

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

JUDGMENT IN A CIVIL CASE

CASE NO: 2012CP2303341

FILED-CLERK OF COURT  
GREENVILLE CO, S.C.  
PAUL B. WICKENSIMER  
2014 JAN 8 PM 4 20

Wilfredo Salas 347611 vs. South Carolina State Of

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.
- 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;

Statement of Judgment by the Court:

Dated at Greenville, South Carolina, this .

RECEIVED

FEB 05 2014

Court Reporter:

SC Court of Appeals

PRESIDING JUDGE - Edward W Miller

This judgment was entered on the 1-8-14, and a copy mailed first class this 1-8-14 to attorneys of record or to parties (when appearing pro se) as follows:

John G. Reckenbeil Law Office Of John G. Reckenbeil, LLC P.O. Box 1633 Spartanburg, SC 29304

Karen Christine Ratigan PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court  
- Clerk of Court

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GREENVILLE )  
 )  
 Wilfredo Salas, )  
 S.C.D.C. No. 347611, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 C.A. No. 2012-CP-23-3341

ORDER OF DISMISSAL

**RECEIVED**

FEB 05 2014

**SC Court of Appeals**

FILED-CLERK OF COURT  
 GREENVILLE CO. S.C.  
 PAUL B. WICKENSIMMER  
 2014 JAN 8 PM 4 20

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed May 17, 2012. The Respondent made its return on August 31, 2012. An evidentiary hearing into the matter was convened on October 23, 2013 at the Greenville County Courthouse. The Applicant was present at the hearing and represented by John G. Reckenbeil, 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 Victoria Salas and the Applicant's plea counsel, Scott D. Robinson, 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, the return, 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 Greenville County Clerk of Court. The Applicant waived presentment to the Greenville County Grand Jury for the charge of lewd act on a minor (2011-

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GS-23-6255A). Scott D. Robinson, Esquire represented the Applicant.

On August 8, 2011, the Applicant pled guilty. The Honorable Letitia H. Verdin sentenced the Applicant to fifteen years imprisonment. 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 obtain discovery.
  - b. “[M]islead applicant about the conditions of the plea.”
  - c. “[F]ailed to investigate the discrepancies and evidence of which concerns these allegations in this case.”
  - d. “[F]ailed to investigate discrepancies of which concerns the date of offense in this case.”
2. Involuntary guilty plea.

At the PCR hearing, the Applicant’s attorney stated they were proceeding solely upon issues of ineffective assistance of counsel, lack of subject matter jurisdiction, and after-discovered evidence.

### **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).

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).

The Applicant stated he met with plea counsel three times while he was in jail and never reviewed any of the evidence (including the victim’s videotaped interview) in his case. The Applicant stated he told plea counsel he was innocent and counsel said he had to plead guilty. The Applicant stated he believed the State would dismiss the case when he pled guilty. The Applicant stated plea counsel said he would be deported and not serve any time. The Applicant stated plea counsel should have filed a motion to quash the indictment. The Applicant stated plea counsel should have objected to the victim impact statement being introduced at the plea hearing. The Applicant stated plea counsel should have objected when the State asked for the maximum sentence because there was no recommendation in this case. The Applicant admitted he told the plea judge that he was satisfied with plea counsel’s performance, but said that – after he has reviewed his case – he has decided he is unsatisfied. The Applicant also admitted that he did not dispute the State’s version of the facts at the plea hearing, but said it was because he

believed he was being deported.

Plea counsel testified he filed discovery motions after he was retained. Plea counsel testified he reviewed the discovery materials with the Applicant and the Applicant said he was innocent. Plea counsel testified they reviewed the sentence ranges for both first-degree criminal sexual conduct with a minor and lewd act upon a child. Plea counsel testified he and the Applicant watched the videotape of the victim's forensic interview while he was out on bond. Plea counsel testified the Applicant also had a pending federal charge and a potential ICE hold and that he knew there was a possibility he would be deported. Plea counsel testified he received the victim's impact statement the day of the plea hearing and that the Applicant and plea judge looked at it. Plea counsel testified he did not object to the statement because he did not see the purpose of it and did not believe the State did anything inappropriate.

The Applicant told the plea judge he wanted to plead guilty and did not dispute the State's factual recitation. (Plea transcript, p.14). The Applicant also told the plea judge that he understood the trial rights he was waiving in pleading guilty, was satisfied with counsel, and had not been coerced in any way. (Plea transcript, pp.4-6).

This Court finds the Applicant failed to meet his burden of proving plea counsel did not properly prepare the case. This Court finds the Applicant and plea counsel had meetings about the case while the Applicant was in jail. This Court finds the Applicant told plea counsel he was innocent of the charges. This Court finds the Applicant clearly changed his mind and decided to plead guilty because the plea transcript in this case is evidence that the Applicant entered a free and voluntary guilty plea. There is no credible evidence to support the Applicant's contention that plea counsel told him he would merely be deported if he pled guilty. The Applicant was, in fact, advised of the potential sentence he could receive – the Applicant testified plea counsel

informed him that he faced a sentence of 0-15 years.

This Court finds the Applicant failed to meet his burden of proving plea counsel should have moved to quash the indictment. The Applicant has failed to articulate a valid basis upon which plea counsel could have made such a motion.

This Court finds the Applicant failed to meet his burden of proving plea counsel should have objected at the plea hearing to both the victim impact statement and the State's request for the maximum sentence. While the victim was in the courthouse, she was not in the courtroom during the guilty plea hearing. The State passed up an "age-appropriate type letter" to the plea judge as a victim impact statement. (Plea transcript, pp.13-14). This Court finds there was no valid reason for plea counsel to have objected to the submission of this statement from the minor victim. The State also requested the plea judge levy the maximum sentence. (Plea transcript, p.12). This Court finds the Applicant has failed to articulate a valid reason for trial counsel to have objected to the State's request, as the Applicant was pleading guilty without a sentence recommendation from the State.

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. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

### Subject Matter Jurisdiction

Plea counsel testified the Applicant was originally charged with first-degree criminal sexual conduct with a minor but that the State eventually agreed to drop this charge if the Applicant would waive presentment (and plead guilty to) the charge of lewd act upon a child. The Applicant admitted plea counsel told him a few days before the plea hearing that the State was dropping one charge and he would plead guilty to another.

This Court finds the Applicant has failed to meet his burden of proving the plea court lacked subject matter jurisdiction. It is clear the Applicant pled guilty to lewd act upon a child as a new charge – not as a lesser-included offense of the original charge. (Plea transcript, p.11). The Applicant waived presentment of the lewd act charge to the Greenville County Grand Jury. (Plea transcript, p.6). The Applicant knew he was pleading guilty to lewd act upon a child instead of first-degree criminal sexual conduct with a minor several days before he pled guilty and the waiver of presentment and the indictment were clearly sufficient to put the Applicant on notice of the charge he was facing. See State v. Gentry, 363 S.C. 93, 102-03, 610 S.E.2d 494, 500 (2005).

### After-Discovered Evidence

The Applicant's wife, Victoria Salas,<sup>1</sup> stated the victim was five years old at the time of the incident. Salas stated the victim made two disclosures of abuse (and that she first disclosed to the grandmother) and that she took the victim to the doctor after the second disclosure. Salas stated the Applicant never picked the victim up from school and that there were other people in the house at the time the abuse would have occurred. Salas stated she made a statement to this effect to plea counsel. Salas stated she did not believe any abuse happened and that she never

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<sup>1</sup> This witness is also the victim's mother.

had an opportunity to speak to the victim about the abuse. Salas admitted she was assisting the defense team before the plea hearing.

The Applicant stated he did not know Salas had been helping the defense in his case. The Applicant stated he did not know until the day of the PCR hearing that Salas believed the victim was lying.

Plea counsel confirmed Salas had given a statement to him that she did not believe the victim. Plea counsel testified Salas said she believed her mother may have influenced the victim. Plea counsel also confirmed Salas had been assisting in the Applicant's defense.

This Court finds Victoria Salas's testimony does not constitute after-discovered evidence. See Hayden v. State, 278 S.C. 610, 611-12, 299 S.E.2d 854, 855 (1983). Most importantly, Salas's opinion (that the victim was lying and had been influenced by her mother) was known to the defense before the Applicant pled guilty. It is clear the parties both knew Salas was assisting the Applicant with his defense – Salas admitted this in her testimony and the assistant solicitor also pointed it out to the plea judge. (Plea transcript, p.11). As such, Salas's testimony cannot be considered to be after-discovered evidence. This Court further finds both Salas and the Applicant are not credible on this issue. Salas stated she never discussed the abuse with the victim (her five-year-old daughter) and the Applicant stated he did not know Salas was assisting in his defense. This Court finds this testimony to be patently unbelievable. See State v. Harris, 391 S.C. 539, 545, 706 S.E.2d 526, 529 (Ct. App. 2011) ("The credibility of newly-discovered evidence is for the trial court to determine.").

#### 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. 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 7 day of January, 2014.

  
Edward W. Miller  
Presiding Judge  
Thirteenth Judicial Circuit

, South Carolina.