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August 29, 2014

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

Re: *JEFFREY GILLILAND 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,

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 Robin B. Stilwell

CA No. 2012-CP-23-5861

JEFFREY GILLILAND,

APPELLANT,

vs.

STATE OF SOUTH CAROLINA

RESPONDENT.

NOTICE OF APPEAL

Appellant JEFFREY GILLILAND, appeals from the Order of the Honorable Robin B. Stilwell, Circuit Court Judge clocked August 5, 2014.

Respectfully submitted,

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

Date: August 29, 2014

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

STATE OF SOUTH CAROLINA	)	**IN THE SUPREME COURT**
	)	
COUNTY OF GREENVILLE	)	
	)	**C.A. No. 2012-CP-23-5861**
Jeffrey Gilliland,	)	
	)	
Appellant,	)	
	)	
-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 Appellant, and that I have this day caused to be served upon the person(s) named below Appellant's Notice of Appeal by placing copies of same in the United States mail, with adequate postage thereon, addressed as follows:

Ms. Loriene 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

August 29, 2014

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	C.A. No. 2012-CP-23-5861
COUNTY OF GREENVILLE)	
)	
Jeffrey Doyle Gilliland,)	
S.C.D.C. No. 335786,)	
)	
Applicant,)	
)	**ORDER OF DISMISSAL**
v.)	
)	
State of South Carolina,)	
)	
Respondent.)	

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed September 13, 2012. The Respondent made its return on March 26, 2013. An evidentiary hearing into the matter was convened on June 20, 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, Daniel J. Farnsworth, Sr., 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, and the appellate records.

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 by the Greenville County Grand Jury for Incest (2009-GS-23-10484) and Second-Degree

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Criminal Sexual Conduct (CSC) with a minor (2009-GS-23-10485). He was represented by Daniel J. Farnsworth, Sr., Esquire.

On September 12, 2011, the Applicant pled guilty. The Honorable G. Edward Welmaker sentenced the Applicant to concurrent terms of ten years for Incest and twenty years for Second-Degree CSC with a Minor.

A notice of appeal was filed at the South Carolina Court of Appeals. By order dated January 19, 2012, 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 reason:

1. Ineffective assistance of counsel.

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 his or her 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 and plea counsel did not review discovery materials (though he did have a copy of it) or the facts. The Applicant stated plea counsel turned down two plea offers for fifteen years and then ten years. The Applicant stated he did not known about these offers until after they had been rejected. The Applicant stated he was also charged in Laurens County and had pled guilty to assault and battery of a high and aggravated nature and received a non-violent sentence. The Applicant stated plea counsel said he would not receive a lengthier sentence on these charges because one judge could not override another's sentence. The Applicant stated plea counsel's confidence was why he did not tell the plea judge about the rejected plea offers. The Applicant stated plea counsel told him that he should not bring this case to trial. The Applicant stated plea counsel did not file a motion to change venue (because the victim's stepfather's parents worked at the Greenville County Detention Center).

Plea counsel testified he filed discovery motions in this case and received those materials. Plea counsel testified he sent a copy of the discovery materials to the Applicant on March 9,

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2011, reviewed those items with him, and answered any questions. Plea counsel testified that, while the Applicant was in SCDC, he was brought back to Greenville whenever they needed to meet. Plea counsel testified the Applicant admitted his guilt to him and never wanted a trial. Plea counsel testified the State was "playing tough" with plea offers in this case. Plea counsel testified the first offers was for a fifteen-year sentence (which would be for a violent offense and include the sex offender registry), but that the Applicant rejected it because he wanted a non-violent sentence such as what he received in Laurens County. Plea counsel testified the State made a ten-year offer (which would be for a violent offense and include the sex offender registry) but the Applicant rejected it because he wanted a non-violent sentence and did not want to be on the sex offender registry. Plea counsel testified he never told the Applicant that he would probably receive a ten-year sentence. Plea counsel testified he never heard about the victim's relatives being detention center employees but that he would have filed a motion to change venue if the Applicant had insisted upon 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 adequately conferred with the Applicant and discussed the facts and evidence in this case. This Court finds there was a thorough guilty plea colloquy in this case, and that the Applicant properly answered all of the plea judge's questions. The Applicant admitted to the plea judge that he was guilty and that he did not dispute the facts. (Plea transcript, p.11; p.13). 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.11-13).

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This Court finds the Applicant failed to meet his burden of proving plea counsel did not convey two plea offers from the State. While the Applicant stated he was unaware of these offers and that plea counsel rejected them on his behalf, plea counsel testified both offers were relayed to the Applicant. Plea counsel further testified the Applicant rejected both offers because he wanted an offer that was for a non-violent sentence without inclusion on the sex offender registry. This Court specifically finds plea counsel is more credible than the Applicant on this issue. This Court also notes plea counsel had a specific recollection of relaying the offers to the Applicant and the Applicant opting to refuse them. This Court finds plea counsel fulfilled his responsibilities in this regard. See Davie v. State, 381 S.C. 601, 675 S.E.2d 416 (2009) (holding counsel's failure to convey the State's plea offer to the defendant constituted deficient performance); see also Rule 1.2(a), RPC, Rule 407, SCACR (an attorney cannot force his client to accept a plea offer and that the decision whether to accept or reject such an offer rests solely with the client).

This Court finds the Applicant failed to meet his burden of proving plea counsel should have filed a motion to change venue. While the Applicant stated the victim's stepfather's parents worked at the Greenville County Detention Center, plea counsel testified the first time he heard this statement was at the PCR hearing. This Court notes the victim in this case is the Applicant's biological daughter. As such, he would have known if she had any tangential relationship to Greenville County employees. This Court finds the Applicant's testimony is not credible. Regardless, this Court finds the Applicant has failed to articulate a cognizable basis for plea counsel to have filed a motion to change venue.

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

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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. The Applicant pled guilty to charges related to this incident in Laurens County. (Plea transcript, p.15; pp.21-22). The victim gave a statement to police about the relationship. (Plea transcript, pp.8-9). The Applicant admitted to three people (one of whom was his sister) that he had a sexual relationship with his biological daughter. (Plea transcript, pp.9-10). The Applicant also sent love letters to the victim. (Plea transcript, pp.10-11). Even assuming arguendo the Applicant could prove plea counsel was deficient, he cannot prove any resulting prejudice because of the overwhelming evidence of guilt. See Franklin v. Catoe, 346 S.C. 563, 570 n. 3, 552 S.E.2d 718, 722 n. 3 (2001) (finding overwhelming evidence of guilt negated any claim that counsel's deficient performance could have reasonably affected the result of defendant's trial); Geter v. State, 305 S.C. 365, 367, 409 S.E.2d 344, 346 (1991) (concluding reasonable probability of a different result does not exist when there is overwhelming evidence of guilt).

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.

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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 1 day of Aug, 2014.

Robin B. Stilwell
Presiding Judge
Thirteenth Judicial Circuit

Greer, South Carolina.

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