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March 10, 2014

South Carolina Supreme Court
PO Box 11330
Columbia, SC 29211

RE: Casey Jenkins, 349382 v State of South Carolina
2012-CP-08-2077

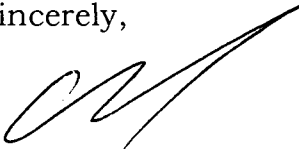
Dear Sir or Madam:

Enclosed herewith you will find the **Notice of Appeal, Order of Dismissal**, along with a **Proof of Service** in reference to the above named Applicant.

If you have any questions or concerns, please contact my office at the number stated above.

With kind regards, I am

Sincerely,



Charles T. Brooks, III
CTB/srw

Enclosed as stated

Cc: Ashleigh R. Wilson, Office of Attorney's General
South Carolina Office of Appellate Defense
Casey Jenkins, 349382

RECEIVED

MAR 13 2014

S.C. Supreme Court

THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

MAR 13 2014

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas
Honorable Kristi L. Harrington, Circuit Court Judge

S.C. Supreme Court

Case No: 2012-CP-08-2077

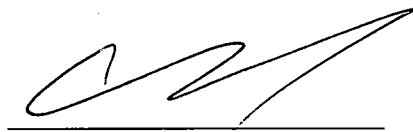
Casey Jenkins.....Appellant
S.C.D.C. 349382

v.

The State.....Respondent

NOTICE OF APPEAL

Casey Jenkins, appeals his Denial for Post Conviction Relief in this case. The order of Dismissal was imposed and signed by the Honorable Kristi L. Harrington, February 28, 2014, which I, Charles T. Brooks, III, received on March 7, 2014.



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Attorney for Appellant

Other Counsel on Record:
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Assistant Attorney General
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THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas
Honorable Kristi L. Harrington, Circuit Court Judge

Case No: 2012-CP-08-2077

Casey Jenkins.....Appellant
S.C.D.C. 349382
v.
The State Respondent

PROOF OF SERVICE

I, the undersigned, do hereby certify that on this 10th day of March, 2014, I served the foregoing **Notice of Appeal, Order of Dismissal**, as well as **Proof of Service** in this matter by depositing a true copy of it in the United States Mail, postage prepaid, on March 10, 2014, addressed to the following as indicated below:

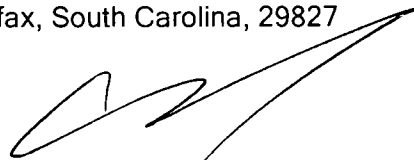
South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

South Carolina Office of Appellate Defense
1330 Lady Street, Suite 401
PO Box 11589
Columbia, SC 29211-1589

Office of Attorney's General
Attn: Ashleigh R. Wilson, Esquire
Post Office Box 11549
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Casey Jenkins, 349382
Allendale Correctional Institution
F2 B21
PO Box 1151
Fairfax, South Carolina, 29827

Dated: March 10, 2014


Charles T. Brooks, III
Attorney for the Appellant
309 Broad Street
Sumter, South Carolina 29150
(803) 418-5708

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)
)
Casey Jenkins, #349382,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)

IN THE COURT OF COMMON PLEAS
2012-CP-08-2077

ORDER OF DISMISSAL

FILED
2014 MAR -6 PM 2:06
MARY P. BRUNN
CLERK OF COURT
BERKELEY COUNTY, SC

Presiding Judge: The Honorable Kristi L. Harrington
Applicant's Attorney: Charles T. Brooks, III, Esquire
Respondent's Attorney: Ashleigh R. Wilson, Esquire
Plea Counsel: J. Mitchell Lanier, Esquire
Date of Hearing: January 13, 2014
Court Reporter: Sharon L. Vizer

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed July 17, 2012. The Respondent made its Return on February 21, 2013. An evidentiary hearing into the matter was convened on January 13, 2014 at the Charleston County Courthouse. The Applicant was present at the hearing and represented by Charles T. Brooks, III, 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. Also present to testify was Benjamin Shelton, Esquire- the assistant solicitor assigned to the Applicant's case.¹ This Court had before it the guilty plea transcript, the records of the Berkeley County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the PCR application, and Respondent's Return thereto.

¹ The Applicant's plea counsel, J. Mitchell Lanier, passed away prior to the evidentiary hearing.

DO164055-1

3/17/14
C.T.B.
ARW

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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 Berkeley County. The Applicant was indicted at the September 2008 of the Berkeley County Grand Jury for trafficking cocaine in excess of 200 grams (2008-GS-08-1833). J. Mitchell Lanier, Esquire, represented the Applicant. On January 18, 2012, the Applicant pled guilty to the lesser included offense of trafficking cocaine 28-100 grams. The Honorable R. Markley Dennis sentenced the Applicant to confinement for eight (8) years. The Applicant did not appeal his conviction or sentence.

ALLEGATIONS

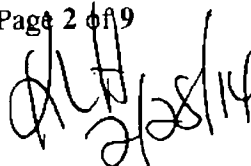
The Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. "Counsel failed to do any investigation in reference to establish that the plaintiff was never in possession of any drugs."
2. Sufficiency of the evidence.

At the hearing, the Applicant waived all grounds for relief except ineffective assistance of counsel, involuntary guilty plea, and lack of subject matter jurisdiction.

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 (2003).


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The Applicant testified he met with the counsel several times prior to his guilty plea. He testified he never talked with counsel about the evidence. The Applicant testified counsel did not have any recorded conversations. He also testified counsel discussed the plea offer with him and told him if the offer was rejected he would get a mandatory twenty-five year sentence. The Applicant testified it was not his decision to plead guilty. He testified he recalled telling the plea judge that he wish to plead guilty and was indeed guilty, but he was coached by counsel. He testified further he told the Court he was not threatened or coerced to plead guilty and that his responses during his guilty plea were truthful.

The Applicant testified he pled guilty because his attorney told him everything was stacked against him. He testified his attorney coerced him to plead guilty. He testified he understood the process that the court has to go through to true bill an indictment. He testified he also understood that any problems with his indictment would be corrected by the State. He testified the lesser included offense of trafficking is possession with intent to distribute. The Applicant testified he also understood the offense that he was indicted for was worse than the offense he pled guilty to.

Benjamin Shelton, the assistant solicitor assigned to the Applicant's case, was also present and testified. He testified the case was initially handled by another solicitor and he took over the case after it was put on the trial roster. He testified the drug task force set up a controlled buy between the Applicant and a confidential informant. He testified the Applicant arrived at the scene of the controlled buy and got out of a car with a brown bag. Shelton testified the Applicant threw the bag under a vehicle when he saw police. He testified further the Applicant confessed after Miranda.

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Shelton testified when he took over the Applicant's case he re-extended the plea offer that had expired from the previous assistant solicitor. He testified discovery materials were sent to plea counsel. Shelton testified he was not sure whether or not a copy of the audio of the controlled buy was sent to the Applicant's attorney. He testified there was audio of the buy, but no video. He testified the State offered a plea to the lesser included offense with a negotiated ten year sentence or a cap of twelve years. Shelton testified the Applicant chose to plea to the lesser included offense with a cap of twelve years. He testified further he did not prepare the Applicant's indictment, but the Applicant was indicted under the general trafficking statute. He testified the indictment for 200g or more included the offense of 28-100g and the Applicant was allowed to plead guilty to two charges below what he was indicted for.

At the close of the Applicant's case, the Applicant moved for directed verdict. This Court denied the Applicant's motion. On January 13, 2014, the Applicant also filed a Motion for Summary Judgment. This Court finds the allegations raised in this amendment are wholly without merit. This Court finds no testimony or argument was presented in support of these allegations. Viewing all evidence in the light most favorable to the State- the non-moving party, this Court finds a genuine issue of material fact is present in this case and the Applicant is not entitled to judgment as a matter of law. This Court denies the Applicant's motion for summary judgment and denies and dismisses all allegations raised in the motion.

Ineffective Assistance of Counsel

The Applicant alleges that he received ineffective assistance of counsel. As an initial matter, this Court 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. 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).

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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); 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).

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

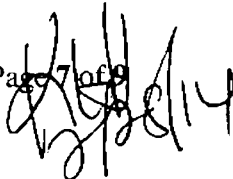
The Applicant alleges counsel was ineffective because he did not have the audio of the recorded conversations with the confidential informant. This Court finds this allegation is without merit. This Court finds the Applicant has failed to carry his burden of proving the audio was exculpatory. This Court also finds the Applicant has failed to show how counsel's alleged failure to obtain this audio resulted in any prejudice. This Court finds in light of State's case

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against the Applicant, it is unlikely the contents of the audio would have been beneficial to the Applicant's case. This Court finds that this allegation is without merit and the Applicant has failed to carry his burden of proving counsel's performance was ineffective in any way.

This Court finds that the Applicant's guilty plea was entered freely and voluntarily. The record reflects the Applicant was fully advised of the consequences of his guilty plea. The Applicant was advised by the court of the potential sentence he was facing (T. 2:17-23), his right to a jury trial (T. 6:14-19), his right to remain silent (T. 6:20-23), and his right to confront his accusers (T. 6:14-19). The Applicant told the Court he had not been promised anything or threatened to plead guilty. (T. 7:2-7). The Applicant told the Court he was not under the influence and did not suffer from any mental illnesses. (T. 6:2-13). This Court finds most telling the following statement by the Applicant to the court: "I accept my guilt as far as reading rights. I am guilty, your honor." (T. 14:7-9). This Court finds the Applicant has failed to carry his burden of proving his guilty plea was involuntarily entered.

This Court finds the Circuit Court had proper subject matter jurisdiction to accept the Applicant's guilty plea. The Applicant alleges the plea court did not have subject matter jurisdiction over his case because he was not indicted for the offense that he pled guilty to. The record reflects the Applicant was indicted for trafficking cocaine in excess of 200 grams, but pled guilty to trafficking cocaine 28-100 grams. A circuit court has subject matter jurisdiction over a criminal offense if: (1) there has been an indictment that sufficiently states the offense; (2) there has been a waiver of indictment; or (3) the charge is a lesser-included offense of the crime charged in the indictment. Carter v. State, 329 S.C. 355, 495 S.E.2d 773 (1998). This Court finds since the Applicant pled to the lesser included offense of the charge he was indicted for the

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circuit court had subject matter jurisdiction to accept his guilty plea. This Court finds the Applicant failed to carry his burden of proving the plea court did not have subject matter jurisdiction over his case.

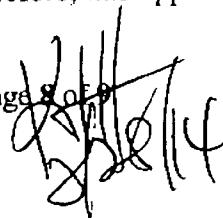
Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test, specifically that counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that counsel committed either errors or omissions while representing the Applicant. The Applicant failed to show that counsel's performance was deficient. Therefore, this Court need not address prejudice. Applicant's complaints concerning counsel's performance are without merit and are denied and dismissed. This Court finds the Applicant's guilty plea was entered freely and voluntarily. This Court also finds the Applicant failed to carry his burden of proving the plea court lacked subject matter jurisdiction to accept his guilty plea.

All Other Allegations

As to any and all allegations that were raised in the application and not specifically addressed in this Order, this Court finds the Applicant failed to present any argument or testimony 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

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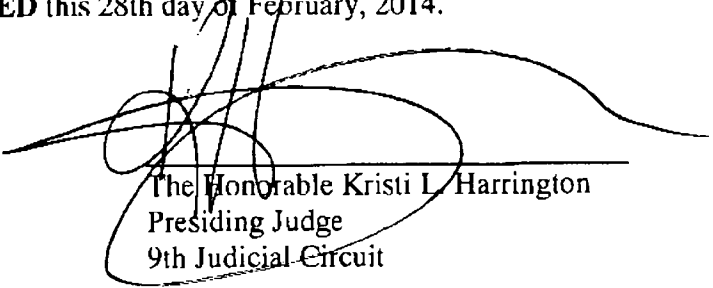
dismissed with prejudice.

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.

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

Charleston, South Carolina.

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