



ALAN WILSON
ATTORNEY GENERAL

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S.C. Supreme Court

October 17, 2013

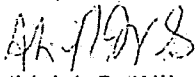
The Honorable Scarlett A. Wilson
Solicitor, Ninth Judicial Circuit
101 Meeting Street, Suite 400
Charleston, SC 29401

RE: Leonard Roper, #338094 v. State of South Carolina
2012-CP-08-3597

Dear Solicitor Wilson:

Enclosed please find the **Amended Order** regarding the above-referenced PCR matter. We are closing our file in this case.

Sincerely,


Ashleigh R. Wilson
Assistant Attorney General

ARW/arh
Enclosure

cc: Joenathan Chaplin, Esquire
David M. Tatarsky, Esquire (SCDC)
Trisha Allen (Victim Services)

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Latron Bryant, #336700,
Applicant,

v.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS

2012-CP-10-2359

2013 SEP 24 PM 3:14
JUDGE J. ARNSTRONG
CLERK OF COURT

FILED

AMENDED ORDER OF DISMISSAL¹

Presiding Judge:
Applicant's Attorney:
Respondent's Attorney:
Trial Counsel:
Date of Hearing:
Court Reporter:

The Honorable Deadra L. Jefferson
J. Matthew Dillon, Esquire
Ashleigh R. Wilson, Esquire
Mary A. Ford, Esquire
July 23, 2013
Phyllis Norton

This matter is before the Court on an application for post-conviction relief filed April 9, 2012. The Respondent filed its Return on January 23, 2013. The Respondent filed an amended Return and Motion to Dismiss on May 30, 2013. The Respondent also submitted a Conditional Order of Dismissal to the Honorable Roger M. Young for dismissal of the application. The Applicant filed a response to the Respondent's Motion to Dismiss dated June 19, 2013 and requested a hearing be held on the Respondent's motion. A hearing on the Respondent's Motion to Dismiss was held on July 23, 2013.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Charleston County. The Applicant was indicted at the April 2011 term by the Charleston County Grand Jury for Burglary-First

¹ Amended to correct scrivener's and citation errors.

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[Signature]

Degree (2011-GS-10-2286). Mary Ford, Esquire, represented the Applicant. The Applicant pled guilty as indicted. The Honorable L. Casey Manning sentenced the Applicant to confinement for fifteen (15) years. The Applicant did not appeal the plea or sentence.

ALLEGATIONS

In his application for post-conviction relief, the Applicant alleged he is being held in custody unlawfully for the following reasons:

1. Sentenced for the wrong charge.
2. Given too much 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 arguments presented at the PCR hearing. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. CODE ANN. § 17-27-80 (2003).

The Respondent has filed a Motion to Dismiss the Applicant's application for post-conviction relief for failing to state a claim. This Court finds this application is summarily dismissed for failing to state a claim cognizable under the post-conviction relief statute. An Applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or

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6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy . . .

S.C. CODE ANN. § 17-27-20 (1976).

This Court finds that even if the facts alleged by the Applicant are true, the facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds.

This Court also finds the Applicant's allegation is without merit. In the Applicant's Response to the Respondent's Motion to Dismiss, he states the basis for his claim is "his contention that since the gun charge was dropped, he should have plead to second degree burglary, not first degree burglary." This Court finds a plea of guilty to Burglary-First Degree does not require a correlating conviction for possession of a weapon during the commission of a violent crime. See S.C. CODE ANN. § 16-11-311(A)(1)(a), (d) (1976). This Court also finds and the record reflects the Applicant was aware that the weapons charge (2011-GS-10-2999) was being dismissed by the State in exchanged for the Applicant's guilty plea. (Tr. 11:17-24). This Court finds the facts as presented by the State during the plea proceeding indicate that Burglary-First Degree was the proper charge for the Applicant. (Tr. 14:25-15:17). The record also reflects the Applicant agreed with the facts of the burglary as presented at the guilty plea proceeding. (Tr. 15:21-16:2).

This Court finds the Applicant waived his right to challenge the nature of the charge against him by pleading guilty. (Tr. 16:3-9). This Court finds, and the record of the sentencing court's plea colloquy reflects that the Applicant's guilty plea was entered freely, voluntarily, and knowingly and was intelligently made. See id. The Applicant was advised of the potential sentences for the charges he was facing. (Tr. 6:15-7:23) and of the State's plea offer for dismissing the associated gun charge in exchange for the Applicant's plea of guilty to Burglary-

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First Degree. (Tr. 11:17-23). The Applicant told the court he was not promised anything, nor offered hope of reward for pleading guilty, nor was the Applicant threatened, pressured, or intimidated into pleading guilty. (Tr. 12:3-12). Additionally, the Applicant told the court that he was pleading guilty freely and that he was satisfied with his lawyer's services and understood his conversations with his attorney. (Tr. 12:16-13:15). Most notably, the sentencing court confirmed with the Applicant numerous times that he understood the charge of Burglary-First Degree and that the Applicant did, in fact, wish to plead guilty to the indicted offense. (Tr. 6:21-7:15; 9:25-10:7; 11:4-14; 16:19-24).

CONCLUSION

Based on 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. Therefore, this application for PCR 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 written notice of entry of this Order 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 served and 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.

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[Signature]

AND IT IS SO ORDERED this 23rd day of Sept, 2013.

D. L. Jefferson

The Honorable Deadra L. Jefferson
Presiding Judge, Ninth Judicial Circuit

Charleston, South Carolina.

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D. L. J.