

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

The Honorable Stephanie P. McDonald, Circuit Court Judge

Case No. 2013-CP-08-0007

Adrian White, #351674,.....Petitioner,

v.

State of South Carolina,.....Respondent.

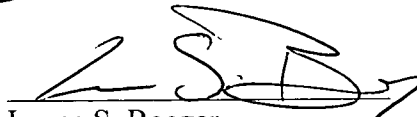
NOTICE OF APPEAL

The Petitioner appeals the Honorable Stephanie P. McDonald's Order dated March 14, 2014, denying post-conviction relief to the Petitioner. Undersigned counsel received notice of entry of the Order on March 27, 2014. A copy of the Order on appeal is attached to this notice.

RECEIVED

Respectfully submitted,

APR 24 2014



Lance S. Boozer
The Boozer Law Firm, LLC
1331 Park Street
Columbia, SC 29201
Tele: 803-608-5543

S.C. SUPREME COURT

April 23, 2014

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

The Honorable Stephanie P. McDonald, Circuit Court Judge

Case No. 2013-CP-08-0007

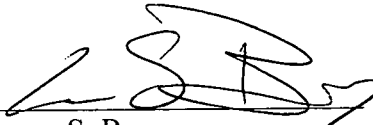
Adrian White, #351674,.....Petitioner,

v.

State of South Carolina,.....Respondent.

PROOF OF SERVICE

I, Lance S. Boozer, attorney for Petitioner, certify that I have today served within Notice of Appeal upon the Respondent by depositing a copy of it in the United States Mail, postage prepaid, addressed to Assistant Attorney General Ashleigh Wilson, P.O. Box 11549, Columbia, SC 29211. I further certify that all parties required by Rule to be served have been served this 23rd day of April, 2014.


Lance S. Boozer
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Columbia, SC 29201
Tele: 803-608-5543

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)
)
Adrian White, #351674,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
2013-CP-08-0007

ORDER OF DISMISSAL

FILED
2014 MAR 26 AM 11:34
CLERK OF COURT
BERKELEY COUNTY, SC

Presiding Judge:	The Honorable Stephanie P. McDonald
Applicant's Attorney:	Lance Boozer, Esquire
Respondent's Attorney:	Ashleigh R. Wilson, Esquire
Plea Counsel:	J. Mitchell Lanier, Esquire
Date of Hearing:	November 20, 2013
Court Reporter:	Sharon Vizer

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed on January 2, 2013. The Respondent made its Return on October 10, 2013. An evidentiary hearing into the matter was convened on November 20, 2013, at the Charleston County Courthouse. The Applicant was present at the hearing and represented by Lance Boozer, Esquire. Ashleigh R. Wilson, Esquire, of the South Carolina Attorney General's Office represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also present to testify were Ernest L. White and Adrian Dejeu, Esquire- the assistant solicitor assigned to the case.¹ This Court had before it the guilty plea transcript, the records of the Berkeley County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the PCR application, and Respondent's Return thereto.

¹ The Applicant's former defense attorney J. Mitchell Lanier, Esquire, passed away prior to the filing of this application for post-conviction relief.

3/20/14
Email
A. Wilson
L. Boozer

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PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Berkeley County. The Applicant was indicted at the October 2009 term of the Berkeley County Grand Jury for assault and battery with intent to kill (ABWIK) (2009-GS-08-2167) and possession of a weapon during the commission of a violent crime (2009-GS-08-2168). J. Mitchell Lanier, Esquire, represented the Applicant. The Applicant pled guilty as indicted. Pursuant to a negotiated plea agreement, the Honorable Kristi L. Harrington sentenced the Applicant to confinement for five (5) years for possession of a weapon during the commission of a violent crime and for twenty (20) years, provided ^{that} upon the service of ten (10) years, the balance is suspended to five (5) years' probation for ABWIK. The sentences were to run concurrently. The Applicant did not appeal his convictions or sentences.

ALLEGATIONS

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

1. Ineffective assistance of counsel.
 - a. Counsel refused to request a lesser sentence.
 - b. Counsel refused to request accrued house arrest.
 - c. Counsel represented the victim's family and ~~was~~ Applicant.
 - d. Counsel failed to investigate the possibility of a plea of not guilty based on either provocation or actual innocence.
 - e. Counsel failed to investigate sentencing options short of incarceration.
2. Involuntary guilty plea.
 - a. Counsel failed to present the victim's favorable testimony to the trial court in mitigation.
 - b. Counsel failed to request leniency.
 - c. Counsel refused to request credit for time served.
3. Conflict of interest.

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At the evidentiary hearing, the Applicant alleged the following:

1. Ineffective assistance of counsel.
 - a. Counsel refused to request credit for house arrest.
 - b. Counsel represented the victim's family members.
2. Involuntary guilty plea.

This Court finds the Applicant waived all other grounds for relief except the three grounds raised during his evidentiary hearing.

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 his or her 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).

The Applicant testified he was represented by Lanier shortly after arrest, and that he met with counsel three or four times. He testified he bonded out of jail, was placed on house arrest, and that he was on house arrest for three years. The Applicant testified he reviewed discovery with counsel and discussed possible defenses, and that counsel never gave him a defense. He testified he discussed the plea offers made by the State with counsel. The Applicant testified he asked counsel to ask the Court for credit for his time on house arrest, but counsel refused.

The Applicant testified he found out about the possession of a weapon during the commission of a violent crime charge three days prior to trial. He testified he was never shown an indictment for possession of a weapon. The Applicant testified he was related to the victim and the victim was willing to help him. The Applicant further testified counsel also represented

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the victim's brother and the victim's father, and that counsel never told him he represented the victim's family until shortly before Court.

The Applicant testified counsel informed him of the ten year plea offer by phone. He testified he did not want to plead guilty, but he did not feel comfortable going to trial. The Applicant testified he met with counsel prior to ^{the} plea and was told that if he did not plead guilty he would get twenty-five years. He testified he felt pressured to plead guilty, and that his attorney did not ask for credit for the three years he spent on house arrest. The Applicant testified it was his decision to plead guilty and he recalled waiving his constitutional rights. He testified he also recalled telling the Court he was satisfied with his attorney's representation and that he did not have any complaints and there was nothing else counsel could do for him.

Also present and called to testify by the Applicant was Ernest L. White. Mr. White testified he was the Applicant's father and has been a pastor for over twenty years. He testified he was present at the Applicant's guilty plea. He testified prior to the plea the Applicant spoke with Mr. Lanier and was told that if he did not plead guilty he would automatically be sentenced to twenty-five years. Mr. White testified further he was not present at every meeting between Mr. Lanier and the Applicant.

Also present and called to testify by the State was Adrian Dejeu, Esquire. Mr. Dejeu was the Assistant solicitor assigned to the Applicant's case. Mr. Dejeu testified he has been an assistant solicitor in the 9th Circuit since 2011. He testified the Applicant was accused of shooting the victim after an argument. He testified the evidence against the Applicant showed: the Applicant arrived at the place where the victim was present, got out of a car with a shotgun, and shot the victim twice in the back while the victim walked away. Mr. Dejeu testified the victim identified the Applicant as the shooter along with two other witnesses.

Mr. Dejeu testified the case was ready for trial and ultimately the Applicant pled guilty a few weeks prior to trial. Mr. Dejeu testified there was nothing unusual about the Applicant's guilty plea proceeding. He testified the victim and his family were onboard with the plea and came to meet with him several times. He testified he did not recall any discussions with defense counsel about credit for time on house arrest.

Ineffective Assistance of Counsel

The Applicant alleges that he received ineffective assistance of counsel. In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; 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.

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).

Courts use a two-pronged test to evaluate 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." Id. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. 668). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for

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counsel's unprofessional errors, the result of the proceeding would have been different." Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). 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 (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 (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)). When a defendant pleads guilty on the advice of counsel, the plea may only be attacked through a claim of ineffective assistance of counsel. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2002) (citations omitted).

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds that Applicant's attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, 466 U.S. at 668; Butler, 286 S.C. 441, 334 S.E.2d 813. This Court finds that counsel's representation did not fall below an objective standard of reasonableness. This Court also finds the testimony of Assistant Solicitor

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Adrian Dejeu to be credible, while finding the testimony of the Applicant and Ernest White were less credible.

This Court finds that trial counsel was not ineffective for failing to request credit for the Applicant's time on house arrest. This Court finds counsel's failure to request credit for house arrest did not result in deficient performance. In June 2013, S.C. Code Section 24-13-40 was amended to state the following: "In every case in computing the time served by a prisoner, full credit against the sentence must be given for time served prior to trial and sentencing, and may be given for any time spent under monitored house arrest." The Applicant pled guilty in July 2012, almost a year prior to the amending of this statute to allow for credit for time spent on monitored house arrest. Prior to the amending of this statute, the South Carolina Court of Appeals in State v. Higgins, 357 S.C. 382, 593 S.E.2d 180 (2004) held house arrest is a condition of release on bond and it was illogical to credit the defendant with time served while he was "released" on bond. This Court finds, based on the ruling of the Court of Appeals in Higgins, the controlling case law at the time of the Applicant's guilty plea, ^{that} it was not unreasonable for counsel to refuse to request credit for the time the Applicant served on house arrest. This Court finds counsel is not expected to be clairvoyant or to anticipate changes in the law. This Court also finds no prejudice resulted from counsel's performance since there was no testimony presented by the Applicant to indicate the possibility of receiving credit for his time on house arrest affected his decision to plead guilty. This Court finds that this allegation is without merit, and the Applicant has failed to carry his burden of proving counsel's performance was ineffective for failing to request credit for his time spent on house arrest.

This Court finds the Applicant has also failed to carry his burden of proving a conflict of interest existed based on counsel's alleged representation of the victim's family members. "An

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actual conflict of interest occurs where an attorney owes a duty to a party whose interests are adverse to the defendant's." Staggs v. State, 372 S.C. 549, 551, 643 S.E.2d 690, 692 (2007). This Court has further stated that a conflict of interest occurs when "a defense attorney places himself in a situation inherently conducive to divided loyalties." Lomax v. State, 379 S.C. 93, 101, 665 S.E.2d 164, 168 (2008).

Until a defendant shows that his counsel actively represented conflicting interests, he has not established the constitutional predicate for a claim of ineffective assistance of counsel arising from multiple representation. Langford v. State, 310 S.C. 357, 359, 426 S.E.2d 793, 795 (1993) (citing Cuyler v. Sullivan, 446 U.S. 335, 350 (1980); see also Burger v. Kemp, 483 U.S. 776, 783 (1987)). "The mere possibility defense counsel may have a conflict of interest is insufficient to impugn a criminal conviction." State v. Gregory, 364 S.C. 150, 152-53, 612 S.E.2d 449, 450 (2005). A defendant need not demonstrate prejudice if there is an actual conflict of interest." Id., 364 S.C. at 153, 612 S.E.2d at 450.

This Court finds the Applicant has failed to present any evidence to show Mr. Lanier's alleged representation of the victim's family ^(in a prior matter) resulted in a conflict of interest. The Applicant has failed to show that Mr. Lanier owed a duty to party whose interests were adverse to the Applicant's. This Court also finds the Applicant has failed to show that he was prejudiced from counsel's alleged conflict of interest. This Court finds in light of the Applicant's testimony that he was related to the victim and the victim was willing to help his case it is unlikely counsel's alleged prior representation of the victim's family members had any effect on counsel's representation of the Applicant. This Court finds that this allegation is without merit and the Applicant has failed to carry his burden of proving a conflict of interest existed.

This Court also finds and the record reflects the Applicant's guilty plea was entered

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freely and voluntarily with a full understanding of the consequences of his guilty plea. During his guilty plea proceeding, the Applicant was advised by the court of the following: the potential penalties he was facing (Tran. 7:20-23, 9:10-14), his right to a jury trial (Tran. 7:5-9), his right to remain silent (Tran. 7:10-11), and his right to confront his accusers (Tran. 7:11-12). The Applicant was also advised by the Court of the terms of his negotiated guilty plea. (Tran. 5:20-24). The Applicant told the Court he had not been promised anything or threatened to plead guilty. (Tran. 10:1-3). The Applicant told the Court he was not under the influence of drugs or alcohol and did not suffer from any mental illnesses. (Tran. 5:14-19). The Applicant also told the Court he agreed with the facts as presented by the State during the plea proceeding. (Tran. 12:10-17). Lastly, the Applicant told the Court he was satisfied by his attorney's representation, he had no complaints, and there was nothing else he wanted counsel to do for his case. (Tran. 10:7-9, 13-19). This Court finds and the record reflects that the Applicant was fully advised by the Court of the charges he was facing and the consequences of his guilty plea. This Court finds the Applicant has failed to carry his burden of proving his guilty plea was not entered freely and voluntarily.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test specifically that counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that counsel committed either errors or omissions while representing the Applicant. The Applicant failed to show that counsel's performance was deficient. Therefore, this Court need not address prejudice. Applicant's complaints concerning counsel's performance are without merit and are denied and dismissed. This Court finds further that the Applicant's guilty plea was entered freely and voluntarily, with a full understanding of the consequences of his guilty plea.

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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 or argument regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations. Therefore, they are hereby denied and dismissed.

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, nor was the Applicant prejudiced by counsel's representation. Therefore, this application for PCR 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 written notice of entry of this Order 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 served and filed.

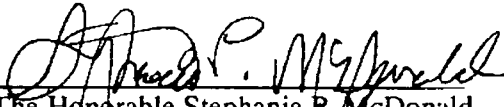
[Signature on the following page.]

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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 14th day of March, 2014.


The Honorable Stephanie P. McDonald
Presiding Judge
9th Judicial Circuit

Charleston, South Carolina.



ALAN WILSON
ATTORNEY GENERAL

February 22, 2013

The Honorable Mary P. Brown
Clerk of Court, Berkeley County
300 California Avenue
Moncks Corner, S. C. 29461

RE: Adrian White v. State
2013-CP-08-0007

JW
FILED
2013 FEB 25 AM 10:53
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

Dear Ms. Brown:

The above-referenced individuals have filed Applications for Post-Conviction Relief (PCR) in the Circuit Court and need to have attorneys appointed to represent them. If you will appoint an attorney to each applicant and let me know his or her name, I will send him or her a copy of our file in this matter.

The attorney listed on the PCR application was "J Mitchell Lanier."

If you have any questions with regard to this matter, please let me know.

Atty Info:

Lanci Boozer
1331 Park St.
Columbia, SC 29201
ph 803-608-5543

Sincerely,

Anne R. Henley

Anne R. Henley
Legal Assistant

cc: The Honorable Roger M. Young, Sr.,
Administrative Judge of the Ninth Judicial Circuit

THE BOOZER LAW FIRM, LLC

Lance S. Boozer, Esq.*

*Also admitted in Florida

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April 23, 2014

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

The Honorable Mary Brown
Clerk, Berkeley County
300 California Dr.
Moncks Corner, SC 29461

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APR 24 2014

**RE: Adrian White v. State of South Carolina
2013-CP-08-0007**

S.C. SUPREME COURT


Dear Mr. Shearouse and Ms. Brown:

Enclosed for filing is a Notice of Appeal in the above-referenced case. Also enclosed are the following:

- (1) Proof of Service of the Notice of Appeal;
- (2) A copy of the Order which is to be challenged on appeal; and
- (3) Prior Order of Appointment of Counsel.

As I was appointed to represent Mr. White in his PCR proceeding, I anticipate that the Office of Appellate Defense will represent Mr. White in this appeal.

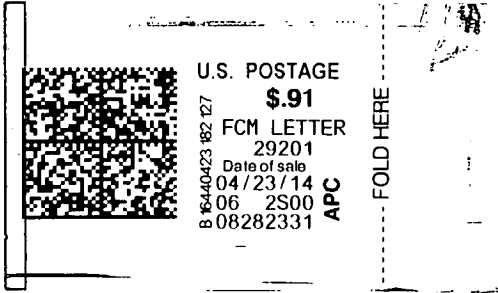
Yours very truly,


Lance S. Boozer

Enclosure

cc: Ashleigh Wilson, AAG
Office of Appellate Defense
Adrian White, #351674

THE BOOZER LAW FIRM, LLC
1331 Park Street
Columbia, SC 29201



The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
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