

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
THE HONORABLE G. EDWARD WELMAKER

CA No. 2012-CP-23-7605

CHRISTOPHER SANCHEZ,

APPELLANT,

vs.

STATE OF SOUTH CAROLINA

RESPONDENT.

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMMER
2014 APR 25 AM 10 53

NOTICE OF APPEAL

Appellant CHRISTOPHER SANCHEZ, appeals from the Order of the Honorable G. EDWARD WELMAKER, Circuit Court Judge clocked March 25, 2014

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APR 30 2014

S.C. SUPREME COURT

Respectfully submitted,

Caroline M. Horlbeck

Caroline M. Horlbeck, Esq.
101 Whitsett St
Greenville, SC 29601

Date: April 25, 2014

Other Counsel of Record: Karen Ratigan, Esq.
Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Christopher Sanchez,)
 S.C.D.C. No. 351353,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2012-CP-23-7605

ORDER OF DISMISSAL


FILED-CLERK OF COURT
 GREENVILLE CO. S.C.
 PAUL B. WICKENSIMMER
 2014 MAR 25 PM 12 34

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed December 5, 2012. The Respondent made its return on May 3, 2013. An evidentiary hearing into the matter was convened on February 19, 2014 at the Greenville County Courthouse. The Applicant was present at the hearing and represented by Brian P. Johnson, 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, Richard H. Warder, Esquire. The Court had before it the transcript of the guilty plea hearing, the Greenville County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, and the return.

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 presentment to the Greenville County Grand Jury for felony DUI resulting in death (2012-GS-23-2778) and leaving the scene of an accident with death (2012-GS-23-2779). He was

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represented by Richard H. Warder, Esquire.

On June 19, 2012, the Applicant pled guilty. The Honorable Letitia H. Verdin sentenced the Applicant to concurrent terms of twelve years for felony DUI resulting in death and twelve years for leaving the scene of an accident with death. 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. "My paid attorney did not represent me the way he implied he would."
 - b. "He was unprepared and lied to me about several things."

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

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

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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 would meet with him once a month, but that they never reviewed the discovery materials. The Applicant stated he never wanted a jury trial. The Applicant stated they discussed the plea offer and that the State wanted a sentence between ten and fourteen years. The Applicant stated plea counsel would request a five to seven year sentence and that he was under the impression this was the sentence he would receive. The Applicant stated plea counsel had said he would get a psychiatric evaluation to explain to the court why the Applicant left the scene that night – but that he never did so. The Applicant stated plea counsel recommended taking an outpatient alcohol treatment class (which he did), but that counsel did not refer to it at the plea hearing. The Applicant stated he was advised about how to answer the questions at the plea hearing. The Applicant stated he believed plea counsel would file a motion to reduce his sentence but admitted he never asked counsel to file such a motion.

Plea counsel testified he was retained in this case. Plea counsel testified he filed discovery motions, received those materials, and reviewed them with the Applicant. Plea counsel testified the Applicant relayed his version of events, and that it was similar to the State's version. Plea counsel testified they reviewed the sentence ranges for the charges. Plea counsel testified the State made the plea offer on April 11, 2012 and he reviewed it with the Applicant on

May 1, 2012. Plea counsel testified he told the Applicant he would ask for a five to seven year sentence, but that the plea judge would likely follow the recommendation. Plea counsel testified that the Applicant did not want to spend the extra money to retain a psychiatrist for a report. Plea counsel testified he generally tells clients that an alcohol class and treatment can be helpful, but that he believes the Applicant did not complete this class. Plea counsel testified there were no grounds to file a motion to reconsider the sentence, that the Applicant knew this would be a gamble on a fifty-year sentence, and that the Applicant did not request he file such a motion.

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 the Applicant's testimony is not credible, while also finding plea counsel's testimony is credible. This Court further finds plea counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his representation.

The Applicant admitted to the plea judge that he took "full responsibility" for the victim's death. (Plea transcript, p.18). 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.2-4).

This Court finds the Applicant failed to meet his burden of proving plea counsel misadvised him about the sentence he would receive. Plea counsel testified he advised the Applicant of the sentence ranges for the offenses and that he could receive a maximum sentence of fifty years. Plea counsel testified he reviewed the State's plea offer with the Applicant and told him that, while he would argue for a five to seven year sentence, the plea judge would likely follow the plea recommendation. This Court finds plea counsel's testimony is credible. This Court finds the Applicant was advised of the sentence ranges for the offenses and the State's plea

offer and chose to enter a guilty plea pursuant to that offer. This Court notes plea counsel did ask the plea judge to impose a sentence of five to seven years. (Plea transcript, p.19). This Court finds that, while the Applicant may have hoped for a lesser sentence, he was well aware of both the maximum sentence he could receive and the sentence range requested by the State. 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.”).

This Court finds the Applicant failed to meet his burden of proving plea counsel did not present an adequate mitigation argument at the guilty plea hearing. The Applicant stated plea counsel failed to secure a psychiatric evaluation to explain his actions at the scene of the accident. The Applicant stated plea counsel failed to tell the plea judge about the outpatient alcohol treatment classes he completed. This Court finds that, as the Applicant did not present a mental health expert at the PCR hearing, it would be speculative to discuss whether such an expert would have had an impact upon the Applicant’s sentence. See Lorenzen v. State, 376 S.C. 521, 530, 657 S.E.2d 771, 777 (2008) (finding that, as the applicant failed to present any expert testimony at the PCR hearing, “it is merely speculative that these allegedly favorable expert witnesses would have aided in his defense”). Similarly, as the Applicant failed to present documentation that he completed the outpatient alcohol treatment program, this Court cannot speculate as to the impact of such information upon sentencing. See, e.g., Palacio v. State, 333 S.C. 506, 513, 511 S.E.2d 62, 66 (1999) (holding that, since the contents of challenged documents were not presented at the PCR hearing, the Applicant could not demonstrate how the

failure of counsel to obtain these documents prejudiced the defense). Regardless, this Court notes plea counsel presented through mitigation, which included several individuals speaking on the Applicant's behalf. (Plea transcript, pp.9-19).

This Court finds the Applicant failed to meet his burden of proving plea counsel should have filed a motion for reconsideration after he was sentenced. Plea counsel testified there was no merit to such a motion. Both plea counsel and the Applicant testified the Applicant did not request plea counsel to file a motion to reconsider. This Court notes that the Applicant was aware he was pleading guilty pursuant to a ten to fourteen year plea offer. (Plea transcript, p.6). The Applicant received a twelve-year sentence. This Court finds the Applicant did not ask for counsel to file a motion for reconsideration and, regardless, has failed to articulate the grounds upon which such a motion would have been successful.

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.

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 19 day of March, 2014.



G. Edward Welmaker
Presiding Judge
Thirteenth Judicial Circuit

Greenville, South Carolina.

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE SUPREME COURT

CHRISTOPHER SANCHEZ,)
)
)
APPELLANT,)

C.A. No. 2012-CP-23-7605

-vs-

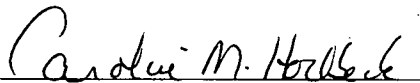
CERTIFICATE OF SERVICE

STATE OF SOUTH CAROLINA,)
)
)
RESPONDENT.)

This is to certify that I am an employee in the law office of Caroline M. Horlbeck, attorneys for Applicant, and that I have this day caused to be served upon the person(s) named below Applicant's Notice of Appeal by placing copies of same in the United States mail, with adequate postage thereon, addressed as follows:

Ms. Lorie French
S.C. Office of Appellate Defense
PO Box 11433
Columbia, SC 29211

Karen Ratigan, Esq.
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211


Caroline M. Horlbeck

Greenville, South Carolina

April 25, 2014

CAROLINE M. HORLBECK

ATTORNEY AT LAW

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April 25, 2014

Via Regular Mail

Mr. Daniel E. Shearouse
Clerk, The S.C. Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re: CHRISTOPHER SANCHEZ v. State

Dear Mr. Shearouse:

Enclosed you will find the original Notice of Appeal in the above matter along with Proof of Service upon the Respondents. The Notice has been filed with the Greenville County Clerk of Court.

These matters are being referred to the Office of Appellate Defense in that we were participating as Court appointed counsel at trial.

Thank you for your attention to this matter.

Yours very truly,

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APR 30 2014

Caroline M. Horlbeck, Esq.

S.C. SUPREME COURT

Enclosure

cc: Office of the Attorney General
Office of Appellate Defense

CAROLINE M. HORLBECK

Attorney At Law

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Via Regular Mail

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