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February 11, 2014

The South Carolina Supreme Court
P.O. Box 11330
Columbia, SC 29211

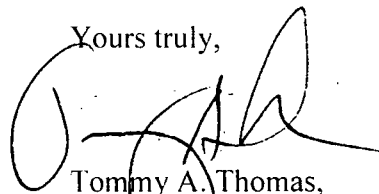
REIkeef Brailsford v. State of South Carolina
Docket No.: 2012-CP-43-0142

Dear Sir or Madam:

Enclosed please find an Original and a copy of a Notice of Appeal, along with a Certificate of Service and attachments.

Kindly return a clocked copy to me in the enclosed envelope. Thank you and should you have any questions, or need any additional information, please do not hesitate to contact me.

Yours truly,



Tommy A. Thomas,
Attorney at Law

TAT/jem
cc: Daniel Gourley, Esq.
Ikeef Brailsford #264172
Appellate Defense

RECEIVED

FEB 18 2014

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SUMTER COUNTY
Court of Common Pleas
Post-Conviction Relief

R. Ferrell Cothran, Jr., Presiding Judge

Case No.: 2012-CP-43-0142

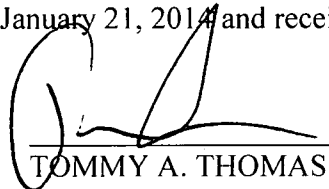
Ikeef Brailsford #264172Appellant,

vs.

State of South CarolinaRespondent.

NOTICE OF APPEAL

Ikeef Brailsford #264172 appeals the Order of Dismissal of the Honorable R. Ferrell Cothran, Jr., signed January 14, 2014 and filed on January 21, 2014 and received on January 28, 2014.



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Other Counsel of Record:

Daniel Gourley, Esq.
Assistant Attorney General
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Attorney for Respondent

Irmo, South Carolina
February 11, 2014

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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
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APPEAL FROM SUMTER COUNTY
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Ikeef Brailsford #264172Appellant,

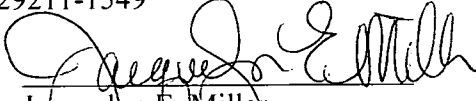
vs.

State of South CarolinaRespondent.

CERTIFICATE OF SERVICE

I, Jacquelyn E. Miller, secretary to Tommy A. Thomas, Attorney for the Applicant, hereby certify that I placed in the United States Mail, a copy of a Notice of Appeal with postage prepaid and the return address clearly shown on said envelope to Daniel Gourley, Esq. with the Office of the Attorney General at:

Daniel Gourley, Esq.
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211-1549


Jacquelyn E. Miller
Secretary to Tommy A. Thomas
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February 11, 2014

fifteen years imprisonment suspended upon the service of twelve years imprisonment, an additional ten years imprisonment for manufacturing cocaine, and ten years for distribution crack cocaine. All sentences were to run concurrent. The Applicant did not appeal his conviction or sentence.

ALLEGATIONS

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following allegations:

1. Ineffective assistance of trial counsel.
2. Involuntary guilty plea.

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. The State presented testimony from plea counsel, Charles D. Barr, Esquire (Counsel). This Court also had before it a copy of guilty plea hearing, the Sumter County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, and the return.

During the evidentiary hearing, Applicant stated he was arrested on July 22 or 23 of 2010 and hired Counsel. Applicant stated he was out on bond approximately four months after his arrest. Applicant stated he met with Counsel approximately four times prior to his guilty plea. Applicant stated he reviewed the discovery material with Counsel. Applicant stated he never discussed any possible defenses with Counsel. Applicant stated he received an emergency phone call from Counsel informing him that his Co-Defendant had been arrested, was pleading guilty, and would most likely testify against him.

Applicant stated he went to court with Counsel and the solicitor offered him a plea deal with a cap of twenty years. Applicant stated he was being charged under a third offense.

Applicant explained he pled guilty on the same day to two separate drug charges from July 2005 and December 2005. Applicant stated he discussed with Counsel as to why it was a third offense versus a second offense. Applicant stated he does not believe that he is guilty of a third offense. Applicant stated he did not plead freely and voluntarily. However, Applicant stated he agreed during the plea proceeding that he was pleading guilty to a third or subsequent offense for distribution of crack cocaine. Applicant stated it was his decision to plead guilty. Applicant stated he did waive his constitutional rights. Applicant stated he told the plea judge on two separate occasions that he was satisfied with Counsel's services. Applicant stated he told the plea judge that he had enough time to discuss his case with Counsel. Applicant stated he told the plea judge "Mr. Barr was excellent, he was always in contact with me, let me know what was going on." (Tr. p. 10 lines 1-3).

Following Applicant's testimony, Counsel was called to testify by the State. Counsel stated he has been practicing law for approximately thirty five years. Counsel stated he was retained. Counsel could not recall when he was retained. Counsel stated he had the opportunity to review his file from his representation prior to the date of the PCR hearing. Counsel stated he met with Applicant approximately three to four times. Counsel stated Applicant was out on bond during majority of his representation. Counsel stated he went over the indictments, elements of the charges, and potential sentences. Counsel stated he explained to Applicant why he was being charged with a third offense versus a second offense. Counsel stated they had previous discussions about the issue prior to Applicant pleading guilty. Counsel further stated that the deal was for Applicant to receive twelve years so regardless of whether Applicant was charged with third or second offense, Applicant would still receive the same amount of time. Counsel stated he discussed Applicant's version of the facts. Counsel stated Applicant had a number of

drug cases. Counsel could not recall when he received discovery, but it is his practice to file for and send the discovery material to his clients. Counsel stated he had a sufficient amount of time to prepare and investigate Applicant's case. Counsel recalled that the plea negotiations included a cap of twelve years and that Applicant would receive the maximum on the other charges. In Counsel's opinion he gave Applicant adequate advice and information to make an informed and intelligent decision whether to plea. Counsel stated it was ultimately Applicant's decision to enter a guilty plea.

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 at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Specifically, this Court finds that Counsel's testimony is very credible while Applicant's testimony is less credible. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). 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, (1984); Butler, 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, 286 S.C. 441, 334 S.E.2d 813 (1985). Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. 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. 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 (1985). Below are this Court's findings in regards to each of Applicant's allegations of ineffective assistance of counsel.

INEFFECTIVE ASSISTANCE OF COUNSEL

Counsel was ineffective for failing to challenge whether Applicant was correctly charged as third offense versus a second offense.

This Court finds Applicant's allegation that he was denied effective assistance of counsel for failing to adequately investigate and prepare a defense for trial is without merit. This Court finds plea counsel had numerous meetings with Applicant prior to his plea and that they reviewed the discovery materials. Applicant argues he should have been charged as a second offense because he pled to two prior drug offenses on the same day.¹ However, Applicant can enter a plea of guilty to a first and second drug offense during the same proceeding. See State v. Robinson, 387 S.C. 568, 693 S.E.2d 402 (2010) (finding, trial counsel did not render ineffective

¹ Applicant was charged in July and December 2005 for two separate drug offenses. Applicant ultimately pled guilty on the same day to both offenses and was sentenced as a first offense for both offenses.

assistance by failing to challenge defendant's conviction for trafficking in crack cocaine as third offense for purposes of recidivist sentencing; defendant was properly sentenced for third drug offense, in that defendant had two prior drug convictions); See State v. Patterson, 272 S.C. 2, 248 S.E.2d 770 (1978) (holding, in a case where defendant pleaded guilty during the same proceeding to a first and second drug offense that occurred on the same date, trial judge properly treated the charges as first and second offenses given at the time of the imposition of the sentence of the second offense the appellant stood convicted by way of a guilty plea of a first offense). The Court notes that there was a lengthy discussion between the plea judge, solicitor, and Counsel regarding whether Applicant was correctly charged as a third offense versus a second offense. This Court finds that Counsel was not ineffective for failing to challenge Applicant's guilty plea for distribution of crack cocaine third or subsequent offense. This Court finds Applicant was properly charged as a third or subsequent offense based off of his two prior drug convictions dating back to July 2005 and December 2005. Furthermore, this Court finds Applicant was fully informed that he was entering a guilty plea to a third or subsequent offense prior to entering his guilty plea. Therefore, this Court finds this allegation should be denied and dismissed with prejudice.

Involuntary Guilty Plea

This Court finds that the Applicant's guilty plea was entered freely and voluntarily. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). Defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and

defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977)). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. United States, 519 F.2d 347 (4th Cir.1975).

This Court finds that this allegation is without merit and the Applicant has failed to carry his burden of proving that his guilty plea was involuntarily made. This Court finds that the Applicant's testimony was entered freely and voluntarily. The Applicant testified at the evidentiary hearing that he was pleading guilty freely and voluntarily. This Court finds further that the record reflects the Applicant was thoroughly advised of the waiver of his constitutional rights by both counsel and the plea judge. The record reflects the Applicant at his plea proceeding told the court that he wished to plead guilty. (T. 11). The record also reflects that the Applicant told the court that he had not been promised or threatened by anyone to get him to plead guilty. (T. 23). This Court finds that the Applicant had a full understanding of the consequences of his plea and the charges against him. Specifically, this Court notes Applicant stated he was guilty of distribution of crack cocaine third offense or subsequent offense. (T.26). Applicant testified This Court finds that the plea judge correctly found that the Applicant's plea was freely, voluntarily, and intelligently made. (T. 26).

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.

The 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

Except as discussed above, this Court finds that the Applicant affirmatively waived the remaining allegations set forth in his application at the hearing. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

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

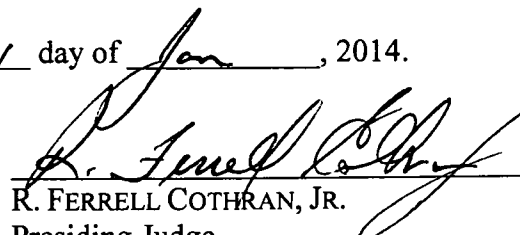
with prejudice.

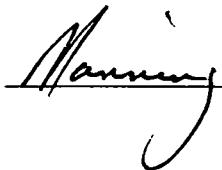
This Court notes that that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCR, 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:

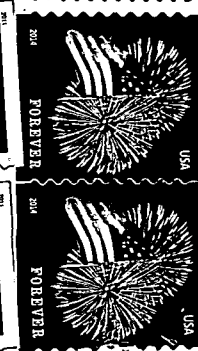
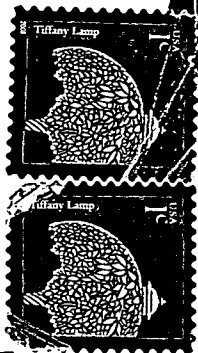
1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 14 day of Jan, 2014.


R. FERRELL COTHRAN, JR.
Presiding Judge
Third Judicial Circuit

, South Carolina

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