him. This Court finds plea counsel's testimony is credible. This Court finds the Applicant has failed to present any credible evidence that counsel did not review and discuss the discovery materials with him before he pled guilty. This Court finds the Applicant also failed to articulate what materials he did not view and how not viewing those materials affected the outcome of his case. See Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (holding that, in a post-conviction relief proceeding, the applicant bears the burden of proving the allegations in their application).

This Court finds the Applicant failed to meet his burden of proving plea counsel did not adequately investigate his medication. The Applicant testified plea counsel did not "look into" his medications. Plea counsel testified he did not recall any issues regarding the Applicant's medication. Plea counsel noted the Applicant was evaluated twice while he was represented by his prior attorney. Plea counsel also noted the file indicated the Applicant was interested in "the Prozac defense." This Court notes the plea transcript reflects that plea counsel was aware the Applicant was taking medication on the day of the incident. (Plea transcript, p.17). This Court finds, however, that the Applicant failed to present medical records or expert testimony about his medications and how they may have impacted either his competency or the defense case. As such, this Court cannot speculate on this matter. See, e.g., Dempsey v. State, 363 S.C. 365, 370,

610 S.E.2d 812, 815 (2005) (finding that, as the applicant failed to have an expert testify at the evidentiary hearing, “any finding of prejudice is merely speculative”); Palacio v. State, 333 S.C. 506, 513, 511 S.E.2d 62, 66 (1999) (holding that, since the contents of challenged documents were not presented at the PCR hearing, the Applicant could not demonstrate how the failure of counsel to obtain these documents prejudiced the defense).

This Court finds the Applicant failed to meet his burden of proving plea counsel said he would receive two consecutive life sentences if he went to trial on these charges. This Court notes the Applicant was facing the possibility of two life sentences plus thirty years if he received consecutive maximum sentences. This Court notes the Applicant must be advised of the maximum sentence he can receive before he pleads guilty. See Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (finding that, before a defendant can enter a guilty plea, he “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”). Regardless, this Court notes the Applicant told the plea judge he had not been threatened in order to have him plead guilty. (Plea transcript, pp.10-11).

This Court finds the Applicant failed to meet his burden of proving plea counsel told him to falsely answer the judge’s questions during the plea colloquy. Plea counsel testified that, during guilty plea preparations, he told the Applicant to answer the judge’s questions truthfully. This Court finds plea counsel’s testimony is credible. This Court also finds the Applicant has failed to present any evidence or testimony in support of this allegation. See Butler v. State, 286 S.C. at 442, 334 S.E.2d at 814.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that plea counsel failed to render reasonably effective assistance under

prevailing professional norms. The Applicant failed to present specific and compelling evidence that plea counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by plea counsel’s performance. Even assuming arguendo that plea counsel committed an error or omission in his representation, the Applicant cannot prove prejudice because the State had overwhelming evidence of guilt (in the form of his statement and his sister’s eyewitness identification of him as the shooter). (Plea transcript, p.14). See, e.g., Geter v. State, 305 S.C. 365, 367, 409 S.E.2d 344, 346 (1991) (concluding reasonable probability of a different result does not exist when there is overwhelming evidence of guilt).

This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. This Court also concludes the Applicant has failed to meet his burden of proving his guilty plea was not knowing and voluntary. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.¹

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not

¹ This Court notes the Applicant alleged prosecutorial misconduct as an issue in his PCR application. The Applicant, however, failed to present any evidence or testimony in support of this issue. As such, this Court finds the Applicant has abandoned this issue. See Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989) (finding that, with regard to prosecutorial misconduct, the burden is on the defendant to prove actual vindictiveness).

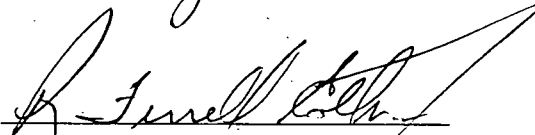
established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner and the Applicant was not prejudiced by counsel's representation. Furthermore, the Applicant's guilty plea was entered knowingly and voluntarily within the mandates of Boykin. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

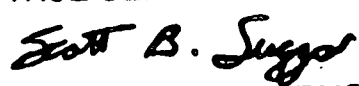
IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 19 day of Aug, 2013.


R. Ferrell Cothran, Jr.
Presiding Judge

Manning, South Carolina.

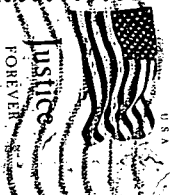
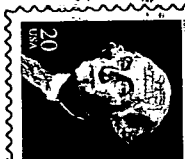
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FILED

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04 SEP 2013



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