THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

G. Edward Welmaker, Circuit Court Judge

Case No. 2013-CP-39-0649

Rodney David Young,..... Appellant,
SCDC #345281

v.

State of South Carolina ..... Respondent.

NOTICE OF APPEAL

Rodney David Young appeals the Honorable G. Edward Welmaker's Order of Dismissal dismissing Young's application for post-conviction relief. On January 21, 2014, the Honorable G. Edward Welmaker signed an order dismissing Appellant's application for post-conviction relief with prejudice. Appellant, through counsel, received written notice of entry of this order on January 27, 2014. A copy of Judge Welmaker's Order is attached.

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Greenville, South Carolina
February 6, 2014

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STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 2013CP3900649

2014 JAN 23 AM 8 34

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

Rodney David Young 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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy:

☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other: _____

IT IS ORDERED AND ADJUDGED: X☐ See attached order; ☐ Statement of Judgment by the Court:

Order of Dismissal

Dated at Pickens, South Carolina, this .

Court Reporter:

PRESIDING JUDGE -

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

US mail
✓ **R. Mills Ariail Jr.** 11 North Irvine St., Ste., 11 Greenville, SC 29601 MS

ATTORNEY(S) FOR THE PLAINTIFF(S)

emailed
✓ **Karen Christine Ratigan** PO Box 11549 Columbia, SC 29211

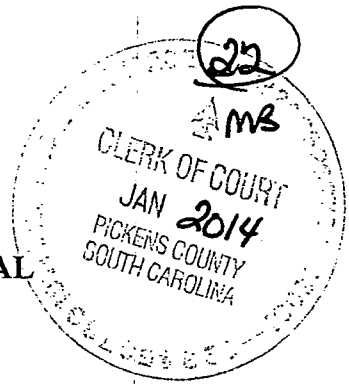
ATTORNEY(S) FOR THE DEFENDANT(S)

Harold P Welborn, Jr. - Clerk of Court

MS

CPFORM4M
SCCA SCRCP Form 4 Revised 06/2008

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	C.A. No. 2013-CP-39-0649
COUNTY OF PICKENS)	
)	
Rodney David Young,)	
S.C.D.C. No. 345281,)	
)	
Applicant,)	**ORDER OF DISMISSAL**
)	
v.)	
)	
State of South Carolina,)	
)	
Respondent.)	
)	



This matter comes before the Court by way of an application for post-conviction relief (PCR) filed May 13, 2013. The Respondent made its return on October 14, 2013. An evidentiary hearing into the matter was convened on December 16, 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, John W. DeJong, 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 (SCDC) records, the PCR application, and the return.

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 at the September 2012 term of the Pickens County Grand Jury for distribution of cocaine base (crack cocaine) (2011-GS-39-1794), distribution of marijuana (2011-GS-39-1798), distribution

of crack cocaine within 1/2 mile of a park (2011-GS-39-1799), and distribution of marijuana within close proximity of a park (2011-GS-39-1800). He was represented by John W. DeJong, Esquire.

On January 29, 2013, the Applicant pled guilty.[1] The Honorable Edward W. Miller sentenced the Applicant to concurrent terms of eighteen years suspended on service of eight years and three years probation for distribution of cocaine base, second offense, eight years for distribution of marijuana, second offense, eight years for distribution of crack cocaine within 1/2 mile of a park, and eight years for distribution of marijuana within close proximity of a park. The Applicant did not appeal.

ALLEGATIONS

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

1. "I was indicted Jan 24, 2013 but was arrested Feb 15, 2011."
2. "Never received a preliminary hearing nor given the form."
3. "Co-defendant warrant claims she had no co-defendant."
4. "Upon apprehension I was not presented with or viewed arrest warrant pursuant to §17-13-50 and §22-5-190. Nor was my arresting officer ever mentioned in my Rule 5. My attorney . . . is full aware of these issues and I repeatedly asked him to look into the matter and he said he would but failed to do so."
5. "I was coerced to lie under oath. . . . I told my attorney 'I like to only plea to what I am guilty of' he responded and told me in order for the judge to go with the plea you would have to plea out to the crack-cocaine charges as well. . . . He emphasized to me that if I take this plea I'll be eligible for parole & work release etc. and that its non-violent 65 percent thats the best it gets, however I'm doing contrary 85 percent non-violent non eligible for parole, or work release."
6. "I was not given adequate legal information pertaining to original two plea

[1] The State nol prossed indictments for possession of a pistol by a person convicted of a violent crime (2011-GS-39-1792), two counts of distribution of cocaine base (crack cocaine) (2011-GS-39-1793, -1796), two counts of distribution of cocaine base within 1/2 mile of a park (2011-GS-39-1795, -1797), and possession of contraband in county prison (2012-GS-39-2790).

offers especially the second which was a cap 10, he simply said the judge can't go over 10 years. I again asked for some case laws or/and statute he said ok but never did."

7. "On Feb 23 201 a bond reduction was requested my attorney completed the attorney section and submitted to the clerk of court of Pickens County and the clerk of court forwarded to the solicitor's office however the form was not completed and ignored."
8. "On numerous occasions I asked my attorney to produce the original warrant for Feb. 3, 2011 reason being the warrant I have is written in ink it is not a copy and it appears to be forged and my attorney agreed and nothing was looking into about it."

At the PCR hearing, the Applicant proceeded upon grounds of ineffective assistance of plea counsel and involuntary 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 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/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 several meetings with plea counsel and that, while they "briefly" reviewed the discovery materials, they never discussed any defenses. The Applicant stated he heard parts of all the audiotapes once and then heard the plea audiotape on one case – but that he was not on that tape. The Applicant stated he asked plea counsel to look into his arrest warrant because it appeared to be forged. The Applicant stated plea counsel said he would have his investigator look into the warrant but that they never discussed it again. The Applicant stated plea counsel told him the State had made a plea offer for a cap of ten years. The Applicant stated plea counsel did not give him any information about the cap, except to say the plea judge would not give a sentence in excess of ten years. The Applicant stated plea counsel should have made him accept the recommendation of a ten year cap. The Applicant stated he pled guilty

because plea counsel told him to do so. The Applicant stated he was guilty of the marijuana charge and would have pled guilty to that, but that plea counsel said he had to plead guilty to all charges. The Applicant stated five of his charges were nol prossed after he pled guilty. The Applicant stated plea counsel told him that he would serve 65% of his sentence if he pled guilty.

Plea counsel testified he filed discovery motions, received those materials, reviewed them with the Applicant, and provided him a copy of the materials. Plea counsel testified he explained the elements of the offenses to the Applicant, as well as the sentencing ranges. Plea counsel testified they discussed that the key evidence against him was the confidential informant's testimony. Plea counsel testified he believed he listened to the audiotapes but that the Applicant was only allowed to hear the tape for the case that was on the trial docket. Plea counsel testified he would have discussed the contents of the audiotapes with the Applicant. Plea counsel testified there was no issue with the arrest warrant but that, while he spoke to the Applicant about it, the Applicant remained adamant. Plea counsel confirmed the State made a plea offer for a ten year cap and said that he explained the idea of a cap to the Applicant. Plea counsel confirmed the Applicant did not accept this plea offer. Plea counsel testified the Applicant eventually pled guilty without a sentence recommendation and that he explained the sentence ranges to him. Plea counsel testified the State offered to nol pros numerous charges if the Applicant pled guilty. Plea counsel testified the Applicant did not waver during the plea hearing. Plea counsel testified he believes he told the Applicant that he would not have to serve 85% of the sentence.

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.

The Applicant admitted to the plea judge both that he was guilty and that the facts recited by the solicitor were true. (Plea transcript, p.6; p.8). The Applicant also told the plea judge that he understood the trial rights he was waiving in pleading guilty and was satisfied with counsel. (Plea transcript, p.6). 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.

This Court finds the Applicant failed to meet his burden of proving trial counsel did not adequately meet with him and prepare the case for trial. Trial counsel testified he met with the Applicant and that they reviewed the discovery materials. Trial counsel testified they discussed the audiotapes and his co-defendant's involvement. This Court finds the Applicant has failed to articulate what more trial counsel should have done to prepare the 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 trial counsel should have challenged the arrest warrant. The Applicant has failed to present any credible evidence that the warrant in his case had been forged. See Butler v. State, 286 S.C. 441, 442, 334 S.E.2d

813, 814 (1985) (holding that, in a post-conviction relief proceeding, the applicant bears the burden of proving the allegations in their application).

This Court finds the Applicant failed to meet his burden of proving plea counsel did not adequately explain the plea offer. This Court finds plea counsel fulfilled his professional obligation by conveying the State's plea offer of a ten year cap to the Applicant and discussing what this would mean. Cf. Davie v. State, 381 S.C. 601, 675 S.E.2d 416 (2009) (holding counsel's failure to convey the State's plea offer to defendant constituted deficient performance). As the Applicant is the only person who can accept a plea offer, this Court finds the Applicant merely exercised his right to reject the State's offer. See Rule 1.2(a), RPC, Rule 407, SCACR.

This Court finds the Applicant failed to meet his burden of proving plea counsel misadvised him about the time he would have to serve on his sentence. This Court finds plea counsel did not err. This Court notes that an examination of the Applicant's SCDC records indicates the charges are listed as non-violent.[2]

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

[2] This Court notes that if the Applicant is challenging the method used by SCDC to calculate his sentence, he must follow the procedure set forth in Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000).

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

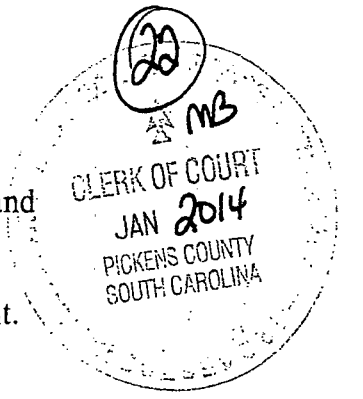
Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner and the Applicant was not prejudiced by counsel's representation. 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 21 day of Jan, 2014.

G. Edward Welmaker
Presiding Judge
Thirteenth Judicial Circuit

Pickens, South Carolina.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

G. Edward Welmaker, Circuit Court Judge

Case No. 2013-CP-39-0649

Rodney David Young,..... Appellant,
SCDC #345281

v.

State of South Carolina ..... Respondent.

CERTIFICATE OF SERVICE

I, Denise Tanner LaBeck, paralegal to R. Mills Ariail, Jr., do hereby certify that on this 10th day of February, 2014 I served upon the below named Respondents copies of the **NOTICE OF APPEAL** by depositing copies of the same via U.S. Mail, postage prepaid, Registered Mail in an envelope addressed as set forth herein below:

Karen C. Ratigan, Esq.
Assistant Attorney General
PO Box 11549
Columbia, SC 29211
Attorney for the State of South Carolina

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Denise Tanner LaBeck
Denise Tanner LaBeck
Paralegal to R. Mills Ariail, Jr.
LAW OFFICE OF R. MILLS ARIAIL, JR.

February 10, 2014
Greenville, SC

R. MILLS ARIAIL, JR.
ATTORNEY AT LAW

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February 6, 2014

Via US Mail
Daniel E. Shearouse
Clerk of Court
Supreme Court of South Carolina
Post Office Box 11330
Columbia, South Carolina 29211

Re: Notice of Intent to Appeal from Rodney David Young v. State of South Carolina, C.A. No.: 2013-CP-39-0649

Dear Mr. Shearouse:

I was Court Appointed in the above referenced matter, and I expect that appellate defense will handle the appeal and petition for certiorari. On behalf of my client, enclosed for filing please find the Notice of Appeal and proof of service. I've enclosed a copy of Judge Welmaker's Order of Dismissal to be challenged on appeal. I must inform the Supreme Court that as an officer of this Court, I am unable to identify any issue which can be reviewed on appeal. By copy of this letter, I am instructing Petitioner that if he must notify this Court, in writing, no later than twenty (20) days from the date of this letter, of any arguable basis for an appeal from his guilty plea as required by Rules 203(d)(1)(B) of the South Carolina Appellate Court Rules. By copy of this letter, I am also serving counsel for the State of South Carolina, the Pickens County Solicitor's Office, the South Carolina Commission of Indigent Defense - Appellate Defense Division and the Pickens County Clerk's Office.

Thank you for your assistance in this matter and if you have any questions, please feel free to contact me.

Sincerely,
LAW OFFICE OF R. MILLS ARIAIL, JR.
Attorney at Law

R. Mills Ariail, Jr.

RMAjr/dcd
Enclosures (as stated)

cc: Pickens County Clerk's Office
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