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JUN 27 2014

S.C. Supreme Court

ALAN WILSON
ATTORNEY GENERAL

June 27, 2014

The Honorable Daniel E. Shearouse
Clerk of the South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

**Re: Patrick Bouvier Connor, 329222, Respondent v. State of South Carolina, Petitioner
Case No. 2013-CP-23-0154**

Dear Mr. Shearouse:

Enclosed for filing is a notice of appeal in the above case. Also enclosed are the following:

1. A copy of the order which is to be challenged on appeal.
2. Proof of service of notice of appeal on the Respondent.
3. A letter ordering the PCR transcript from the court reporter.

Sincerely,

Karen C. Ratigan
Senior Assistant Deputy Attorney General

KCR/jacc
Enclosures

cc: Jeffrey Falkner Wilkes, Esquire
South Carolina Department of Corrections
Greenville County Clerk of Court
Solicitor W. Walter Wilkins
Office of Appellate Defense
Trisha Allen, Victim Services

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

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JUN 27 2014

The Honorable D. Garrison Hill, Circuit Court Judge

S.C. Supreme Court

Case No. 2013-CP-23-0154

Patrick Bouvier Connor, #329222, Respondent,

v.

State of South Carolina, Petitioner.

NOTICE OF APPEAL

The State of South Carolina appeals the Honorable D. Garrison Hill's order dated and filed May 30, 2014 granting post-conviction relief to the Respondent. The State received notice of entry of the order on June 2, 2014. A copy of the order on appeal is attached to this notice.


Respectfully submitted,

ALAN WILSON
Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General
S.C. Bar # 68331

P.O. Box 11549
Columbia, S.C. 29211
(803) 734-3737

By:


Attorneys for the Petitioner

Columbia, South Carolina

June 27, 2014

Other counsel of record:

Jeffrey Falkner Wilkes, Esquire
114 Whitsett Street
Greenville, South Carolina 29601

STATE OF SOUTH CAROLINA
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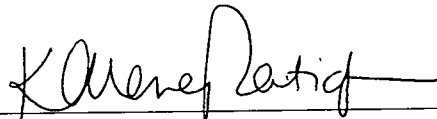
State of South Carolina, Petitioner.

PROOF OF SERVICE

I, Karen C. Ratigan, Counsel for the Petitioner, certify that I have today served the within notice of appeal upon the Respondent by depositing a copy of it in the United States Mail, postage prepaid, addressed to his attorney of record:

Jeffrey Falkner Wilkes, Esquire
114 Whitsett Street
Greenville, South Carolina 29601

I further certify that all parties required by Rule to be served have been served this 27th day of June, 2014.



KAREN C. RATIGAN
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737
Attorney for the Petitioner

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Patrick B. Connor,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

THE COURT OF COMMON PLEAS
 THIRTEENTH JUDICIAL CIRCUIT
 Case No: 2013-CP-23-00154

FILED-CLERK OF COURT
 GREENVILLE CO. S.C.
 PAUL B. WICKENS
 2014 MAY 29 PM 10 21

**ORDER GRANTING POST
 CONVICTION RELIEF**

I. Introduction

Patrick B. Connor (Connor) petitions for Post-Conviction Relief. At the April 23, 2014 evidentiary hearing, Connor was present and represented by Jeff F. Wilkes, Esquire, of the Greenville County Bar. Karen Ratigan, Esquire, of the South Carolina Attorney General's Office, appeared for the State.

At the hearing, Connor testified on his own behalf. Also testifying was his trial counsel Larry H. Cooke, Esquire. Based on the record and the applicable law, Mr. Connor's application for Post-Conviction Relief is granted.

II. Procedural History

Connor was indicted at the June 2011 term of the Greenville County Grand Jury for three (3) counts of armed robbery (2010-GS-23-9055, count 1; -9063, count 1; -9065, count 1) and three (3) counts of possession of a weapon during the commission of a violent crime (2010-GS-23-9055, count 2; -9063, count 2; -9065, count 2). On January 11, 2012, Connor pled guilty. The Honorable C. Victor Pyle, Jr. sentenced Connor to concurrent terms of twenty-five (25) years for

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each count of armed robbery and five (5) years for each count of possession of a weapon during the commission of a violent crime. Connor did not appeal.

III. PCR Allegations

Connor alleges he is being held in custody unlawfully for the following reasons: (1) he had ineffective assistance of counsel; (2) he gave an involuntary guilty plea; and (3) the State failed to disclose all Brady or Rule 5 materials.

This Court has reviewed the record and heard the testimony and arguments presented at the PCR hearing. The Court observed each witness, closely gauged their credibility, and 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.

IV. Standard of Review for Ineffective Assistance of Counsel Claims

In a PCR action, "[t]he burden of proof is on the Connor to prove his allegations by a preponderance of the evidence." 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, Id. Connor must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRPC).

First, Connor 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, citing Strickland. Second, counsel's deficient performance must have prejudiced Connor 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.

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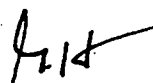
at 117-18. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland).

V. Findings of Fact and Conclusion

Connor contends his trial counsel was ineffective by not adequately communicating the second plea offer to him. The State's first plea offer for a sentence of fourteen (14) years was made in January 2011 and expired on May 8, 2011. A second offer—which recommended the same sentence but included dismissal of additional charges—was made in May 2011 and it contained no expiration date. The record demonstrates that Connor had consistently rejected the State's first offer, and had advised Mr. Cooke he desired a trial. At some point, he and Mr. Cooke lost contact.¹ Nevertheless, in the fall of 2011, their contact resumed when Connor's case was placed on the trial docket. As an automatic consequence, the May 2011 offer was off the table even though it is undisputed Connor had never been aware of it. Connor asked Mr. Cooke to renew negotiations, but by this point the Solicitor's Office policy prohibited plea negotiations.

While Mr. Cooke's failure to forward the second and more favorable offer to Connor was excusable neglect, it meets the standard for PCR relief established by Davie v. State, 381 S.C. 601, 675 S.E.2d 416 (2009). Prejudice has been shown by the significantly stiffer sentence Connor ultimately received without the benefit of the bargain contained in an offer never communicated to him. His desire to accept the fourteen (14) year deal is proven by his attempts to have Mr. Cooke renegotiate a plea agreement. Thus, Connor has shown "a reasonable probability that the end result of the criminal process would have been more favorable by reason of a plea to a lesser degree or a sentence of less prison time." Missouri v. Frye, 132 S.Ct. 1399,

¹ Mr. Cooke had surgery around this time.



1409 (2012). It is probable that the court would have accepted the plea.

The court need not get bogged down in the impossibly subjective inquiry of whether counsel's advice related to the plea offer was "meaningful," complete or reasonable, for here it is undisputed that the second offer was never communicated to Connor. Connor testified that he did not expect to get a twenty-five (25) year sentence. He has proven actual prejudice by demonstrating that, but for counsel's deficient performance, he would have accepted the second offer and benefitted from the bargain. See Davie, 381 S.C. at 613.

Connor has established both Strickland prongs. Therefore, his application for post-conviction relief is hereby granted, and the case is remanded for a new trial.

IT IS SO ORDERED!



D. Garrison Hill
Circuit Judge

May 30, 2014
Greenville, South Carolina