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PCR

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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: CHRISTOPHER B. ANDERSON 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.

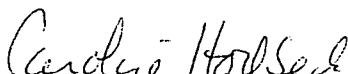
Thank you for your attention to this matter.

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-23-3899

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMMER
2013 NOV 5 PM 4 44

CHRISTOPHER B. ANDERSON,

APPELLANT,

vs.

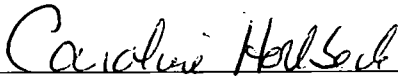
STATE OF SOUTH CAROLINA

RESPONDENT.

NOTICE OF APPEAL

Appellant CHRISTOPHER B. ANDERSON, appeals from the Order of the Honorable Robin B. Stilwell, Circuit Court Judge clocked October 10, 2013

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

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NOV 12 2013

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE SUPREME COURT

Rakeem Johnson,)
)
)
Appellant,)

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

-vs-)

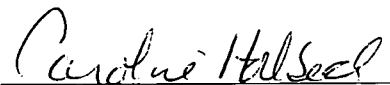
CERTIFICATE OF SERVICE

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)
)
 COUNTY OF GREENVILLE)
)
 Christopher Bernard Anderson,)
 S.C.D.C. No. 237423,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2012-CP-23-3899

ORDER OF DISMISSAL

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

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed June 14, 2012. The Respondent made its return on October 8, 2012. An evidentiary hearing into the matter was convened on August 27, 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 were Beverly Adams and the Applicant's plea counsel, Joshua Schultz, 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. The Applicant was indicted at the February 2010 term of the Greenville County Grand Jury for manufacturing cocaine base

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(2010-GS-23-0713), possession with intent to distribute (PWID) cocaine base (2010-GS-23-0714), and trafficking cocaine (2010-GS-23-0715). He was represented by Joshua Schultz, Esquire.

On June 16, 2011, the Applicant pled guilty. The Honorable Letitia H. Verdin sentenced the Applicant to concurrent terms of eighteen years for manufacturing cocaine base, second offense, eighteen years for PWID cocaine base, second offense, and eighteen years for trafficking cocaine (10-28 grams), second offense. 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 withdraw plea because of "unkempt plea bargain."
2. Illegal search and seizure.

At the PCR hearing, the Applicant proceeded upon grounds of ineffective assistance of plea counsel and 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 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 plea counsel was hired one or two weeks before the plea hearing and in order to obtain a sentence of house arrest. The Applicant stated he and plea counsel reviewed the State’s evidence and his version of events. The Applicant stated they also discussed a possible motion to suppress and that plea counsel said they had a good case. The

Applicant stated plea counsel said he faced up to a twenty-five year sentence after the third offense was reduced to a second and that he was eligible for probation. The Applicant stated he thought plea counsel would ask for a probation sentence. The Applicant stated plea counsel told him that he had to plead guilty that week because he would be out of town the following week. The Applicant stated he was not comfortable with this because plea counsel had not done a proper investigation or questioned witnesses (Stanley Mackie and Delores Chandler). The Applicant stated he pled guilty because (1) he had to think about his family and (2) plea counsel was going out of town. The Applicant stated he would not have pled guilty if he had known the State would ask for a substantial sentence.

Beverly Adams, the Applicant's fiancée, stated she hired plea counsel eight days before the plea hearing. Adams stated she spoke with plea counsel five times and that they discussed the Applicant's potential sentence. Adams stated plea counsel said the Applicant was facing a sixty-year sentence but that he would push for a sentence of five years or five years and probation. Adams admitted plea counsel did not promise the Applicant would receive such a sentence.

Plea counsel testified he was hired one week before the plea hearing (when the case was on the trial docket). Plea counsel testified he received the discovery materials and had adequate time to review them. Plea counsel testified he discussed the discovery with the Applicant and reviewed the Applicant's version of events. Plea counsel testified he discussed a possible motion to suppress and that he felt they "had a shot" at suppressing the evidence. Plea counsel testified they did not pursue the motion, however, because he was concerned the consequences for the Applicant would have been far worse if they lost. Plea counsel testified he explained to the Applicant the risks and advantages of a plea versus a trial. Plea counsel testified he would not

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have told the Applicant or Adams that he would ask for a straight probation sentence because there was a mandatory prison sentence. Plea counsel testified he had a low success rate of getting a minimum sentence of home detention but that they hoped for a five or ten year sentence in this case. Plea counsel testified the Applicant asked him to contact Mackie and Chandler but that he could not locate them. Plea counsel testified the State reduced the charges to second offenses but there was no sentence recommendation. Plea counsel testified he was surprised the assistant solicitor asked for "substantial time" during the plea hearing but that he did not feel it violated any agreement he had with the State.

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.

This Court finds the Applicant failed to meet his burden of proving plea counsel did not properly investigate his case or pursue a motion to suppress. Trial counsel confirmed the Applicant asked him to contact Mackie and Chandler but testified he could not locate these witnesses. As these individuals did not testify at the evidentiary hearing, any discussion regarding what they could have testified about at a jury trial is purely speculative. See Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (the South Carolina Supreme Court "has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial.") (emphasis in original). This Court also finds the Applicant failed to prove plea counsel erred in not pursuing a suppression

motion because he failed to both articulate the grounds for such a motion or demonstrate that it would have been successful. 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 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).

This Court finds the Applicant failed to meet his burden of proving plea counsel should have objected when the State said law enforcement wanted “to ask for substantial jail time.” (Plea transcript, p.11). This Court notes there was no sentence recommendation in this case. This Court also notes plea counsel did not believe the assistant solicitor’s comment violated the spirit of any agreement made between the parties. This Court finds there was no error or prejudice from the lack of an objection to the solicitor’s statement. It is the judge – not the parties – who decides sentencing. See In re M.B.H., 387 S.C. 323, 326, 692 S.E.2d 541, 542 (2010) (“A trial judge has broad discretion in sentencing within statutory limits.”).

This Court finds the Applicant has failed to meet his burden of proving his guilty plea was involuntary. This Court notes the plea judge explained the minimum and maximum possible sentences and the Applicant made a knowing and intelligent waiver of his constitutional rights. (Plea transcript, p.4; pp.7-8). This Court notes the Applicant also stated he had not been forced into pleading guilty. (Plea transcript, p.6). 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 notes that a certain degree of pressure is inherent in the guilty plea process and is not a sufficient basis for granting relief in this matter. 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.

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

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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 8 day of oct, 2013.



Robin B. Stilwell
Presiding Judge
Thirteenth Judicial Circuit

GILLE, South Carolina.

POST CONVICTION RELIEF HEARING

PCR

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

THIRTEENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA

VS.

ORDER OF APPOINTMENT OF LEGAL
COUNSEL FOR INDIGENT DEFENDANT

Christopher Bernard Anderson
Inmate

SCDC# 237423

Kirkland Correctional Institution
Address

4344 Broad River Rd

Columbia SC 29210
City/State/ZIP

Columbia SC 29210
Telephone

2012-CP-23- 03899

PCR Case No. _____

Original Attorney: Joshua Schultz

* * * * *

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 18 day of Oct, 2012

Zach Klebe

Criminal Justice Coordinator

CAROLINE M. HORIBECK

Attorney At Law

101 WHITSETT ST.
GREENVILLE, SOUTH CAROLINA 29601



Via Regular Mail

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

