

Per

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September 4, 2014

RECEIVED

SEP 08 2014

S.C. SUPREME COURT

South Carolina Supreme Court
PO Box 11330
Columbia, SC 29211

RE: Roger Rutledge v State of South Carolina
Case No. 2012-CP-18-01406

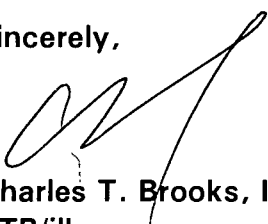
Dear Sir or Madam:

Enclosed herewith you will find the Notice of Appeal, Order of Dismissal, along with a Proof of Service in reference to the above named Applicant.

If you have any questions or concerns, please contact my office at the number stated above.

With kind regards, I am

Sincerely,



Charles T. Brooks, III
CTB/jlb

Enclosed as stated

Cc: Megan Harrigan, Office of Attorney's General
South Carolina Office of Appellate Defense
Roger Rutledge

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas
Honorable Maite Murphy, Circuit Court Judge

Case No: 2012-CP-18-01406

Roger Rutledge..... Appellant
S.C.D.C. No.: 310245

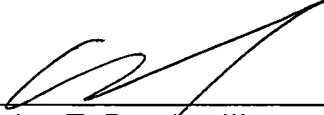
v.

The State..... Respondent

NOTICE OF APPEAL

Roger Rutledge appeals his Denial for Post Conviction Relief in this case. The Order of Dismissal was imposed and signed by the Honorable Maite Murphy on August 18, 2014, which I, Charles T. Brooks, III, received on September 2, 2014.

September 4, 2014



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Attorney for Appellant

Other Counsel on Record:
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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

CERTIFIED COPY

COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

2014 AUG 28 AM 11:37

Roger Rutledge, #310245,

Case No. 2012-CP-18-01406

Applicant,

Cheryl Graham
CLERK OF COURT
DORCHESTER COUNTY

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

FILED-RECORDED

8-27-2014

Cheryl Graham
Clerk of Court
Dorchester County

This matter comes before the Court by way of an application for post-conviction relief filed June 5, 2012 and amended on October 18, 2012. The State made its Return on August 13, 2012, requesting an evidentiary hearing be held. An evidentiary hearing into the matter was convened on May 28, 2014, at the Dorchester County Courthouse. Applicant was present at the hearing and was represented by counsel, Charles T. Brooks, III, Esquire. Respondent was represented by Assistant Attorney General Megan E. Harrigan of the South Carolina Attorney General's Office. After reviewing all testimony and other evidence presented at the hearing, along with a review of all records provided to the Court, this Court finds that there are no constitutional deprivations or other grounds on which to grant relief and is denying and dismissing this application with prejudice.

PROCEDURAL HISTORY

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Dorchester County Clerk of Court. Applicant was true bill indicted during the February 5, 2009 term of the

Dorchester County Grand Jury for Murder (2008-GS-18-1690). Applicant was represented by Mary LeMatty, Esquire. On June 20, 2011, Applicant appeared before the Honorable Diane S. Goodstein, where he pled guilty to the lesser included offense of voluntary manslaughter. Judge Goodstein sentenced the Applicant to confinement for a period of twenty years pursuant to negotiations between Applicant and the State. The Applicant did not appeal his conviction or sentence.

In his application for post-conviction relief, Applicant alleged that he was being held in custody unlawfully based on the following allegations:

1. Ineffective assistance of counsel
2. Involuntary Guilty Plea

In his amended application, filed October 18, 2012, Applicant added the allegation of "jurisdictional defect," with the specific allegation that no grand jury was convened on the date listed on his indictment.

SUMMARY OF TESTIMONY PRESENTED AT EVIDENTIARY HEARING

At the evidentiary hearing, Applicant testified on his own behalf. Respondent presented testimony from plea counsel, Mary LeMatty, Esquire (hereinafter "Counsel"). This Court also had before it Applicant's guilty plea transcript, the records from the Dorchester County Clerk of Court regarding the subject convictions, and Applicant's records from the South Carolina Department of Corrections.

Applicant testified first on his own behalf. Applicant testified that Counsel was appointed to represent him and that he only saw her when he was at the courthouse for hearings.

He testified that Counsel represented him for approximately three years and that she did not come to see him enough. He testified that Counsel never reviewed discovery materials with him, but acknowledged that he told the plea court while under oath that Counsel had reviewed all the State's evidence with him. He testified that he lied while under oath because he was scared and Counsel told him to lie. He testified that Counsel failed to conduct any investigation and did not discuss any defense with him. He testified that Counsel refused to discuss anything other than telling him to plead guilty. He testified that he did not want to plead guilty, but only did so because he did not know what was going on, was scared, and was afraid he would receive a life sentence if he went to trial. He testified that he lied during his plea proceeding when he told the plea court he wanted to plead guilty, was guilty, and was satisfied with Counsel. He again testified that he lied because he was scared and Counsel had advised him to lie. He testified that he has mental health issues, but could not recall whether he was evaluated prior to his guilty plea.

Following Applicant's testimony, Counsel was called to testify by Respondent. She testified that she has been practicing law since 1993 and has been employed by the First Circuit Public Defender's office since 2005, either as a contract attorney or full-time public defender. She testified that she was appointed to represent Applicant in December 2008 and that she met with him more than ten times. She testified that Applicant "didn't like her much" and often refused to speak with her. She testified that she asked for assistance from Mitchell Farley, a fellow public defender, who was able to better communicate with Applicant. She testified that she and Farley were able to review all discovery materials with Applicant, including nineteen

witness interviews, ballistics evidence, expert reports, and other materials. She testified that there was a great deal of evidence implicating Applicant and that the State would have likely received a conviction for murder if the case went to trial based on overwhelming evidence of guilt. She testified that she reviewed the elements of the crime with Applicant, as well as potential sentences. She testified that she advised Applicant that murder carries a mandatory minimum sentence of thirty years imprisonment, which must be served day-for-day, up to a maximum sentence of life imprisonment.

She testified that she tried to discuss Applicant's version of the facts, but his only responses were either that he was not present or he did not know. She testified that she also tried to discuss defenses, including a possible alibi defense, but that Applicant struggled to provide her any information. She testified that that Applicant appeared to be "very smart," but that she had him evaluated due to the seriousness of the charges and her difficulty communicating with him. She testified that Applicant was evaluated by Dr. Donna Schwartz-Watts, who found Applicant to be competent.

Counsel testified that she reviewed Applicant's indictment, which had been true billed by the Dorchester County Grand Jury. She testified that the indictment appeared to be regular and she saw no good faith basis for challenging the indictment. She testified that the standard practice in Dorchester County is for the grand jury to meet at a set time to review indictments, and then a report is placed on the record before the Chief Administrative Judge. She testified that she has no reason to believe that standard procedure was not followed in this case.

She testified that Applicant originally wanted to proceed to trial and she was in the process of preparing for trial while simultaneously negotiating a favorable plea offer with the State. She testified that the State's initial plea offer was for the mandatory minimum of thirty years for murder. She testified that she subsequently received an offer for the lesser included offense of voluntary manslaughter for a negotiated twenty year sentence. She testified that she presented this offer to Applicant and explained all aspects of the plea. She testified that Farley also explained the plea offer to Applicant and answered any questions he had. She testified that she thought the plea offer was a favorable resolution to the case and advised Applicant to accept the offer. She testified that it was Applicant's decision to plead guilty.

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 at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. This Court finds that Counsel's testimony is credible and should be afforded great weight; this Court also finds that Applicant's testimony lacks credibility, particularly in light of his admission that he has lied under oath during previous court proceedings. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Ineffective Assistance of Counsel

In a post-conviction relief action, the applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813

(1985). Where ineffective assistance of counsel is alleged 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 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813.

The proper measure of performance is whether an 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, 286 S.C. 441, 334 S.E.2d 813. The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant 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, 385 S.E.2d at 625 (citing Strickland). 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. With respect to guilty plea counsel, the applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

After careful review based on the standard discussed above, including a review of the testimony of the witnesses presented at the evidentiary hearing, this Court denies this application

on the basis that Counsel's performance did not fall below the standard required and there was no resulting prejudice to Applicant. This Court finds that Counsel's credible testimony reveals that she met with Applicant numerous times, sought assistance from another public defender in her office, investigated the case, reviewed all evidence with Applicant, and was in the process of preparing for trial when she was able to secure an extremely favorable plea offer from the State. This Court finds that Counsel's performance was reasonable according to professional standards and, therefore, did not perform deficiently in regards to this allegation. Furthermore, this Court finds that Applicant cannot establish any resulting prejudice, as there is no reasonable probability that he would have insisted on going to trial absent Counsel's advice. Applicant testified that he pled guilty to avoid a harsher sentence if convicted at trial, which was more than likely based on overwhelming evidence of guilt. Therefore, this Court finds that this allegation must be denied and dismissed with prejudice.

Involuntary Guilty Plea

Applicant also alleges that his guilty plea was entered involuntarily. To find a guilty plea is voluntarily and knowingly entered into the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the post-conviction relief hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

The transcript reflects that the guilty plea was knowingly and voluntarily entered with a full understanding of the charges and consequences of the plea. Because a guilty plea is a

solemn, judicial admission of the truth of the charges against an individual, [an applicant's] right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63 (1977). Statements made during a guilty plea should be considered conclusively, unless an [applicant] presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. United States, 519 F.2d 347 (4th Cir. 1975) overruled on other grounds by United States v. Whitley, 759 F.2d 327 (4th Cir. 1985). This Court finds that Applicant presented no reasons to show that he should be allowed to depart from the truth of the statements he made during his guilty plea hearing. During his guilty plea, Applicant told the plea court that he wanted to plead guilty, that he understood the plea was for a negotiated sentence of twenty years imprisonment, and that he was entering his plea freely and voluntarily.

An applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for trial counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993). Given an applicant's burden of proof and the analysis to be applied to this claim, Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it will be treated as such. As shown in Applicant's allegation of ineffective assistance of counsel presented above, this Court finds that Counsel acted reasonably and effectively. Therefore, this allegation must be denied and dismissed with prejudice.

Subject Matter Jurisdiction

Applicant alleges that the trial court did not have proper jurisdiction to accept his guilty plea. This Court finds that this allegation is without merit and must be denied and dismissed with prejudice. A circuit court has subject matter jurisdiction to convict a defendant of an offense if there is an indictment that sufficiently states the offense, the defendant waives presentment, or the offense is a lesser-included offense of the crime charged in the indictment. State v. Wilkes, 353 S.C. 462, 464-465, 578 S.E.2d 717, 719 (2003), citing Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001). In the present case, Applicant was true bill indicted by the Dorchester County Grand Jury for murder and pled guilty to the lesser included offense of voluntary manslaughter. The indictment sufficiently states the necessary elements of each offense and cites the applicable statutes and was signed by the foreman of the Grand Jury. A presumption of regularity attaches to all proceedings in the courts of this State, and it is incumbent upon one who challenges a proceeding to prove his claims. See, e.g., Tate v. State, 345 S.C. 577, 549 S.E.2d 601 (2001); Pringle v. State, 287 S.C. 409, 339 S.E.2d 127 (1986). This Court finds that Applicant has failed to establish any irregularity warranting relief. Furthermore, this Court finds that the indictment in question is sufficient on its face and properly conferred jurisdiction to the trial court. See State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005) (“[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters.”). Therefore, this allegation must be denied and dismissed with prejudice as a matter of law.

CONCLUSION

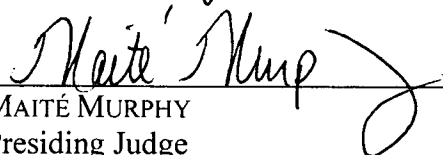
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.


This Court notes that Applicant must file and serve a Notice of Appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRPC, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on an applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief shall be denied and dismissed with prejudice; and
2. The Applicant shall remain remanded to the custody of the State.

AND IT IS SO ORDERED this 18 day of August, 2014.


MAITÉ MURPHY
Presiding Judge
First Judicial Circuit

, South Carolina.

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas
Honorable Maite Murpy, Circuit Court Judge

Case No: 2012-CP-18-01406

Roger Rutledge.....Appellant
S.C.D.C. No.: 310245

v.
The State.....Respondent

PROOF OF SERVICE

I, the undersigned, do hereby certify that on this 4th day of September, 2014, I served the foregoing **Notice of Appeal, Order of Dismissal**, as well as **Proof of Service** in this matter by depositing a true copy of it in the United States Mail, postage prepaid, on September 4, 2014, addressed to the following as indicated below:

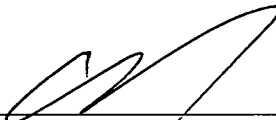
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Dated: September 4, 2014



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