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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	2012-CP-10-7668
	)	
Adrian Beaton, #327914,	)	
	)	
Applicant,	)	
	)	
v.	)	**ORDER OF DISMISSAL**
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

FILED
2014 AUG -1 PM 2:12
JULIE J. ARMSTRONG
CLERK OF COURT

Presiding Judge:	The Honorable R. Markley Dennis
Applicant's Attorney:	J. Michael Bosnak, Esquire
Respondent's Attorney:	Ashleigh R. Wilson, Esquire
Trial Counsel:	D. Ashley Pennington, Esquire
Date of Hearing:	April 15, 2014
Court Reporter:	Deborah Garrison

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed November 26, 2012. The Respondent made its Return on April 16, 2013. An evidentiary hearing into the matter was convened on April 15, 2014 at the Charleston County Courthouse. The Applicant was present at the hearing and represented by J. Michael Bosnak, 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, D. Ashley Pennington, Esquire, was present and 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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ATTORNEY GENERAL'S OFFICE

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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 August 2010 of the Charleston County Grand Jury for burglary- first degree (2010-GS-10-5325), kidnapping (2010-GS-10-5326), assault and battery with intent to kill (ABWIK) (2010-GS-10-5327), and murder (2010-GS-10-5328). D. Ashley Pennington, Esquire, represented the Applicant. The Applicant pled guilty on January 26, 2012. The Honorable Thomas L. Hughston sentenced the Applicant to confinement for twenty (20) years for ABWIK and for thirty-five (35) years for all the remaining charges. The sentences were to run concurrently. The Applicant did not appeal his convictions and sentences.

ALLEGATIONS

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

1. Ineffective assistance of counsel.
2. Involuntary guilty plea.

At the evidentiary hearing, the Applicant proceeded solely on the grounds of ineffective assistance of counsel and involuntary guilty plea.

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).

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Summary of Testimony

At the start of the evidentiary hearing, the Applicant made a *pro se* motion for continuance. Counsel for the Applicant indicated to the Court that he was prepared to proceed and the Court denied the Applicant's motion for continuance.

The Applicant was present and testified he was arrested in March 2010 for murder, kidnapping, armed robbery, and assault and battery with intent to kill. He testified he was represented by Ashley Pennington. The Applicant testified he met with counsel frequently. The Applicant testified he never reviewed his discovery materials with counsel and never received a copy of his discovery materials. He testified he was told by counsel that the State had a video and photo line-up of him.

The Applicant testified he was aware that there was DNA evidence that the State claims was his. He testified he saw the DNA results after he was locked up. He testified counsel never had the DNA evidence in his case independently evaluated. The Applicant also testified he has problems with ADHD and was never mentally evaluated. He testified he did not recall discussing possible defenses with counsel.

The Applicant testified he was afraid during his guilty plea and felt he had to plead guilty out of fear of others. He testified counsel told him a guilty plea was best and that he could be sentenced to death or life.

D. Ashley Pennington, Esquire, was also present and testified at the hearing that he was appointed to represent the Applicant shortly after his arrest. He testified he has been a public defender practicing criminal law for the last thirty-three (33) years. Counsel testified he met with the Applicant monthly and had more intense conversations with the Applicant in the beginning of his representation and during final plea negotiations with the State.

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Counsel testified he filed Brady and Rule 5 motions on the Applicant's behalf. Counsel testified he obtained boxed of documents in discovery and would take large volumes of documents with him when he went to visit the Applicant. He testified the Applicant was not comfortable having the discovery documents in jail, so a copy of his case file was not given to the Applicant until the end of the case. Counsel testified there was no video of what took place inside the apartment during the murder. He testified there was a video of the outside of the apartment and he recalls viewing the video. Counsel testified the video was not a key piece of evidence against the Applicant.

Counsel testified he thoroughly investigated the Applicant's case. He testified he reviewed the discovery and was hoping to show the co-defendant was the chief perpetrator. Counsel testified he discussed with the Applicant the elements of the charges he was facing and what the State was required to prove. He testified they also discussed the Applicant's version of facts and possible defenses. Counsel testified the Applicant gave a statement and trace DNA from his hands was found at the scene on a cord used to tie up one of the victims. He testified he did not know if any other DNA was found. Counsel also testified he did not have the DNA evidence from the scene that was linked to the Applicant independently tested.

Counsel testified he was aware the Applicant suffered from ADHD and had likely been manipulated by an older man to commit the crime. He testified he used these facts to paint a sympathetic picture of the Applicant in mitigation. Counsel testified these facts did not provide a defense. He testified he had no legal basis to claim the Applicant lacked competency. He testified he thought the Applicant did not read well so he took extra care to explain things to the Applicant verbally.

Counsel testified he discussed with the Applicant the evidence and his involvement in the

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crime and he did not see a viable defense for the Applicant. Counsel testified he spoke with the Applicant about proceeding to trial and the evidence that the State would present at trial. He testified the Applicant had no interest in going to trial. He testified he knew early on it would be a mitigation case. Counsel testified the Applicant proffered testimony for the State prior to his guilty plea to earn a good plea before Judge Hughston. Counsel testified that during the Applicant's proffer, he did not give the identities of his co-defendants and the State did not insist on any future cooperation from the Applicant.

Counsel testified plea negotiations with the State were ongoing and he thought the case might go capital or towards life without parole. He testified all evidence pointed to the Applicant, but he thought the State felt the Applicant was just being used as a tool by an older man. Counsel testified the State agreed to have the Applicant plead guilty in front of Judge Hughston, to acknowledge the Applicant's cooperation, and to stipulate that the kidnapping was not sexual. Counsel testified he communicated the plea offer to the Applicant. He testified there was no hesitancy or confusion by the Applicant about the plea offer because that was what the Applicant had hoped for. Counsel testified he informed the Applicant of his constitutional rights. He testified it was the Applicant's decision to plead guilty after consulting with his family. Counsel testified the Court definitely took into consideration the mitigation evidence he presented on the Applicant's behalf.

Ineffective Assistance of Counsel

The Applicant alleges that he received ineffective assistance of counsel. In a post-conviction relief action, the applicant has the burden of proving the allegations in the 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

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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 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).

Courts use a two-pronged test to evaluate 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." Id. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. 668). 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." Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243-44 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). When determining issues

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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)). When a defendant pleads guilty on the advice of counsel, the plea may only be attacked through a claim of ineffective assistance of counsel. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2002) (citations omitted).

As an initial matter, this Court finds the testimony of trial counsel to be credible, while finding the testimony of the Applicant was not credible. This Court finds counsel is a criminal 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 pending charges, the elements of the charges and what the State was required to prove, Applicant's constitutional rights, Applicant's version of the facts, and possible defenses or lack thereof. The record reflects the Applicant's guilty plea was entered freely, voluntarily, knowingly, and intelligently.

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. 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. This Court further finds counsel adequately conferred with the Applicant, conducted a proper investigation, and provided thorough representation. This Court finds that counsel's representation did not fall below an objective standard of reasonableness.

The Applicant alleges counsel was ineffective for failing to have the DNA evidence

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linking the Applicant to the scene of the murder independently evaluated. This Court finds counsel was not ineffective for failing to have the DNA evidence independently evaluated and this allegation is without merit. This Court finds counsel had no obligation to have the DNA evidence independently evaluated. This Court finds further the Applicant has failed to show what an independent evaluation of the DNA evidence would have yielded. This Court finds the Petitioner was not prejudiced by counsel's failure to have the DNA evidence independently tested since in his own statement to police the Applicant indicated he was present in the apartment during the murder. (Tr. 15:1-5). This Court finds the Applicant has failed to carry his burden of proving counsel's performance was deficient and that the outcome of his proceeding would have been different had counsel had the DNA evidence independently tested.

The Applicant alleges counsel was ineffective for failing to have him mentally evaluated. A defendant must be mentally competent to stand trial to assist counsel in his defense. Drope v. Missouri, 420 U.S. 62 (1975). In determining if counsel is ineffective for failing to request a competency hearing, an applicant must show that a reasonable probability exists that he would be found incompetent at the time of this trial or plea. Jeter v. State, 308 S.C.230, 417 S.E.2d 594 (1992). Counsel may reasonably rely on his own perceptions in deciding if a client is competent to stand trial. Id. This Court finds the counsel was not ineffective for failing to have the Applicant evaluated for competency. This Court finds the Applicant has also failed to present any evidence showing that he would have been found incompetent at the time of his plea. This Court finds credible counsel's perception that the Applicant had no mental competency issues and was involved in the evaluation of the facts of his case. Counsel also provided credible testimony that he took extra care to explain things to the Applicant because of his poor reading skills. This Court finds the Applicant has failed to carry his burden of proving he was mentally

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incompetent at the time of his guilty plea and that counsel should have requested he be evaluated for mental competency.

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. The Applicant's complaints concerning counsel's performance are without merit and are denied and dismissed.

Involuntary Guilty Plea

The Applicant claims his guilty plea was induced by fear causing his guilty plea to be entered involuntarily. This Court finds this allegation is without merit and 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 U.S. 63, 97 S.Ct. 1621, 52 L.Ed.2d 136

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(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 that the Applicant's guilty plea was entered freely and voluntarily. This Court finds further that the record reflects the Applicant was thoroughly advised of the waiver of his constitutional rights by both trial counsel and the plea judge. The record reflects the Applicant was advised by the Applicant and plea counsel of his right to a jury trial and his right to confront his accusers. (Tr. 6:1-6, 6:18-25). The Applicant was also advised of the potential sentence he was facing for each charge. (Tr. 2:17-25, 3:6, 4:5-20). The Applicant told the Court he wished to plead guilty and that he was actually guilty of the crime he was pleading guilty to. (Tr. 7:12-15). This Court finds the record is void of any indication that the Applicant was threatened or forced to plead guilty. This Court finds the plea court correctly concluded the Applicant's guilty plea was entered freely and voluntarily. This Court finds the Applicant has failed to carry his burden of proving that his guilty plea was involuntarily entered.

All Other Allegations

As to any and all allegations that were raised in the application 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 waived 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

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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 21st day of July, 2014

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

Moncks Corner, South Carolina.

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ALAN WILSON
ATTORNEY GENERAL

July 15, 2014

The Honorable R. Markley Dennis, Jr.
PO Box 1800
300 B. California Avenue
Moncks Corner, SC 29461

RE: **Adrian Beaton, #327914 v. State of South Carolina,**
2012-CP-10-7668

Dear Judge Dennis:

Enclosed please find a **Proposed Order of Dismissal** in the above-referenced case for your approval and signature. If this Order meets with your approval, please sign same and forward to the Charleston County Clerk of Court in the enclosed envelope to be filed and served. Thank you for your time and consideration in this matter.

Sincerely,

Ashleigh R. Wilson
Assistant Attorney General

ARW/arh
Enclosure: Proposed OOD

Cc: J. Michael Bosnak