

QR# 300077

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)
Christopher Hampton, # 314697,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2006-CP-42-3049

ORDER OF DISMISSAL

I. PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed September 15, 2006. An evidentiary hearing into the matter was convened on September 17, 2007, at the Spartanburg County Courthouse. The Applicant was present at the hearing and was represented by W. Jeffrey McGurk, Esquire. The Respondent was represented by S. Prentiss Counts of the South Carolina Attorney General's Office. This Court had before it the application, the respondent's return, the guilty plea transcript, the records of the Spartanburg County Clerk of Court, and the Applicant's records from the South Carolina Department of Corrections.

At the hearing, the Applicant moved for a continuance to review discovery, specifically a report produced by Detective Stedman. The Court denied this motion but allowed the Applicant time to review this document.

At the hearing, the State consented to allow the Applicant to pursue a direct appeal pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974).

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. The Applicant was

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indicted at the August 2005 term of the Spartanburg County Grand Jury for Murder (05-GS-42-3629) and Criminal Sexual Conduct with a Minor, Second Degree (05-GS-42-3630). The Applicant was represented by Michael Bartosh, Esquire. On April 3, 2006, the Applicant pled guilty to Murder. CSC with Minor, 2nd was *not prosect*. Applicant was sentenced by the Honorable John C. Few to confinement for Life.

A Motion to File Notice of Appeal Out of Time was filed on the Applicant's behalf on May 10, 2006 stating that trial counsel had passed away two (2) days after trial and had not filed Notice of Appeal. The Court of Appeals denied this motion by Order of Dismissal dated May 17, 2006. The remittitur was issued June 1, 2006.

II. SUMMARY OF TESTIMONY AND EVIDENCE PRESENTED AT THE PCR EVIDENTIARY HEARING

Applicant's Testimony

At the PCR evidentiary hearing the Applicant testified that counsel was ineffective for failing to move to suppress his statement. He stated that his statement was involuntarily given. The Applicant described the circumstances around giving his confession in great detail.

The Applicant was picked up by Detective Stedman and Detective Lamb from the Edgefield Federal Penitentiary. Shortly after departure, the Detectives pulled over to the side of the road and served the Criminal Sexual Conduct warrant on him. They did not serve the Murder warrant at that time. At that time, he refused to sign the pre-interrogation waiver and asked for an attorney. They continued to their destination and the Detectives informed him that a press conference had been set for that afternoon. The Applicant stated that the Detectives told him there would be "beatings" and that he was in "their" custody now. They stopped at the Clinton Detention Facility to allow the Applicant to use the restroom. Once arriving in Spartanburg, the Detectives took the Applicant to



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the narcotics building. There he ate a cheeseburger. He was not left alone and asked for an attorney. The Detectives continued talking to the Applicant and showed various evidence from the crime scene. The Applicant finally involuntarily gave in to the pressure and said, "let's go." The Applicant proceeded to take the Detectives to where he had buried the body. Later that night he signed a statement indicating he was guilty of the murder. He stated that he did not mention that the victim had a box-cutter in his statement because the Detectives told him to make up a story. They stated that Solicitor Gowdy had told them that the Applicant had the paintbrush and could to paint it however he liked.

The Applicant testified that counsel was ineffective for failing to move for a change in venue. He stated that the entire case happened in Spartanburg County and that he was prejudiced by having to proceed forward in that county.

The Applicant testified that counsel was ineffective for failing to explain to him that if he proceeded to trial, he had the opportunity to be found guilty of a lesser included offense. He stated that counsel did not define malice for him and he was unaware that he had any other options at trial besides guilty or murder or not guilty of murder.

The Applicant testified that counsel was ineffective for failing to present further mitigating circumstances to the sentencing judge. He should have informed the Judge that he had a three (3) year old daughter, that he had been working, and that he had a non-violent criminal history.

The Applicant testified that counsel was ineffective for failing to show him discovery from the State. He was never shown the videotape of his confession, his written statement, Detective Stedman's report, or his mental health evaluation.

The Applicant testified that counsel was ineffective for failing to adequately meet with the Applicant prior to his guilty plea. He stated that counsel only met with him twice for a little over an

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The Detectives did discuss certain facts of the case among themselves on the drive and they probably mentioned the press conference to the Applicant.

The Detectives stopped in Clinton and arranged with the County Jail to allow the Applicant to use their restroom. When they arrived in Spartanburg, they took the Applicant to the Narcotics building because they assumed the press would already be at the station. They put him in an interrogation room and re-read his Miranda rights. They gave the Applicant a cheeseburger and cigarettes. The Detectives showed the Applicant pictures of evidence and discussed the different lies he had told law enforcement previously. They told the Applicant that the victim's blood had been found in his apartment. The Applicant got up and stated, "let's go." He took them to the body. Later he gave a full, video-taped confession to law enforcement after signing a pre-interrogation form.

The Detective testified that the Applicant was never threatened or coerced. He never asked for an attorney. He was never denied food or water or access to a restroom. The Applicant was read his Miranda rights multiple times. The Applicant voluntarily showed the Detectives where the body was buried. The Applicant voluntarily gave a statement to law enforcement.

III. APPLICABLE LAW

Ineffective Assistance of Counsel

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel 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, 334 S.E.2d 813.

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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).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 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, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

Statements During a Guilty Plea

Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. 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. U.S., 519 F.2d 317 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

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Trial Judge Colloquy Cures Counsel Statements

Even where counsel fails to advise, or even misadvises, a defendant regarding a critical aspect of his charges the error is cured where the trial court during a guilty plea properly advises the defendant about the matter in question. Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998). See also Knox v. State, 340 S.C. 81, 86, 530 S.E.2d 887, 889 (2000), *overruled on other grounds by State v. Gentry*, 2005 WL 524813 (S.C.).

Venue

It is the defendant's burden to demonstrate actual juror prejudice as a result of pretrial publicity. Sheppard v. State, 357 S.C. 646, 594 S.E.2d 462 (2004).

Time Spent with Applicant

The "brevity of time spent in consultation, without more, does not establish that counsel was ineffective." Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980). When claims of ineffective assistance of counsel are based on lack of preparation time, an Applicant challenging his conviction must show specific prejudice resulting from counsel's alleged lack of time to prepare. United States v. Cronin, 466 U.S. 648 (1984); U. S. v. LaRouche, 896 F.2d 815 (4th Cir. 1990).

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the testimony presented at the evidentiary hearing, ^{presented by} witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court reviewed the Clerk of Court records regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the transcripts and documents from the prior proceedings, and legal arguments of counsel. Pursuant to S.C. Code Ann. § 17-27-80 (1985), this Court makes the following findings of fact based upon all of the probative evidence presented.

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Direct Appeal Issue

At the hearing, the Applicant alleged that he was denied effective assistance of counsel when trial counsel failed to inform him of his right to appeal his guilty plea. The State consented to allow the Applicant to file his belated appeal pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974).

This Court agrees that the allegation that the Applicant was denied a direct appeal is meritorious. Trial counsel must ensure that a criminal defendant is made fully aware of his appeal rights. White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974). In the absence of an intelligent waiver by the defendant, counsel must either initiate an appeal or comply with the procedure required by Anders v. California.¹ White, Id. Where the post-conviction relief judge determines that the applicant did not freely and voluntarily waive their appellate rights, the applicant may petition the South Carolina Supreme Court for review of direct appeal issues pursuant to White v. State. See Rule 227(g)(1), SCACR; Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986).²

The Court affirmatively finds that the Applicant did not knowingly and voluntarily waive his right to a direct appeal. The Court concludes that the Applicant is entitled to a belated review of his conviction(s). The Applicant's lack of a direct appeal can be remedied by a petition for belated review pursuant to White v. State.

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¹ 386 U.S. 738, 87 S.Ct. 1396 (1967).

² "Even where the post-conviction relief judge makes this finding, he may not grant relief on this basis. Instead, **the applicant must petition this Court for a White v. State review.**" [Emphasis added]. Davis, 288 S.C. at 291, n. 1, 342 S.E.2d at 60.

Other Allegations of Ineffective Assistance of Counsel

This Court finds the Applicant's testimony to be not credible on all issues. This Court finds Detective Stedman's testimony to be credible.

This Court finds that no credible evidence was presented to prove that the Applicant's statement was involuntarily given. This Court finds that the Applicant's statement was freely and voluntarily given. Nevertheless, this Court finds that the Court informed the Applicant that by pleading guilty, he would be giving up his right to challenge the voluntariness of the statement (Tt. Pg. 17, lines 20 - Pg. 28, line 10). He informed the plea judge that he had discussed this with counsel and wished to waive that right. This Court notes that the Applicant told the plea judge that he had no complaints regarding law enforcement (Tt. p. 8, lines 5-9). The Applicant failed to present a valid reason why he should be allowed to depart from the truth of his statements during his guilty plea. This Court finds the Applicant freely and voluntarily waived his right to challenge his statement and denies and dismisses this allegation.

This Court finds that the Applicant has failed to prove he was prejudiced by counsel's failure to file a motion to change venue. The Applicant bears the burden of proving that pre-trial publicity would affect the jurors impartiality. Here, the Applicant waived his right to a jury trial, thus waiving his right to question the impartiality of the potential jury pool (Tt. p. 7, lines 4 - 14). The Applicant failed to present a valid reason why he should be allowed to depart from the truth of his statements during his guilty plea. The Applicant provided no evidence whatsoever that he was prejudiced in any way because this motion was not made. This Court denies and dismisses this allegation.

This Court finds that counsel was not ineffective for failing to explain to the Applicant that he could ask for a lesser included offense at trial. This Court finds that the Applicant is not credible. Furthermore, this Court finds that the plea judge informed the Applicant that he was waiving his

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recitation of the facts (Tr. p. 15, line 11). The Applicant failed to present a valid reason why he should be allowed to depart from the truth of his statements during his guilty plea. The mere existence of letters written to counsel with an alternate version of events does not carry the burden to prove that counsel was ineffective for failing to pursue self-defense. This Court finds that the Applicant knowingly and intelligently waived his right to pursue self-defense and denies and dismisses this allegation.

This Court finds that counsel was not ineffective for failing to object as the Solicitor read a letter written by a family member of the victim. The record clearly indicates that the letter was not written by the Solicitor and did not convey his wishes. The plea judge would have easily understood this. The Court finds that this allegation is wholly without merit and denies and dismisses this allegation.

Furthermore, this Court finds that the Applicant's plea was freely and voluntarily given. He testified that his answers were his own, were truthful, and that no one had told him how to answer the questions (Tr. p. 11, lines 12 - 24). The Applicant failed to present a valid reason why he should be allowed to depart from the truth of his statements during his guilty plea. This Court finds that the Applicant has failed to prove prejudice from any alleged ineffective assistance of counsel he received. The Applicant failed to show, with reasonable probability, that but for counsel's alleged ineffectiveness, he would not have pled guilty. This Court finds that the Applicant failed to carry his burden to show that trial counsel's representation fell below the standard of professional reasonableness for a criminal defense attorney in this regard. Strickland v. Washington; Cherry v. State. The Court finds that the Applicant cannot satisfy either requirement of the Strickland test

As to any and all allegations that were or could have been raised in the application or at the hearing in this matter, but were not specifically addressed in this order, the Court finds that the



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Applicant failed to present any probative evidence regarding such allegations. Accordingly, this Court finds that the Applicant waived such allegations and failed to meet his burden of proof regarding them. Accordingly, they are denied and dismissed with prejudice.

V. CONCLUSION

Based on all the foregoing, this Court finds and concludes that all allegations in this application for post conviction relief, with the exception of his belated appeal, must be denied and dismissed with prejudice. All other allegations or claims that were raised or could have been raised in this application are hereby dismissed with prejudice.

This Court further concludes that the Applicant is entitled to a belated direct appeal of his criminal conviction. White v. State; Davis v. State.

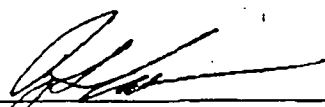
This Court advises Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCR, provides that if the applicant wishes to seek appellate review, must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 227 for appropriate procedures for appeal.

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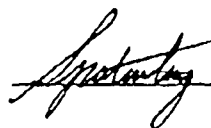
IT IS THEREFORE ORDERED:

1. This application for post conviction relief is denied and dismissed with prejudice.
2. Within thirty days of service of this Order, counsel for the Applicant must file a Notice of Appeal to secure the appropriate review of the Applicants' convictions. Counsel and the Applicant are directed to Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986) and South Carolina Appellate Court Rule 227(g) for the appropriate procedure for securing belated appellate review
3. The Applicant is remanded to the custody of the South Carolina Department of Corrections to serve the remainder of his sentence.

AND IT IS SO ORDERED this 2nd day of November, 2007.



ROGER L. COUCH
Presiding Judge
Seventh Judicial Circuit

, South Carolina.

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