

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

W. Jeffery Young, Circuit Court Judge

Civil Action Number: 2013-CP-29-1484

KEITH ROBINSON #353355,

Petitioner,

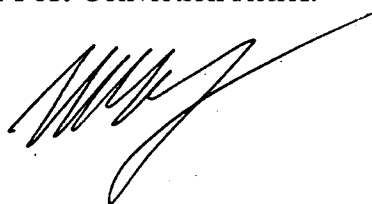
v.

STATE OF SOUTH
CAROLINA,

Respondent.

NOTICE OF APPEAL

The Petitioner above appeals the order of the Honorable W. Jeffery Young, dated September 22, 2014 denying his application for Post-Conviction Relief.



September 30, 2014

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S.C. Supreme Court

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Keith Robinson,

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v.

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PROOF OF SERVICE

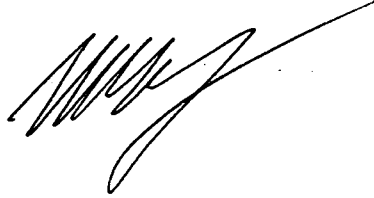
I certify that I have served the Notice of Appeal in the above captioned case on the following individuals by depositing a copy of it in the United States Mail, postage prepaid, on October 2, 2014, addressed to:

Jeff Hammond, Clerk of Court
Lancaster County Court of Common Pleas
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October 1, 2014



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(2012-GS-29-1163, 1165), and attempted murder (2012-GS-29-1164). Michael Lifsey, Esquire represented the Applicant.

On December 3, 2012, Applicant pled guilty as indicted. The Honorable Brooks P. Goldsmith sentenced the Applicant to concurrent terms of forty-five (45) imprisonment for murder and first degree burglary, thirty (30) years imprisonment for armed robbery and attempted murder, and five (5) years imprisonment on the weapons possession charges. The Applicant did not appeal.

ALLEGATIONS

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

1. Ineffective assistance of counsel.
 - a. Counsel only spoke to Applicant twice and only wanted him to plead guilty.
2. Involuntary guilty plea.
 - a. Applicant pled believing he would only receive a thirty (30) year sentence.
3. Ineffective assistance of appellate counsel.¹

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. The State presented testimony from plea counsel, Mike Lifsey, Esquire (Counsel). This Court also had before it a copy of the plea transcript, the Lancaster 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

¹ This Court notes that Applicant did not appeal from his guilty plea. As such, this allegation is facially without merit.

Mike Lifsey, Esquire. Applicant testified he pled guilty to murder, armed robbery, burglary, attempted murder, and weapons possession. Applicant testified he met with Counsel five times prior to his plea. Applicant testified the times they met were brief, lasting twenty minutes or less. Applicant testified Counsel did not thoroughly discuss his right to trial and what a trial would entail. Applicant testified they began his trial, and he decided to plead guilty once they got to the jury selection phase. Applicant testified he had never been to trial before. Applicant testified Counsel told him he would get thirty years if he pled guilty then and there. Applicant testified that he remembered his plea in front of Judge Goldsmith. Applicant testified he did not want more than thirty years. Applicant testified he and Counsel never left the courtroom to discuss the plea. Applicant testified he signed the sentencing sheets before the sentence was levied. Applicant testified he received forty-five years imprisonment. Applicant testified Counsel left immediately after the plea. Applicant testified he would not have pled if he had known he would receive forty-five years. Applicant testified he wanted to go to trial. Applicant testified Counsel told him he could file a PCR. Applicant testified he told Counsel he wanted to appeal his plea.

On cross-examination, Applicant testified the plea transcript reflected that he told the Judge he was pleading to the maximum sentence on all charges except the murder. Applicant testified he was pleading to anything but life imprisonment on the murder charge. Applicant testified that he told the plea judge he understood all of his questions. Applicant testified that he admitted to the police he was armed with a handgun, but he denied he was the shooter. Applicant testified he hit Investigator Thompson over the head while he was adjusting Applicant's shackles and stabbed Investigator Thompson with a razor blade. Applicant testified he told the judge he was guilty of all the other charges. Applicant testified the plea transcript reflected he told the plea judge he understood he was giving up his constitutional rights by pleading guilty. Applicant

testified he told the plea judge he was satisfied with Counsel, and he had enough time to speak with him and discuss his case. Applicant testified he told the plea judge the only stipulation to his plea was that he would not receive life imprisonment. Applicant testified he told the plea judge he was pleading guilty because he was guilty. Finally, Applicant testified he told the plea judge that he was sorry for the death of the victim and for what happened to Investigator Thompson.

Following Applicant's testimony, Mike Lifsey, Esquire (Counsel), testified. Counsel testified he has been practicing law since 1991. Counsel testified he is the Circuit Public Defender for the Sixth Judicial Circuit. Counsel testified he was already representing Applicant on pending ABWIK charges when Applicant was arrested on these charges. Counsel testified he met with Applicant multiple times to discuss the old charge as well as the new charges. Counsel testified it was more difficult to meet with Applicant after he attempted to murder Investigator Thompson because Applicant was moved to Lee Correctional after the incident. Counsel testified he received discovery in the case and went over it with Applicant. Counsel testified Applicant gave statements to law enforcement about both incidents. Counsel testified Applicant admitted everything in the first incident, but he denied being the actual shooter. Counsel testified Applicant admitted stabbing Investigator Thompson and trying to kill him. Counsel testified the only plea offer to Applicant was the solicitor would not seek life imprisonment. Counsel testified the state could have sought life without parole. Counsel testified he never told Applicant he would only receive thirty years. Counsel testified it was Applicant's decision to plead guilty. Counsel testified Applicant never asked to appeal his guilty plea.

On cross-examination, Counsel testified Applicant was nineteen years old at the time of his plea. Counsel testified Applicant was legally an adult. Counsel testified he never received any specific plea offer until October 4, but he would have discussed pleas, in general, with Applicant.

Counsel testified he was surprised by the plea offer because one of the victims was a member of law enforcement. Counsel testified the solicitor never revoked the offer. Counsel testified that Applicant decided to plea once the reality of the situation set in, and Applicant realized the evidence against him was overwhelming. Counsel testified he kept asking Applicant if he was sure that he wanted a trial because Counsel thought the chances of a favorable outcome at trial were extremely low. Counsel testified that once Applicant realized he was looking at a potential sentence of life without parole, he decided to plead guilty. Counsel testified he discussed all of the constitutional issues surrounding a guilty plea with Applicant. Finally, Counsel testified he had no concerns that Applicant did not understand what was going, as well as the consequences of pleading guilty.

INEFFECTIVE ASSISTANCE OF COUNSEL

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea

counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

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

This Court finds that Counsel met with Applicant multiple times prior to the guilty plea. This Court further finds Counsel obtained discovery from the solicitor and went over it with Applicant. This Court finds Counsel's belief that Applicant had no competency issues was reasonable. This Court finds that the evidence against Applicant was overwhelming, and Counsel did everything he could reasonably have done to obtain a favorable outcome for Applicant. This Court further finds that Counsel thoroughly prepared Applicant's case. This Court further finds that Applicant waived any constitutional or evidentiary challenges he may have had by pleading guilty. This Court further finds that Counsel thoroughly explained the trial process to Applicant, as well as the consequences of pleading guilty. This Court can find no evidence to support Applicant's allegation that Counsel advised him he would receive a specific sentence by

pleading guilty. This Court finds Applicant has failed to establish that Counsel promised him he would receive a thirty year sentence. Accordingly, This Court finds Applicant's argument in that regard to be without merit. This Court further finds that Applicant has failed to establish any evidence to show he requested an appeal of his guilty plea. This Court finds Applicant's testimony in this regard to be not credible and find's Counsel's testimony to be credible. Finally, this Court finds that Counsel did an exceptional job representing Applicant, given the extremely troubling facts surrounding the crimes committed by Applicant in this case.

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. Once again, this Court finds Counsel's testimony to be credible and Applicant's testimony to be not credible.

This Court finds Applicant was aware of the nature of the charges he was facing and the possible penalties. This Court finds Applicant was well aware that by pleading guilty he was waiving his ability to challenge the evidence against him. This Court further finds Applicant was well aware of the constitutional rights he was waiving by pleading guilty. This Court further finds that Applicant pled guilty voluntarily and of his own free will. Furthermore, this Court is not convinced by Applicant's claims that Counsel promised him a thirty year sentence. This Court finds that Applicant was well aware of the overwhelming evidence against him, and that Applicant made a well-reasoned decision to plead guilty in order to avoid a life sentence. As such, Applicant's claims are without merit.

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

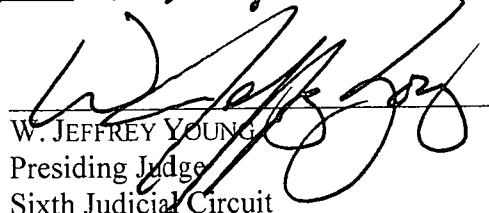
Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Plea counsel rendered effective assistance in regard to the claims raised by Applicant. Therefore, this application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

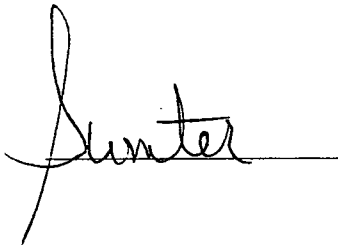
The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a 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 16 day of Sept, 2014.


W. JEFFREY YOUNG
Presiding Judge
Sixth Judicial Circuit


Sumter, South Carolina