

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO: 2013-CP-10-0448

CORRIE D. BROWN,)
PLAINTIFF,)
)
VS.)
)
STATE OF SOUTH CAROLINA)
DEFENDANT.)
_____)

NOTICE OF INTENT TO APPEAL

TO THE HONORABLE ATTORNEY GENERAL:

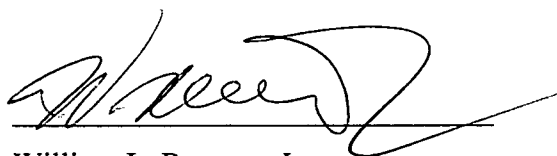
NOW COMES the Applicant above named and hereby serves Notice of his Intent To Appeal the decision of the Honorable Court of Common Pleas, The Honorable R. Markley Dennis presiding Judge dated August 28th , 2014 and with same being filed September 5, 2014 in the Office of the Clerk of Court and served on Counsel by US Mail and received by Counsel on September 8, 2014. Said Appeal being taken to conclusion of Fact and Law as entered by the Honorable Court, with Merits of said Appeal being submitted to the Honorable Supreme Court for their consideration.

Submitted this 12th day September, 2014 at Charleston, South Carolina.

RECEIVED

SEP 15 2014

S.C. SUPREME COURT



William L. Runyon, Jr.
Bar # 4838
#3 Gamecock Avenue, Suite 303
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STATE OF SOUTH CARLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO: 2013-CP-10-0448

CORRIE D. BROWN,)
PLAINTIFF,)

VS.)

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DEFENDANT.)

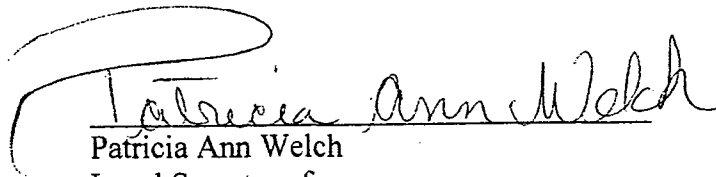
CERTIFICATE OF SERVICE BY MAIL

I , Patricia Ann Welch, Legal Secretary for William L. Runyon, Jr., Esquire , do hereby certify that on the 12th of September, 2014, I served a copy of **Notice of Intent To Appeal and Certificate of Service By Mail** together with Order of Appointed Counsel and Order of Dismissal TO Ashleigh Wilson, Assistant Attorney General Office of Appellate Defense, in the within matter, by mailing copies to her/him by way of the United States Mail, with sufficient postage attached thereto and addressed as follows:

Ashleigh Wilson, Esquire
P.O. Box 11540
Columbia SC 29211

Office of Appellate Defense
1205 Pendleton Street, Rm 306
Columbia, SC 29201

Charleston County Clerk Of Court
100 Broad Street, Ste 106
Charleston, SC 29401



Patricia Ann Welch
Legal Secretary for
William L. Runyon, Jr.
#3 Gamecock Avenue
Suite 303
Charleston, SC 29407

CC
AT
AG
SBL
BS

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
)
Corrie D. Brown, #246396,)
)
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Applicant,)
)
)
v.)
)
State of South Carolina,)
)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
2013-CP-10-0448

ORDER OF DISMISSAL

FILED
2014 SEP -5 PM 3:23
CLERK OF COURT

Presiding Judge: The Honorable R. Markley Dennis
Applicant's Attorney: William L. Runyon, Jr., Esquire
Respondent's Attorney: Ashleigh R. Wilson, Esquire
Plea Counsel: Juan Tolley, Esquire
Date of Hearing: April 14, 2014
Court Reporter: Deborah Garrison

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed January 24, 2013. The Respondent made its Return on November 1, 2013. An evidentiary hearing into the matter was convened on April 14, 2014 at the Charleston County Courthouse. The Applicant was present at the hearing and represented by William L. Runyon, Jr., Esquire. Ashleigh R. Wilson, Esquire, of the South Carolina Attorney General's Office represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. The Applicant's plea counsel, Juan Tolley, Esquire, also testified at the hearing. This Court had before it the guilty plea transcript, the records of the Charleston County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the PCR application, and Respondent's Return thereto.

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PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Charleston County. The Applicant was indicted at the March 2011 term of the Charleston County Grand Jury for criminal sexual conduct- first degree (2011-GS-10-1729). Juan Tolley, Esquire, represented the Applicant. The Applicant pled guilty to the lesser included offense of criminal sexual conduct- second degree. The Honorable Stephanie P. McDonald sentenced the Applicant to confinement for seventeen (17) years. The Applicant did not appeal his conviction or sentence.

ALLEGATIONS

The Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. Failure to adequately develop, investigate, and present facts depriving the jury of critical information relevant to an accurate assessment of my innocence.
 - b. Failure to timely notify defendant of his right to appeal.
 - c. Failure to call emergency medical personnel who would have testified the victim stated immediately after the attack that she did not know her assailant.
 - d. Advising the defendant that he would face life if he went to trial, when he would face 7-25 years or 25 years.
 - e. Failure to object to judge's improper comments in the presence of jury which reflect that the judge believed the victim's testimony.
2. Victim's blood alcohol concentration.
3. Victim gave conflicting stories to medical personnel, investigators, and law enforcement.

At the hearing, the Applicant proceeded solely on the issue of whether or not his guilty plea was entered freely and voluntarily after the Court advised the Applicant that he could be sentenced to thirty (30) years if he were convicted at trial. This Court finds the Applicant presented no testimony or evidence in support of any other claims at the evidentiary hearing, therefore, any remaining allegations are deemed abandoned by the Applicant.

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).

Summary of the Testimony

Juan Tolley, Esquire, was present and testified she has been practicing law since 1991. She testified she was a former public defender and had experience handling criminal matters. She testified she was appointed to represent the Applicant approximately nine (9) months prior to the Applicant's trial. Counsel testified she met with the Applicant many times prior to trial.

Counsel testified she filed Brady and Rule 5 motions on the Applicant's behalf. Counsel testified she received discovery from the State and reviewed the materials with the Applicant. She testified she discussed with the Applicant the elements of the charges he was facing and what the State was required to prove. She testified they also discussed the Applicant's version of facts and possible defenses. Counsel testified the Applicant was accused of raping a College of Charleston student. She testified the evidence against the Applicant included the student's testimony and DNA linking the Applicant to the victim. Counsel testified she tracked down a potential witness given to her by the Applicant, but when her investigator contacted the witness, the witness was unable to verify the Applicant was present at the shelter during the time of the incident.

Counsel testified she was prepared to try the Applicant's case. Counsel testified the

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Applicant's defense would be that he was involved with the victim and that consensual sex took place between the victim and the Applicant in exchange for drugs. Counsel testified at the start of the Applicant's trial she requested a continuance because she felt she had received some discovery late. Counsel testified ultimately she had enough time to prepare for trial. She testified the Court had a colloquy with the Applicant about the possibility of the Applicant being sentenced to the maximum sentence if convicted at trial. She testified they selected a jury and proceeded to trial.

Counsel testified plea negotiations took place throughout the trial. She testified the solicitor originally offered plea to twenty (20) years which she discussed with the Applicant and he rejected. Counsel testified the State offered the Applicant a plea to eighteen (18) years which she discussed with the Applicant and he also rejected. She testified the State made a third offer of seventeen (17) years. She testified she discussed the plea offer with the Applicant and advised him about the wisdom of taking the plea offer. Counsel testified ultimately the Applicant decided to accept the plea offer. Counsel testified she had many conversations with the Applicant about a guilty plea and the possible penalties he was facing. She testified she discussed with the Applicant his constitutional rights. She testified the Applicant was aware of his rights and the penalties he was facing. She testified she told the Applicant that the plea offer was a good one, but it was up to him to decide whether or not to plead guilty.

The Applicant was present and testified he met with his attorney regularly before the start of his trial. He testified he reviewed discovery with his attorney. He testified they discussed his constitutional rights, but they did not discuss possible defenses. The Applicant testified counsel never mentioned a plea offer until trial started. The Applicant testified the judge told him that it was her policy to give the maximum sentence. He testified he declined two prior plea offers and

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did not want to plead guilty. He testified he pled guilty because he was stressed out and scared about getting a thirty (30) year sentence. He testified counsel did a wonderful job, but he felt his trial was staged and the State got everything it wanted. The Applicant testified he was aware he was facing a thirty (30) year sentence prior to his trial and the court's comments. He testified his trial was not going so well and he plead guilty because he did not want to risk receiving a thirty (30) year sentence if convicted at trial.

Involuntary Guilty Plea.

The Applicant claims that his guilty plea was not entered freely and voluntarily and that he was scared into pleading guilty by the Court advising him that he was facing a thirty (30) year sentence if convicted at trial. This Court finds this allegation is without merit. This Court finds counsel's testimony at the evidentiary hearing to be credible, while the Applicant provided testimony that was not credible.

This Court finds the Applicant's guilty plea was entered freely and voluntarily. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). Defendant's knowing and voluntary waiver of statutory or constitutional rights 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)). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431

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U.S. 63, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977)). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate 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).

This Court finds counsel provided reasonable representation and adequate advice to the Applicant about pleading guilty. This Court finds that Applicant's attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, 466 U.S. at 668; Butler, 286 S.C. 441, 334 S.E.2d 813. Counsel is a trial practitioner who has extensive experience in the trial of serious offenses. Counsel conferred with the Applicant on numerous occasions. During conferences with the Applicant, counsel discussed the Applicant's pending charges, the elements of the charges the Applicant was facing and what the State was required to prove, the Applicant's constitutional rights, the Applicant's version of the facts, and possible defenses or lack thereof. This Court finds counsel properly advised the Applicant of the potential sentence he was facing and of the consequences of pleading guilty.

This Court finds the Applicant has failed to carry his burden of proving his guilty plea was entered freely and voluntarily. The record reflects the Applicant was advised by the Court before the start of his trial that if he was convicted of criminal sexual conduct- first degree he would be facing a sentence of up to thirty (30) years. (T. 143:19-22, 144:12-13, 145:4-5). This Court also finds the Court's comments to the Applicant regarding the potential sentence he was facing if convicted at trial were not improper in any way, but a reflection of the reality of the sentence the Applicant was facing if convicted of criminal sexual conduct- first degree. This

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Court finds the record is void of any showing that the Applicant was forced or threatened to plead guilty. The record reflects the Applicant was never told by the court that he would be sentenced to the maximum sentence if he was convicted at trial. This Court finds the Applicant pled guilty because he was receiving a significant benefit by accepted the State's plea offer to a negotiated sentence for the lesser included offense.

This Court also finds further the Applicant was fully advised of the consequences of pleading guilty. The record reflects the applicant was advised of the following by the Court during his guilty plea proceeding: the substance of the plea offer he was accepting (T. 303:10-13), the most serious and violent classification of the offense (T.303:20-304:304:9), the fact that he would have to register for the sex offender registry upon release (T. 305:16-20), and the Applicant's right to remain silent and right to a jury trial (T. 309:4-311:17). The Applicant advised the Court that he was not under the influence of any substances that would interfere with his ability to understand his guilty plea proceeding. (T. 302:12-16). The Applicant also admitted he was indeed guilty of the offense he was pleading guilty to. (T. 314:4-10). The Applicant told the Court he was not promised anything, forced, or threatened to plead guilty and that he was doing so of his own free will. (T. 315:4-19).

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test, specifically that counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that counsel committed either errors or omissions while representing the Applicant. The Applicant failed to show that counsel's performance was deficient. Therefore, this Court need not address prejudice. Applicant's complaints concerning counsel's performance are without merit and are denied and dismissed.

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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 evidence regarding such allegations. Accordingly, this Court finds the Applicant abandoned such allegations. Therefore, they are hereby denied and dismissed.

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, nor was the Applicant prejudiced by counsel's representation. Therefore, this application for PCR must be denied and dismissed with prejudice.

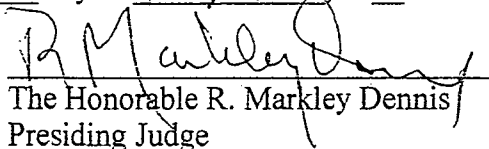
This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of written notice of entry of this Order to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely served and 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 28th day of August, 2014

Monetta Corner, South Carolina


The Honorable R. Markley Dennis
Presiding Judge
9th Judicial Circuit

#3 Gamecock Avenue, Suite 303
Charleston, South Carolina 29407
(843) 571-3515
(843) 766-5085 FAX

William L. Runyon, Jr.

Attorney At Law

September 12, 2014

Daniel E. Shearouse
Clerk of The Supreme Court
P.O. Box 11330
Columbia, SC 29211

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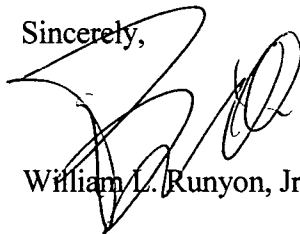
RE: Corrie D. Brown vs. State
Case No.: 2012-CP-10-08355

Dear Honorable Clerk:

Enclosed please find **Notice of Intent To Appeal** and **Order of Dismissal** in reference to the above matter.

Thanking you, I remain

Sincerely,



William L. Runyon, Jr.

WLR,Jr.:paw
enclosures as stated

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