

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas
Post-Conviction Relief

Frank R. Addy, Jr., Presiding Judge

Case No.: 2011-CP-32-3972

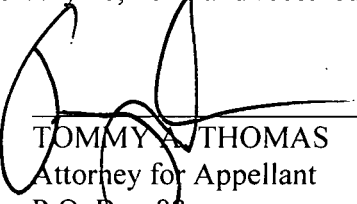
William C. Martin #332078Appellant,

vs.

State of South CarolinaRespondent.

NOTICE OF APPEAL

William C. Martin #332078 appeals the Order of Dismissal of the Honorable Frank R. Addy, Jr., signed February 17, 2014, filed on February 26, 2014 and received on March 3, 2014.


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Other Counsel of Record:

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Columbia, SC 29211
Attorney for Respondent

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Irmo, South Carolina
March 31, 2014

S.C. SUPREME COURT

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APPEAL FROM LEXINGTON COUNTY
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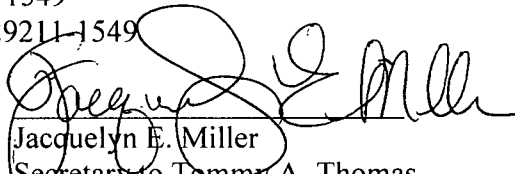
vs.

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CERTIFICATE OF SERVICE

I, Jacquelyn E. Miller, secretary to Tommy A. Thomas, Attorney for the Applicant, hereby certify that I placed in the United States Mail, a copy of a Notice of Appeal with postage prepaid and the return address clearly shown on said envelope to J. Walt Whitmire, Esq. with the Office of the Attorney General at:

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March 31, 2014

ORIGINAL

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

Case No. 2011-CP-32-3972

William C. Martin,
S.C.D.C. No. 332078,

Applicant,

v.

State of South Carolina,

Respondent.

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CLERK OF COURT
LEXINGTON, SC

ORDER OF DISMISSAL

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed October 20, 2011. Respondent made its Return. An evidentiary hearing into the matter was convened on April 16, 2013 at the Lexington County Courthouse. Applicant was present and was represented by Tommy Thomas, Esq. Respondent was represented by Walt Whitmire, Esq., of the Office of the Attorney General. Applicant, Jackie Williams, and trial counsel testified at the hearing.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. Applicant was indicted at the May 2008 term of the Lexington County Grand Jury for Felony DUI Resulting in Death (2008-GS-32-1374). Applicant was represented by Robert T. Williams, Sr., Esq. On December 1-3, 2008, the State called its case to trial where Applicant was found guilty as charged. The Honorable Deadra L. Jefferson sentenced Applicant to a term of fifteen (15) years imprisonment. A timely notice of appeal was filed on Applicant's behalf and an appeal was perfected. Applicant was represented on appeal by trial counsel and Benjamin A. Stitley, Esq. The South Carolina

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Court of Appeals affirmed Applicant's conviction and sentence. State v. Martin, Op. No. 4788 (Ct. App. filed February 3, 2011). The remittitur was issued on February 23, 2011.

At the PCR hearing, Applicant moved forward on the following allegations:

Ineffective assistance of counsel:

- a. failure prepare Applicant's case;
- b. failure to adequately advise Applicant on the terms of the solicitor's initial guilty plea offer;
- c. failure to convey a second guilty plea offer to Applicant;
- d. failure to request a jury charge to the lesser included offense of driving under the influence resulting in great bodily injury.

RETTA A. CAMPBELL
CLERK OF COURT
LEXINGTON, SC

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SUMMARY OF TESTIMONY

At the PCR hearing, Applicant testified to his version of the facts surrounding his arrest and conviction. Applicant testified he was operating his vehicle when he collided with a vehicle that had entered the roadway in front of him. Subsequent to the automobile accident, law enforcement conducted testing that showed Applicant was twice over the limit required for the inference of intoxication. Applicant recalled that he fainted while being processed by law enforcement. The incident hospitalized the passenger/victim who was riding in the other vehicle. As a result, Applicant testified that he retained Theo Williams to represent him on the initial charge of driving under the influence resulting in great bodily injury. Applicant essentially alleged trial counsel was ineffective for failing to prepare his case. Applicant testified he posted bonded during the interim year and one-half prior to the State calling his case for trial. Applicant's asserted trial counsel neglected to review discovery with him and provide him with a defense strategy. Applicant recalled his charges were enhanced after the victim died. Applicant recalled meeting trial counsel two to possibly three times prior to trial. Applicant also testified to receiving correspondence from trial counsel. Applicant testified trial counsel advised him of a

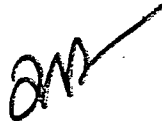
suppression defense related to his blood test and a defense concerning alternative causation of the victim's injury and death in that the driver of the other vehicle may have been at fault. Applicant stated trial counsel kept him apprised of a pending medical malpractice case against the facility treating the victim. Applicant maintained that trial counsel never reviewed the State's evidence with him or explained to him that the solicitor would present experts to prove its case at trial. Applicant also alleged trial counsel was deficient for not consulting a private investigator or experts prior to trial.

Applicant alleged trial counsel was ineffective for failing to advise Applicant to accept a beneficial plea offer. Applicant testified the solicitor offered to plead Applicant to the lesser included offense of driving under the influence, resulting in great bodily injury. Applicant testified his decision to reject the plea offer resulted from trial counsel's advice because he was unfamiliar with the workings of General Sessions and was emotionally wrecked from the incident. Applicant acknowledged that, because he had never been incarcerated in the Department of Corrections, the three (3) to six (6) year term of imprisonment seemed substantial to him. After rejecting the plea offer, Applicant would not entertain a plea offer with equal or more punishing terms and conditions. Applicant testified trial counsel failed to advise him of the enhanced exposure on the driving under the influence, great bodily injury charge. Applicant testified trial counsel declined a subsequent plea offer of a ten (10) year term of imprisonment at the start of trial. Applicant testified he learned of plea counsel's discussions with the trial judge and the solicitor after the offer had been rejected. Applicant testified he was unaware of the strength of the State's case. Applicant testified that, as he watched the State's evidence mount against him during the trial, he wished he would have accepted either of the plea offers. Applicant alleged trial counsel had falsely led Applicant to believe he would have been

exonerated at trial.

Last, Applicant testified trial counsel was ineffective for failing to advise him of the benefits and detriments of testifying at trial. However, Applicant testified he was apprehensive about testifying but ultimately left the decision to trial counsel. Applicant stated he was unaware his magistrate court convictions for driving under the influence could not be used against him for impeachment purposes. Applicant also alleged trial counsel was ineffective for failing to request a charge on the lesser included offense of driving under the influence, resulting in great bodily injury.

At the PCR hearing, trial counsel testified to his course of conduct during the representation. Trial counsel obtained discovery and formulated a defense strategy. Trial counsel testified his core objective was to first show the driver of the victim's vehicle shared fault for causing the accident, and second to show victim's death was the result of an intervening cause. While obtaining treatment from injuries incurred from the accident with Applicant, the victim's family filed a medical malpractice action against the medical facility. The victim chose to be taken off life support prior to succumbing to an infection. Trial counsel investigated the defense and presented it to the jury through his cross-examination of State witnesses. Trial counsel monitored the victim's civil litigation. When the medical malpractice action faltered, trial counsel decided not to consult an independent expert on the matter to aid Applicant's defense. Trial counsel further reasoned Applicant's case did not necessitate the employment of a private investigator. Trial counsel testified he sent Applicant copies of discovery and supplemental discovery to Applicant as the case developed. Trial counsel discussed all aspects of his representation with Applicant. Furthermore, trial counsel recalled Applicant being an active participant in the case. Trial counsel discussed developments in the case via phone, General



Sessions' appearances, and appointment with Applicant.

Trial counsel testified he would have conveyed the solicitor's guilty plea offers to Applicant despite his lack of recall on the stand. Trial counsel has practiced criminal law for thirty (30) years and explained that as a matter of routine, he does not "brow beat" his clients into pleading but instead opts to advise them on the strength of the State's evidence and the defense's theory of the case. Trial counsel believed the defense theory of the case had merit. Trial counsel testified Applicant was aware of primary causation defense along with the fact that he struck the victim's vehicle from behind after he had been drinking. Trial counsel postulated that a guilty plea that included a six (6) year prison sentence for a charge that potentially exposed Applicant to twenty-five (25) years' incarceration was not a preferable result in Applicant's case. Trial counsel testified Applicant steadfastly did not want to serve a felony prison sentence. As a result, Applicant exercised his option to pursue a jury trial.

Last, trial counsel testified he did not request the trial judge charge the jury with the lesser-included offense of DUI, resulting in great bodily injury because of Applicant's desire to avoid a term of imprisonment in the Department of Corrections. Trial counsel testified he pursued an all-or-nothing approach to seek exoneration. Trial counsel testified he would have discussed the matter with Applicant during the course of the trial.

At the PCR hearing, Jackie Williams, Applicant's sister, testified to her involvement in Applicant's case. Williams testified she accompanied Applicant during his two (2) or possibly three (3) consultations with trial counsel. Williams testified she provided evidence to support an alternative causation defense. Williams testified she had no knowledge of Applicant receiving discovery materials from trial counsel but acknowledged Applicant was living at a separate residence while awaiting trial. Williams recalled trial counsel advising Applicant to reject the

solicitor's initial three (3) to six (6) year plea offer. Williams testified trial counsel discussed the subsequent ten (10) year plea offer with Applicant and his former spouse outside of her presence. Williams stated they discussed the matter in private consultation room during Applicant's trial.

APPLICABLE LAW

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, (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. at 668, 104 S.Ct. at 2064. 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~~ ^{DM} 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, *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.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the 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 convictions, 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 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

A.

This Court finds Applicant failed to meet his burden of proving trial counsel was deficient in preparing Applicant's case for trial. To establish counsel was inadequately prepared, an Applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel been more fully prepared. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998). This Court finds trial counsel's testimony more credible than Applicant's testimony. Trial counsel conducted a sound investigation and formulated a viable defense strategy, and trial counsel's thorough pretrial preparations were exhibited during his cross-examination of Lt. Day and Dr. Love. (Trial Transcript pp.288-308; pp.344-59). See Dempsey v. State, 363 S.C. 365, 369, 610 S.E.2d 812, 814 (2005). Furthermore, Applicant failed to produce evidence at the PCR hearing to show what trial should have, but failed to, investigate. See Frasier v. State, 306 S.C. 158, 160-61, 410 S.E.2d 572, 573 (1991). Therefore, this allegation is denied and dismissed.

B.

This Court finds Applicant failed to meet his burden of proving trial counsel was

deficient in failing to adequately advise him on the three (3) to six (6) year guilty plea offer. "Given the seriousness of the matter, the Constitution insists, among other things, that the defendant enter a guilty plea that is 'voluntary' and that the defendant must make related waivers 'knowing[ly], intelligent[ly], [and] with sufficient awareness of the relevant circumstances and likely consequences.'" Hyman v. State, 397 S.C. 35, 44, 723 S.E.2d 375, 379-80 (2012) (citing United States v. Ruiz, 536 U.S. 622, 628, 122 S.Ct. 2450, 153 L.Ed.2d 586 (2002)). This Court finds trial counsel's testimony more credible than Applicant's testimony and Williams' testimony. This Court finds trial counsel is a seasoned criminal defense attorney who implements standard practices regarding advising clients on guilty plea offers. Trial counsel explained Applicant's only desired result was to avoid incarceration. This Court finds trial counsel kept Applicant apprised of developments in the case throughout the course of representation. Applicant failed to produce credible evidence that trial counsel improperly influenced Applicant's decision to take the case to trial. Therefore this allegation is denied and dismissed.

Additionally, Applicant failed to meet his burden of proving trial counsel was deficient for failing to convey the solicitor's subsequent ten (10) year plea offer to him during trial. "[C]ounsel's failure to convey a plea offer constitutes deficient performance." Davie v. State, 381 S.C. 601, 609, 675 S.E.2d 416, 420 (2009). "Where counsel's ineffective advice led to an offer's rejection, and where the prejudice alleged is having to stand trial, a defendant must show that but for the ineffective advice, there is a reasonable probability that the plea offer would have been presented to the court, that the court would have accepted its terms, and that the conviction or sentence, or both, under the offer's terms would have been less severe than under the actual judgment and sentence imposed." Lafler v. Cooper, ___ U.S. ___, 132 S. Ct. 1376, 1380, 182 L. Ed. 2d 398 (2012). This Court finds trial counsel's testimony credible and Applicant's testimony not

credible. While Applicant testified he was never made aware of the offer until it had allegedly been improperly rejected by trial counsel, Applicant's own witness, Williams, testified trial counsel discussed the matter with Applicant and his ex-spouse in private during the trial. This Court finds Applicant failed to present any credible evidence that the plea offer was not adequately conveyed to him. Regardless, Applicant provided no indication that he would have even accepted the allegedly unconveyed plea offer. This Court notes Applicant testified he decided not to entertain a more punitive plea offer after rejecting the three (3) to six (6) year plea offer. Therefore, this allegation is denied and dismissed.

C.

This Court finds Applicant failed to prove trial counsel was deficient for not requesting the jury be charged with the lesser included offense of DUI, resulting in great bodily injury. "[W]here counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." Watson v. State, 370 S.C. 68, 634 S.E.2d 642 (2006), citing Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). "There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in a case." Caprood v. State, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000). This Court finds trial counsel's testimony credible. Trial Counsel testified his trial strategy was to present the strongest case possible in an effort to achieve Applicant's acquittal. This Court finds trial counsel's strategy valid in this particular case. Therefore, this allegation is denied and dismissed.

II.

Except as discussed above, this Court finds that Applicant affirmatively abandons the remaining allegations set forth in his application at the hearing. A waiver is a voluntary and

intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). Applicant's failure to address these issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

CONCLUSION

Based on all the forgoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of intent to appeal within thirty (30) days from receipt of this Order to secure the appropriate appellate review. See Rule 203, SCACR. Rule 71.1(g), SCRCP; Bray v. State, 336 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant's counsel to file and serve notice of appeal. Applicant's attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely filed.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant is remanded to the custody of Respondent.

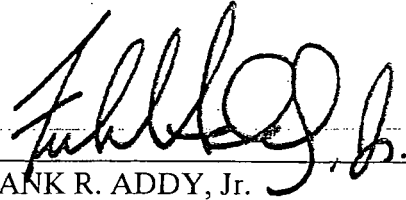
LETITIA C. VANDERBROG
CLERK OF COURT
LEXINGTON, SC

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IT IS SO ORDERED this 17th day of February, 2014.



FRANK R. ADDY, Jr.
Presiding Judge
Eleventh Judicial Circuit

Greenwood, South Carolina

LETIA A. CARROLL
CLERK OF COURT
LEXINGTON, SC

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March 31, 2014

The South Carolina Supreme Court
P.O. Box 11330
Columbia, SC 29211

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APR 02 2014

RE: William C. Martin #332078 v. State of South Carolina
Docket No.: 2011-CP-32-3972

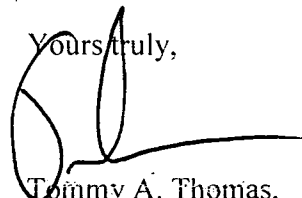
S.C. SUPREME COURT

Dear Sir or Madam:

Enclosed please find an Original and a copy of a Notice of Appeal, along with a Certificate of Service and attachments.

Kindly return a clocked copy to me in the enclosed envelope. Thank you and should you have any questions, or need any additional information, please do not hesitate to contact me.

Yours truly,



Tommy A. Thomas,
Attorney at Law

TAT/jem
cc: J. Walt Whitmire, Esq.
William Martin #332078
Appellate Defense

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