

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHESTERFIELD COUNTY
Court of Common Pleas
Post Conviction Relief

R. Ferrell Cothran, Jr., Presiding Judge

Case No.: 12-CP-13-673

RECEIVED

OCT - 4 2013

S.C. Supreme Court

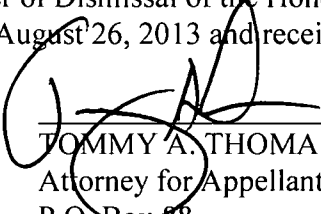
Dalvin Aaron Peterson #351338Appellant,

vs.

State of South CarolinaRespondent.

NOTICE OF APPEAL

Dalvin Aaron Peterson #351338 appeals the Order of Dismissal of the Honorable R. Ferrell Cothran, Jr., signed August 19, 2013, filed on August 26, 2013 and received on September 5, 2013.



TOMMY A. THOMAS
Attorney for Appellant
P.O. Box 88
Irmo, SC 29063
(803) 732-5507

Other Counsel of Record:

Karen C. Ratigan, Esq.
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211
Attorney for Respondent

Irmo, South Carolina
October 1, 2013

THE STATE OF SOUTH CAROLINA
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Post Conviction Relief

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Dalvin Aaron Peterson #351338Appellant,

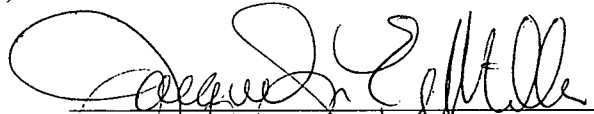
vs.

State of South CarolinaRespondent.

CERTIFICATE OF SERVICE

I, Jacquelyn E. Miller, Secretary to Tommy A. Thomas, Attorney for the Applicant, hereby certify that I placed in the United States Mail, a copy of a Notice of Appeal, with postage prepaid and the return address clearly shown on said envelope to:

Office of the Attorney General
Atten: Karen Ratigan, Esq.
P.O. Box 11549
Columbia, SC 29211-1549



Jacquelyn E. Miller, Secretary for
Tommy A. Thomas
Attorney for Applicant
P.O. Box 88
Irmo, SC 29063
(803) 732-5507

Irmo, South Carolina
October 1, 2013

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHESTERFIELD)
)
 Dalvin Aaron Peterson,)
 S.C.D.C. No. 351338,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS

2012-CP-13-0673

ORDER OF DISMISSAL

FAYEL SELLERS
 CLERK OF COURT
 CHESTERFIELD COUNTY, SC

2013 AUG 26 AM 9 50

CLERK OF COURT C.P. & G.S.
 CHESTERFIELD COUNTY, SC

A True Copy, Attest
 Joyce S. Sellers

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed October 22, 2012. The Respondent made its return on January 18, 2013. 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 Tommy A. Thomas, 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 were Robert Williams, Wanda Williams, and the Applicant's plea counsel, Joshua A. Bailey, Esquire. The Court had before it the transcript of the guilty plea hearing, the Chesterfield 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 Chesterfield County Clerk of Court. The Applicant was indicted at the March 2012 term of the Chesterfield County Grand Jury for first-degree burglary (2012-

GS-13-0117) and grand larceny (2012-GS-13-0118). He was represented by Joshua A. Bailey, Esquire.

On June 18, 2012, the Applicant pled guilty to the lesser-included offense of second-degree burglary and grand larceny. He was sentenced by the Honorable Paul M. Burch under the Youthful Offender Act¹ to concurrent terms not to exceed six years for second-degree burglary and not to exceed five years for grand larceny. 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. “SCDC unlawfully changed my sentence – instead of 3 years madtory [sic]. I was sentence 13 months straight time with a 1-3.”
 - a. “My sentence sheet and my public defender promise 13 months straight time.”

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

At the PCR hearing, the Applicant argued his guilty plea was involuntary and that he

¹ S.C. Code Ann. §§ 24-19-10 to -160 (Supp. 2003).

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 reviewed the facts, evidence, and discovery materials with plea counsel. The Applicant stated they reviewed his version of events, the incriminating fingerprint evidence, and his confession. The Applicant stated plea counsel told him to plead guilty and said he would only serve 13 months. The Applicant admitted he told the plea judge he was not

promised anything but still believed he was pleading guilty in exchange for a 13-month sentence. The Applicant also admitted the mandatory minimum three-year sentence was mentioned twice at the guilty plea hearing but said it was the first time anyone mentioned a three-year sentence. The Applicant stated that, even with the strong evidence against him, he would have gone to trial if he had known he would receive a 13-month sentence.

Robert Williams and Wanda Williams – the Applicant’s parents – each stated plea counsel promised the Applicant would serve a 10-13 month sentence and that they did not learn of the three year sentence until after the Applicant pled guilty.

Plea counsel testified he filed discovery motions, received those materials, and reviewed them with the Applicant. Plea counsel testified they reviewed the Applicant’s version of events. Plea counsel testified they discussed the Applicant’s confession and the impact it had upon their case. Plea counsel testified he negotiated the plea offer for a Youthful Offender Act sentence with the State and conveyed it to the Applicant once or twice. Plea counsel testified he explained to the Applicant that the plea offer was to reduce the first-degree burglary charge to second-degree with a mandatory minimum three-year sentence under the Youthful Offender Act. Plea counsel testified he never told the Applicant or his parents that the Applicant would serve a 10-13 month sentence. Plea counsel testified the Applicant was not surprised at receiving a three-year sentence at the plea hearing because he knew this would happen.

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, pp.6-7). 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.4-6). 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 promised he would receive a thirteen-month sentence if he pled guilty. Plea counsel testified he did not advise either the Applicant or his parents that the Applicant would receive a thirteen-month sentence. Plea counsel testified he told the Applicant that the plea offer in this case was for him to plead guilty under the Youthful Offender Act and that there was a three-year mandatory minimum sentence. This Court finds both that plea counsel's testimony is credible and that counsel fulfilled his obligation to convey and explain the plea offer. See Davie v. State, 381 S.C. 601, 675 S.E.2d 416 (2009) (holding counsel's failure to convey the State's plea offer to defendant constituted deficient performance). This Court also finds the Applicant's allegation must be denied because it is refuted by the guilty plea transcript. 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). The assistant solicitor noted at the outset of the plea hearing that the Applicant was pleading guilty under the Youthful Offender Act and the Applicant did not object. (Plea transcript, p.4). The deputy solicitor and plea counsel stated there was a mandatory minimum three-year sentence for the second-degree burglary charge and the Applicant did not object. (Plea transcript, pp.10-12). As such, even

assuming arguendo that plea counsel misadvised the Applicant about the recommendation, any error was cured by the plea colloquy. See Holden v. State, 393 S.C. 565, 575, 713 S.E.2d 611, 616 (2011); Burnett v. State, 352 S.C. 589, 593-94, 576 S.E.2d 144, 246 (2003).

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.

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.

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 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

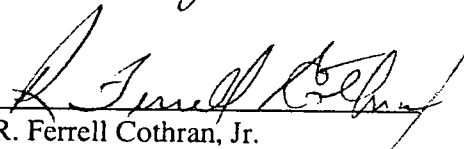
knowingly and voluntarily within the mandates of Boykin. Therefore, this PCR application must be denied and dismissed with prejudice.

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 August, 2013.


R. Ferrell Cothran, Jr.
Presiding Judge

Manning, South Carolina.

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHESTERFIELD)
)
)
DALVIN AARON PETERSON, 351338)
)
Applicant,)
)
vs)
)
STATE OF SOUTH CAROLINA,)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS

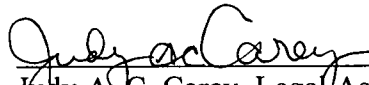
2012-CP-13-0673

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Order of Dismissal** in the above-captioned matter on the following person by depositing in the United States mail, postage prepaid:

Tommy A. Thomas, Esquire
Post Office Box 88
Irmo SC 29063

DATED this 4th day of September, 2013.



Judy A. C. Carey, Legal Assistant
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

Tommy A. Thomas

ATTORNEY AND COUNSELOR AT LAW

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(803) 781-4226

INMATE LINE
(803) 732-6542

October 1, 2013

The South Carolina Supreme Court
Daniel E. Shearouse, Clerk of Court
P.O. Box 11330
Columbia, SC 29211

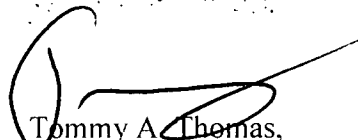
RE: Dalvin Peterson #351338
Appellate Case No.: 2012-CP-13-673

Dear Sir or Madam:

Enclosed please find an Original and a copy of Mr. Peterson's Notice of Appeal for filing in the above matter.

Kindly return a clocked copy to me in the enclosed envelope. Thank you and should you have any questions, please feel free to contact me.

Yours truly,


Tommy A. Thomas,
Attorney at Law

TAT/jem
cc: Karen Ratigan, Esq.
Dalvin Peterson #351338
Appellate Defense

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S.C. Supreme Court

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