

Feb 25 2025

STATE OF SOUTH CAROLINA)	S.C. SUPREME COURT
COUNTY OF CHARLESTON)	IN THE COURT OF COMMON PLEAS
)	FOR THE NINTH JUDICIAL CIRCUIT
Samuel Smiley, #361602,)	Case No.: 2021-CP-10-05463
)	
Applicant,)	
)	ORDER GRANTING LATE
v.)	APPEAL AND DISMISSING
)	REMAINING ALLEGATIONS
State of South Carolina,)	
)	
Respondent.)	
)	

FILED
 2025 FEB 18 AM 11:07
 JULIE J. GIBSON
 CLERK OF COURT

This matter came before the Court on Samuel Phillip Smiley’s (“Applicant”) application for post-conviction relief (PCR) filed on December 3, 2021. Respondent filed a return requesting an evidentiary hearing. On March 14, 2024, an evidentiary hearing convened before the Honorable Walton J. McLeod, IV. Applicant was present and represented by Christopher L. Murphy, Esquire. Assistant Attorney General Danielle Dixon represented Respondent. At the hearing, Applicant testified on his behalf and called one witness, trial counsel Jason Bybee. Following a review of the records and the testimony presented at the hearing, this Court finds Applicant did not voluntarily waive his direct appeal. This Court further finds Applicant did not meet his burden of proof on any other allegation. Thus, this Court denies and dismisses with prejudice all allegations except for the claim related to the late appeal.

PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections serving a thirty-year sentence. In February 2013, the Charleston County Grand Jury indicted Applicant for accessory before the fact to armed robbery (2013-GS-10-0898). This charge arose from an August 2012 armed robbery that resulted in the murder of Jarvon Dowling (Victim). On November 17 to 19, 2014, Applicant proceeded to a jury trial before the Honorable Roger M. Young, Sr. Applicant

was represented by Jason Bybee, Esquire, and Assistant Solicitor Lindsey McClain prosecuted the case. Applicant was convicted as indicted, and Judge Young sentenced him to thirty years. Applicant filed a motion to reconsider. Following a hearing, Judge Young issued an order June 25, 2021, denying the motion. Applicant did not appeal.

First PCR Application: 2017-CP-10-1501

On March 23, 2017, while his general sessions motion was pending, Applicant filed his first PCR application. On February 13, 2019, the Honorable G. Thomas Cooper dismissed the application without prejudice due to the pending general sessions motion.

Federal Habeas Corpus Petition: 8:21-cv-00543-MGL-JDA

On February 16, 2021, while his general sessions motion was still pending, Applicant filed a petition for writ of habeas corpus in the federal district court. On February 25, 2021, the Honorable Jacquelyn D. Austin, United States Magistrate Judge, issued a Report and Recommendation recommending Applicant's petition be dismissed without prejudice. On April 20, 2021, the Honorable Mary G. Lewis, United States District Judge, adopted Judge Austin's Report and Recommendation in her order dismissing Applicant's petition without prejudice.

CURRENT PCR APPLICATION: 2021-CP-10-05463

On December 3, 2021, Applicant filed his second and current PCR application, alleging:

1. "New evidence"
 - a. "Reconsideration of sentence" – "Deny"
2. "Ineffective [Assistance] Counsel"
 - a. "PCR' Dismissed without prejudice"
3. "Failure to communicate/Failure to file appeal"
 - a. "Counsel failed to file Notice of appeal"

At the start of the hearing, Applicant relayed he was proceeding only on the following:

1. Belated appeal – no one ever filed his direct appeal.

2. Trial counsel failed to explain (a) the right to plead guilty to the charges or (b) the sentence range of 10-30 years for pleading guilty. Applicant did not understand his options and thought trial was his only option.

Applicant did not present evidence or argument on any other claims, and this Court finds Applicant has waived any allegation other than the two listed above.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the records before it, including the Charleston County Clerk of Court records of the underlying conviction; Applicant's records from the South Carolina Department of Corrections; the trial transcript; the records from Applicant's prior PCR action and federal habeas corpus action; and the records from this PCR action. This Court also observed the witnesses presented at the hearing, weighed their credibility and testimony accordingly. After a careful review, this Court finds Applicant did not voluntarily waive his direct appeal. This Court further finds Applicant has failed to prove any other allegation. Below are this Court's findings of fact and conclusions of law as required by § 17 27-80 of the South Carolina Code (2017).

Belated Appeal

Applicant asserts he did not voluntarily waive his direct appeal. "To waive a direct appeal, a defendant must make a knowing and intelligent decision not to pursue the appeal." Wilson v. State, 348 S.C. 215, 217, 559 S.E.2d 581, 582 (2002) (citing Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986)). "In the absence of an intelligent waiver by the defendant, counsel must either initiate an appeal or comply with the procedure in Anders v. California, 386 U.S. 738 (1967)." Turner v. State, 380 S.C. 223, 224, 670 S.E.2d 373, 374 (2008) (internal citation omitted). When an applicant establishes he was unconstitutionally deprived his statutory right to a direct appeal, the South Carolina Supreme Court will review the record and pass upon all issues properly raised and argued as if the direct appeal had been perfected. White v. State, 263 S.C. 110, 119, 108 S.E.2d

35, 39-40 (1974); Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986).

At the PCR hearing, Applicant testified he asked counsel to file an appeal, but counsel did not file an appeal. Bybee testified Applicant retained another attorney after the plea to file a motion to reconsider. He stated Applicant always wanted to appeal. This Court finds credible Applicant and counsel's foregoing testimony that Applicant wanted to appeal. Based on the foregoing, this Court finds Applicant did not voluntarily waive his appeal, and he may petition the South Carolina Supreme Court for a late appeal pursuant to White.

Ineffective Assistance of Counsel

Applicant also contends counsel was ineffective for not explaining the right to plead guilty or the sentence range of 10-30 years for pleading guilty. He asserts he did not understand his options and thought trial was his only option. Applicant failed to prove this ground.

In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). To establish ineffective assistance of counsel, Applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) Applicant was prejudiced by counsel's deficient performance. Strickland v. Washington, 466 U.S. 668, 687-88 (1984); Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). Under the first prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment," and the applicant must overcome this presumption to receive relief. Id. at 117-18, 386 S.E.2d at 625. Second, the applicant must show "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id.

At the PCR hearing, Applicant testified he only met with counsel three times, and at the second meeting, counsel relayed a plea offer of three years on a separate charge. However, counsel indicated to him there was no offer for the accessory charge. Applicant testified counsel did not discuss the sentencing range, and he did not know he had the right to plead guilty. He stated at the third meeting, he asked if there was an offer but counsel said no. In contrast, Bybee testified he met with Applicant a lot more than three times. He stated he tried to get an offer but the solicitor was not willing to make an offer without cooperation from Applicant. Counsel stated Applicant's options were to plead straight up or go to trial, which he discussed with Applicant. He testified he explained the charges and the sentencing range to Applicant.

This Court finds credible counsel's foregoing testimony that he explained to Applicant the sentencing range, the charge, and the option to plead straight up or go to trial. This Court further finds credible counsel's testimony that he attempted to negotiate an offer but the solicitor was unwilling to make one without Applicant's cooperation. Based on the foregoing, counsel's performance and advice was reasonable under prevailing professional norms and not deficient. Further, Applicant has not shown a reasonable probability he would have pled straight up rather than going to trial. Thus, Applicant has not met his burden, and 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), SCRPC. Attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

After considering the arguments presented by Counsel, relevant testimony, and reviewing applicable law I find:

1. Applicant may petition the Supreme Court for a late appeal pursuant to White v. State;
2. The remaining allegations are denied and dismissed with prejudice; and
3. Applicant shall be remanded to and remain in the custody of the State.

IT IS SO ORDERED.


WALTON J. MCLEOD, IV
Presiding Judge
Ninth Judicial Circuit

Charleston, South Carolina

FEB. 13, 2025



State of South Carolina
The Circuit Court of the Eleventh Judicial Circuit

Walton J. McLeod, IV
Judge

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Julie J. Armstrong
Clerk of Court
Berkeley County Courthouse
100 Broad Street
Charleston County, SC 29401

State v. Samuel Smiley
Case: 2021CP1005463

Dear Mrs. Clerk:

Please find the enclosed Order of Dismissal regarding the above referenced case. I would appreciate you filing this order, and providing a clocked copy to the attorneys of record.

With kind regards,

Sincerely,

A handwritten signature in black ink, appearing to read "Walton J. McLeod, IV".

Walton J. McLeod, IV

CC: Danielle Dixon, Assistant Attorney General (email only)
Christopher L. Murphy, Esq. (email only)