

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

JUDGMENT IN A CIVIL CASE
CASE NO: 2013CP2303703

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2014 AUG 11 PM 4 25

Terry Douglas Campbell vs. South Carolina State Of

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.
- 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; Statement of Judgment by the Court:

Dated at Greenville, South Carolina, this .

Court Reporter:

PRESIDING JUDGE - Robin B Stilwell

This judgment was entered on the , and a copy mailed first class this , to attorneys of record or to parties (when appearing pro se) as follows:

R. Mills Ariail Jr. 11 North Irvine St., Ste., 11
Greenville, SC 29601

Karen Christine Ratigan PO Box 11549 Columbia,
SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court
- Clerk of Court

RECEIVED

AUG 18 2014

SC Court of Appeals

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Terry Douglas Campbell,)
 S.C.D.C. No. 281286,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS

2013-CP-23-3703

ORDER OF DISMISSAL

FILED-CLERK OF COURT
 GREENVILLE CO. S.C.
 PAUL D. WICKENSIMER
 2014 AUG 11 PM 4 20

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed July 8, 2013. The Respondent made its return on December 3, 2013. An evidentiary hearing was convened on June 19, 2014 at the Greenville County Courthouse. The Applicant was present and represented by R. Mills Ariail, Jr., 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, Sarah M. Henry, 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, the return, the appellate documents, and Applicant's Exhibit 1.

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 was indicted at the July 2012 term of the Greenville County Grand Jury for first-degree burglary (2012-GS-23-2101). He was represented by Sarah M. Henry, Esquire.

1
RS9

On January 16, 2013, the Applicant pled guilty to second-degree burglary (violent). The Honorable G. Edward Welmaker sentenced Applicant to 100 months imprisonment.

A notice of appeal was filed at the South Carolina Court of Appeals. By order dated May 1, 2013, the Court of Appeals dismissed the appeal based on the Applicant's failure to provide a written explanation as to what issues could be reviewed. See Rule 203(d)(1)(B)(iv), SCACR.

ALLEGATIONS

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

1. "I was sentenced on an indictment for first degree burglary. My sentence sheet reads burglary 2nd (X) lesser included offense 2nd (X) serious (X) violent."
 - a. "Under no conditions was this a first degree burglary. There was no weapons or explosives involved. I was not guilty of first degree burglary nor was this plea to a lesser included offense or serious."
2. "I was told as part of a plea bargain that I would be given credit for 249 days."
3. Ineffective assistance of counsel:
 - a. Counsel wanted him "to plea to 8 years" before he saw the discovery materials.
 - b. Counsel had him transported from the Spartanburg jail to the Greenville jail and told him he was going to plead guilty. The Applicant stated he would not do so because he had not seen discovery.
 - c. Counsel said the Applicant "must plea bargain before the trial date or 1/17/13. I did so on 1/16/13."

In a pro se document titled "Amendmant [sic] to PCR" filed October 10, 2013, the Applicant made the following allegations:

1. Ineffective assistance of counsel:
 - a. Counsel "spoke to me on at least four occasions trying to get me to plea. [Counsel] told me that if I didn't plea, I would get 15 years."

- b. Counsel “failed terribly at properly representing me. [Counsel] seemed to be working harder for the prosecution than helping me. I told [counsel] multiple times that I had no intention of pleading.”
 - c. Counsel “should have realized that the Indictment against me was no good. I feel quite sure [counsel] did realize this and this was her very reason for insisting that I plea.”
2. “Pursuant to Rule 3 in the South Carolina Rules of Criminal Procedure, the indictment wasn’t properly submitted.

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. 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 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 met plea counsel while he was at the Greenville County jail but that he was sent to the Spartanburg County jail after one week. The Applicant stated plea counsel twice asked him to plead guilty before he saw his discovery materials. The Applicant stated plea counsel told him that he faced a life sentence but later corrected herself. The Applicant stated plea counsel eventually stated he would have to plead guilty by January 16, 2013 because the trial was set for the following day. The Applicant stated they never discussed first-degree burglary but that he ultimately pled guilty to second-degree burglary. The Applicant stated plea counsel did not provide a copy of his discovery materials until the week prior to the plea hearing. The Applicant stated he did not tell the plea judge because plea counsel said they would end up going to trial. The Applicant specified the indictment was faulty because of a violation of Rule 3(c), SCRCrimP.

Plea counsel testified the Applicant was charged with first-degree burglary, grand larceny and possession of burglary tools. Plea counsel testified she filed discovery motions, received those materials from the State, and reviewed them. Plea counsel testified the State's case was very strong because the Applicant was caught inside the building and the officer's in-car camera recorded the Applicant making very forthcoming statements. Plea counsel testified she reviewed the discovery materials with the Applicant in November 2012. Plea counsel testified she believed the Applicant when he said he did not receive the discovery materials so her staff sent a copy to him in January 2013. Plea counsel testified the State's plea offer was to reduce the first-degree burglary charge to second-degree and that they discussed that this offense was not actually a first-degree burglary. Plea counsel testified the assistant solicitor rejected the Applicant's request for drug court and also his request to dismiss the burglary charge so that he

could plead guilty to the grand larceny charge only. Plea counsel testified she met with the Applicant multiple times in January 2013. Plea counsel testified she relayed a plea offer from the State for the Applicant to plead guilty to second-degree burglary and dismiss the other charges. Plea counsel stated the Applicant wanted some time to think about it but that he later received a call from the Applicant's mother that he wanted to accept it.

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 finds plea counsel properly conveyed all plea offers to the Applicant (and made counteroffers at his request). This Court further finds plea counsel adequately conferred with the Applicant, conducted a proper investigation and was thoroughly competent in her representation. The Applicant admitted to the plea judge that he was guilty. (Plea transcript, pp.10-11). 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.6-10).

This Court finds the Applicant failed to meet his burden of proving plea counsel did not properly meet with him to discuss the case. Plea counsel testified she had several meetings with the Applicant in both the Greenville and Spartanburg jails. Plea counsel testified they reviewed the discovery materials (eventually watching the in-car video) and that her staff sent a copy of the discovery to him after he stated he did not receive it. This Court finds plea counsel's testimony is credible. This Court notes the Applicant told the plea judge he had reviewed the evidence with plea counsel and was satisfied with her representation. (Plea transcript, pp.3-4; pp.9-10). This Court further finds the Applicant failed to demonstrate any prejudice that resulted

from not receiving his own copy of the discovery materials until January 2013. See Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (holding a PCR applicant bears the burden of proving the allegations in their application).

This Court finds the Applicant failed to meet his burden of proving plea counsel should have objected to the indictment under Rule 3(c), SCRCrimP. “[T]he failure of the solicitor to act upon a warrant within ninety (90) days . . . does not within itself invalidate a warrant or prevent subsequent prosecution.” State v. Culbreath, 282 S.C. 38, 40, 316 S.E.2d 681, 681 (1984). Further, this Court finds the Applicant failed to provide evidence of prejudice that resulted from any delay. See, e.g., State v. Pittman, 373 S.C. 527, 647 S.E.2d 144 (2007) (noting one must prove prejudice in order to prevail on an allegation that one’s speedy trial rights were violated).

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 her 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 11 day of April, 2014.



Robin B. Stilwell
Presiding Judge
Thirteenth Judicial Circuit

Givens, South Carolina.