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December 10, 2013

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

Re: Samuel J. Jeter, #242979, Petitioner/Appellant, v. State of South Carolina, Respondent
Case No. 2012-CP-42-0057

Dear Mr. Shearhouse:

Enclosed for filing with the Supreme Court is the ***Notice of Appeal*** on the above Post-Convuction relief matter. Also enclosed for filing are four (4) copies of the following:

1. Proof of Service of the Notice of Appeal on the Respondent and the Office of Appellate Defense;

2. A copy of the Order which is being challenged on appeal.

This appeal is being filed with the Supreme Court pursuant to Rule 243(a) SCARC. Please note that I am appointed counsel pursuant to Rule 602 SCACR and therefore should be automatically relieved as appellate counsel. A copy of this letter is hereby provided to the Division of Appellate Defense for further processing, including ordering the transcript. Please do not hesitate to contact me should you have any questions regarding this matter.

Sincerely,

Howard R. Knard

Cc: Suzanne H. White, Esq.
Samuel J. Jeter, #242979, Petitioner/Appellant
Division of Appellate Defense (Robert M. Dudek, Esq.)

THE STATE OF SOUTH CAROLINA

In the Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Honorable R. Lawton McIntosh, Circuit Court Judge

Case No. 2012-CP-42-0057

Samuel J. Jeter, #242979.....Petitioner,

v.

State of South Carolina.....Respondent.

NOTICE OF APPEAL

Samuel J. Jeter appeals the Order of the Honorable R. Lawton McIntosh dated November 7, 2013, denying Petitioner's Application for Post Conviction Relief. Undersigned counsel received notice of entry of the Order on November 13, 2013. A copy of the Order on appeal is attached to this notice.

Respectfully submitted,

Howard R. Kinard
220 North Church Street, Suite 4
Post Office Drawer 5587
Spartanburg, South Carolina 29304
(864) 582-8121 FAX: (864) 585-5328

December 10, 2013

Other Counsel of Record:

Suzanne H. White, Esq.
Assistant Attorney General
P.O. Box 11549
Columbia, South Carolina 29211
(803) 734-3919
Attorney for Respondent

THE STATE OF SOUTH CAROLINA

In the Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Honorable R. Lawton McIntosh, Circuit Court Judge

Case No. 2012-CP-42-0057

Samuel J. Jeter, #242979.....Petitioner,

v.

State of South Carolina.....Respondent.

PROOF OF SERVICE

I certify that I have served the within Notice of Appeal on the following persons by depositing a copy of it in the United States Mail, postage prepaid, on this 10th day of December 2013, addressed as follows:

State of South Carolina:

Suzanne H. White, Esq.
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211

Petitioner:

Samuel J. Jeter, #242979
Ridgeland Correctional Inst.
P. O. Box 2039
2039Ridgeland, SC 29936

South Carolina Office of Appellate Defense:

Robert M. Dudek, Chief Appellate Defender
1330 Lady Street
Columbia, SC 29201

Howard R. Kinard
220 North Church Street, Suite 4
Post Office Drawer 5587
Spartanburg, South Carolina 29304
(864) 582-8121 FAX: (864) 585-5328

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	2012-CP-42-0057
Samuel J. Jeter, #242979,	)	
	)	
Applicant,	)	
	)	
v.	)	ORDER OF DISMISSAL
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

This matter comes before the Court by way of an Application for Post-Conviction Relief filed January 6, 2012. The Respondent made its Return on or about September 25, 2012. An evidentiary hearing into the matter was convened on June 26, 2013, at the Spartanburg County Courthouse. The Applicant was present and represented by Howard J. Kinard, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. James A. Cheek, Esquire, testified on Respondent's behalf. This Court also had before it a copy of the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the Return, and the plea transcript.

PROCEDURAL HISTORY

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Spartanburg County Clerk of Court's orders of commitment. The Spartanburg County Grand Jury indicted the Applicant at the June 2011 and September 2011 terms of General Sessions for criminal domestic violence of a high and aggravated nature (CDVHAN) (11-GS-42-2889), distribution of methamphetamine or crack cocaine (11-GS-42-5604), and distribution of crack cocaine within one-half mile of school (11-GS-42-5603). The Applicant

was represented by James A. Cheek, Esquire. As a result of a plea agreement, the charge of distribution of crack cocaine within one-half mile of school (11-GS-42-5603) was *nolle prossed* and the Applicant pled guilty as indicted to the other charges on November 17, 2011. The Honorable J. Mark Hayes II sentenced the Applicant to confinement for a period of seven and one-half (7.5) years for each charge, to run concurrent. The Applicant did not appeal his guilty plea or sentence.

ALLEGATIONS

In the current application, the Applicant alleged he was being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel; in that,
   a. Counsel failed to investigate the case,
   b. Counsel made "me plea to the maximum."

At the hearing, the Applicant indicated that he wished to proceed on the claims of ineffective assistance of counsel and involuntary guilty plea based upon the fact that his plea agreement was not honored and there was an insufficient investigation.

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

The Applicant alleges 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) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland).

With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

Involuntary Guilty Plea

In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

Applicant testified that he was represented by James Cheek at his plea, but originally met with Beverly Jones at his preliminary hearing and second appearances. Applicant testified that his first time meeting with Cheek was the day before the plea. Applicant testified that he thought he was pleading guilty for a sentence of one year on both charges, but Cheek never mentioned the one year deal at the plea. Applicant testified that he never saw discovery materials and would not have pled guilty if he had seen the police operations plan, Applicant's #1. Applicant testified that he saw a still photo from the video, but never listened to the audio of the video.

Cheek testified that he met with the Applicant twice before the plea. Cheek testified that he reviewed a portion of the audio with Applicant and showed him the still photos, at which time

Applicant acknowledged that it was him. Cheek testified that he reviewed with Applicant the range of sentences, including the fact that CDV was a minimum of one to maximum of ten years. Cheek testified that Applicant wanted a concurrent sentence of one year since that was the minimum for CDVHAN, but even the Solicitor informed Applicant that there was no offer for one year.

This Court finds that the testimony of the Applicant is not credible. The plea colloquy fully covered all of the Applicant's constitutional rights and any issues he may have with any possible defenses. Further, the Assistant Solicitor pointed out twice that the only recommendation was for concurrent sentences and Cheek requested concurrent sentencing. Additionally, the Applicant admitted that the facts as read by the Solicitor were correct. The Applicant was informed of possible sentences and chose to plead guilty. To establish counsel was inadequately prepared, an Applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel been more fully prepared. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998); Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial). The Applicant offered no testimony or evidence to support his claim that Counsel failed to sufficiently investigate the charges. Therefore, this claim is denied and dismissed.

Summary

This Court finds that Counsel is an experienced attorney who was prepared for and effectively represented Applicant at his plea. This Court finds Counsel adequately conferred with the Applicant, was thoroughly competent in his representation, and that Counsel's conduct does not fall below the objective standard of reasonableness.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in their representation of the Applicant.

This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. There is no evidence that the outcome of the proceedings would have changed based upon any of the allegations of deficiency. This Court concludes the Applicant has not met his burden of proving Counsel failed to render reasonably effective assistance. See Frasier *supra*. Therefore, this allegation is denied.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court cautions Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

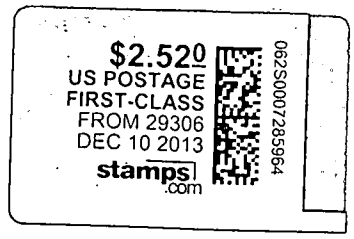
1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and

2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 31 day of Oct, 2013.

R. Lawton McIntosh
Presiding Judge
Seventh Judicial Circuit

Johnson Smith Hibbard & Wildman Law Firm, LLP
P.O. Drawer 5587
Spartanburg SC 29304



The Honorable Daniel E. Shearhouse
Clerk, South Carolina Supreme Court
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