

CAROLINE M. HORLBECK
ATTORNEY AT LAW

PCR

101 WHITSETT ST.
GREENVILLE, SOUTH CAROLINA 29601
horlbecklawfirm@gmail.com

(864) 315-9919
Fax(864) 232-4756

November 5, 2013

Via Regular Mail

Mr. Daniel E. Shearouse
Clerk, The S.C. Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re: RAKEEM R. JOHNSON v. State

Dear Mr. Shearouse:

Enclosed you will find the original Notice of Appeal in the above matter along with Proof of Service upon the Respondents. The Notice has been filed with the Greenville County Clerk of Court.

These matters are being referred to the Office of Appellate Defense in that we were participating as Court appointed counsel at trial.

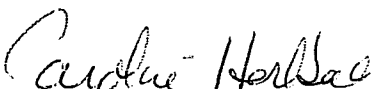
Thank you for your attention to this matter.

Yours very truly,

RECEIVED

NOV 12 2013

S.C. SUPREME COURT


Caroline M. Horlbeck, Esq.

Enclosure

cc: Office of the Attorney General
Office of Appellate Defense

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
THE HONORABLE ROBIN B. STILWELL

CA No. 2012-CP-23-3621

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMMER
2013 NOV 5 PM 4 43

RAKEEM R. JOHNSON,

APPELLANT,

vs.

STATE OF SOUTH CAROLINA

RESPONDENT.

NOTICE OF APPEAL

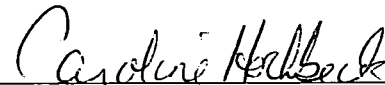
Appellant RAKEEM R. JOHNSON, appeals from the Order of the Honorable Robin B. Stilwell,
Circuit Court Judge clocked October 10, 2013

RECEIVED

NOV 12 2013

S.C. SUPREME COURT

Respectfully submitted,



Caroline M. Horlbeck, Esq.
101 Whitsett St
Greenville, SC 29601

Date: November 5, 2013

Other Counsel of Record: Karen Ratigan, Esq.
Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE SUPREME COURT

Rakeem Johnson,)
)
)
Appellant,)

C.A. No. 2012-CP-23-3621

-vs-)

CERTIFICATE OF SERVICE

State of South Carolina,)
)
)
Respondent.)

This is to certify that I am an employee in the law office of Caroline M. Horlbeck, attorneys for Applicant, and that I have this day caused to be served upon the person(s) named below Applicant's Notice of Appeal by placing copies of same in the United States mail, with adequate postage thereon, addressed as follows:

Ms. Lorie French
S.C. Office of Appellate Defense
P.O. Box 11433
Columbia, SC 29211

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


Caroline M. Horlbeck

Greenville, South Carolina

Nov. 6, 2013

STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE

COUNTY OF GREENVILLE

CASE NO: 2012CP2303621

IN THE COURT OF COMMON PLEAS

FILED-CLERK OF COURT
GREENVILLE CO S
PAUL B. WICKENSIMER
2013 OCT 10 AM 10:40

Rakeem R Johnson vs. South Carolina State Of

CHECK ONE:

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**
 - Rule 12(b), SCRPC;
 - Rule 41(a), SCRPC (Vol. Nonsuit);
 - Rule 43(k), SCRPC (Settled);
 - Other: _____
- ACTION STRICKEN (CHECK REASON):**
 - Rule 40(j) SCRPC;
 - Bankruptcy;
 - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 - Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 - Affirmed;
 - Reversed;
 - Remanded;
 - Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; Statement of Judgment by the Court:
Dated at Greenville, South Carolina, this 10th day of October, 2013.

Court Reporter: _____

PRESIDING JUDGE - Robin B Stilwell

This judgment was entered on the 10th day of October, 2013, and a copy mailed first class this 10th day of October, 2013, to attorneys of record or to parties (when appearing pro se) as follows:

✓ **Caroline M.W. Horlbeck** 101 Whitsett Street
Greenville, SC 29601

Katren Ratigan Attorney General Office

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court
- Clerk of Court

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Rakeem R. Johnson,)
 S.C.D.C. No. 345999,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2012-CP-23-3621

2013 OCT 10 AM 10:11
 FILED-CLERK OF COURT
 GREENVILLE CO S.C.
 PAUL B. WICKENS/STP

ORDER OF DISMISSAL

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed May 31, 2012. The Respondent made its return on August 31, 2012. An evidentiary hearing into the matter was convened on August 28, 2013 at the Greenville County Courthouse. The Applicant was present at the hearing and represented by Caroline Horlbeck, 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, Nihar Patel, Esquire. The Court had before it the transcript of the guilty plea hearing, the Greenville 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 Greenville County Clerk of Court. four (4) counts of armed robbery (2010-GS-23-3353, count 1, -3355, -3357, -3514, count 1), two (2) counts of possession of a weapon during commission of a violent crime (2010-GS-23-3353, count 2, -3514, count 2),

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and conspiracy (2010-GS-23-3359). He was represented by Nihar Patel, Esquire.

On May 17, 2011, the Applicant pled guilty. The Honorable G. Edward Welmaker sentenced the Applicant to concurrent terms of 185 months for each count of armed robbery, five years for one count of possession of a weapon during commission of a violent crime,¹ and five years for conspiracy. The Applicant did not 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. Failure to prepare.
 - b. Failure to investigate.
2. Involuntary guilty plea.

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

¹ 2010-GS-23-3514, count 2. The State not prossed 2010-GS-23-3353, count 2.

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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 met with plea counsel four times before the plea hearing. The Applicant stated they reviewed the State's evidence, his version of events, and the impact his statement had upon the case. The Applicant stated he wanted to have a suppression hearing but plea counsel did not discuss it. The Applicant stated they discussed if the police officer had a valid reason to follow him that night but that plea counsel did not feel the police did anything out of the ordinary. The Applicant stated he did not believe the officer had probable cause to

approach his vehicle. The Applicant stated he would not have pled guilty if he could have had a suppression hearing.

Plea counsel testified he filed discovery motions, received those materials, reviewed them with the Applicant, and provided him with a copy. Plea counsel testified they discussed the Applicant's confession and the impact it had upon the case. Plea counsel testified this case was a guilty plea case from the beginning. Plea counsel testified the Applicant ultimately pled guilty after the case was on the trial docket because there were several negotiations with the State regarding reducing the number of armed robbery charges or allowing the Applicant to plead guilty to strong arm robbery. Plea counsel testified the Applicant told him what happened on the day he was apprehended. Plea counsel testified the officers saw the Applicant and co-defendant running from the store and became involved at that point. Plea counsel testified there was no valid basis to file a motion to suppress in this case.

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.21). 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.18-21). 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

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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 properly advise the Applicant about filing a motion to suppress in this case. The Applicant failed to prove plea counsel provided incorrect or deficient advice. The Applicant and plea counsel both testified they discussed the Applicant's version of what happened on the day he was arrested. This Court agrees with plea counsel that there was no valid basis to file a motion to suppress in this case. The facts set forth in the plea transcript indicate a deputy was on the road outside the location of one of the armed robberies and saw the Applicant and co-defendant running from the store. (Plea transcript, p.15). The deputy then followed these individuals without their knowledge and saw them enter a vehicle. (Plea transcript, p.15). The deputy approached the vehicle, asked the defendant to show his hands, and ultimately fired his weapon three times. (Plea transcript, p.16). The Applicant got out of the vehicle and was arrested. (Plea transcript, p.16). The Applicant admitted his guilt and did not dispute the State's factual recitation. (Plea transcript, p.18; p.21). This Court finds the Applicant was advised of his rights, including the right to challenge the State's evidence, and specifically waived those rights. (Plea transcript, p.19). Regardless, this Court finds that, given the undisputed facts in this case, the Applicant cannot prove he was prejudiced by the lack of a suppression motion because such a motion would have been unsuccessful. See Sikes v. State, 323 S.C. 28, 30, 448 S.E.2d 560, 562 (1994) ("When the defendant claims that counsel's failure to articulate a Fourth Amendment

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claim was ineffective assistance, defendant must show that such claim is meritorious and that the verdict would have been different absent the evidence that should have been excluded.”) (citation omitted).

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

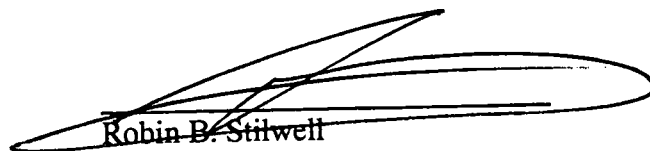
knowingly and voluntarily within the mandates of Boykin. Therefore, this PCR application must be denied and dismissed with prejudice.

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 4 day of OCT, 2013.


Robin B. Stilwell
Presiding Judge
Thirteenth Judicial Circuit

G'VILLE, South Carolina.

POST CONVICTION RELIEF HEARING

PKK

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

)
)

THIRTEENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA

VS.

ORDER OF APPOINTMENT OF LEGAL
COUNSEL FOR INDIGENT DEFENDANT

Rakeem R. Johnson

Inmate

SCDC# 345999

Broad River Correctional Institution

Address

4460 Broad River Rd

City/State/ZIP

Columbia SC 29210

Telephone

2012-CP-23-03621

PCR Case No. _____

Original Attorney: Nihar Patel

* * * * *

The defendant contends that he is indigent and in need of services of an attorney as contemplated by law.

THEREFORE, Caroline Horlbeck, Attorney at Law, is appointed as counsel for the defendant.

This 10 day of Sept, 2012

Zed Klem

Criminal Justice Coordinator

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CAROLINE M. HORLBECK

Attorney At Law

101 WHITSETT ST.
GREENVILLE, SOUTH CAROLINA 29601



Via Regular Mail

Mr. Daniel E. Shearouse
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