IN THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM RICHLAND COUNTY

COURT OF COMMON PLEAS

L. CASEY MANNING, CIRCUIT COURT JUDGE

2013-CP-40-6051

RECEIVED

SEP 12 2014

S.C. Supreme Court

Stuart Stanton,.....Petitioner.

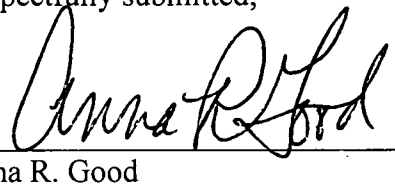
vs

The State of South Carolina,.....Respondent.

**NOTICE OF APPEAL**

Stuart Stanton appeals the Honorable L. Casey Manning's August 29, 2014, Order of Dismissal. Undersigned counsel received notice of entry of the order on September 10, 2014. A copy of the order on appeal is attached to this notice.

Respectfully submitted,



Anna R. Good
Law Office of Anna Good, LLC
1720 Main Street, Suite 303
Columbia, South Carolina 29201
Telephone: (803) 429-9107
Fax: (803) 799-4059

Attorney for the Petitioner.

September 12, 2014.

OTHER COUNSEL OF RECORD:
Megan Harrigan
South Carolina Attorney General's Office
Post Office Box 11549
Columbia, SC 29211-1549

IN THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM RICHLAND COUNTY

COURT OF COMMON PLEAS

L. CASEY M ANNING, CIRCUIT COURT JUDGE

2013-CP-40-6051



Stuart Stanton,.....Petitioner.

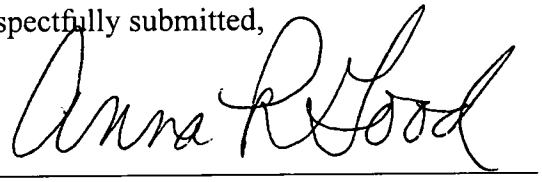
vs

The State of South Carolina,.....Respondent.

**PROOF OF SERVICE**

I, Anna Good, certify that I have today served the within notice of appeal upon the Respondent by depositing a copy of it in the United States Mail, postage prepaid, addressed to the attorney of record, Megan Harrigan, P.O. Box 11549, Columbia, South Carolina 29211-1549. I further certify that all parties required by Rule to be served have been served this 12th day of September 2014.

Respectfully submitted,



Anna R. Good, Esquire
Law Office of Anna Good, LLC
1720 Main Street, Suite 303
Columbia, South Carolina 29201

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA<br>COUNTY OF RICHLAND | ) | IN THE COURT OF COMMON PLEAS<br>FOR THE FIFTH JUDICIAL CIRCUIT |
| Stuart Stanton, #304298,<br><br>Applicant,<br><br>v.<br><br>State of South Carolina,<br><br>Respondent. | ) | Case No. 2013-CP-40-6051<br><br>**ORDER OF DISMISSAL** |



This matter comes before the Court by way of a post-conviction relief (PCR) application filed on October 4, 2013. Respondent made its return on February 26, 2014. An evidentiary hearing into the matter was convened on July 14, 2014, at the Richland County Courthouse. Applicant was present at the hearing and was represented by Anna R. Good, Esquire. Respondent was represented by Assistant Attorney General J. Croom Hunter of the South Carolina Attorney General's Office.

## PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. Applicant was indicted during the January 2012 term of the Richland County Grand Jury for Shoplifting – 3rd of Subsequent Offense (2012-GS-40-243) and during the July 2012 term of the Richland County Grand Jury for Burglary in the First Degree (2012-GS-40-1575). Applicant was represented by John Duncan, Esquire. On June 10, 2013, Applicant appeared before the Honorable Doyet A. Early, III, where he pled guilty as indicted to shoplifting and to the lesser included offense of Burglary in the Second Degree. Judge Early sentenced Applicant to fifteen years for Burglary in the Second

Degree and to ten years for shoplifting, with the sentences to be served consecutively. Applicant did not appeal his guilty plea or sentences.

## ALLEGATIONS

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully based on the following grounds:

a. "Lied to me."
b. "Was told by lawyer a 15year deal – no 85% - parole"
c. "Lawyer was mad at me – yelling at me to sign the plea."
d. "I thought plea was negotiated because he was in chambers. We were about to pick the jury. He told me I would serve about 5 or 6 more years and be eligible for parole and ATU. It was my understanding that the CDV, shoplifting would be dropped if I pled to burglary, plus I don't think the 3 strike law applied to me as my prior burglaries were non-violent. Mr. Duncan didn't get my phone records to show I was invited to residence that night and key witness/victim was not present at both trials. State subpoenaed her first time, and my lawyer subpoenaed her second trial. My dad hired Neal Lourie but Mr. Duncan stayed on case."

## SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. The State presented testimony from plea counsel, John E. Duncan, Esquire (Counsel). This Court also had before it a copy of the plea transcript, the Richland County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, and the return.

During the evidentiary hearing, Applicant testified that he was represented at his plea by John E. Duncan, Esquire. Applicant testified he was sentenced to fifteen (15) years imprisonment for burglary 2nd and ten (10) years imprisonment for shoplifting, to be served consecutively. Applicant testified that he had a couple of attorneys before Duncan took his case. He testified he met with Duncan three or four times and met with him for the first time in 2013. Applicant testified he discussed plea agreements with Duncan. Applicant testified there was an offer for

fifteen (15) years for burglary 1st, and the shoplifting charge and a CDV charge would be dismissed. Applicant testified he did not accept that offer because he lived at the house, so he was not guilty of first degree burglary. Applicant testified that counsel advised him he would likely get the max sentence for shoplifting and CDV because the solicitor "had it out for him." Applicant testified life without parole was originally on the table, but the solicitor decided not to pursue it. Applicant testified he decided to plead guilty after the case was set for trial. Applicant testified that counsel yelled at him to force him to plead guilty. Applicant testified the plea was supposed to be for a negotiated fifteen (15) years for burglary 2nd, and the other charges were supposed to be dropped. Applicant testified he decided not to plead at that time. Applicant testified he was then served with LWOP again. Applicant testified more plea offers were then discussed. Applicant testified he decided he wanted to accept the fifteen (15) year offer. Applicant testified when he went to plead the second time, he thought he was pleading to the fifteen (15) year offer. Applicant testified that during the plea, counsel ignored him. Applicant testified he signed the plea paperwork and then heard counsel and the solicitor discussing the shoplifting charge. Applicant testified he asked counsel about the shoplifting charge again, and counsel told him he did not think the shoplifting charge would be run consecutive. Applicant testified he was worried about receiving consecutive sentences. Applicant then testified he heard the plea judge was tough on sentencing, but he was not worried because he thought his plea was negotiated. Applicant testified that after he received consecutive sentences, he asked counsel to withdraw his plea and go to trial. Applicant testified he knew he only had ten days to appeal, but he did not know how to appeal. Applicant testified he would not have pled guilty if he knew he could get consecutive sentences. Applicant testified he trusted counsel, but he should not have.

On cross-examination, Applicant testified he did not know he could be sentenced

consecutively. Applicant testified he did not recall the plea judge telling him he could sentence him consecutively. Applicant testified the solicitor withdrew the LWOP notice in exchange for his plea. Applicant testified he pled guilty based on counsel's representations to him. Applicant testified the plea judge reviewed the rights he was giving up by pleading. Applicant testified that he told the plea judge no one had promised or threatened him in order to force him to plead. Applicant testified that he pled guilty because he was guilty. Applicant then testified that counsel promised him he would only get fifteen (15) years. Applicant testified that he told the judge at the plea that he was relieved he was not going to a jury trial and facing a life sentence.

Following Applicant's testimony, John E. Duncan, Esquire (Counsel) was called to testify. Counsel testified he has practiced law for over thirty (30) years and was appointed to Applicant's case. Counsel testified that a review of his records showed that he met with Applicant nine (9) times. Counsel testified he reviewed discovery with Applicant, discussed Applicant's version of events, and discussed Applicant's possible defenses. Counsel testified the evidence against Applicant was strong. Counsel testified the victim's testimony and the police officers' testimony would not have been good for Applicant's defense. Counsel testified Applicant's prior record was sufficient for LWOP. Counsel testified the most incriminating evidence was hours of jailhouse recordings. Counsel testified that he never makes promises to his clients, but he did discuss possible sentences and parole dates. Counsel testified it was Applicant's decision to plead guilty. Counsel testified there was originally an offer of a twenty (20) year negotiated sentence for burglary 1st, followed by another offer for fifteen (15) years. Counsel testified the final offer was for burglary 2nd. Counsel testified that he received a letter from Applicant after the time for appeal had passed. Counsel testified the letter was misdirected, and that he would have filed a Notice of Appeal if he had received it in time.

On cross-examination, counsel testified he told Applicant the plea was not negotiated. Counsel testified he told Applicant he could get consecutive sentences prior to the plea. Counsel testified he told Applicant there was a chance he could get concurrent sentences, and he would ask for it. Counsel testified that Applicant did want to withdraw his plea after he was sentenced. Counsel testified he never told Applicant he would definitely receive consecutive time. Counsel testified he did not ask Applicant if he wanted to appeal. Counsel testified that he wrote Applicant a letter on July 29, 2013 about the letter that he received from Applicant stamped June 27, 2013. Counsel testified he did not request an extension to file Applicant's appeal.

**INEFFECTIVE ASSISTANCE OF COUNSEL**

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his 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, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 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. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). 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. 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, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

This Court finds Applicant failed to demonstrate that Counsel's performance was deficient in any way. This Court further finds that Applicant presented no evidence to show any prejudice resulting from Counsel's representation. Additionally, this Court finds Counsel's testimony credible and Applicant's testimony not credible.

This Court finds that Counsel met with Applicant multiple times prior to the guilty plea. This Court further finds that Counsel obtained Applicant's discovery materials and thoroughly went over the evidence with Applicant. This Court finds Applicant was aware of the charges he was facing and the possible sentences he could receive. This Court finds that Counsel worked diligently to obtain better plea offers for Applicant. This Court finds that Counsel made a reasoned decision to advise Applicant to plead guilty based upon the overwhelming evidence against Applicant and the possible time he was facing. This Court finds Counsel did not promise Applicant he would receive a certain sentence. Additionally, this Court finds Counsel's testimony credible and Applicant's testimony not credible.

Accordingly, this Court finds Applicant did not demonstrate any deficiencies in Counsel's representation. This Court finds that because Counsel's representation was well within the range of competence required in criminal cases, Applicant has further failed to make any

showing that but for Counsel's alleged deficiencies, the result of Applicant's case would have been any different.

**INVOLUNTARY GUILTY PLEA**

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. See Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969). In Boykin, the United States Supreme Court held that before a court can accept a guilty plea, a criminal defendant must be advised of the constitutional rights he is waiving. Id. at 243, 89 S. Ct. at 1712. Specifically, the accused must be aware of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers. Id. Moreover, a criminal defendant entering a guilty plea "must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citation omitted). A criminal defendant's knowing and voluntary waiver of statutory or constitutional rights in a guilty plea "must be established by a complete record, and may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)).

When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)).

This Court finds Applicant has failed to demonstrate that his guilty plea was entered involuntarily.

This Court finds Applicant was fully apprised of the constitutional rights he was waiving by entering his guilty plea. This Court finds Applicant's decision to plead guilty was freely and voluntarily made. This Court finds Applicant was not forced to plead guilty. This Court finds Applicant was aware his plea was not for a negotiated sentence. This Court further finds Applicant was aware he could receive consecutive sentences. This Court finds Applicant was aware the Notice of LWOP was being dropped in return for Applicant's plea. This Court finds Applicant pled guilty because he is guilty. This Court finds Counsel did not promise Applicant he would receive a certain sentence or that his sentences would run concurrently.

Accordingly, this Court finds Applicant's guilty plea was knowingly and voluntarily entered. This Court finds that the evidence presented at the evidentiary hearing as well as contained within the guilty plea transcript clearly supports a finding that the guilty plea was not coerced or involuntary; rather, it was freely, knowingly, and voluntarily entered. This Court finds Applicant was informed of the nature and elements of the offenses with which he was charged and to which he pled guilty. This Court further finds that Applicant was fully apprised of the rights he was forfeiting in order to plead guilty and that Applicant decided to go forward with his guilty plea.

**RIGHT TO APPEAL**

Finally, the Applicant alleges that he was not advised of his right to appeal. The South Carolina Supreme Court has held:

> ...absent extraordinary circumstances, there is no constitutional requirement that a defendant be informed of the right to appeal from a guilty plea... The bare assertion that a defendant was not advised of appellate rights is insufficient to grant relief. Instead, there must be proof that extraordinary circumstances exist such that the defendant should have been advised of the right to appeal.

Weathers v. State, 319 S.C. 59, 459 S.E.2 838 (S.C. 1995).

This Court finds Applicant has not shown that he requested an appeal within the ten (10) day filing period or that nonfrivolous grounds for appeal exist in this case, and Applicant has not provided any proof that extraordinary circumstances existed requiring Counsel to proactively advise Applicant of right to appeal. This Court finds that Applicant's letter to counsel requesting an appeal was time stamped by the South Carolina Department of Corrections on June 27, 2013. Applicant pled guilty on June 10, 2013. Furthermore, this Court finds that Applicant was aware that he must file a Notice of Appeal within ten (10) days of his plea. Accordingly, Applicant's request for an appeal was made out of time. Because Weathers remains good law in South Carolina in regards to guilty plea appeals, this Court finds that Counsel acted well within the range of competence widely expected by guilty plea attorneys in regards to notifying Applicant of right to appeal.

**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, the Court finds Applicant failed to present sufficient evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

**CONCLUSION**

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Plea counsel rendered effective assistance in regard to the claims raised by Applicant. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt 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, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on 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 must be denied and dismissed with prejudice; and

2. The Applicant must be remanded to the custody of the Respondent.

**AND IT IS SO ORDERED** this 13 day of August, 2014.

L. CASEY MANNING
Chief Administrative Judge
Fifth Judicial Circuit

Columbia, South Carolina