

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM MARION COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

RECEIVED

JAN - 6 2014

Case No. 2012-CP-21-03289

S.C. Supreme Court

Shalla Marshall, #327284, Petitioner,

v.

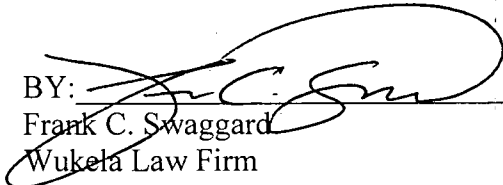
State of South Carolina, Respondent.

NOTICE OF APPEAL

Shalla Marshall, appeal the Order Denying Post Conviction Relief of the Honorable William H. Seals, Jr. dated October 7, 2013. Appellant received written notice of entry of this Order on December 12, 2013. A copy of the order on appeal is attached to this notice.

WUKELA LAW FIRM

December 18, 2013

BY: 
Frank C. Swaggard
Wukela Law Firm
Post Office Box 13057
Florence, South Carolina 29504
843-669-5634
Attorney for Petitioner

Other Counsel of Record:
Joshua L. Thomas, Esq.
Assistant Attorney General

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM MARION COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

Case No. 2012-CP-21-03289

Shalla Marshall, #327284, Petitioner,

v.

State of South Carolina, Respondent.

PROOF OF SERVICE

I, Amy Harrell, certify that I have today served the within notice of appeal upon the Respondent by depositing a copy of it in the United States Mail, postage prepaid, addressed to Joshua L. Thomas, Esquire, Assistant Attorney General, Post Office Box 11549, Columbia, SC 29211-1549. I further certify that all parties required by Rule to be served have been served this 2nd day of January, 2014.

WUKELA LAW FIRM

January 2, 2014

BY: Amy Harrell
Amy Harrell
Legal Assistant to Frank C. Swaggard

STATE OF SOUTH CAROLINA
 COUNTY OF FLORENCE
 IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2012CP2103289

FILED

2013 DEC 11 AM 11:14

CONNIE REEL-SHEARIN
 CCCP & GS
 FLORENCE COUNTY, SC

Shallah Marshall

State Of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: Plaintiff Defendant
 Self-Represented Litigant

DISPOSITION TYPE (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. See Page 2 for additional information.
- 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; (formal order to follow) Statement of Judgment by the Court:
ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge

Judge Code

12/11/2013

Date

For Clerk of Court Office Use Only

CERTIFIED: A TRUE COPY
Connie Reel-Shearin
 CLERK OF COURT C.P. & G.S.
 FLORENCE COUNTY, S.C.

This judgment was entered on **December 10, 2013**, and a copy mailed first class or placed in the appropriate attorney's box on **December 11, 2013**, to attorneys of record or to parties (when appearing pro se) as follows:

Frank Clayton Swaggard 403 Second Loop Road PO Box
13057 Florence, SC 29504-3057

ATTORNEY(S) FOR THE PLAINTIFF(S)

Joshua Lee Thomas PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE DEFENDANT(S)

Connie Reel-Shearin

Connie Reel-Shearin - Clerk of Court

Court Reporter

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS
FOR THE TWELFTH JUDICIAL CIRCUIT

Shallah Marshall, #327284,)
Applicant,)

Case No. 2012-CP-21-3289

v.)

ORDER OF DISMISSAL

State of South Carolina,)
Respondent.)

2013 DEC 10 PM 12:26
CONNIE REEL-SHEARER
CCCP & GS
FLORENCE COUNTY, SC
FILED

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed December 13, 2012. Respondent made its Return on or about March 8, 2013. The Court convened an evidentiary hearing into the matter on October 7, 2013, in Marion County. Applicant was present at the hearing and represented by Frank C. Swaggard, Esquire. Joshua L. Thomas, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the PCR hearing. Applicant's plea counsel, William V. Meetze, Esquire, also testified. The Court had before it a copy of the plea transcript, the records of the Florence County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the application, and the return. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Florence County Clerk of Court. In March 2011, the Florence County Grand Jury issued five indictments against Applicant: armed robbery, possession of a weapon during a violent crime, and conspiracy (2011-GS-21-428); attempted armed robbery and conspiracy (2011-GS-21-439); attempted armed robbery (2011-GS-21-441); two counts of

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Connie Reel-Shearer
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

armed robbery, possession of a weapon during the commission of a violent crime, and conspiracy (2011-GS-21-443); and armed robbery, kidnapping, and possession of a weapon during the commission of a violent crime. He was represented by William V. Meetze, Esquire (“plea counsel”). On August 8, 2011, Applicant entered a negotiated plea to three counts of armed robbery and two counts of attempted armed robbery. The Honorable Michael G. Nettles sentenced Applicant to fifteen (15) years for each charge, all sentences to run concurrently. Applicant did not appeal his plea or sentence.

II. ALLEGATIONS

In his application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. “Applicant was denied the right to effective assistance of counsel, guaranteed by the Sixth and Fourteenth amendments of the United States Constitution
 - a. “Counsel informed me I would receive a sentence of 10 yrs in exchange for a guilty plea, however I plead guilty and received 15 yrs counsel failed to object to sentence”

At the PCR hearing, the Applicant proceeded on the allegation in his application as well as allegations of ineffective assistance of plea counsel for failure to investigate and for failure to file an appeal.

III. SUMMARY OF TESTIMONY

Applicant testified he had multiple charges, but pled guilty to only one charge in exchange for a plea to fifteen years. Applicant testified plea counsel advised him he would do no more than ten (10) years because of programs in the department of corrections. He testified that he was instead doing twelve years because he must serve eighty-five percent of his sentence. Applicant further testified he told plea counsel to file an appeal, but that none was filed.

Applicant also claimed plea counsel was ineffective for allowing the solicitor to meet with Applicant and plea counsel in the presence of one of his co-defendants and the co-defendant's attorney. He alleged plea counsel was only interested in convincing him to plead guilty.

On cross examination, Applicant admitted he met with plea counsel numerous times and discussed the State's evidence and any possible defense Applicant may have. He further testified he gave plea counsel some leads to investigate. Applicant also alleged he gave plea counsel some case law to review involving witness identification. Applicant claims a victim never identified him and the co-defendant had a personal vendetta against him. Applicant also testified he discussed the State's initial offer of twenty-five (25) years with plea counsel. He turned that offer down, and he testified they never discussed a fifteen (15) year plea offer.

Plea counsel testified he met with Applicant in jail several times and reviewed the State's evidence. He testified Applicant initially denied any involvement and wanted a jury trial. In the case the State called to trial first, Applicant and a co-defendant were seen on camera robbing a local convenience store. Although Applicant could not be identified on the video, the victim identified the co-defendant. Applicant and co-defendant were later spotted by police walking together nearby. The police apprehended the co-defendant, but Applicant fled and was arrested later.

Plea counsel testified the State initially offered twenty-five (25) years on all the armed robberies and attempted armed robberies. The State later reduced the offer to eighteen (18) years. On the day trial was to begin, the State reduced the offer to fifteen (15) years. Plea counsel testified he discussed with Applicant the benefits of pleading guilty and the risks of going forward with trial. He testified he also reviewed Applicant's constitutional rights. Plea

counsel further testified that Applicant never wavered once he decided to plead guilty. He also testified he never told Applicant he would file an appeal and Applicant never asked for one to be filed.

Plea counsel further testified he never mentioned a ten (10) year sentence to Applicant. Plea counsel specifically recalled advising Applicant he would serve eighty-five percent of the fifteen (15) year sentence. He further testified he discussed with Applicant's girlfriend the allegation co-defendant had a vendetta against Applicant. Plea counsel testified he was prepared to cross-examine the co-defendant about his relationship with Applicant if the case had gone to trial.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed 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).

A. Ineffective Assistance of Plea Counsel

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of counsel 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." Id. at 442, 334 S.E.2d at 814 (citing Strickland v. Washington, 466 U.S. 668 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove that counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any 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." Id. at 117-18, 386 S.E.2d at 625. 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, 59 (1985). Below are the Court's findings in regards to each of Applicant's allegations of ineffective assistance of plea counsel.

The Court finds Applicant failed to meet his burden of proof regarding his allegations of ineffective assistance of counsel. Specifically, Applicant's claim plea counsel did not investigate

is without merit. Regarding this claim, the Court finds plea counsel's testimony to be credible, and Applicant's to be not credible. Plea counsel adequately conferred with Applicant, conducted a proper investigation, and was thoroughly competent in his representation. Plea counsel investigated Applicant's claim regarding his co-defendant's bias, and was prepared to address the issue if Applicant had proceeded to trial. Furthermore, Applicant has not presented any evidence a further investigation would have uncovered any information that would have led to a different result had the case gone to trial. See Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998). Therefore, Applicant had not shown plea counsel was deficient in this regard.

The Court likewise finds the allegation plea counsel failed to file an appeal to be without merit. Plea counsel testified Applicant never indicated he wanted an appeal. The Court finds plea counsel's testimony on this point to be very credible, and Applicant's to be not credible. Thus, the Court finds plea counsel was under no duty to file an appeal. See Roe v. Flores-Ortega, 528 U.S. 470, 478 (2000) ("Counsel performs in a professionally unreasonable manner only by failing to follow the defendant's express instructions with respect to an appeal."); see also Weathers v. State, 319 S.C. 59, 61, 459 S.E.2d 838, 839 (1995) ("One extraordinary circumstances which would require counsel to advise a defendant of the right to appeal from a guilty plea would arise when the defendant inquires about an appeal."). Therefore, Applicant had not shown plea counsel was deficient for not filing an appeal.

The allegation plea counsel mis-informed Applicant of his sentence is without merit as well. The Court finds very credible plea counsel's testimony he never advised Applicant of a potential ten (10) year sentence. According, the Court finds Applicant's testimony to be not

credible or believable. Furthermore, the plea transcript indicates Applicant was informed twice of the negotiated fifteen (15) year sentence. (Plea Tr. 3:9-11; Plea Tr. 12:3-12). Furthermore, Applicant was also informed he would serve eighty-five percent of his sentence. (Plea Tr. 4:22-5:9). Because the plea judge advised Applicant of the consequences of his plea, Applicant cannot now claim he is entitled to a ten (10) year sentence. See Holden v. State, 393 S.C. 565, 575, 713 S.E.2d 611, 616 (2011) (any alleged deficiency in plea counsel's representation is cured by the plea colloquy). Therefore, Applicant cannot show plea counsel's advice was deficient.

B. 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, the Court finds Applicant failed to present sufficient evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

V. CONCLUSION

Based on the foregoing, the Court finds and concludes that 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.


The Court notes that Applicant 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, 409 S.E.2d 395 (1991), an applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRPC, provides that if the applicant wishes to

seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on the applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. The Applicant be remanded to the custody of the Respondent.

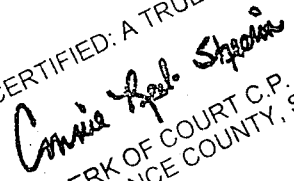
AND IT IS SO ORDERED this 27 day of Nov., 2013.

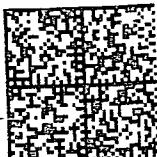


 THE HONORABLE WILLIAM H. SEALS, JR.
 Presiding Judge
 Twelfth Judicial Circuit

 , South Carolina

FILED
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 CONNIE REEL-SHEARIN
 C.C.P. & G.S.
 FLORENCE COUNTY, SC

CERTIFIED: A TRUE COPY

 CLERK OF COURT C.P. & G.S.
 FLORENCE COUNTY, S.C.



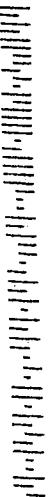
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WUKELA LAW FIRM
403 SECOND LOOP ROAD
P.O. BOX 13057
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To:

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



POSTNET

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January 2, 2014

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JAN - 6 2014

S.C. Supreme Court

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

Re: Shalla Marshall, #327284 v. State of South Carolina, Case No.: 2012-CP-21-03289

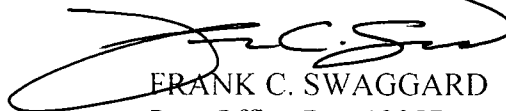
Dear Mr. Shearouse:

Enclosed for filing is the original and two copies each of the following: the Notice of Appeal in the above case, a copy of the Order which is to be challenged on appeal, and Proof of Service of the Notice of Appeal on the Respondent. I have also closed a self-addressed and stamped envelope for the return of the certified copies.

With kind regards, I am

Yours truly,

WUKELA LAW FIRM



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Post Office Box 13057
Florence, South Carolina 29504
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Attorney for Appellant

cc: Joshua L. Thomas, Esquire
Assistant Attorney General
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Attorney for Respondent

cc: South Carolina Office of Appellate Defense
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