

LAW OFFICE OF
Kristy Grafton Goldberg, LLC
ATTORNEY AT LAW

June 30, 2014

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

RE: Eddie Alewine, SCDC # 351282, vs. State of South Carolina
Appeal of Case No. 2013-CP-32-2146

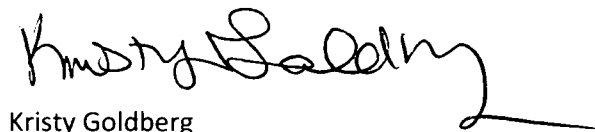
Dear Mr. Shearouse,

Enclosed for filing is a Notice of Appeal in the above referenced case. Also enclosed are a certificate of service and a copy of the original court order which is to be challenged on appeal. I would appreciate it if you could file the Notice of Appeal and mail a date-stamped copy back to me in the enclosed pre-stamped envelope.

By copy of this letter I am informing the Office of Appellate Defense of this Appeal so that they may begin representation of Mr. Alewine as I was appointed in this matter. I am also hereby requesting that Appellate Defense obtain a copy of the court transcript within the time required by this court.

Please let me know if you have any questions or concerns regarding this matter.

Respectfully,


Kristy Goldberg

CC: Walt Whitmire
Assistant Attorney General
Post Office Box 11549
Columbia, South Carolina 29211-1549

Eddie Alewine, SCDC # 351282
Broad River Correctional Institution
4460 Broad River Road
Columbia, SC 29210

RECEIVED

JUL 02 2014

S.C. SUPREME COURT

The Honorable Beth Carrigg
Clerk of Court
205 East Main Street
Lexington , South Carolina 29072

Office of Appellate Defense
Chief Appellate Defender – Robert Dudek
PO Box 11433
Columbia, SC 29211-1433

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

William P. Keesley, Circuit Court Judge

Case No. 2013-CP-32-2146

Eddie Alewine, SCDC # 351282, Appellant

v.

State of South Carolina, Respondent.

NOTICE OF APPEAL

Applicant Eddie Alewine hereby appeals from the Order of the Honorable William P. Keesley presiding Judge for the 11th Judicial Circuit, filed June 5, 2014 and received by counsel for the Applicant on June 9, 2014 in the matter of Eddie Alewine v. State of South Carolina, Case No. 2013-CP-32-2146.

June 30, 2014



Kristy Goldberg
Attorney for Plaintiff

Law Office of Kristy Goldberg, LLC.
1720 Main Street, Suite 301
Columbia, SC 29201
Phone (803) 252-2299
kristy@kristygoldberglaw.com

RECEIVED

JUL 02 2014

S.C. SUPREME COURT

Other Counsel of Record:

Assistant Attorney General, Walt Whitmire
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

William P. Keesley, Circuit Court Judge

Case No. 2013-CP-32-2146

Eddie Alewine, SCDC # 351282, Appellant

v.

State of South Carolina, Respondent.

PROOF OF SERVICE

Personally appeared before me, Kristy Goldberg, Esquire, who being duly sworn, deposes
and states:

She is the counsel of record for Applicant;

Service by mail is proper in this instance; and

She has served the NOTICE OF APPEAL on the following party on June 30, 2014 by
depositing one copy in the U.S. Mail, postage prepaid:

Assistant Attorney General, Walt Whitmire
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211



Kristy Goldberg
Attorney for Plaintiff

Law Office of Kristy Goldberg, LLC.

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Columbia, SC 29201
Phone (803) 252-2299
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Other Counsel of Record:
Assistant Attorney General, Walt Whitmire
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

ORIGINAL

STATE OF SOUTH CAROLINA FILED IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON

2014 JUN -5

ELEVENTH JUDICIAL CIRCUIT

P 12:55

Eddie F. Alewine,
S.C.D.C. No. 351282,

Applicant,

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

C.A. No. 2013-CP-32-2146

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed June 21, 2013. Respondent made its Return. An evidentiary hearing into the matter was convened on April 17, 2014 at the Lexington County Judicial Center. Applicant was present and was represented by Kristy Goldberg, Esquire. Respondent was represented by Assistant Attorney General Walt Whitmire.

WPC
#1

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Lexington County. Applicant was indicted at the May 2012 term of the Court of General Sessions for Lexington County for distribution of crack cocaine (2012-GS-32-1191). He was represented by Wayne Floyd, Esquire. The State called its case to trial and Applicant was found guilty as indicted on June 19, 2012. The Honorable D. Craig Brown sentenced Applicant to a term of eighteen (18) years imprisonment.

A Notice of Appeal was filed on Applicant's behalf and was perfected by Robert M. Pachak, Esq., pursuant to Anders v. California¹. The South Carolina Court of Appeals affirmed

¹ Anders v. California, 389 U.S. 738, 87 S.Ct. 1396 (1967).

Applicant's sentence and conviction in an unpublished opinion. State v. Eddie F. Alewine, No. 2013-UP-201 (S.C. Ct. App. filed on May 15, 2013). The remittitur was issued on June 3, 2013.

At the PCR hearing, Applicant alleged that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel:
 - a. failing to adequately advise Applicant on a plea;
 - b. failing to investigate alleged deficiencies in the chain of custody of the narcotics;
 - c. failing to challenge an illegal sentence based upon an alleged improper enhancement.

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JUN -5 P 12:55
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

SUMMARY OF TESTIMONY

Applicant testified he was confined in pre-trial detention during the pendency of his case. He stated that he never wanted to proceed to trial. He stated that he wrote counsel to enquire about the status of plea negotiations and learned that the solicitor was unwilling to drop the PWID, third-offense, and offer a lesser-included offense. He recalled that the solicitor had made a single plea offer. He stated that counsel never discussed the plea offer with him during the representation. Although plea negotiations were not particularly beneficial to him, he stated that he still desired a plea. He was aware that the charged offense carried a ten year minimum term of imprisonment. He speculated that he would have received a more favorable sentence had pleaded guilty instead of being convicted at trial. He stated that he was familiar with counsel's experience and reputation in the criminal Bar.

WPC
#2

Applicant was disgruntled by the alleged hastily manner his trial commenced. He stated that he had no opinion of counsel's performance at trial. However, he stated counsel should have done a more thorough job investigating defects in the chain of custody of narcotics. He noted the evidence custodian that testified at trial was not the same evidence custodian that filled out the forms. He alleged that his sentence was invalid because the manner in which the solicitor

enhanced him to a third offense was improper. He stated that one of charges used to enhance him was ultimately dropped by the solicitor.

Counsel testified to his course of conduct during the representation. He recalled the case and the circumstances surrounding Applicant's arrest. He stated that he met with Applicant three to five times prior to trial. At these meetings, he reviewed the State's evidence with Applicant, among other things. He agreed that Applicant did not want a trial in that he desired a favorable guilty plea. Efforts in plea bargaining were consistently unfruitful. He stated the solicitor would not deviate from the charged PWID, third-offense during their discussions on the matter. He elaborated that the solicitor was willing to plead Applicant without negotiation or recommendation to the charged offense and *nol pros* collateral pending charges. Counsel apprised Applicant of the solicitor's posture. Counsel noted that, based upon his discussions and observations of Applicant, he was under the impression Applicant fully understood the solicitor's posture. Counsel stated Applicant rejected the offer because he was unwilling to enter a plea to an offense that carried a minimum ten year term of imprisonment. Counsel stated that he would have much preferred to have negotiated an acceptable plea for Applicant than take the case to trial. He stated he was placed in an unfortunate position because the solicitor's decision was absolute. Detrimental reliance was not present in the case.

WPC
#3

APPLICABLE LAW

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel 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, 104 S.Ct. 2052, 2064, (1984); Butler, 286 S.C. at 441, 334 S.E.2d at 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. at 668, 104 S.Ct. at 2064. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

WPK
#4

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland, *supra*. Second, counsel's deficient performance must have prejudiced the Applicant 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. at 117-18, 386 S.E.2d at 625.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court reviewed the Clerk of Court records regarding the subject convictions, the application for post-conviction relief, the transcripts and documents from the prior proceedings, and legal arguments of counsel. Pursuant to S.C. Code Ann. §17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

As a matter of general impression, this Court finds that Applicant has not met his burden of proof to establish that counsel performed deficiently regarding the issues before the Court. The credible evidence demonstrates only that Applicant was upset with his sentence. Claims of ineffective assistance of counsel or prejudice were refuted by counsel's credible testimony. Applicant's assertions that he would have received a lesser sentence were simply unproven and speculative.

A.

Applicant failed to meet his burden to prove counsel's performance was deficient in advising him on a guilty plea. "Where counsel's ineffective advice led to an offer's rejection, and where the prejudice alleged is having to stand trial, a defendant must show that but for the ineffective advice, there is a reasonable probability that the plea offer would have been presented to the court, that the court would have accepted its terms, and that the conviction or sentence, or both, under the offer's terms would have been less severe than under the actual judgment and sentence imposed." Lafler v. Cooper, -- U.S. --, 132 S. Ct. 1376, 1380 (2012). "Simply put, the first inquiry is whether trial counsel's advice was deficient." Alexander v. State, 303 S.C. 539, 542, 402 S.E.2d 484, 485 (1991).

This Court finds counsel's testimony to be credible in that he apprised Applicant of the elements and sentencing range of the charged offense throughout the course of the representation. Counsel also provided credible testimony that he apprised Applicant of the terms of the solicitor's posture to plead him "straight up" as indicted. Counsel provided credible testimony that Applicant made a voluntary decision to proceed to trial after considering his options. See Custodio v. State, 373 S.C. 4, 10, 644 S.E.2d 36, 38-39 (2007) ("The Reed court stated that a defendant does not have a constitutional right to plea bargain, a trial judge is not

required to accept a plea bargain, and that ordinarily a plea offer is nothing more than an offer until it is accepted by the defendant by entering a court-approved plea of guilty. However, the Reed court found the general rule is subject to a detrimental reliance exception.”) In contrast, this Court finds Applicant’s testimony on this matter less credible than counsel’s testimony. Applicant has not met his burden to overcome counsel’s convincing testimony that Applicant voluntarily rejected a plea because he could not accept a ten year minimum sentence.

Regardless, Applicant’s claim of prejudice is entirely speculative where he was convicted of the same offense at issue in the rejected plea. He has failed to meet his burden to prove otherwise. See U.S. v. Boone, 62 F.3d 323, 327 (10th Cir. 1995) (where there was no evidence that a different sentence would be imposed if counsel had tried to negotiate a plea.). Therefore, this allegation is denied and dismissed.

B.

WPH
#6

Applicant’s allegation that counsel was ineffective for failing to investigate a suppression defense based on a defective chain of custody is without merit. Counsel thoroughly investigated the issue and properly preserved the suppression argument for appellate review. [See Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993) ([P]ost-conviction relief procedure is not a substitute for appeal or a place for asserting errors for the first time which could have been reviewed on direct appeal.”)] A review of the trial transcript negates this allegation. [See also Barnard v. Collins, 958 F.2d 634 (5th Cir.1992) (Counsel's own performance at trial, in argument, and in examination of witnesses demonstrated that counsel was sufficiently prepared and knowledgeable about the case.))] Applicant has also failed to prove that his sentence is invalid as a result of improper enhancement. See State v. Spratt, 383 S.C. 212, 213-14, 678 S.E.2d 266, 267 (Ct. App. 2009). Therefore, these allegations are denied and dismissed.

C.

Except as discussed above, this Court finds that the Applicant affirmatively abandons the remaining allegations set forth in his application at the hearing. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

CONCLUSION

WSP
#7
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of intent to appeal within thirty (30) days from receipt of this Order to secure the appropriate appellate review. See Rule 203, SCACR. Rule 71.1(g), SCRPC; Bray v. State, 336 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant's counsel to file and serve notice of appeal. The Applicant's attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely filed.


IT IS THEREFORE ORDERED

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and

2. Applicant must be remanded to the custody of Respondent

AND IT IS SO ORDERED this 3rd day of June, 2014.

ORIGINAL


WILLIAM P. KEESLEY
Presiding Judge
Eleventh Judicial Circuit

Edgefield, South Carolina

#8

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

2014 JUN -5 P 12:55

FILED

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP3202146

Eddie F Alewine #351282

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: Plaintiff Defendant
 Self-Represented Litigant

DISPOSITION TYPE (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. See Page 2 for additional information.
- 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: _____

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; (formal order to follow) Statement of Judgment by the Court:
ORDER INFORMATION

This order ends does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge _____ Judge Code _____ Date 6/6/2014
For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on 9th of June 2014, to attorneys of record or to parties (when appearing pro se) as follows:

Kristy Grafton Goldberg
Law Office Of Kristy Goldberg
1720 Main Street, Suite 301
Columbia, SC 29201

John Walter Whitmire
PO Box 11549
Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg/mh

Court Reporter

Beth A. Carrigg - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

LAW OFFICE OF
Kristy Grafon Goldberg, LLC
ATTORNEY AT LAW
1720 MAIN STREET, SUITE 301
COLUMBIA, SOUTH CAROLINA 29201

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

