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VANESSA CASON

ATTORNEY AT LAW

March 10, 2014

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
Post Office Box 11330
Columbia, South Carolina 29211

RE: State of South Carolina, Respondent, v. Keith Ramon Keener
Case No. 2012-CP-12-0568

Dear Mr. Shearouse:

Enclosed for filing is a notice of appeal in the above case. Also enclosed is the Proof of service of the notice of appeal on the respondent.

This appeal is being filed with the Supreme Court pursuant to Rule 203 of the South Carolina Rules of Appellate Practice.

Respectfully,

Vanessa Cason

VC/rml
cc: Mary Williams
Attorney for Respondent
Post Office Box 11549
Columbia, South Carolina 29211-1549

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

Brian Gibbons, Circuit Court Judge

Case No. 2012-CP-12-0568

State of South Carolina, Respondent,

v.

Keith Ramon Keener, Appellant.

NOTICE OF APPEAL

Keith Ramon Keener appeals the order of the Honorable Brian Gibbons dated February 23, 2014. Appellant received written notice of entry of this order on March 10, 2014.

February 14, 2014

Vanessa Cason, SCBAR #69891
Post Office Box 2842
Greenville, South Carolina 29602
(864) 277-9093
Attorney for Appellant

Other Counsel of Record:
Mary Williams
Post Office Box 11549
Columbia, South Carolina 29211-1549
Attorney for Respondent
(803) 734-3737

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

Brian Gibbons, Circuit Court Judge

Case No. 2012-CP-12-0568

State of South Carolina, Respondent,

v.

Keith Ramon Keener, Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the State of South Carolina by depositing a copy of it in the United States Mail, postage prepaid, on March 10, 2014, addressed to the attorney of record, Mary Williams, Post Office Box 11549, Columbia, South Carolina 29211-1549

Vanessa Cason, SCBAR #69896
Post Office Box 2842
Greenville, South Carolina 29602
(864) 277-9093
Attorney for Appellant

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VANESSA CASON

ATTORNEY AT LAW

March 10, 2014

The Honorable Sue Carpenter
Chester County Clerk of Court
Post Office Drawer 580
Chester, South Carolina 29706

RE: State of South Carolina, Respondent, v. Keith Ramon Keener
Case No. 2012-CP-12-0568

Dear Mrs. Carpenter:

Enclosed for filing is a notice of appeal in the above case.

Respectfully,

Vanessa Cason

VC/rml
cc: Mary Williams
Attorney for Respondent
Post Office Box 11549
Columbia, South Carolina 29211-1549

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHESTER	)	
		2012-CP-12-0568
Keith Ramon Keener, #321935,	)	
	)	
Applicant,	)	
	)	
v.	)	**ORDER OF DISMISSAL**
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

This matter comes before the Court by way of an Application for Post-Conviction Relief filed November 2, 2012. An evidentiary hearing was convened on February 3, 2014, at the Lancaster County Courthouse. The Applicant was present at the hearing and was represented by Vanessa Cason, Esquire. The Respondent was represented by Mary S. Williams of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. Also testifying was Michael Lifsey, Esquire. This Court had before it the records of the Chester County Clerk of Court, the guilty plea transcript, the sentencing transcript, and the Applicant's records from the South Carolina Department of Corrections.

PROCEDURAL HISTORY

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Chester County Clerk of Court. He was indicted for murder (2011-GS-12-0052), possession of weapon during violent crime (2011-GS-12-0053), and unlawful carrying of pistol (2011-GS-12-0055). The Applicant was

represented by Michael Lifsey, Esquire. On June 18, 2012, the Applicant pled guilty to the lesser-included offense of voluntary manslaughter and pled to the remaining offenses as indicted. On June 25, 2012, he was sentenced by the Honorable Brooks P. Goldsmith to confinement for twenty-seven (27) years for voluntary manslaughter, five (5) years for possession of a firearm during the commission of a violent crime, and one (1) year for carrying a pistol, all running concurrently. Applicant did not appeal his conviction and sentence.

In his application for post-conviction relief (PCR), Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel; and
2. Involuntary guilty plea.

At the PCR hearing, Applicant dismissed his claim of involuntary plea and proceeded solely on issues of ineffective assistance of counsel.

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. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80.

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) (citing Rule 71.1(e), SCRCP).

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, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 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, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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, supra). 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. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland). 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, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

Failure to Investigate / Inadequate Preparation

Applicant felt that he did not have adequate time with his attorney prior to his plea. Applicant testified that he spoke with Counsel a few times but not as many times as he should have. Applicant recited several issues he had with evidence, including:

- Applicant received all witness statement but received only a partial statement for one witness and got the rest of the statement approximately one week before trial.
- Potential witness Sharif Sanders' statement reflects that he was only 65% sure that it was Applicant.
- Deputy Faile could not identify Applicant in a lineup but said in a statement he knew him.

Applicant nonetheless stated that he did discuss several of these issues with counsel. During the plea colloquy, Applicant affirmed that he had adequate time with counsel. (June 18, 2012, Tr. p. 15, lines 3-18.)

Counsel affirmed that there was fodder for cross-examination if the matter proceeded to trial and that he discussed these issues with Applicant. Counsel opined, however, that the insurmountable obstacle at trial would be Applicant's confession. Counsel added that Applicant's confession would confirm testimony from these witnesses as Applicant admitted hiding a gun in an accessible location and firing toward the crowd. Counsel testified that he met with Applicant "more times than [he] can count." Counsel further opined that Applicant would not receive a charge on a lesser-included offense at trial.

I find Counsel's testimony to be credible. It appears from the evidence that Counsel met with Applicant sufficiently to provide him with evidence in the case and discuss witness statements and potential inconsistencies which could be explored at trial. Having reviewed these things with Counsel, Applicant decided to take advantage of a plea offer to a lesser offense, a benefit not likely available to him at trial. Based on all the foregoing, I find that Counsel's preparation and meetings

with his client were well within reasonable professional norms. Further, Applicant has pointed to no evidence or issue not known to him before his plea which would have affected his decision to plead guilty. Therefore, I find that even if Counsel had been deficient in his preparation and consultation with Applicant, Applicant has failed to meet his burden of demonstrating prejudice therefrom. See for example Harris v. State, 377 S.C. 66, 75 - 76, 659 S.E.2d 140, 145 (2008) (Applicant failed to carry burden where it was merely speculative that there would have been a different result had counsel spent additional time with his client).

Failure to Object to Statements at Plea

Applicant also stated that Counsel was ineffective in failing to object to statements made at his plea by Sheriff Richard Smith. During the sentencing hearing, Sheriff Smith noted that the shooting occurred a club, the type of place where "people just kind of enjoy themselves and try to get away from their hard work. . . ." (June 25, 2012, Tr. p. 21, lines 14-16.) The sheriff stated that the act of discharging a firearm into a crowd showed "reckless disregard for life and safety for everybody." (June 25, 2012, Tr. p. 22, lines 3-4.) The sheriff mentioned briefly that Applicant's act was one in a string of incidents at the club that night and that ultimately a shooting occurred at the hospital because of incidents at the club. The sheriff added that Applicant had "picked fights with people in the jail." (June 25, 2012, Tr. p. 22, line 12.) The sheriff then noted the loss and impact for the victim's family and the need for community members to feel safe. The sheriff requested the maximum sentence, just as the solicitor did.

Counsel testified that he did not feel that there was a legal basis for objection to the sheriff's testimony. However, he noted that he was able to rebut some of the sheriff's comments. Particularly, Counsel noted that he corrected the sheriff's statement with regard to incidents at the jail. Counsel

informed the plea court that the other person involved in the fight had been charged in the fight and was therefore the aggressor, making it unfair to hold the incident against Applicant. (June 25, 2012, Tr. p. 29, line 21 – p. 30, line 4.) Counsel also reiterated during the sentencing hearing that Applicant was not involved in the other incidents at the nightclub and hospital. Counsel argued that it was unfair to blame Applicant for the other incidents. (June 25, 2012, Tr. p. 30, lines 5-20.) Counsel's statements therefore corrected any misapprehension the court may have had.

This court also notes that at the solicitor pointed out that Applicant had "nothing to do" with the other incident at the club. (June 25, 2012, Tr. p. 26, line 1.) The solicitor also argued that while Applicant was only responsible for the act he committed, the presence of numerous individuals with guns, including Applicant, led to a series of tragic events. (June 25, 2012, Tr. p. 28, line 14 – p. 29, line 5.) The solicitor also requested the maximum sentence of 30 years. As to the string of events and the request for sentence, the solicitor's remarks were largely cumulative to those of the sheriff.

With regard to sentencing,

> the judge is required to listen and give serious consideration to any information material to punishment...A trial judge generally has wide discretion in determining what sentence to impose. It is also true that before making that determination, a judge may appropriately conduct an inquiry broad in scope, largely unlimited either as to the kind of information he may consider or the source from which it may come.

State v. Franklin, 267 S.C. 240, 245-246, 226 S.E.2d 896, 897-898 (1976). With the broad scope of inquiry permitted at sentencing, I find that Counsel was not deficient in failing to object to the sheriff speaking. Further, I find that Applicant has failed to establish prejudice such that but for any failure to object to the statements Applicant would have insisted on going to trial. Counsel corrected any misapprehension that the court may have had following the sheriff's statement, particularly with

regard to the incident at the jail and the fact that Applicant had no direct involvement in the other shootings that evening, and many of the sheriff's remarks were cumulative to the solicitor's. Applicant received the benefit of a plea to the lesser charge of voluntary manslaughter, a benefit which Counsel noted would have been unlikely at trial. Applicant also received a sentence less than the 30 year maximum, a sentence he understood was possible and which the solicitor requested. For all these reasons, I find Counsel was not ineffective in this regard.

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 advises Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order to secure the appropriate appellate review. His attention is also directed to Rule 243, SCACR, for appropriate procedures after notice has been timely filed.

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 _____ day of _____, 20__.

2/23/14

BRIAN M. GIBBONS
Presiding Judge
Sixth Judicial Circuit

_____, South Carolina.

STATE OF SOUTH CAROLINA)
COUNTY OF Chester)

IN THE [X] COURT OF COMMON PLEAS
[ ] FAMILY COURT

Keith Ramon Keener #321935
vs
State of South Carolina

FILE NO: 2012-CP-12-0568

CERTIFICATE OF SERVICE

I certify that, on this date, I served a copy of the Order of Dismissal (Document Served) in this action, dated February 23, 2014, on Atty. Vanessa Cason (Name of person served) by:

[ ] delivering it to him/her personally; or,

[X] mailing it to him/her, at his/her last known address, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

Atty. Vanessa Cason
P.O. Box 2842
Greenville, S.C. 29602 ; or

[ ] Other: _____

FILED
2014 MAR -3 P 12:05
CLERK OF COURT
CHESTER CO S.C.

[See Rule 5(b)(1), SCRCP]

March 3, 2014
(Date)

Lynn K. Carpenter
(Signature) Clerk of Court

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ATTORNEY AT LAW
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The Honorable Daniel Shearouse
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