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March 27, 2014

Supreme Court of South Carolina
ATTN: Daniel Shearouse, Clerk of Court
P.O. Box 11330
Columbia, SC 29211

RECEIVED

MAR 31 2014

S.C. SUPREME COURT

RE: Rikam Ikkesh Dozier v. State of South Carolina

Dear Mr. Shearouse:

Enclosed please find a Notice of Appeal along with a Certificate of Service and copies of the Orders being appealed. Also enclosed is a copy which I request you stamp as "filed" and return to me in the enclosed stamped envelope.

Thank you for your assistance in this matter.

Yours truly,



Christina Metze
Paralegal

cc: Karen C. Ratigan, Assistant Attorney General
Beth Carrigg, Lexington County Clerk of Court
Rikam Dozier

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Edgar W. Dickson, Presiding Judge

10-CP-32-1122

RIKAM IKKESH DOZIER, #334052,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Rikam Ikkesh Dozier, #334052,, appeals the Order of Dismissal denying his Application for Post-Conviction Relief filed February 5, 2014, and received by counsel on February 5, 2014, and the Order Denying Rule 59(E) Motion filed March 13, 2014, and received by counsel on March 17, 2014, issued by the Honorable Edgar W. Dickson, presiding Judge.

RECEIVED

MAR 31 2014

S.C. SUPREME COURT



Aimee J. Zaroczek, Esq.
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ajzlawfirm@gmail.com
ATTORNEY FOR PETITIONER

This 27th day of March 2014.

Other Counsel of Record:
Karen C. Ratigan, Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211
Attorney for Respondent
(803) 734-3737

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Edgar W. Dickson, Presiding Judge

10-CP-32-1122

RIKAM IKKESH DOZIER, #334052,

Petitioner,

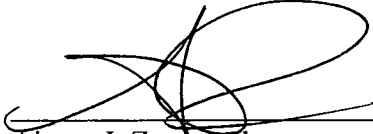
v.

STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the Petitioner's Notice of Appeal in the above-entitled case has been served upon opposing counsel, Karen C. Ratigan, Assistant Attorney General, P.O. Box 11549, Columbia, SC 29211, by mailing in an envelope properly addressed with postage prepaid on this 27th day of March, 2014.



Aimee J. Zmroczek
Attorney and Counselor at Law

SWORN TO BEFORE me this 27th day
of March 2014.

Christina Metzger (L.S.)
Notary Public for South Carolina
My Commission Expires: 9/25/16

previous order of dismissal fully comports with the requirements of Rule 52(a) SCRCP.

IT IS THEREFORE ORDERED:

1. That the Applicant's motion is denied and dismissed.

AND IT IS SO ORDERED this 7th day of March, 2014.
EW



Edgar W. Dickson
Presiding Judge

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

2014 MAR 13 A 10:49

FILED

2/2 *EW*

For Clerk of Court Office Use Only

This judgment was entered on 18th of March 2014, and a copy mailed first class or placed in the appropriate attorney's box on 18th of March 2014, to attorneys of record or to parties (when appearing pro se) as follows:

Aimee Jendrzewski Zmroczek
PO Box 11961 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

J Walt Whitmire
PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg/mh

Court Reporter

Beth A. Carrigg - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

ORIGINAL ²

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON)

2010-CP-32-1122

Rikam Ikkesh Dozier,
S.C.D.C. No. 334052,

Applicant,

v.

State of South Carolina,

Respondent.

LEXINGTON COUNTY
LEXINGTON, SC

ORDER OF DISMISSAL

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed March 10, 2010. The Respondent made its return on May 14, 2010. An evidentiary hearing into the matter was convened on November 15, 2012 at the Lexington County Courthouse. The Applicant was present at the hearing and represented by Aimee Zmroczek, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's plea counsel, Bradley B. Hansen, Esquire. The Court had before it the transcript of the guilty plea hearing, the records of the Lexington County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the PCR application, the return, and the Applicant's Exhibit 1.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Lexington County Clerk of Court. The Applicant was indicted at the September 2008 term of the Lexington County Grand Jury for armed robbery (2008-GS-32-

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2826) and criminal conspiracy (2008-GS-32-2827). He was represented by Bradley B. Hansen, Esquire.

On April 2, 2009, the Applicant pled guilty to armed robbery.¹ He was sentenced by the Honorable R. Knox McMahon to fifteen years imprisonment. The Applicant did not appeal.

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
2. Violations of the 5th, 6th, and 14th Amendments.
3. Subject matter jurisdiction.
4. Due process violations.

Counsel for the Applicant also prepared a Trial Brief (with Exhibits A-I). This document, dated November 14, 2012, was submitted to the Court on the day of the hearing² and listed the following issues:

1. Ineffective assistance of counsel:
 - a. Failure to ask the solicitor to have the case remanded to the family court.
 - b. Failure to argue the Applicant's case fell within the jurisdiction of the family court.
 - c. Misrepresented the Applicant's potential charges when he advised him not to file an appeal.
 - d. Advised the Applicant he would receive the minimum sentence.
2. Involuntary guilty plea:
 - a. This case should have been transferred to the family court.
 - b. The Applicant was misadvised about the potential sentence he faced.
 - c. The Applicant could not consider the impact his statements may have had at trial because counsel had not investigated the admissibility of these statements.

¹ The State not prossed the criminal conspiracy charge.

² This document was admitted as Applicant's Exhibit 1.

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 their 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).

Ineffective Assistance of Counsel/Involuntary Guilty Plea

The Applicant alleges his guilty plea was involuntary and that 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).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel’s ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). 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, 106 S. Ct. 366, 370 (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, 89 S. Ct. 1709, 1712 (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)).

The Applicant stated he hired plea counsel to negotiate a plea on his three warrants (armed robbery, criminal conspiracy, and kidnapping). The Applicant stated he had two meetings with plea counsel and they reviewed the evidence and his version of events. The Applicant stated plea counsel said he was facing a ninety year sentence. The Applicant stated, however, that plea counsel said he was working out a deal for a ten year offer. The Applicant stated he believed he was pleading guilty in exchange for ten years. The Applicant stated he answered the plea judge's questions as counsel had instructed him. The Applicant stated he discussed an appeal with plea counsel but plea counsel said it was not in his best interest because he only received five years over the minimum sentence and he could potentially receive new charges if he was successful on appeal. The Applicant stated he wanted an appeal because his sentence was too harsh.

Plea counsel confirmed the Applicant retained him in order to negotiate a plea in this case. Plea counsel testified he filed discovery motions, received those materials and reviewed them with the Applicant. Plea counsel testified they discussed the sentence ranges on the charges. Plea counsel testified the Applicant was sixteen years old when he committed the offense and had been waived up to General Sessions. Plea counsel testified he asked the State to waive the matter back to family court but never filed a formal motion. Plea counsel testified the Applicant admitted his guilt from the beginning and that he engaged in lengthy plea negotiations. Plea counsel testified the first assistant solicitor took a hard stance with this case but the second

assistant solicitor dropped the Applicant's kidnapping charge. Plea counsel testified the State could have brought additional charges of armed robbery for the other individuals but the State agreed not to bring those indictments. Plea counsel testified the eventual offer was for the Applicant to plead to a range of 10-30 years and that the State would not object to the minimum sentence on armed robbery. Plea counsel testified he explained the offer to the Applicant, who had 4-6 weeks to consider it. Plea counsel testified he never promised the Applicant would receive a certain sentence and noted the Applicant did not waver at the plea hearing itself. Plea counsel testified he spoke with the Applicant after the plea hearing and he was unsatisfied because he hoped to get the minimum sentence. Plea counsel testified he delivered a letter to the Applicant the next day, however, in which he advised not to file an appeal.

Initially, this Court notes concern with some aspects of plea counsel's representation that may have fallen below a reasonable standard of care.

First, plea counsel was apprehensive about the Applicant's age and mental capacity. While the Applicant was evaluated, plea counsel chose not to pursue any further action along these lines – though there was evidence the Applicant may not have fully understood the potential sentencing range at the time of his guilty plea.

The Court is also concerned that Applicant was not fully advised of his right to appeal. However, this Court finds the Applicant failed to meet his burden of proving plea counsel misadvised him about an appeal. Applicant received a letter from counsel advising him of his right to appeal, but advising him not to do so because he could, at best, have five years removed from his sentence. There is no evidence in the record that the Applicant asked plea counsel to file an appeal and counsel did not do so. Rather, this Court finds the Applicant, after having been advised of his appellate rights both orally and in writing, chose not to pursue them. See

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Sheppard v. State, 357 S.C. 646, 651, 594 S.E.2d 462, 465 (2004) (“To waive a direct appeal, a defendant must make a knowing and intelligent decision not to pursue the appeal.”). As such, this Court finds the Applicant is not entitled to a belated appeal from his guilty plea hearing.

The Court is also concerned that Mr. Hansen unique approach to criminal representation- which included having his client admit their guilt and deciding on a “fair and just punishment”- may have caused his representation of applicant to fall below reasonable professional standards and may amount to errors in representation.

The Court is concerned these aspects of Applicant's representation, when taken cumulatively, may have prejudiced Applicant. However, this Court is aware that South Carolina courts have not recognized the potentially cumulative effects of counsel's actions can be a cognizable ground for post-conviction relief. Our courts have noted the issue is unsettled. See Lorenzen v. State, 376 S.C. 521, 535 n.3, 657 S.E.2d 771, 779 n.3 (2008) (“[W]hether the cumulation of several errors, ‘which by themselves are not prejudicial, would warrant relief is an unsettled question in South Carolina.’”) (quoting Green v. State, 351 S.C. 184, 197, 569 S.E.2d 318, 325 (2002)); see also Walker v. State, 397 S.C. 226, 243, 723 S.E.2d 610, 619 (Ct. App. 2012) (“Even if South Carolina did allow PCR based on the cumulative prejudicial effect of two or more instances of deficient performance, [Applicant] would still have to demonstrate [prejudice under Strickland].”). As this Court is bound to apply the law as defined, or not defined, the Court cannot find the cumulative effect of plea counsel's representation has prejudiced the Applicant.

Ultimately, this Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance under current South Carolina law. This Court also concludes the Applicant has failed to meet his burden of proving his guilty plea was not

knowing and voluntary. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174. The Applicant admitted to the plea judge that he was guilty. (Plea transcript, p.9). The Applicant also told the plea judge that he understood the trial rights he was waiving in pleading guilty, was satisfied with counsel, and had not been coerced in any way. (Plea transcript, pp.8-9; pp.10-11; pp.11-12).


The Court finds that Applicant failed to meet his burden of proving plea counsel misadvised him about the sentence he would receive if he pled guilty. The Applicant testified plea counsel said he would receive a ten-year sentence if he pled guilty. Plea counsel testified they were hopeful the Applicant would receive the minimum sentence for armed robbery but that he never made any promises regarding sentencing. Plea counsel also testified the State had agreed not to oppose the minimum sentence in this case. This Court finds plea counsel's testimony is credible. This Court notes plea counsel's testimony is supported by the record. The assistant solicitor informed the plea judge that he was "not taking a position on the actual sentencing" and did not oppose the minimum sentence. (Plea transcript, p.9). Both plea counsel and the Applicant affirmed this was also their understanding about plea negotiations. (Plea transcript, pp.9-10). At no point does the Applicant inform the plea judge he was pleading guilty in exchange for a ten-year sentence. This Court finds plea counsel properly relayed and explained the plea negotiations to the Applicant. Cf. Davie v. State, 381 S.C. 601, 675 S.E.2d 416 (2009) (holding counsel's failure to convey the State's plea offer to defendant constituted deficient performance). This Court notes that, while the Applicant and plea counsel may have hoped for the minimum sentence, both were fully aware of the sentencing ranges for the offenses. See Holden v. State, 713 S.E.2d 611, 617, 393 S.C. 565, 575-76 (2011) (citing Roddy v. State, 339 S.C. 29, 36, 528 S.E.2d 418, 422 (2000)) ("Wishful thinking regarding sentencing

does not equal a misapprehension concerning the possible range of sentences, especially where one acknowledges on the record that one knows the range of sentences and that no promises have been made.”).

The Court is concerned that Applicant may not have understood his potential sentencing range at the time of the plea, but ultimately finds that Applicant failed to meet his burden of proving plea counsel misadvised him about his potential sentence. Plea counsel testified he reviewed the discovery materials and discussed it with the Applicant. Plea counsel testified that, based upon the facts, the Applicant could have been charged with additional counts of armed robbery but that the State agreed not to seek additional indictments. Plea counsel testified he advised the Applicant of the sentences he was facing. This Court finds plea counsel’s testimony is credible. This Court further finds plea counsel fulfilled his obligations as the Applicant’s attorney when he explained the sentence ranges of both the charges he was pleading guilty to and the charges that could potentially be brought against him. This Court also notes the plea judge explained the sentence ranges for the armed robbery and criminal conspiracy charges and the Applicant did not indicate he was surprised by these figures. (Plea transcript, pp.7-8). This Court finds plea counsel properly advised the Applicant regarding sentencing. See Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d:623, 624 (1999) (finding that, before a defendant can enter a guilty plea, he “must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived”).

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

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present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not proved that Counsel was not deficient, or that any one of his errors caused the Applicant to be prejudiced by counsel's representation. Furthermore, the Applicant has not proven that his guilty plea was not entered knowingly and voluntarily within the mandates of Boykin. Therefore, this PCR application 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 this Order if he wants 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 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 31st day of January, 2014.



Edgar W. Dickson
Presiding Judge

Orangeburg, South Carolina.

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STATE OF SOUTH CAROLINA
COUNTY OF Lexington
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 10 CP- 1122

Rikam Dozier

State of SC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> Self-Represented Litigant.

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

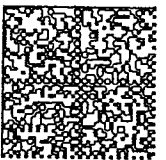
Circuit Court Judge

Judge Code

Date

A. J. Z. Law Firm, LLC
P.O. Box 11961
Columbia, SC 29211

Supreme Court of South Carolina
ATTN: Daniel Shearouse, Clerk of Court
P.O. Box 11330
Columbia, SC 29211



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