

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-40-4874

RECEIVED

SEP 12 2014

S.C. Supreme Court

Deleorn Thompson,.....Petitioner.

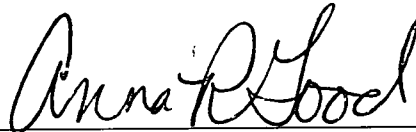
vs

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

NOTICE OF APPEAL

Deleorn Thompson 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

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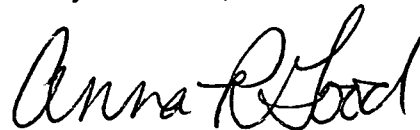
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PROOF OF SERVICE

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)
 COUNTY OF RICHLAND)
 Eugene Deleorn Thompson, #275974,)
 Applicant,)
 v.)
 State of South Carolina,)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE FIFTH JUDICIAL CIRCUIT

Case No. 2013-CP-40-4874

ORDER OF DISMISSAL

RICHLAND COUNTY
 FILED
 2014 AUG 29 AM 11:21
 JEANNETTE W. MCORRIDE
 C. P. & C. S.

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on August 19, 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

The records before this Court indicate 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 August 2012 term of the Richland County Grand Jury for three counts of armed robbery (2012-GS-40-3953, -3954, -3955). Applicant was represented by Courtney A. Gibbs, Esquire. On May 9, 2013, Applicant appeared before the Honorable Robert E. Hood, where he pled guilty to one count of armed robbery. Pursuant to negotiations with the State, Judge Hood sentenced Applicant to ten years imprisonment, and the

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two remaining armed robbery charges were dismissed. Applicant did not appeal his guilty plea or sentence.

ALLEGATIONS

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

1. Illegal Search and Seizure;
2. Due Process; and
3. Ineffective Assistance of counsel.

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. The State presented testimony from plea counsel, Courtney A. Gibbes, 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 Courtney A. Gibbes, Esquire. Applicant testified he was offered a negotiated ten year sentence for armed robbery. Applicant testified Counsel met with him approximately four (4) times. Applicant testified that he gave a statement that was written by the officer and the Applicant signed. Applicant testified that after his bond reduction was denied, Counsel informed him of the ten year plea deal. Applicant stated he did not want to go to trial and get ninety (90) years if found guilty. Applicant testified he had a motion to relieve Counsel but decided to continue with her representation because the judge at his motion to relieve informed him he would have to proceed pro se. Applicant testified he never reviewed discovery with Counsel. Applicant testified Counsel told him the chances of getting the search of the truck suppressed were low. Applicant

testified Counsel told him his chances of getting the witness statements suppressed were low. Applicant testified he wants a new trial because Counsel did not challenge the search warrant and the victim statements.

On cross-examination, Applicant testified he knew he was pleading to a ten year negotiated sentence. Applicant testified two other charges were dismissed in exchange for his plea. Applicant testified he knew he was facing up to ninety (90) years. Applicant testified he understood he would have to serve 85% of his sentence. Applicant testified he understood he gave up his right to challenge the evidence by pleading guilty. Applicant testified he told the plea judge he was satisfied with Counsel. Applicant testified ten years is a lot better than ninety years. Applicant testified that he did confess to stealing the vehicle in his statement to police.

Following Applicant's testimony, Courtney Gibbes, Esquire (Counsel) was called to testify. Counsel testified she has been practicing for six and a half years. Counsel testified she was appointed to Applicant's case while working as a public defender. Counsel testified she met with Applicant at least six times and filed all necessary motions. Counsel testified she received discovery and went over it with Applicant after his bond reduction hearing. Counsel testified she also gave Applicant a copy of his discovery. Counsel testified she discussed Applicant's statement and the likelihood that it would not be suppressed. Counsel testified there were no legitimate reasons to suppress the search of the truck. Counsel testified Applicant made the decision to plead guilty. Counsel testified Applicant was facing a total exposure of ninety years in prison on his charges. Counsel testified she never told Applicant the statements could not be thrown out, but that it was rare. Counsel testified she discussed the plain view doctrine with Applicant.

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 finds Applicant understood he was pleading to a ten year sentence. This Court finds Applicant understood he was facing ninety years in prison. This Court further finds Counsel obtained discovery from the solicitor and went over it with Applicant. This Court finds Counsel explained to Applicant the terms of his plea and the fact that if he went to trial he was facing up to ninety years in prison. This Court finds Counsel's belief that there was not a good chance of having the search of the truck or the statements suppressed was reasonable. This Court finds there were no reasonable grounds on which to have the search suppressed.

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 testified he was satisfied with Counsel’s services. Applicant told the plea judge he had complete trust in Counsel and did not want to go to prison for ninety years. Applicant testified that he told the plea judge he appreciated the judge listening to him at the plea and he appreciated the sentence. This Court finds Applicant was aware he would have to serve 85% of his sentence. This Court finds Applicant understood when he pled that he was giving up the right to challenge the evidence against him. This Court finds Applicant’s plea was entered freely and voluntarily. Finally, this Court finds Applicant understood his plea was a negotiated ten year sentence, and it was Applicant’s decision to plead guilty..

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.

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.

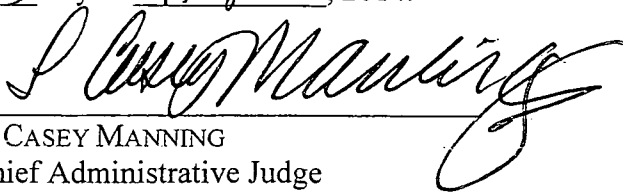
The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453; 409 S.E.2d 395 (1991), Applicant has a 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