

WR

William L. Runyon, Jr.

Attorney At Law

#3 Gamecock Avenue, Suite 303

Charleston, SC 29407

Telephone: (843) 571-3515 Facsimile: (843) 766-5085

March 7, 2014

RECEIVED

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

MAR 11 2014

S.C. SUPREME COURT

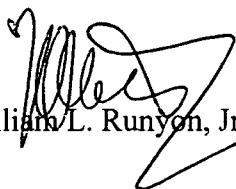
**In Re: Tyrone Dennis vs. State
2013-CP-10-359**

Dear Mr. Shearouse:

Enclosed please find original and three (3) copies of **Notice Of Intent To Appeal** in the above-named case. Also enclosed is a self-addressed stamped envelope for return of certified copies.

Thanking you, I remain

Sincerely,



William L. Runyon, Jr.

Enclosures: as stated above
WLRJr/paw.

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

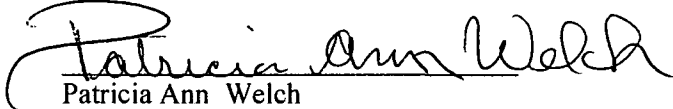
TYRONE DENNIS,)
)
Applicant,)
)
Vs.)
)
STATE OF SOUTH CAROLINA,)
)
RESPONDENT.)
_____)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
Case No. 2013-CP-10--359

CERTIFICATE OF SERVICE

I **Patricia Ann Welch**, Legal Secretary for William L. Runyon, Jr., Esquire , do hereby certify that on the 4th of February, 2014 I served a copy of **Notice of Intent To Appeal** TO U.S. Attorney General Office in the within matter, by mailing copies to him/her by way of the United States Mail, with sufficient postage attached thereto and addressed as follows:

**Office of Attorney General
State of South Carolina
Ashleigh Wilson
P.O. Box 11540
Columbia, SC 29211**


Patricia Ann Welch
Legal Secretary For William L. Runyon, Jr.

Dated this 7th day of **March, 2014**

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
TYRONE DENNIS,)
Plaintiff,)
vs.)
STATE,)
Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
Case No.: 2113-CP-10-359

2013

ORDER SUBSTITUTING
APPOINTED COUNSEL

FILED
2013 MAR -6 PM 3:29
JULIE J. ARMSTRONG
CLERK OF COURT
BY

IT APPEARING to this Court that the Plaintiff above-captioned has appointed counsel, it is hereby;

ORDERED, ADJUDGED AND DECREED, that William L. Runyon, Jr., Esquire be and is hereby substituted as counsel of record for the above-captioned Defendant. That Thomas L. Harper, Jr., Esquire is hereby relieved of all further duties of representation of the above captioned Defendant.

AND IT IS SO ORDERED.

S. Roger Young
Judge, Ninth Judicial Circuit

Dated this ___ day of 2/27, 2013
Charleston, South Carolina

I SO MOVE:

77
Thomas L. Harper, Jr. Esquire
P.O. Box 999
Charleston, SC 29402
(843) 723-6262

I CONSENT:

William L. Runyon, Jr.
William L. Runyon, Jr., Esquire
#3 Gamecock Avenue
Suite 303
Charleston, SC 29407
(843) 571-3515
(843) 766-5085

FOR A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., S.S. & F.C.
Julie J. Armstrong
DEPUTY CLERK

[News](#) [Research](#) [Victims](#) [Programs](#) [Family](#) [About SCDC](#)

INCARCERATED INMATE SEARCH

SCDC ID: SID:
 First Name: Last Name: Phonetic Match

SCDC ID	Name	Sex	Race	Height	Weight	Age
00199175	DENNIS, TYRONE	MALE	BLACK	5' 05"	171	51

1 Inmate Found



Picture Date 10/16/2012

Inmate Description		Inmate Sentence and Location	
<u>Name</u>	Dennis, Tyrone	<u>Offender Type</u>	Adult-straight Sentence
<u>SCDC ID</u>	00199175	<u>Offense</u>	Burglary-1st Degree
<u>SID</u>	SC00284777	<u>Sentence Start Date</u>	12/30/2010
<u>DOB</u>	12/09/1961	<u>Sentence Length</u>	15 YRS, 0 MOS, 0 DYS
<u>Citizenship</u>	Citizen - Native Born	<u>Admission Date</u>	10/16/2012
<u>Build</u>	Medium	<u>Committing County</u>	Charleston
<u>Complexion</u>	Medium	<u>Location</u>	Perry
<u>Hair Color</u>	Black	<u>Projected Release Date</u>	09/26/2023
<u>Eye Color</u>	Brown	<u>Projected Parole Eligibility</u>	10/01/2023
		<u>Supervised Furlough Eligibility</u>	Not Eligible

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 [Version: 3.0.14 Built: 02/08/2013 03:19:14 PM Time: 10:30:11 AM]

*Tyrone Dennis #199175
 Perry Correctional Institution
 430 Oaklawn Rd.
 Pelzer, SC 29669*

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AG
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GS
SDU

AW
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STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
Tyrone Dennis, #199175,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)

IN THE COURT OF COMMON PLEAS
2013-CP-10-0359

ORDER OF DISMISSAL

FILED
2014 MAR -3 PM 3:28
JULIE L. ANDERSON
CLERK OF COURT

Presiding Judge: The Honorable Kristi L. Harrington
Applicant's Attorney: William L. Runyon, Jr., Esquire
Respondent's Attorney: Ashleigh R. Wilson, Esquire
Plea Counsel: Cantrell M. Frayer, Esquire
Date of Hearing: January 14, 2014
Court Reporter: Sharon Vizer

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed January 18, 2013. The Respondent made its Return on November 1, 2013. An evidentiary hearing into the matter was convened on January 14, 2014 at the Charleston County Courthouse. The Applicant was present at the hearing and represented by William L. Runyon, Jr., Esquire. Ashleigh R. Wilson, Esquire, of the South Carolina Attorney General's Office represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Applicant's plea counsel, Cantrell Frayer, Esquire, also testified at the hearing. This Court had before it the guilty plea transcript, the records of the Charleston County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the PCR application, and Respondent's Return thereto.

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PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Charleston County. The Applicant was indicted at the July 2011 term of the Charleston County Grand Jury for two counts of burglary- first degree (2011-GS-10-3961, -4927). Cantrell Frayer, Esquire, represented the Applicant. The Applicant pled guilty as indicted. On October 15, 2012, the Honorable R. Markley Dennis sentenced the Applicant to confinement for fifteen years- the minimum sentence on both counts. The sentences were to run concurrently. The Applicant did not appeal the plea or sentence.

ALLEGATIONS

The Applicant alleged in his application he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
2. Violation of due process.
3. Subject matter jurisdiction.

At the hearing, the Applicant waived all grounds for relief except ineffective assistance of counsel for counsel's failure to file an appeal 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 his or her 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

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(2003).

The Applicant testified he met with counsel three or four times prior to his guilty plea. He testified they spoke on the phone and corresponded by mail. He testified he reviewed the discovery material with counsel. The Applicant also testified he discussed possible defenses with counsel and did not give her any leads or witnesses to investigate. He testified further it was his decision to plead guilty, he recalled waiving his constitutional rights and told the Court he was satisfied with his attorney.

The Applicant testified he pled guilty with the understanding that he was pleading guilty to burglary- second degree. He testified he signed the sentencing sheet and understood the plea offer was for fifteen years. The Applicant testified he recalled the plea Court saying he was indicted for burglary-first degree. He testified he believed the plea offer from the State dropped his charge to burglary- second degree. He testified the plea court told him he was pleading to burglary and the plea offer was already established.

The Applicant testified he spoke with Cantrell about an appeal. He testified Cantrell told him he had a right to appeal. He testified he never told Cantrell he wanted an appeal. The Applicant testified he decided to request an appeal two to three weeks after his guilty plea.

Plea counsel, Cantrell Frayer, Esquire, testified she has practiced criminal law for the last eight years. She testified she was appointed to represent the Applicant in October 2010. She testified she met with the Applicant several days prior to the Applicant's guilty plea which was originally on the trial docket. Counsel testified she filed Brady and Rule 5 motions on the Applicant's behalf. She testified she reviewed the discovery material with the Applicant. Counsel testified she discussed with the Applicant his version of the facts, possible defenses, and the elements of the charge he was facing and what the State had to prove. She testified the Applicant

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had no viable defenses.

Counsel testified the Applicant did not want to plead guilty until shortly before trial. She testified based on the Applicant's record the State would not agree to reduce the Applicant's charges. Counsel testified she discussed the State's inability to reduce the charges with the Applicant and there was never an offer from the State to plea to burglary- second degree. She testified the State ultimately made a fifteen year plea offer to burglary- first degree and the Applicant accepted the offer.

Counsel testified she communicated the plea over to the Applicant along with her trial partner. She testified she informed the Applicant of the consequences of his guilty plea and of his constitutional rights. She testified the Applicant never indicated he did not understand anything and knew he was pleading guilty to two counts of burglary-first degree. She testified further she reviewed the sentencing sheet with the Applicant prior to the guilty plea. Counsel testified it was the Applicant's decision to plead guilty.

Lastly, counsel testified she advised the Applicant of his right to appeal his guilty plea and he never indicated he wanted an appeal. She testified the Applicant wrote her a letter after his guilty plea, but the letter did not indicate he wanted an appeal. She testified the letter was not received within ten days of the guilty plea and she received no other correspondence from the Applicant requesting an appeal.

Ineffective Assistance of Counsel

The Applicant alleges that he received ineffective assistance of counsel. As an initial matter, this Court finds credible the testimony of Cantrell Frayer, Esquire and finds the testimony of the Applicant was not credible. 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.

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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.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test to evaluate 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." Id. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. 668). 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." Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). 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 (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 (1969);

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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)). When a defendant pleads guilty on the advice of counsel, the plea may only be attacked through a claim of ineffective assistance of counsel. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2002) (citations omitted).

This Court finds that counsel is a criminal practitioner who has extensive experience in the trial of serious offenses. Counsel conferred with the Applicant on numerous occasions. During conferences with the Applicant, counsel discussed the pending charges, the elements of the charges and what the State was required to prove, Applicant's constitutional rights, Applicant's version of the facts, and possible defenses or lack thereof. The record reflects that Applicant's plea was entered freely, voluntarily, knowingly, and intelligently. Applicant acknowledged that he was guilty of these offenses. Applicant told the plea court that he was satisfied with his attorney and that no one had threatened him or promised him anything to plead guilty. This Court finds that Applicant understood the consequences of his guilty plea.

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 that Applicant's attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, 466 U.S. at 668; Butler, 286 S.C. 441, 334 S.E.2d 813. This Court further finds counsel adequately conferred with the Applicant, conducted a proper investigation, and provided thoroughly representation. This Court finds that

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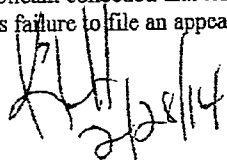
counsel's representation did not fall below an objective standard of reasonableness.

This Court finds that trial counsel was not ineffective for failing to file an appeal of the Applicant's guilty plea. The United States Supreme Court has rejected a "bright-line rule that counsel must always consult with the defendant regarding an appeal." Roe v. Flores-Ortega, 528 U.S. 470, 480, 120 S. Ct. 1029, 1036, 145 L. Ed. 2d 985 (2000). They instead held that "counsel has a constitutionally imposed duty to consult with the defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing." Id. "[A]lthough not determinative, a highly relevant factor in this inquiry will be whether the conviction follows a trial or a guilty plea, both because a guilty plea reduces the scope of potentially appealable issues and because such a plea may indicate that the defendant seeks an end to judicial proceedings." Id.

This Court finds that this allegation is without merit and the Applicant has failed to carry his burden of proving counsel failed to file an appeal on his behalf.¹ This Court finds that counsel gave credible testimony that she conferred with the Applicant about his right to appeal. This Court also finds that trial counsel gave credible testimony that after consulting with the Applicant about his right to appeal, he never indicated he wanted to pursue an appeal. This Court also finds telling the Applicant's testimony that he never told counsel that he wanted to appeal his guilty plea. This Court finds that there is no evidence that a rational defendant would want to appeal or that the Applicant indicated he wanted to appeal.

This Court also finds that the Applicant's guilty plea was freely and voluntarily entered. This Court finds the Applicant was fully aware that he was pleading guilty to burglary- first

¹ At the conclusion of the evidentiary hearing, the Applicant conceded that testimony presented did not support a claim of ineffective assistance of counsel for counsel's failure to file an appeal.

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degree and not burglary- second degree. This Court finds credible counsel's testimony that she discussed with the Applicant the State's decision not to allow the Applicant to plead guilty to a lesser offense based on his prior record. This Court also finds and the record reflects the Applicant was advised by the Court at the start of the plea proceeding that he was pleading guilty to two counts of burglary-first degree and the Applicant told the Court he understood (T. 2:3-8). This Court also notes the Applicant signed the sentencing sheet which indicates he was entering a plea to burglary- first degree.

The record also reflects the Applicant's guilty plea was entered freely and voluntarily and the Applicant was fully advised of the consequences of his guilty plea. The Applicant was advised of the potential sentence he was facing (T. 3:5-8), his right to a jury trial (T. 7:12-17), his right to remain silent (T. 7:18-21), and his right to confront his accusers (T. 7:12-17). The Applicant told the Court he wished to plead guilty and that he was actually guilty. (T. 4:15-20, 8:5-7). The Applicant also told the Court he had not been promised anything or threatened to plead guilty. (T. 7:22-8:4). The Applicant told the Court he was not under the influence of drugs or alcohol and did not suffer from any mental illness. (T.4:24-5:9). This Court finds and the record reflects the Applicant was fully aware of the consequences of his guilty plea and the waiver of his constitutional rights. This Court finds that this allegation is without merit and the Applicant has failed to carry his burden of proving his guilty plea was involuntary.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test, specifically that counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that counsel committed either errors or omissions while representing the Applicant. The Applicant failed to show that counsel's performance was deficient. Therefore, this Court need

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not address prejudice. Applicant's complaints concerning counsel's performance are without merit and are denied and dismissed.

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 or argument regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations. Therefore, they are hereby denied and dismissed.

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, nor was the Applicant prejudiced by counsel's representation. Therefore, this application for PCR 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 written notice of entry of this Order 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 served and filed.

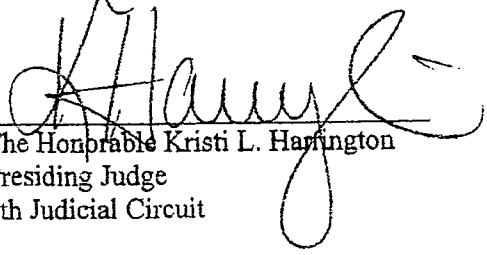
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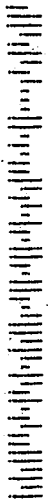
IT IS THEREFORE ORDERED:

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 28th day of February, 2014.


The Honorable Kristi L. Harrington
Presiding Judge
9th Judicial Circuit

Charles, South Carolina.



William L. Runyon, Jr., Esquire
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