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THE STATE OF SOUTH CAROLINA
In The Supreme Court

S.C. SUPREME COURT APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

G. Edward Welmaker, Circuit Court Judge

Case No. 2012-CP-23-7210

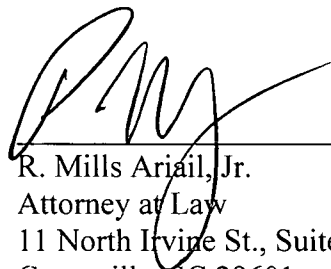
Eddie Pilcher Appellant,
SCDC # 303616

v.

State of South Carolina Respondent.

NOTICE OF APPEAL

Appellant appeals the Honorable G. Edward Welmaker's Order of Dismissal dismissing Appellant's application for post-conviction relief. On April 3, 2014, the Honorable G. Edward Welmaker signed an order dismissing Appellant's application for post-conviction relief with prejudice. Appellant, through counsel, received written notice of entry of this order on April 14, 2014. A copy of the Honorable G. Edward Welmaker's Order of Dismissal is attached.



R. Mills Ariail, Jr.
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Attorney for Appellant

Greenville, South Carolina
April 15, 2014

Other Counsel of Record and Interested Parties:

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Greenville, SC 29601

SC Commission of Indigent Defense
Division of Appellate Defense
1122 Lady Street
Columbia, SC 29201-3218

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APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

G. Edward Welmaker, Circuit Court Judge

Case No.2012-CP-23-7210

Eddie Pilcher,..... Appellant,
SCDC # 303616

v.

State of South Carolina Respondent.

CERTIFICATE OF SERVICE

I, Denise Tanner LaBeck, paralegal to R. Mills Ariail, Jr., do hereby certify that on this April 15, 2014, I served upon the below named Respondents copies of the **NOTICE OF APPEAL** by depositing copies of the same via U.S. Mail, postage prepaid, Registered Mail in an envelope addressed as set forth herein below:

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305 East North Street
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1122 Lady Street
Columbia, SC 29201-3218

Denise Tanner LaBeck

Denise Tanner LaBeck
Paralegal to R. Mills Ariail, Jr.
LAW OFFICE OF R. MILLS ARIAIL, JR.

April 15, 2014
Greenville, SC

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

JUDGMENT IN A CIVIL CASE
CASE NO: 2012CP2307210

Eddie J Pilcher vs. South Carolina State Of

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.
- 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: _____

FILED - CLERK OF COURT
GREENVILLE CO., S.C.
PAUL B. WICKENSIMER
2014 APR - 9 PM 3:11

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; Statement of Judgment by the Court:
Dated at Greenville, South Carolina, this .

Court Reporter:

PRESIDING JUDGE - G Edward Welmaker

This judgment was entered on the . and a copy mailed first class this , to attorneys of record or to parties (when appearing pro se) as follows:

R. Mills Ariail Jr. 11 North Irvine St., Ste. 11
Greenville, SC 29601

ATTORNEY(S) FOR THE PLAINTIFF(S)

Karen Christine Ratigan PO Box 11549 Columbia,
SC 29211

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court
- Clerk of Court

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Eddie James Pilcher, Jr.,)
 S.C.D.C. No. 303616,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2012-CP-23-7210

ORDER OF DISMISSAL

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 GREENVILLE CO. S.C.
 PAUL B. WICKENSIMER
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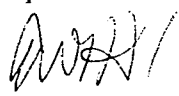
This matter is before the Court by way of an application for post-conviction relief (PCR) filed November 14, 2012. The Respondent made its return on May 3, 2013. An evidentiary hearing into the matter was held on February 19, 2014 at the Greenville County Courthouse. The Applicant was present and represented by R. Mills Ariail, Jr., Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified at the PCR hearing. Also testifying was the Applicant's trial counsel, John "Jake" Kenneth Erwin, Jr., Esquire. The Court had before it the trial transcript, the Greenville County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, the return, and Court's Exhibit 1, and Applicant's Exhibits 1-4.¹

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant waived

¹ This Court left the record open in order to allow PCR counsel to obtain an audio recording. Counsel provided copies of this recording to both the Court and the Respondent. This Court has reviewed that recording.

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presentment to the Greenville County Grand Jury on charges of kidnapping (2012-GS-23-2618), armed robbery (2012-GS-23-2619), and first-degree burglary (2012-GS-23-2620). He was represented by John "Jake" Kenneth Erwin, Jr., Esquire.

On June 26, 2012, the Applicant pled guilty. The Honorable Edward W. Miller sentenced the Applicant to concurrent terms of fifteen years for kidnapping, fifteen years for armed robbery, and fifteen years for first-degree burglary. The Applicant did not appeal.

ALLEGATIONS

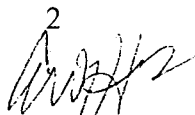
In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel:
 - a. Failed to provide the Applicant with his discovery.
 - b. Failed to advise the Applicant his due process rights had been violated.
 - c. Failed to ensure the Applicant had an evaluation.
 - d. Failed to file an appeal.
2. Due process violations:
 - a. Warrants were not timely filed and served.
3. Prosecutorial misconduct:
 - a. Failure to act on the warrants pursuant to Rule 3, SCRCrimP.
4. Subject matter jurisdiction:
 - a. Charges were not disposed of within 180 days.
 - b. Charges were not presented to the Grand Jury and the Applicant did not sign a written waiver of presentment.

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

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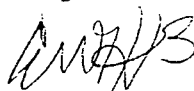
S.C. Code Ann. § 17-27-80 (2003).

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).

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).

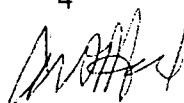
The Applicant stated plea counsel represented him for four months and that they had one meeting at the preliminary hearing and a second meeting on the day he pled guilty. The Applicant stated he had extensive psychiatric issues but that plea counsel did not request an evaluation. The Applicant stated he did not see all of the evidence but that plea counsel told him what the officers said. The Applicant stated an audio recording from the Greer Police Department would have refuted the State’s case and he would not have pled guilty if plea counsel had this recording. The Applicant stated plea counsel should have obtained this recording because it was mentioned in the discovery materials. The Applicant stated plea counsel should not have let him plead guilty to these charges because he was an accessory. The



Applicant stated plea counsel never explained the theory of accomplice liability. The Applicant stated he had no witnesses for plea counsel to contact. The Applicant stated the plea judge never advised him of the right to appeal but that, regardless, he asked plea counsel to file an appeal.

Plea counsel testified he had two meetings with the Applicant and that they reviewed the discovery materials (including the Applicant's statement to the Greer Police Department), the elements of the charges, and that there were no viable defenses. Plea counsel testified the Applicant did not say he was taking any psychiatric medication and that he did not learn about this until the plea hearing. Plea counsel testified the Applicant appeared to understand their conversations. Plea counsel testified he was aware of the existence of the Greer recording and was not aware of it being intentionally withheld by the State. Plea counsel testified his file did not reflect the Applicant wanted to hear the recording. Plea counsel testified he did not recall whether they discussed the right to appeal but that there were no appealable issues in this case and the Applicant never asked him to file an appeal. Plea counsel testified he did not need additional time to prepare this case.


Regarding the Applicant's general claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. The Applicant admitted to the plea judge that he was guilty and that he participated in the crime. (Plea transcript, pp.13-14; p.23). 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.12-14). Plea counsel testified he met with the Applicant and they discussed the discovery materials, elements of the charges, and the facts of the case. Plea counsel testified the outcome of this case would not have been different if he had additional time for preparation. This Court finds the Applicant's testimony is not credible, while also finding plea counsel's

A handwritten signature in black ink, appearing to be "M. J. [unclear]", located at the bottom center of the page.

testimony is credible. This Court finds that, while the Applicant and plea counsel only had two meetings before the plea hearing, the Applicant has failed to demonstrate that additional time or preparation would have affected the outcome of his case. See Smith v. State, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (Ct. App. 2012) (citing Harris v. State, 377 S.C. at 75, 659 S.E.2d at 145) (“The brevity of time spent in consultation with a defendant alone is not indicative of inadequate trial preparation.”).

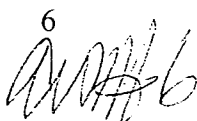
This Court finds the Applicant failed to meet his burden of proving plea counsel should have requested a competency evaluation. Plea counsel testified the Applicant never advised him of any mental health issues and that he was unaware the Applicant was taking psychiatric medication until the day of the guilty plea hearing. Plea counsel further testified the Applicant appeared to understand their discussions about his case. This Court finds plea counsel is credible and notes he was not obligated to request a competency evaluation when he had no indications from the file or his interactions with the Applicant that such may be necessary. See, e.g., Lee v. State, 396 S.C. 314, 721 S.E.2d 442 (Ct. App. 2011). Regardless, the Applicant “bears the burden of proof and is required to show by a preponderance of the evidence he was incompetent at the time of his plea.” Jeter v. State, 308 S.C. 230, 232, 417 S.E.2d 594, 596 (1992). To sustain a claim that plea counsel was ineffective for failing to request competency hearing, the petitioner must show reasonable probability that he would have been found incompetent. Id. at 233, 417 S.E.2d at 596. This Court finds that, as the Applicant has failed to present any evidence or testimony to support his claim that he should have undergone a competency evaluation, he has failed to meet his burden of proof.

This Court finds the Applicant failed to meet his burden of proving plea counsel should have obtained the audio recording made by the Greer Police Department before his guilty plea

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hearing. The Applicant argued he was never aware of the recording until the day of the plea hearing and that he would not have pled guilty if plea counsel had received this recording. The Applicant argues plea counsel's actions forced him to enter an involuntary guilty plea. Plea counsel testified he was aware of the existence of the recording and that it was not intentionally withheld by the assistant solicitor. This Court finds plea counsel's testimony is credible. This Court notes that 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). This Court finds the Applicant was aware of the charges against him, the potential penalties, and the consequences of pleading guilty. 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"). This Court notes the Applicant has failed to demonstrate he would have gone to trial if plea counsel had obtained the recording. This is especially true in light of the fact that the Applicant gave a statement to the police in which he admitted his involvement. (Plea transcript, p.17).

This Court finds the Applicant failed to meet his burden of proving plea counsel should have filed a notice of appeal. Plea counsel testified there were no appealable issues from the guilty plea hearing and that the Applicant never asked him to file an appeal. This Court finds

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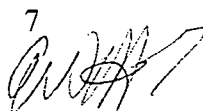
plea counsel's testimony is credible. This Court notes plea counsel has a constitutionally imposed duty to consult with the defendant about an appeal only when there is reason to think either: (1) that a rational defendant would want to appeal or (2) that this defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores-Ortega, 528 U.S. 470, 480, 120 S. Ct. 1029, 1036 (2000). This Court finds the Applicant has failed to meet his burden of proving either that he asked plea counsel to file an appeal or that plea counsel had reason to think he would have wanted to file an appeal after he voluntarily pled guilty.

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.

This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

Due Process

In his PCR application, the Applicant argues his right to due process was violated because the State did not comply with Rule 3(c), SCRCrimP. This Court finds this allegation is without merit. See State v. Culbreath, 282 S.C. 38, 40, 316 S.E.2d 681, 681 (1984) (“[T]he failure of the solicitor to act upon a warrant within ninety (90) days . . . does not within itself invalidate a warrant or prevent subsequent prosecution.”). Further, this Court finds the Applicant failed to provide evidence of any prejudice that may have resulted from any delay. See, e.g., State v. Pittman, 373 S.C. 527, 647 S.E.2d 144 (2007) (noting one must prove prejudice in order

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to prevail on an allegation that one's speedy trial rights were violated).

Prosecutorial Misconduct

The Applicant argued there was prosecutorial misconduct in this case because the assistant solicitor either had the Greer recording (and did not disclose it) or he could have obtained the Greer recording. This Court finds the allegation is without merit. To establish vindictive prosecution a defendant must prove "that (1) the prosecutor acted with genuine animus toward the defendant and (2) the defendant would not have been prosecuted but for that animus." United States v. Wilson, 262 F.3d 305, 314 (4th Cir. 2001). This Court notes the Applicant's argument that the recording was withheld fails because of plea counsel's testimony that he was aware of the existence of this recording. Regardless, this Court finds the Applicant has failed to meet his burden of demonstrating the assistant solicitor in this case acted with "genuine animus."

Subject Matter Jurisdiction

In his PCR application, the Applicant argues the plea judge did not have subject matter jurisdiction to accept his guilty pleas. The true test of the sufficiency of an indictment is not whether it could be made more definite and certain, but whether it contains the necessary elements of the offense intended to be charged and sufficiently appries the defendant of what he must be prepared to meet. State v. Gentry, 363 S.C. 93, 103, 610 S.E.2d 494, 500 (2005). Indictments are not evidentiary or jurisdictional documents – they are merely notice documents. Id. at 102, 610 S.E.2d at 500. The Applicant initialed the appropriate area of the sentencing sheets and indicated he wished to waive presentment of these indictments. The plea judge also explained the waiver and the Applicant agreed to go forward. (Plea transcript, pp.7-8). This Court finds the Applicant was on notice of the charges he was facing. This Court further finds

the Applicant has failed to meet his burden of proving the plea judge did not have subject matter jurisdiction to accept his guilty pleas and impose sentences.

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 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 established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner and the Applicant was not prejudiced by counsel's representation. 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.

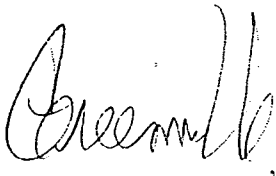
IT IS THEREFORE ORDERED:

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 3 day of April, 2014.



G. Edward Welmaker
Presiding Judge
Thirteenth Judicial Circuit



, South Carolina.

R. MILLS ARIAIL, JR.
ATTORNEY AT LAW

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April 15, 2014

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Via US Mail

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Clerk of Court
Supreme Court of South Carolina
Post Office Box 11330
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S.C. SUPREME COURT

***Re: Notice of Intent to Appeal from Eddie Pilcher v. The State of South Carolina
C.A. No.: 2012-CP-23-7210***

Dear Mr. Shearouse:

I was Court Appointed in the above referenced matter, and I expect that appellate defense will handle the appeal and petition for certiorari. On behalf of my client, enclosed for filing please find the Notice of Appeal and proof of service. I've enclosed a copy of the Honorable G. Edward Welmaker's Order of Dismissal to be challenged on appeal.

Thank you for your assistance in this matter and if you have any questions, please feel free to contact me.

Sincerely,
LAW OFFICE OF R. MILLS ARIAIL, JR.
Attorney at Law


R. Mills Ariail, Jr.

RMAjr/dcd
Enclosures (as stated)

cc: Greenville County Clerk's Office
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