

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM YORK COUNTY
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge

Case No.: 2011-CP-46-1544

RECEIVED

SEP 26 2014

Ronald Boozer #342268,..... Appellant, **S.C. SUPREME COURT**


vs.

State of South Carolina,Respondent.

NOTICE OF APPEAL

An Order of Dismissal signed by The Honorable Edgar W. Dickson on April 18, 2013 and filed on May 8, 2013. A timely Notice of Motion and Motion to Alter or Amend was filed and the Amended Order of Dismissal was filed.

Ronald Boozer #342268 appeals the Amended Order of Dismissal of the Honorable Edgar W. Dickson signed August 28, 2014 and filed on September 15, 2014 and received on September 17, 2014.


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Other Counsel of Record:
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Irmo, South Carolina
September 24, 2014

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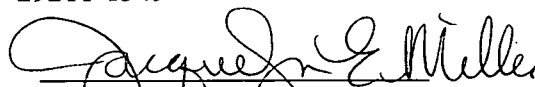
vs.

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CERTIFICATE OF SERVICE

I, Jacquelyn E. Miller, secretary to Tommy A. Thomas, Attorney for the Appellant, hereby certify that I placed in the United States Mail, a copy of a Notice of Appeal with postage prepaid and the return address clearly shown on said envelope to J. Rutledge Johnson with the Office of the Attorney General at:

J. Rutledge Johnson, Esq.
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211-1549



Jacquelyn E. Miller
Secretary to Tommy A. Thomas
Attorney for Applicant
P.O. Box 88
Irmo, SC 29063
(803) 732-5507

September 24, 2014

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)
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))
Ronald Boozer, #342268,)
))
Applicant,)
))
v.)
))
State of South Carolina,)
))
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

2011-CP-46-1544

ORDER OF DISMISSAL

FILED-RECEIVED
2013 MAY -8 AM 10:41
DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

This matter comes before the Court by way of an Application for Post-Conviction Relief filed April 19, 2011. The Respondent made its Return on September 14, 2011. An evidentiary hearing into the matter was convened on October 8, 2012, at the Moss Justice Center in York, SC. Tommy Thomas, Esquire represented the Applicant. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. Jonathan Sullivan, Esquire and the Applicant's mother also testified. This Court had before it a copy of the records of the York County Clerk of Court, records from the South Carolina Department of Corrections, and the guilty plea transcript.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. The Applicant was indicted by the March 2010 term of the York County Grand Jury with one count of Attempt to Manufacture Methamphetamine (2009-GS-46-01170) and one count of Possession of Methamphetamine (2009

GS-46-01169). Applicant was represented by Jonathan C. Sullivan, Esquire. On August 12, 2010, the Applicant pled guilty to Attempt to Manufacture Methamphetamine, 2nd offense as indicted and to Possession of Methamphetamine as indicted before the Honorable John C. Hayes, III. Applicant received a 17-year sentence for the Attempt to Manufacture Methamphetamine, 2nd offense and a 5 year sentence for the Possession of Methamphetamine, 2nd offense. Both sentences run concurrently. Applicant did not appeal his conviction and sentence.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
2. "Involuntary Guilty Plea"

At the hearing, the Applicant proceeded on both claims.

SUMMARY OF TESTIMONY

Counsel (Sullivan) testified he is an assistant Public Defender and was appointed to the Applicant's case. According to Counsel's brief recitation of the relevant facts, the Applicant's parents contacted law enforcement concerning a suspicious case on their property. When police came to investigate, they noticed smoke coming from a bucket. In the bottom of the bucket, police found some suspicious items, including lithium batteries. Police contacted the Drug Enforcement Unit to investigate further. Police then conducted a protective sweep of the Applicant's residence to ensure there was not an active methamphetamine lab. During this sweep, police also saw in plain view, items common to the manufacturing of methamphetamine.

Counsel testified he was prepared for trial, visited the Applicant's house two to three times, and interviewed witnesses. The witnesses included the Applicant's parents and Rick Brookshire, the

gentleman who was found inside the Applicant's house asleep when the police conducted the protective sweep. Counsel also stated HazMat (~~Hazardous Materilas~~ ^{Materials}) took possession of the evidence of the methamphetamine lab.

Counsel testified the defense theory in this case was innocence as the Applicant was not present in the house. The method to attack the State's case was to try and exclude the evidence found based on the search warrant that police obtained. These items included lithium car batteries, pseudoephedrine blister packets, commercial-grade fertilizer, and coffee filters. There was also some methamphetamine found, pursuant to a consent search, in a Jeep parked outside the Applicant's house. Counsel testified the argument he made in a suppression hearing was the items found inside and around the Applicant's house were everyday, household items; none of which are illegal to possess. Counsel further testified he discussed the suppression hearing and the search warrant issues with the Applicant and his parents. Counsel, lastly, stated the suppression motion was unsuccessful, as the judge ruled the items found admissible.

As for the plea offer from the State, Counsel testified the first offer was for between seven and ten years to run consecutive to the eight years' probation the Applicant was currently serving of manufacturing methamphetamine. The solicitor was also going to agree to dismiss the other charges the Applicant had pending against him if the Applicant would plead straight up. Counsel stated he gave the Applicant a copy of the discovery and informed the Applicant the plea offer was to expire that Thursday or Friday. Counsel then testified the plea offer expired because the Applicant was not ready to accept the plea offer, as he wanted to consult with another attorney.

Counsel also testified law enforcement claimed they found fifty to one hundred lithium car batteries, which would have been used to manufacture methamphetamine. Counsel stated he did not

recall seeing any batteries during his visit to the Applicant's house, but testified HazMat would have confiscated the batteries. He further stated he did not remember any of the witnesses telling him they did not see any batteries.

Next, Counsel testified the State utilized Bridget Darty, a crucial witness in the case. Ms. Darty testified she had seen the Applicant cooking methamphetamine, had traded pseudoephedrine tablets for methamphetamine with the Applicant, and had seen the Applicant selling methamphetamine. Counsel stated he attempted to locate this Witness to interview her. The record reflects Counsel and co-counsel (Erik Delaney) moved to suppress Ms. Darty's testimony, yet the trial court allowed it. Counsel testified after Ms. Darty took the stand and testified, he again conferred with the Applicant about a guilty plea. He stated the offer at that time was approximately fifteen years.

On cross-examination, Counsel testified he attacked the search warrant in a suppression hearing based on lack of probable cause, but the trial court allowed the evidence to be admitted. He also stated he argued against allowing Ms. Darty to testify, but the trial court allowed her testimony. Counsel further testified the Applicant understood the guilty plea, that he made no threats or promises to convince the Applicant to plead guilty, and that it was the Applicant's decision to plead guilty.

The Applicant testified he was on probation for manufacturing methamphetamine when he was arrested and charged with Attempt to Manufacture Methamphetamine and Possession of Methamphetamine. He stated he met with Counsel and Mr. Delaney prior to trial and discuss his case. He received and discussed the discovery, although he did not think Counsel went over the entire discovery with him. The Applicant stated his theory of defense was innocence and that he

assisted in his own defense. The Applicant testified he and Counsel did not talk about car batteries because he claims there were no batteries at his house.

The Applicant testified he brought other items to Counsel's attention, such as receipts and a video from Lowe's Home Improvement Store, which would have shown who purchased the items found in and around his house. He stated he spoke with Counsel about the fertilizer found outside of his house.

The Applicant further testified his decision to go to trial changed because of Counsel's action during trial. He explained that he pled guilty to avoid receiving a thirty-year sentence, but wants a new trial. The Applicant testified he did not understand enough to plea freely and voluntarily, but was scared into pleading guilty.

On cross-examination, the Applicant admitted he did not have possession of any receipts or video from Lowe's to support his claims. The Applicant also admitted he told the plea court, under oath, that he understood the charges and his constitutional rights. He stated there were no threats or promises made to influence him to plead guilty and that he pled freely and voluntarily. The Applicant testified he agreed with the facts as presented by the State and apologized for his actions. The Applicant further stated he understood if he was successful in his PCR action, he faced over thirty-five years in prison and that the State could file the additional charges, which were dropped, against him again. The Applicant also testified it was his decision to plead guilty. He lastly admitted this is not the first time he has been convicted of manufacturing methamphetamine.

The Applicant's mother testified there were no batteries found in a bucket or pseudoephedrine blister packs at the scene. She also testified that she saw the police throw

something white into the back of the Jeep where the methamphetamine was found. She claimed she could prove this, but offered no supporting evidence.

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. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRPC). 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, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the 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, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

This Court finds Counsel was competent and diligent in his representation of the Applicant in this case. Counsel sufficiently advised the Applicant of the charges against him, the potential penalties if convicted at trial, and the evidence the State would produce at trial. Counsel satisfactorily investigated this case based on the information supplied by the Applicant. Counsel also engaged in plea negotiations which were beneficial to the Applicant, although the Applicant allowed the plea offer to expire. This Court also finds the Applicant was well informed by Counsel in this case.

This Court further finds the Applicant's testimony regarding Counsel's ineffectiveness is not credible while also finding Counsel's testimony is credible. This Court finds the Applicant has failed to meet his burden of proving counsel's performance was deficient or that he was prejudiced thereby.

Failure to investigate

The Applicant alleged Counsel was ineffective for failing to investigate his case. Specifically, the Applicant alleged Counsel failed to investigate the receipts and video recording

from Lowe's which would have proven who purchased the items that were admitted as evidence at trial.

"Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result." Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998).

Here, the Applicant testified he brought to Counsel's attention receipts and video from Lowe's that would have shown who purchased the items that were seized in and around his house. The Applicant stated had Counsel investigated this information, Counsel would have been better able to defend the Applicant. The Applicant, however, failed to provide any proof of these receipts or video, and thus failed to show how this information would have aided his case. The claim that the receipts and video would have helped his defense is pure speculation. The Applicant has failed to show Counsel was deficient for not investigating this information, and further failed to prove any resulting prejudice. Therefore, this allegation is denied.

Involuntary Guilty Plea

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, 89 S.Ct. 1709 (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 at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 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. U.S., 519 F.2d 317 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for 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).

The Applicant alleged his guilty plea was not freely and voluntarily entered. At the PCR hearing, the Applicant testified he did not feel that he understood enough about his case to plead guilty. He also stated he felt that he was scared into pleading. However, the guilty plea transcript and the Applicant's answers during cross-examination at the PCR hearing directly refute his claims. Additionally, Counsel testified he made no threats or promises to get the Applicant to plead guilty, that the Applicant understood his guilty plea, and that it was the Applicant's decision to plead guilty.

At the guilty plea, the Applicant stated he understood the charges against him and the penalties the charges carried. (Tr. p. 266 line 2). He then stated he wanted to plead guilty to the charges. (Tr. p. 266 lines 3-14). The Applicant testified he was not promised anything or threatened in any way to influence him to enter a guilty plea. (Tr. p. 266 line 21). He stated he was entering the plea freely and voluntarily. (Tr. p. 267 line 2). The Applicant also testified he understood his constitutional rights and waived those rights. (Tr. p. 267 lines 3-14; lines 17-21). He further stated he agree with the facts as presented during the trial phase of his case. (Tr. p. 268 line 16). Further, during the plea, the Applicant admitted he was in violation of his probation by pleading guilty to

these charges, among other violations. (Tr. p. 269 line 18; 22; p. 270 line 8; 17).

At the PCR hearing, the Applicant freely admitted he testified to all of the above at his guilty plea on cross-examination. Additionally, the Applicant stated he understood if he was successful in his PCR action that not only would the original charges be reinstated and he would be facing over thirty-five years' imprisonment, but also understood the solicitor was allowed to reinstated other charges which were dropped in exchange for his guilty plea.

Based on the foregoing, this Court finds the Applicant's testimony concerning an involuntary guilty plea not credible, while finding Counsel's testimony at the PCR hearing credible. This Court also finds the Applicant pled guilty freely and voluntarily. This Court further finds because of the Applicant's prior experience with the court system and his prior guilty plea colloquy, the Applicant fully understood his guilty plea.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – 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 in his representation of the Applicant.

This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. Therefore, these allegations are denied.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the 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.

Except as discussed above, this Court finds that the Applicant failed to raise the remaining allegations set forth in his application at the hearing and has, thereby, waived them. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) 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 PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention 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!



Edgar W. Dickson
Presiding Circuit Court Judge
Sixteenth Judicial Circuit

April 18, 2013

Orangeburg, South Carolina

STATE OF SOUTH CAROLINA)
 COUNTY OF YORK)
)
 Ronald Boozer, #342268,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 SIXTEENTH JUDICIAL CIRCUIT

2011-CP-46-1544

AMENDED ORDER OF DISMISSAL

FILED-RECEIVED
 014 SEP 15 AM 8:50
 DAVID HAMILTON
 C.C.P. & G.S.
 YORK COUNTY, SC

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SUMMARY OF TESTIMONY

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Counsel testified he was prepared for trial, visited the Applicant's house two to three times, and interviewed witnesses. The witnesses included the Applicant's parents and Rick Brookshire, the

gentleman who was found inside the Applicant's house asleep when the police conducted the protective sweep. Counsel also stated HazMat (Hazardous Materials) took possession of the evidence of the methamphetamine lab.

Counsel testified the defense theory in this case was three-pronged: 1.) this was a case of simple possession; 2.) this was a reasonable doubt case; and 3.) to attack the items seized from Applicant's residence. The method to attack the State's case was to try and exclude the evidence found based on the search warrant that police obtained. These items included lithium car batteries, pseudoephedrine blister packets, commercial-grade fertilizer, and coffee filters. There was also some methamphetamine found, pursuant to a consent search, in a Jeep parked outside the Applicant's house. Counsel testified that the suppression motion was based upon lack of probable cause, that there was insufficient evidence for probable cause, and that there was no necessity for the protective search. Counsel also testified that he argued that, in his opinion, the protective search was improper and this search was the basis for the search warrant. Counsel further testified he discussed the suppression hearing and the search warrant issues with the Applicant and his parents. Counsel, lastly, stated the suppression motion was unsuccessful, as the judge ruled the items found admissible.

As for the plea offer from the State, Counsel testified the first offer was for between seven and ten years to run consecutive to the eight years' probation the Applicant was currently serving of manufacturing methamphetamine. The solicitor was also going to agree to dismiss the other charges the Applicant had pending against him if the Applicant would plead straight up. Counsel stated he gave the Applicant a copy of the discovery and informed the Applicant the plea offer was to expire that Thursday or Friday. Counsel then testified the plea offer expired because the Applicant was not ready to accept the plea offer, as he wanted to consult with another attorney.

Counsel also testified law enforcement claimed they found fifty to one hundred lithium car batteries, which would have been used to manufacture methamphetamine. Counsel stated he did not recall seeing any batteries during his visit to the Applicant's house, but testified HazMat would have confiscated the batteries. No batteries were taken into evidence or presented at trial. Counsel testified that the Applicant may have said that there were no batteries.

Next, Counsel testified the State utilized Bridget Darty, a crucial witness in the case. Ms. Darty testified she had seen the Applicant cooking methamphetamine, had traded pseudoephedrine tablets for methamphetamine with the Applicant, and had seen the Applicant selling methamphetamine. Counsel stated he attempted to locate this Witness to interview her. The record reflects Counsel and co-counsel (Erik Delaney) moved to suppress Ms. Darty's testimony, yet the trial court allowed it. Counsel testified after Ms. Darty took the stand and testified, he again conferred with the Applicant about a guilty plea. He stated the offer at that time was approximately fifteen years. Counsel testified that he met with the Applicant and his mother on June 23 and reviewed all of the penalties on all charges including the fact that this was not a parolable offense. Counsel also testified that he was unaware of the new Omnibus Crime Bill or if Applicant would be eligible for parole under the new law.¹ Counsel further stated he was unaware that Judge Hayes had signed a consent order stating that the Applicant was not eligible for parole. Counsel stated that this was "definitely under the old law."

On cross-examination, Counsel testified he attacked the search warrant in a suppression hearing based on lack of probable cause, but the trial court allowed the evidence to be admitted. He

¹ This Court notes the Omnibus Crime Bill (OMNIBUS CRIME REDUCTION AND SENTENCING REFORM ACT OF 2010) took effect on June 2, 2010. Applicant was indicted in March 2010, thus making this Bill inapplicable to

also stated he argued against allowing Ms. Darty to testify, but the trial court allowed her testimony. Counsel further testified the Applicant understood the guilty plea, that he made no threats or promises to convince the Applicant to plead guilty, and that it was the Applicant's decision to plead guilty.

The Applicant testified he was on probation for manufacturing methamphetamine when he was arrested and charged with Attempt to Manufacture Methamphetamine and Possession of Methamphetamine. He stated he met with Counsel and Mr. Delaney prior to trial and ~~discuss~~^{discussed} his case. He received and discussed the discovery, although he did not think Counsel went over the entire discovery with him. The Applicant stated his theory of defense was innocence and that he assisted in his own defense. The Applicant testified he and Counsel did not talk about car batteries because he claims there were no batteries at his house.

The Applicant testified he brought other items to Counsel's attention, such as receipts and a video from Lowe's Home Improvement Store, which would have shown who purchased the items found in and around his house. He stated he spoke with Counsel about the fertilizer found outside of his house.

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oath, that he understood the charges and his constitutional rights. He stated there were no threats or promises made to influence him to plead guilty and that he pled freely and voluntarily. The Applicant testified he agreed with the facts as presented by the State and apologized for his actions. The Applicant further stated he understood if he was successful in his PCR action, he faced over thirty-five years in prison and that the State could file the additional charges, which were dropped, against him again. The Applicant also testified it was his decision to plead guilty. He lastly admitted this is not the first time he has been convicted of manufacturing methamphetamine.

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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. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). 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, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

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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, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

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The Applicant alleged Counsel was ineffective for failing to investigate his case. Specifically, the Applicant alleged Counsel failed to investigate the receipts and video recording from Lowe's which would have proven who purchased the items that were admitted as evidence at trial.

"Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result." Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998).

Here, the Applicant testified he brought to Counsel's attention receipts and video from Lowe's that would have shown who purchased the items that were seized in and around his house. The Applicant stated had Counsel investigated this information, Counsel would have been better able to defend the Applicant. The Applicant, however, failed to provide any proof of these receipts or video, and thus failed to show how this information would have aided his case. The claim that the receipts and video would have helped his defense is pure speculation. The Applicant has failed to show Counsel was deficient for not investigating this information, and further failed to prove any resulting prejudice. Therefore, this allegation is denied.

Involuntary Guilty Plea

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, 89 S.Ct. 1709 (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 at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 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. U.S., 519 F.2d 317 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for 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).

The Applicant alleged his guilty plea was not freely and voluntarily entered. At the PCR hearing, the Applicant testified he did not feel that he understood enough about his case to plead guilty. He also stated he felt that he was scared into pleading. However, the guilty plea transcript and the Applicant's answers during cross-examination at the PCR hearing directly refute his claims. Additionally, Counsel testified he made no threats or promises to get the Applicant to plead guilty,

that the Applicant understood his guilty plea, and that it was the Applicant's decision to plead guilty.

At the guilty plea, the Applicant stated he understood the charges against him and the penalties the charges carried. (Tr. p. 266 line 2). He then stated he wanted to plead guilty to the charges. (Tr. p. 266 lines 3-14). The Applicant testified he was not promised anything or threatened in any way to influence him to enter a guilty plea. (Tr. p. 266 line 21). He stated he was entering the plea freely and voluntarily. (Tr. p. 267 line 2). The Applicant also testified he understood his constitutional rights and waived those rights. (Tr. p. 267 lines 3-14; lines 17-21). He further stated he agreed with the facts as presented during the trial phase of his case. (Tr. p. 268 line 16). Further, during the plea, the Applicant admitted he was in violation of his probation by pleading guilty to these charges, among other violations. (Tr. p. 269 line 18; 22; p. 270 line 8; 17).

At the PCR hearing, the Applicant freely admitted he testified to all of the above at his guilty plea on cross-examination. Additionally, the Applicant stated he understood if he was successful in his PCR action that not only would the original charges be reinstated and he would be facing over thirty-five years' imprisonment, but also understood the solicitor was allowed to reinstate other charges which were dropped in exchange for his guilty plea.

Based on the foregoing, this Court finds the Applicant's testimony concerning an involuntary guilty plea not credible, while finding Counsel's testimony at the PCR hearing credible. This Court also finds the Applicant pled guilty freely and voluntarily. This Court further finds because of the Applicant's prior experience with the court system and his prior guilty plea colloquy, the Applicant fully understood his guilty plea.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – 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 in his representation of the Applicant.

This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. Therefore, these allegations are denied.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the 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.

Except as discussed above, this Court finds that the Applicant failed to raise the remaining allegations set forth in his application at the hearing and has, thereby, waived them. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) 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 PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention 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~~ ^{shall, and hereby is,} be denied and dismissed with prejudice; and
2. The Applicant ~~must~~ ^{shall} be remanded to the custody of the Respondent.

AND IT IS SO ORDERED!



Edgar W. Dickson
Presiding Circuit Court Judge
Sixteenth Judicial Circuit

August 28, 2014

Orangeburg, South Carolina

Tommy A. Thomas

ATTORNEY AND COUNSELOR AT LAW

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(803) 732-6542**

September 24, 2014

York County Clerk of Court
Attention: Common Pleas
300 West Liberty Street
York, SC 29745

RECEIVED

SEP 26 2014

RE: Ronald Boozer #342268 v. State of South Carolina
Docket No.: 2011-CP-46-1544

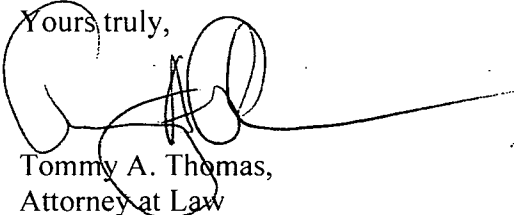
S.C. SUPREME COURT

Dear Sir or Madam:

Enclosed please find for filing an original and a copy of a Notice of Appeal and Certificate of Service.

Kindly return the clocked copies to me in the enclosed envelope. Thank you. Should you have any questions, or need any additional information, please do not hesitate to contact me.

Yours truly,


Tommy A. Thomas,
Attorney at Law

TAT/jem

cc: Rutledge Johnson, Esq.
Ronald Boozer #342268

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