

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-29-1198

RECEIVED

OCT - 3 2014

S.C. Supreme Court

AARON DONALDSON
#355077,

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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Aaron Donaldson,

S.C. Supreme Court

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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

A handwritten signature in black ink, appearing to read 'W. Michael Hemlepp, Jr.', written in a cursive style.

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STATE OF SOUTH CAROLINA)
COUNTY OF LANCASTER)
Aaron J. Donaldson, #355077,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE SIXTH JUDICIAL CIRCUIT

Case No. 2013-CP-29-1198

ORDER OF DISMISSAL

FILED
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CLERK OF COURT
LANCASTER, SC

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on September 6, 2013. Respondent made its return on March 19, 2014. An evidentiary hearing into the matter was convened on July 29, 2014, at the Lancaster County Courthouse. Applicant was present at the hearing and was represented by W. Michael Hemlepp, Jr., Esquire. Respondent was represented by Assistant Attorney General J. Croom Hunter of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lancaster County Clerk of Court. The Applicant was indicted for Armed Robbery (2013-GS-29-0035). He was represented by William P. Frick, Esquire. On April 15, 2013, the Applicant pled guilty to before the Honorable J. Ernest Kinard, Jr. Pursuant to a negotiated sentence, he was sentenced to the minimum ten (10) years

imprisonment.¹ A notice of appeal was filed. The appeal was dismissed by Order dated July 23, 2013. The remittitur was sent July 23, 2013.

ALLEGATIONS

At the post-conviction relief hearing, Applicant proceeded to argue his confinement is unlawful based upon the following grounds:

1. "Ineffective assistance of counsel: Use of threats: coercion by State."
 - a. "The defense counsel was ineffective for allowing the State to use intimidation, coercion, and threats to attack the Defendant's girlfriend to obtain a plea."
2. "Ineffective assistance of counsel: Not properly investigating defendant's case."
 - a. "The defense counsel was ineffective for not properly investigating the Defendant's case before the plea bargaining process started."

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. The State presented testimony from plea counsel, William P. Frick, 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 William P. Frick, Esquire. Applicant testified he is twenty-one years old. Applicant testified he pled guilty to armed robbery. Applicant testified he wanted a jury trial, but Counsel made him plead guilty. Applicant testified he pled guilty because he did not want to receive a forty-five year sentence. Applicant testified he was told that if he did not take the plea, he would have to go

¹ A charge of conspiracy was not pressed pursuant to the plea (2013-GS-29-0034).

to trial the next day. Applicant testified Counsel met with him two or three times to discuss the case. Applicant testified they talked about pleading guilty the majority of the time. Applicant testified he would have had a viable defense at trial. Applicant testified he did not match the description given in the witness statement. Applicant testified he was not the person on the surveillance tape, and no weapon was ever found. Applicant testified Counsel told him the jury would find him guilty because the court system is corrupt, and someone would have paid the jury to find him guilty. Applicant testified he would have gone to trial if Counsel had done more to prepare his case. Applicant testified that he received a sentence of ten years, which is the minimum possible sentence for armed robbery. Applicant testified that he knew he was entering a negotiated plea. Applicant testified he answered the plea judge's questions the way Counsel told him to. Applicant testified he acknowledged to the plea judge that he was aware he was giving up his constitutional rights by pleading guilty.

Following Applicant's testimony, William P. Frick, Esquire (Counsel) testified. Counsel testified he has been practicing law since 2001. Counsel testified he received Applicant's case while he was working for the Sixth Circuit Public Defender's Office. Counsel testified he met with Applicant several times to discuss his case. Counsel testified he advised Applicant of the charges and potential sentences he was facing. Counsel testified he attempted to negotiate a plea to a lesser charge, but the solicitor would not come off the armed robbery charge. Counsel testified Applicant received the minimum possible sentence for armed robbery. Counsel testified Applicant was caught on the surveillance tape, but it was hard to tell the person in the video was Applicant. Counsel testified that he watched the tapes. Counsel testified that he received discovery and went over it with Applicant. Counsel testified the evidence suggested Applicant committed the robbery, but it may not have been his idea. Counsel testified Applicant wanted to

raise an alibi defense, but Applicant never gave Counsel any names of alibi witnesses. Counsel testified the surveillance tapes showed that whoever exited the vehicle prior to the robbery was the offender, and the tapes showed Applicant was the person who exited the vehicle. Counsel also testified that the charges against Applicant's co-defendant, who was also his girlfriend, were also dismissed as part of the plea. Counsel testified that he advised Applicant of the rights he would waive by pleading guilty and had Applicant sign a waiver of rights affidavit. Counsel testified Applicant's story was inconsistent. Counsel testified that initially Applicant wanted to go to trial, but once he went over all of the evidence, Applicant decided to plead 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 further finds that Counsel thoroughly investigated and prepared Applicant's case. This Court notes that Counsel's testimony that Applicant never provided him with the names of any alibi witnesses is credible. This Court further finds that Applicant waived any constitutional challenges 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 finds that Counsel was fully prepared to proceed to trial, but his advice to Applicant to plead guilty was well reasoned and based upon many years of trial experience. This Court finds Counsel attempted to obtain a more favorable plea deal from the solicitor. This Court finds the solicitor's unwillingness to offer a better plea deal in no way reflects upon Counsel's effectiveness. This Court notes that Applicant received the minimum possible sentence he could

for a plea to armed robbery. This Court finds Counsel's opinion that there was sufficient evidence to convict Applicant had he proceeded to trial was well-reasoned. This Court finds further that Counsel was prepared to go to trial, had Applicant decided not to plead guilty. This Court finds no evidence in the record to suggest the State forced or coerced Applicant to plead guilty, or that counsel's performance was somehow deficient in this regard. Finally, this Court finds Counsel's representation of Applicant and handling of this case were well within the standards required for effective representation.

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 waived 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 finds that Applicant made a well-reasoned decision to plead guilty, rather than proceed to a jury trial on the armed robbery charge, based upon the video evidence against Applicant. This Court further finds that Applicant pled guilty voluntarily and of his own free will. This Court finds there is no evidence to suggest Applicant's plea was forced or coerced. This Court finds Applicant's claims that Counsel told him the jury could be bribed to find him guilty is wholly not credible. This Court further finds that Applicant was aware the charges against his co-defendant would be dropped as part of his plea. 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.

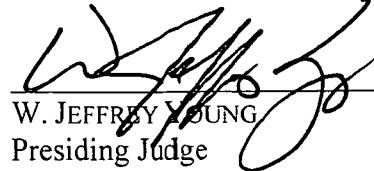
The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a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