pcr

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April 17, 2014

RECEIVED
APR 21 2014
S.C. SUPREME COURT

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

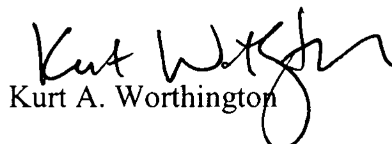
Re: Darrell L. Williams v. State of South Carolina
File No.: 2012-CP-02-01339
Our File No.: 13-9

Dear Sir or Madam:

Enclosed please find the original and one copy of Appellant's Notice of Appeal in the above-captioned matter. I have also enclosed a copy of the Order of Dismissal signed by Judge Dickson. Please file the original and return the stamp-filed copy to me in the enclosed self-addressed, stamped envelope. Given the fact that my client is indigent and this case was appointed to me, it is my understanding that the filing fee is waived.

If you have any questions regarding the enclosed or this matter, please do not hesitate to contact me. As always, thank you for your assistance.

Sincerely,



Kurt A. Worthington

KAW/brj

Enclosures

cc: Daniel Gourley (w/encl.)

RECEIVED
APR 21 2014
S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge

Case No. 2012-CP-02-01339

Darrell L. Williams,
S.C.D.C. No. 334447 — Appellant

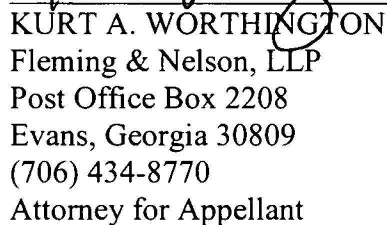
v.

State of South Carolina, — Respondent.

NOTICE OF APPEAL

Darrell L. Williams appeals the order of the Honorable Edgar W. Dickson dated April 9, 2014. Appellant received notice of entry of this order on April 14, 2014.

This 17th day of April, 2014.



KURT A. WORTHINGTON
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Attorney for Appellant

Other Counsel of Record:
Daniel Gourley
Assistant Attorney General
Post Office Box 11549
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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	
	)	2012-CP-02-1339
DARRELL L. WILLIAMS, 334447,	)	
Applicant,	)	
	)	AFFIDAVIT OF SERVICE BY MAIL
vs.	)	
STATE OF SOUTH CAROLINA,	)	
Respondent.	)	

1. I am the attorney for the Applicant in the above-captioned matter.

2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.

3. I have on this day served a copy of the NOTICE OF APPEAL in the above-captioned matter on the following person by depositing same in the United States Mail, postage prepaid:

Daniel Gourley
Assistant Attorney General
Office of the Attorney General
State of South Carolina
Post Office Box 11549
Columbia, South Carolina 29211-1549

Dated this 17th day of April, 2014.

[signature]
KURT A. WORTHINGTON
Attorney for Applicant

STATE OF SOUTH CAROLINA COUNTY OF AIKEN Darrell L. Williams, #334447, Applicant, v. State of South Carolina, Respondent.	IN THE COURT OF COMMON PLEAS FOR THE SECOND JUDICIAL CIRCUIT Case No. 2012-CP-02-01339 **ORDER OF DISMISSAL** Filed 4.14 2014 C.C.P.&G.S. Deputy Clerk

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on May 21, 2012. Respondent made its return on August 9, 2012. An evidentiary hearing into the matter was convened on January 22, 2014, at the Aiken County Courthouse. Applicant was present at the hearing and was represented by Kurt Worthington, Esquire. Respondent was represented by Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

The records before this Court indicate the Applicant is presented confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. The Applicant was indicted during the November 10, 2008 term of the Aiken County Grand Jury for Kidnapping (2008-GS-02-1770). The Applicant was represented by Brian Katonak, Esquire. On April 27, 2009, the Applicant pled guilty as indicted. The Honorable Doyet A. Early, III, sentenced Applicant to a period of confinement for thirty years.

Subsequently, the Applicant filed a Notice of Appeal. The appeal was perfected by Wanda H. Carter, Esquire. The South Carolina Court of Appeals dismissed the Appeal. State v.

Williams, Op. No. 2012-UP-297 (S.C. Ct. App. May 16, 2012). The Remittitur was sent on June 4, 2012.

ALLEGATIONS

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following allegations:

1. Ineffective assistance of trial counsel.
    a. "Counsel informed applicant he would receive a sentence of 15 years."

Subsequently, Applicant amended his PCR application on January 13, 2014, alleging that he was being held in custody unlawfully based on the following allegations:

1. Ineffective Assistance of Counsel:
    a. "...Attorney failed to investigate evidence mitigating Petitioner's role in the matter."
    b. "...attorney failed to provide Petitioner with a copy of his discovery and/or failed to properly review said discovery with Petitioner."
2. Involuntary guilty plea:
    a. "Petitioner's plea of guilty was not knowingly and intelligently entered insomuch as his attorney failed to properly advise him of the sentence he could receive as a result of a guilty plea."

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. Furthermore, Applicant presented testimony from plea counsel, Brian Katonak, Esquire (Counsel). This Court also had before it a copy of guilty plea hearing, the Aiken County Clerk of Court records, Appellate Records, the Applicant's South Carolina Department of Corrections records, the PCR application, and the return.

During the evidentiary hearing, Applicant testified he was thirty years old. Applicant stated he had a tenth grade education and no General Education Degree. Applicant stated he has six children. Applicant stated he understood the PCR process. Applicant stated he met with

Counsel twice. Applicant stated the first meeting lasted approximately twenty minutes. Applicant stated their second meeting was the day of the plea hearing. However, Applicant recalled telling the plea court that he was satisfied with Counsel's services. Applicant stated he pled guilty to kidnapping under the impression that he was going to receive fifteen years. However, Applicant recalled telling the plea judge that no one had promised him anything in order to get him to plead guilty. Applicant stated he would not have pled guilty if he knew he was going to receive thirty years. However, Applicant recalled the plea court advising him that he could face up to thirty years in prison for Kidnapping. Applicant further stated he ultimately pled guilty to avoid facing a potential life sentence for Murder. Applicant recalled telling the plea judge that he was guilty of kidnapping and subsequently affirmed his guilt during the PCR hearing.

Following Applicant's testimony, Counsel was called to testify by Applicant. Counsel stated he has handled twenty to thirty criminal cases. Counsel stated the vast majority have resulted in a guilty plea, however Counsel stated he has had five to ten criminal trials. Counsel stated he was appointed to Applicant's case. Counsel stated he reviewed the possible punishment with Applicant prior to his guilty plea. Counsel further stated he explained in detail that Applicant was facing up to thirty year term of imprisonment for kidnapping. Counsel stated he never promises any of his clients that they will receive a certain sentence. Counsel stated he did not promise Applicant that he would receive a fifteen year sentence. Counsel stated there were no recommendations for sentencing. Counsel stated he advised Applicant that if he did not accept the plea offer that he would be facing a murder charge. Counsel stated the plea court wanted to have all the Co-Defendant's plea at the same time.

Additionally, Counsel stated he reviewed Applicant's constitutional rights. Counsel

further stated that although Applicant did not give him any witnesses or leads to investigate, he met with several of the Co-Defendant's counsels in preparing the case. Counsel stated he received discovery and a SLED Lab report on February 11, 2009. Counsel stated he reviewed the discovery material with Applicant. Counsel stated this incident involved gang activity and Applicant was not actually present during the murder. However, Counsel stated it was alleged and the evidence supported that Applicant was the "ring leader." Counsel stated Applicant was the person who picked up Victim and took him to the trailer where he was ultimately beaten and tortured. Counsel stated, after reviewing the evidence, it was clear that this was not a case that needed to be taken to trial. Counsel stated had Applicant not pled guilty the State was prepared to indicted Applicant for murder and Applicant feared the possibility of facing a murder charge. Counsel further stated it was clear that the State could prove the kidnapping charge.

This Court further questioned Counsel regarding the sentencing for the various Co-Defendants. This Court noted the sentencing for various Co-Defendant's were significantly less than the Applicant's. Counsel explained that Applicant was the original person who picked Victim up and brought him to the trailer where he was ultimately beaten and tortured. Counsel further stated that the State alleged Applicant was the "ring leader." Counsel concluded that most of the evidence pointed to both Applicant and an additional Co-Defendant, who ultimately pled guilty to murder.

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. Specifically, this Court finds that Counsel's testimony is very credible

while Applicant's testimony is less credible. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; 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 (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, 286 S.C. 441, 334 S.E.2d 813 (1985). Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating 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." Cherry, 300 S.C. at 117, 385 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 (1985). Below are this Court's findings in regards to each of Applicant's allegations of

ineffective assistance of counsel.

INEFFECTIVE ASSISTANCE OF COUNSEL

Counsel was ineffective for failing to review discovery, failing to present mitigating evidence, and failing to adequately explain possible sentencing.

This Court finds Applicant's allegation that he was denied effective assistance of counsel for counsel's failure to review discovery, failure to present mitigating evidence, and failure to adequately explain possible sentencing is without merit. Applicant alleged that Coumsel told him that he would receive a fifteen year sentence. Counsel disputed this, stating that he did not ever recall promising a client the he would receive a certain sentence. Rather, Counsel stated that he always discusses the sentencing range for a particular crime and due to the charge being classified as a violent offense Applicant would be required to serve eighty-five percent of whatever sentence he received. Counsel further stated that all defendants in this case admitted their guilt, that applicant expressed to him that he did not want a trial, and that there was overwhelming evidence of applicant's guilt.

This Court further finds plea counsel had numerous meetings with Applicant prior to his plea and reviewed the discovery materials. The Court notes that Counsel stated he did not receive any leads or witnesses to investigate. This Court finds the Applicant failed to articulate what more Counsel should have done to investigate and change the outcome of his proceedings. See Jackson v. State. 329 S.C. 345, 495 S.E.2d 768 (1998) (finding the failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result); Davis v. State, 326 S.C. 283, 486 S.E.2d 747 (1997) (denying relief where applicant failed to present witnesses or specific testimony establishing he would have had a defense with additional time to prepare for trial).

This Court finds Applicant has not met his burden of showing that, but for his attorney's alleged errors, he would not have pled guilty.

Involuntary Guilty Plea

This Court finds that the Applicant's guilty plea was entered freely and voluntarily. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). Defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing 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. United States, 519 F.2d 347 (4th Cir.1975).

This Court finds that this allegation is without merit and the Applicant has failed to carry his burden of proving that his guilty plea was involuntarily made. This Court finds that the Applicant's testimony was entered freely and voluntarily. The Applicant testified at the evidentiary hearing that he was pleading guilty freely and voluntarily. This Court finds further that the record reflects the Applicant was thoroughly advised of the waiver of his constitutional

rights by both counsel and the plea judge. The record reflects the Applicant at his plea proceeding told the court that he wished to plead guilty. (T. 18). The record also reflects that the Applicant told the court that he had not been promised or threatened by anyone to get him to plead guilty. (T. 20). This Court finds that the Applicant had a full understanding of the consequences of his plea and the charges against him. This Court finds that the plea judge correctly found that the Applicant's plea was freely, voluntarily, and intelligently made.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that plea counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that plea counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by plea counsel's performance.

The Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. 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.

ALL OTHER ALLEGATIONS

Except as discussed above, this Court finds that the Applicant affirmatively waived 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). The 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

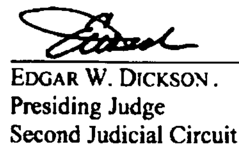
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that that Applicant must file and serve a notice of appeal within thirty 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 post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

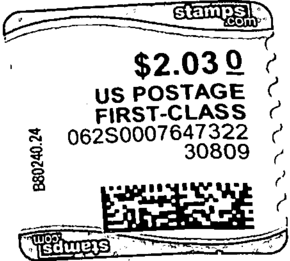
1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 9th day of April, 2014.



EDGAR W. DICKSON.
Presiding Judge
Second Judicial Circuit

Orangeburg, South Carolina



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