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pan

June 27, 2014

Via Regular Mail

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

Re: DARRIN BRYANT 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,

RECEIVED

JUN 30 2014

S.C. SUPREME COURT

Caroline Horlbeck
Caroline M. Horlbeck, Esq.

Enclosure

cc: Office of the Attorney General
Office of Appellate Defense

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
THE HONORABLE D. Garrison Hill

CA No. 2013-CP-23-1424

DARRIN BRYANT,

APPELLANT,

vs.

STATE OF SOUTH CAROLINA

RESPONDENT.

RECEIVED

JUN 30 2014

S.C. SUPREME COURT

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMMER
2014 JUN 23 PM 3 31

NOTICE OF APPEAL

Appellant DARRIN BRYANT, appeals from the Order of the Honorable D. Garrison Hill,
Circuit Court Judge clocked June 5, 2014

Respectfully submitted,

Caroline M. Horlbeck

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

Date: June 23, 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)
)
Darrin Bryant,)
)
Appellant,)
)
-vs-)
)
State of South Carolina,)
)
Respondent.)
_____)

IN THE SUPREME COURT

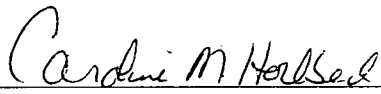
C.A. No. 2013-CP-23-1424

CERTIFICATE OF SERVICE

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
P.O. 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

June 27, 2014

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Darrin Bryant,)
 S.C.D.C. No. 292565,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2013-CP-23-1424

FILED-CLERK OF COURT
 GREENVILLE CO. S.C.
 PAUL B. WICKENSIMMER
 2014 JUN 5 AM 10 24

ORDER OF DISMISSAL

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed March 12, 2013. The Respondent made its return on July 12, 2013. An evidentiary hearing into the matter was convened on April 22, 2014 at the Greenville County Courthouse. The Applicant was present at the hearing and represented by Caroline Horlbeck, 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, Dorothy A. Manigault, 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 (SCDC) 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 distribution of cocaine (2011-GS-23-7859). He was represented by Dorothy A. Manigault, Esquire.

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On March 8, 2012, the Applicant pled guilty to distribution of cocaine, second offense. The Honorable Edward W. Miller sentenced the Applicant to five years imprisonment. 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. "It was my lawyers job and duty to make sure that all my paperwork was in order and drawn up without mistakes. As well as to make sure I recieve [sic] the plea that I plead out to. She never made me aware that I was pleading to a mandatory sentence."
2. Due process.
3. "Indictment, transcripts, sentencing sheets."

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

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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 he was serving a twenty-two year sentence (that began in 2003) when he received this charge. The Applicant stated plea counsel represented him for ten or eleven months but did not meet with him until the day of the plea hearing. The Applicant stated plea counsel did not review discovery materials with him. The Applicant stated he knew the charge he was pleading guilty to that day. The Applicant stated plea counsel did not explain he would serve 85% of this charge. The Applicant stated plea counsel should have asked the plea judge to backdate the sentence to 2011 instead of 2003. The Applicant stated SCDC has not given him the proper amount of credit and this has changed his max-out date from June 2015 to June 2016.

Plea counsel testified she filed discovery motions and sent those materials to the Applicant while he was housed in SCDC. Plea counsel testified the Applicant wrote her two letters in which he asked for a plea offer and for the charges against his co-defendants to be dismissed. Plea counsel testified she conveyed the State's plea offer (to reduce the charge to a second offense) to the Applicant, who asked if it would be concurrent. Plea counsel testified the State said they would not oppose such a request to the plea judge. Plea counsel confirmed she

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fit

did not explain that this would be an 85% charge but noted the plea judge advised the Applicant of this. Plea counsel testified she did not ask the plea judge to backdate the sentence.

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 was guilty. (Plea transcript, p.5). 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.5-6).

This Court finds the Applicant failed to meet his burden of proving plea counsel should have asked the plea judge to backdate his sentence to 2011. The sentencing sheets indicate the plea judge ordered the sentence in this case to be concurrent with the Applicant's sentence from April 21, 2003. This Court finds S.C. Code Ann. § 24-13-40 (2003) is controlling in this matter. This Court further finds the issue of whether the Applicant's sentence was properly calculated is not a post-conviction relief issue but is rather an issue that must be handled administratively. See Al-Shabazz v. State, 338 S.C. 354, 369, 527 S.E.2d 742, 750 (2000) (holding a credit-related claim or challenge to other conditions of confinement are administrative matters and, thus, cannot be raised in a post-conviction relief proceeding).

This Court finds the Applicant failed to meet his burden of proving plea counsel did not properly review certain things with him. While the Applicant stated plea counsel never reviewed the discovery with him, the Applicant informed the plea judge that he had sufficient time to review the evidence in his case. (Plea transcript, p.6). This Court finds this allegation is refuted

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by the plea transcript. See Stalk v. State, 375 S.C. 289, 300, 652 S.E.2d 402, 407 (Ct. App. 2007). While plea counsel admits she did not advise the Applicant that he would serve 85% of this current charge, this Court finds any error was cured when the plea judge advised the Applicant of such during the colloquy. (Plea transcript, pp.6-7). See Holden v. State, 393 S.C. 565, 575, 713 S.E.2d 611, 616 (2011).

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

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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 23rd day of May, 2014.

D. Garrison Hill

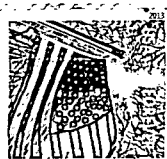
D. Garrison Hill
Presiding Judge
Thirteenth Judicial Circuit

Greenville, South Carolina.

CAROLINE M. HORLBECK

Attorney At Law

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