

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ORANGEBURG COUNTY
Maité Murphy, Circuit Court Judge

2013-CP-38-0874

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S.C. SUPREME COURT

Sean Echols, #282720,

Appellant,

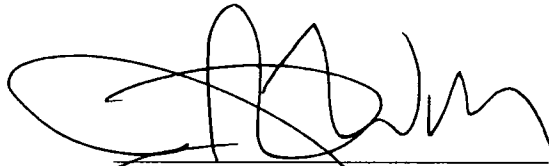
v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Sean Echols, #282720, appeals the Order of Dismissal denying his Application for Post-Conviction Relief filed August 22, 2014 and served on counsel by letter dated August 29, 2014 and received by counsel September 2, 2014, issued by the Honorable Maité Murphy, Presiding Judge, First Judicial Circuit.



Jonathan D. Waller

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ATTORNEY FOR PETITIONER

This 8TH day of September, 2014.

Other Counsel of Record:

Megan Harrigan, Assistant Attorney General

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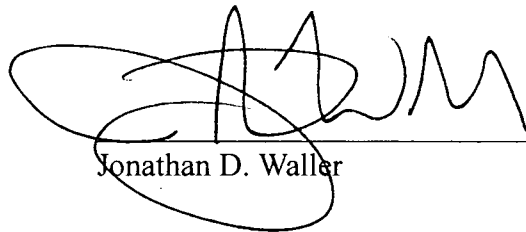
v.

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Respondent.


CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the Appellant's Notice of Appeal in the above-entitled case has been served upon opposing counsel, Megan Harrigan, Assistant Attorney General, by mailing in an envelope properly addressed with postage prepaid on this ____ day of September 2014.



Jonathan D. Waller

SWORN TO BEFORE me this 8th day
of September, 2014.



Antonette Hewitt
Notary Public for South Carolina
My Commission Expires: 03/14/2021

JCW
THE LAW OFFICE OF JONATHAN WALLER, LLC
1720 MAIN STREET, SUITE 104
COLUMBIA, SC 29201

September 8, 2014

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

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S.C. SUPREME COURT

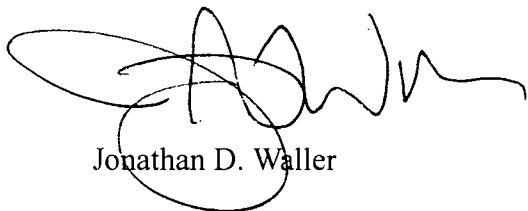
Re: Sean Echols, #282720 vs. State of South Carolina
C/A No: 2013-CP-38-00874

Dear Mr. Shearouse:

Please find enclosed one (1) original and one (1) copy each of Applicant's Notice of Appeal and Certificate of Service in the above referenced case. I would appreciate you filing the original and returning the clocked copies in the enclosed envelope. I have also included a copy of the Order of Dismissal upon which this appeal is based.

If you have any questions, please do not hesitate to ask. My telephone number is 803-256-0011.

Sincerely,



Jonathan D. Waller

Enclosures

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)
Sean Echols, #282720,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

Case No. 2013-CP-38-00874

ORDER OF DISMISSAL

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This matter comes before the Court by way of an application for post-conviction relief filed July 25, 2013. The State made its Return on October 9, 2013, requesting an evidentiary hearing be held. An evidentiary hearing into the matter was convened on May 29, 2014, at the Dorchester County Courthouse. Applicant was present at the hearing and was represented by counsel, Jonathan D. Waller, 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 Orangeburg County Clerk of Court. On April 11, 2013, Applicant appeared before the Honorable Edgar W. Dickson, alongside counsel Andrew J. Brown, Esquire, where Applicant waived presentment to

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ATTEST: TRUE COPY
Wingja B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

the Orangeburg County Grand Jury for Armed Robbery (2011-GS-38-1557) and Attempted Murder (2011-GS-38-1559). Pursuant to plea negotiations between Applicant and the State, Judge Dickson sentenced Applicant to confinement for fifteen years for Armed Robbery and ten years for the lesser included offense of Assault and Battery, with both sentences to be served concurrently. Additional armed robbery and attempted murder charges were also dismissed pursuant to the plea. Applicant did not appeal his sentences or convictions.

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
 - a. "Attorney advised me to plead guilty;" and
2. Involuntary Guilty Plea
 - a. "Only agreed to plea agreement of ten years maximum, plea breached."

SUMMARY OF TESTIMONY PRESENTED AT EVIDENTIARY HEARING

At the evidentiary hearing, Applicant testified on his own behalf. Respondent presented testimony from plea counsel, Andrew J. Brown, Esquire (hereinafter "Counsel") and two Exhibits, No. 1 (Affirmation of Guilty Plea dated April 11, 2013) and No. 2 (the trial transcript of Richard Sprinkle, Applicant's co-defendant, including Applicant's testimony). This Court also had before it Applicant's guilty plea transcript, the records from the Orangeburg 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. He testified that he was originally charged with two counts of Attempted Murder and two counts of Armed Robbery, but one of each was

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dismissed pursuant to his plea agreement with the State. Applicant testified that he was originally represented by Margaret E. Hinds, Esquire, of the Orangeburg Public Defender's office, but was later appointed Counsel due to a conflict of interest with the public defender's office. Applicant testified that he met with Counsel six times, but Counsel was only concerned with discussing his pending federal charges and only discussed the merits of this case one time for approximately fifteen minutes. He testified that he had a preliminary hearing and met with Counsel before this hearing, as well as Counsel's law partner, Michael R. Culler, Jr., who was present at the preliminary hearing on behalf of Counsel. He testified that he wrote Counsel several letters, to all of which received no reply. He testified that his grandmother also repeatedly tried to contact Counsel to no avail. He testified that he contacted Judge Dickson regarding his complaints, but never received a response.

Applicant testified that he reviewed his discovery with Hinds while she represented him and that she gave him a copy of all discovery materials. He testified that he discussed discovery with Counsel, but Counsel did not provide him with another copy of the discovery materials. He testified that he provided Counsel with two alibi witnesses – his brother and his best friend – whom he wanted Counsel to contact for use at trial. However, Applicant readily admits he is guilty and conceded that he described the crimes during his testimony on behalf of the State at his co-defendant's trial. (See Respondent's Ex. No. 1). He acknowledged that Counsel used a private investigator to assist in his defense, but testified that the investigator never spoke to his alibi witnesses.

Applicant testified that he was interested in reaching a favorable plea agreement with the State, so he contacted the prosecuting Assistant Solicitor, Sara Ford, directly in an attempt to broker a deal. He testified that he told Ford he would be willing to testify against his co-defendant in exchange for a ten year plea offer; he acknowledged that Ford never promised he would receive a ten year sentence. He testified that he did testify at his co-defendant's trial, where he fully described his involvement. He testified that Counsel negotiated a plea offer of fifteen years imprisonment, which helped him avoid a possible life without parole sentence based on his prior convictions. He acknowledged that he understood he would receive a fifteen year sentence in exchange for his guilty plea, as well as the dismissal of related charges, which was memorialized in writing in an "Affirmation of Guilty Plea" prepared by Counsel and signed by Applicant on April 11, 2013. (See Respondent's Exhibit No. 1). He testified it was his decision to plead guilty, but he only did so because he felt Counsel was not prepared.

Following Applicant's testimony, Counsel was called to testify by Respondent. He testified that he has been practicing law since 2003 and was an assistant public defender from 2004 to 2008. He testified that he was appointed to represent Applicant on October 20, 2011, after previous counsel was relieved due to a conflict with the Orangeburg County Public Defender's office. He testified that he met with Applicant numerous times, as well as members of Applicant's family. He testified that his law partner, Michael R. Culler, Jr., also assisted in Applicant's case on an as-needed basis, and elaborated that Culler is a highly experienced criminal defense attorney who was the Chief Public Defender in Orangeburg for many years. He strongly refuted Applicant's contention that his current pending charges were only discussed

once, testifying that he discussed all of Applicant's pending charges with him at every meeting. He testified that he filed appropriate Rule 5, SCRCrimP and Brady motions on Applicant's behalf and reviewed all materials with Applicant. He testified that Applicant had already reviewed all of these materials with his prior counsel as well. He testified that he reviewed the elements of the charges, what the State would be required to prove, and possible sentences with Applicant. He testified that there was a significant concern that the State would seek life without parole based on Applicant's prior conviction for Assault and Battery with Intent to Kill. He testified that he discussed defenses with Applicant, including a possible alibi defense. He testified that Applicant provided him with two possible alibi witnesses, but neither were able to adequately provide an alibi. He testified that this case had "very bad facts" and actively involved victims, which was exacerbated by Applicant's mother initiating contact with the victims and pleading with them not to get her son locked up. He testified that he fully investigated the case, but unfortunately, there were no viable defenses available.

Counsel testified that the State was seeking either Applicant or his co-defendant to testify against the other at trial, and he informed Applicant that if Applicant did not cooperate, his co-defendant likely would. He testified that he was able to negotiate a favorable plea deal with the State, allowing Applicant to plead guilty to one count of Armed Robbery and one count of Attempted Murder for a negotiated fifteen year sentence and the dismissal of related charges in exchange for Applicant's testimony against his co-defendant. He testified that he fully informed Applicant of all aspects of the plea offer, which was memorialized in an "Affirmation of Guilty Plea" signed by Applicant. (See Respondent's Exhibit No. 1). He testified that he never told

Applicant he would receive a ten year sentence in exchange for testimony against his co-defendant, but rather, explained to Applicant both orally and in writing that the negotiation was for a fifteen year sentence. He testified that it was Applicant's decision to plead guilty and that Applicant wanted to accept this extremely favorable plea offer from the State.

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 and that Applicant's testimony lacks credibility. 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), SCRPC; 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 from these alleged deficiencies. Applicant alleges that Counsel was ineffective for "advising him to plead guilty." However, Applicant readily admitted that he is indeed guilty, that he provided sworn testimony detailing his participation in the crime, that he understood that his guilty plea would result in a fifteen year sentence, and that it was his decision to plead guilty. This Court finds that this allegation is without merit and must

be denied and dismissed with prejudice. First, this Court finds that Counsel's performance was not deficient, as Counsel fully advised Applicant, both orally and in writing, of all aspects of the State's plea offer, which was confirmed by Applicant, both orally and in writing. 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. 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 fifteen 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 the Applicant's burden of proof and the analysis to be applied to this claim, the 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.

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

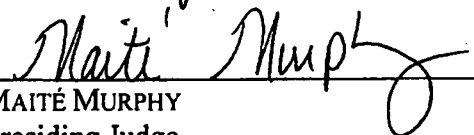
application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.


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), SCRCP, 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:

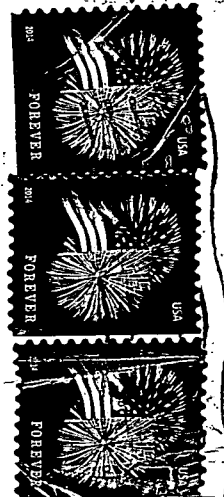
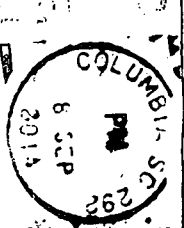
1. That the Application for Post-Conviction Relief shall be denied and dismissed with prejudice; and
2. The Applicant shall remain remanded to the custody of the State.

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


MAITÉ MURPHY
Presiding Judge
First Judicial Circuit

, South Carolina.

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