

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
COUNTY OF PICKENS)
Tyrone Bernard Patrick,)
S.C.D.C. No. 233697,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

2013 DEC -3

P 2 IN THE COURT OF COMMON PLEAS
C.A. No. 2012-CP-39-0081

ORDER OF DISMISSAL **RECEIVED**
JAN 03 2014
SC Court of Appeals

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed January 20, 2012. The Respondent made its return on June 12, 2012. An evidentiary hearing into the matter was convened on October 21, 2013 at the Pickens County Courthouse. The Applicant was present at the hearing and represented by R. Mills Ariail, Jr., 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, Frank Eppes, Esquire. The Court had before it the transcript of the guilty plea hearing, the Pickens County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, the return, the appellate records, and Applicant's Exhibit 1.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Pickens County Clerk of Court. The Applicant was indicted by the Pickens County Grand Jury for trafficking cocaine base (2009-GS-39-1593), possession with

intent to distribute (PWID) cocaine base within proximity of a school (2009-GS-39-1594), and possession of a weapon during the commission of a violent crime (2009-GS-39-1595). He was represented by Frank Eppes, Esquire.

On April 13, 2011, the State called the case to trial. The Applicant, however, subsequently entered an Alford¹ plea pursuant to a negotiated sentence. The Honorable G. Edward Welmaker sentenced the Applicant pursuant to concurrent terms of twenty years for trafficking cocaine base, second offense, five years for PWID cocaine base within proximity of a school, and five years for possession of a weapon during the commission of a violent crime.

A notice of appeal was filed at the South Carolina Court of Appeals. By order dated June 3, 2011, the Court of Appeals dismissed the appeal based on the Applicant's failure to provide a written explanation as to what issues could be reviewed. See Rule 203(d)(1)(B)(iv), SCACR.

ALLEGATIONS

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

1. Ineffective assistance of counsel.
 - a. Failed to object to improper jury instruction.
 - b. "Silently surrendering competent representation in the presence of the trial courts' improper 'browbeating' of Applicant with incomplete sentencing declarations."
 - c. Failed to timely "move the court to subpoena witnesses."
 - d. Failed to move for a continuance.
 - e. Failed to thoroughly cross-examine the State witness about consent to search.
 - f. Failed to investigate and failed to object to admission of evidence "seized in the residence where Applicant occupied 'mere presence.'"
 - g. Failed to request a specific reasonable doubt charge.
 - h. Failed to properly object to the pre-trial identification and hearsay statements used in support of the search warrant affidavit.
 - i. Failed to properly cross-examine witnesses.

¹ North Carolina v. Alford, 400 U.S. 25, 91 S. Ct. 160 (1970).

- j. Failed to object to the admission of hearsay.
- k. Failed to object to the admission of statements.
- l. Failed to file a proper motion to compel discovery.
- m. Failed to challenge subject matter jurisdiction of the Applicant's prior conviction.
- n. Failed to perfect the appeal.
- o. Failed to present an entrapment defense
- 2. Trial court error.
- 3. Involuntary guilty plea.
- 4. Lack of subject matter jurisdiction.

At the PCR hearing, the Applicant proceeded solely upon the issues of ineffective assistance of plea counsel and involuntary guilty plea. This Court finds all issues related to the events of the Applicant's trial were not raised at the hearing and are thus abandoned. This Court further notes such issues are without merit, as the Applicant ultimately pled guilty.

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 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 he had three or four meetings with plea counsel. The Applicant stated that, while he told plea counsel he was innocent, they never reviewed the discovery materials. The Applicant stated he rejected a fifteen-year plea offer because he wanted a jury trial. The Applicant stated plea counsel failed to "corroborate the statement" – that Kraig Pringle took from co-defendant Stephanie Foster – in order to show that he had no knowledge of the drugs. The Applicant stated plea counsel failed to investigate the case or subpoena witnesses (Pringle and Foster). The Applicant stated he "broke down" and decided to plead guilty because of coercion. The Applicant stated plea counsel explained the concepts of an Alford plea and a negotiated sentence.

Plea counsel testified he filed discovery motions after he was retained. Plea counsel testified he reviewed the discovery materials (except for some information about the confidential informant) with the Applicant. Plea counsel testified the Applicant told him that he was innocent and rejected a fifteen-year plea offer from the State. Plea counsel testified he did "corroborate" the statement at issue but that Pringle's testimony would be inadmissible hearsay. Plea counsel testified, however, that he was not impressed by Foster's statement. Plea counsel testified that, while the Applicant gave him contact information for Foster, he was never able to get in touch with her. Plea counsel testified they had a pre-trial suppression hearing and had begun the trial² when the Applicant decided to plead guilty. Plea counsel testified the State would only offer a negotiated sentence and that he explained the nature of such (as well as what an Alford plea entailed) to the Applicant. Plea counsel testified he could not have done anything else to obtain a different result 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.

This Court finds the Applicant failed to meet his burden of proving plea counsel should have corroborated the statement. The Applicant stated Kraig Pringle took a statement from his co-defendant, Stephanie Foster, and plea counsel could have corroborated this statement to show he had no knowledge of the drugs. Plea counsel testified Pringle's testimony would have been inadmissible hearsay. This Court finds the Applicant has failed to articulate what he wanted plea

² This Court notes the trial halted after the direct examination of the first witness.

counsel to have done to “corroborate” the statement. Without such a showing, this Court cannot speculate as to whether any additional investigation into the statement would have yielded a different result in this case. See Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (holding 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).

This Court finds the Applicant failed to meet his burden of proving plea counsel should have investigated and subpoenaed Pringle and Foster. Plea counsel indicated he had contact information for Foster but was never able to get in touch with her prior to the trial. This Court finds plea counsel’s testimony is credible. Regardless, as neither Pringle nor Foster testified at the PCR hearing, this Court cannot speculate as to any impact their testimony may have had upon the Applicant’s case. 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). Further, the Applicant has failed to articulate what plea counsel could have discovered if he had further investigated these two witnesses. See Davis v. State, 326 S.C. 283, 486 S.E.2d 747 (1997) (denying relief where applicant failed to present witnesses or specific testimony establishing he would have had a defense with additional time to prepare for trial).

This Court finds the Applicant failed to meet his burden of proving he was coerced into pleading guilty. The Applicant told the plea judge that he understood his questions and had given truthful answers. (Plea transcript, p.14). The Applicant told the plea judge he was satisfied with plea counsel’s representation and had understood their discussions. (Plea

transcript, p.10). While this Court notes the guilty plea did stop at one point, when the plea judge asked the Applicant if he wanted to wanted to plead guilty, the Applicant stated "I'm pleading, I'm pleading, I'm pleading." (Plea transcript, p.8; p.10). When the plea judge noted the jury was still waiting, the Applicant did not tell the judge that he wanted to resume the trial. (Plea transcript, p.10). 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 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

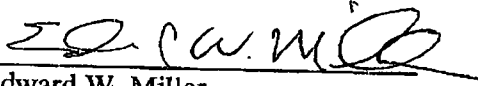
Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner and the Applicant was not prejudiced by counsel's representation. 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 25 day of November 2013.


Edward W. Miller
Presiding Judge
Thirteenth Judicial Circuit

, South Carolina.

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