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S.C. Supreme Court

IN THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM RICHLAND COUNTY

COURT OF COMMON PLEAS

ROBERT E. HOOD, CIRCUIT COURT JUDGE

2013-CP-40-3674

Curtis Schoclet,.....Petitioner.

vs

The State of South Carolina,.....Respondent.

NOTICE OF APPEAL

Curtis Schoclet appeals the Honorable Robert E. Hood's September 22, 2014, Order of Dismissal. Undersigned counsel received notice of entry of the order on October 3, 2014. A copy of the order on appeal is attached to this notice.

Respectfully submitted,

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Attorney for the Petitioner.

October 7, 2014.

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PROOF OF SERVICE

I, Anna Good, certify that I have today served the within notice of appeal upon the Respondent by depositing a copy of it in the United States Mail, postage prepaid, addressed to the attorney of record, J. Croom Hunter, P.O. Box 11549, Columbia, South Carolina 29211-1549. I further certify that all parties required by Rule to be served have been served this 7th day of October 2014.

Respectfully submitted,

Anna R. Good

Anna R. Good, Esquire
Law Office of Anna Good, LLC
1720 Main Street, Suite 303
Columbia, South Carolina 29201

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT
Curtis Schoclet, #354333, Applicant, v. State of South Carolina, Respondent.	Case No. 2013-CP-40-3674 **ORDER OF DISMISSAL**

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on June 24, 2013 and amended on March 21, 2014. Respondent made its return on February 24, 2014. An evidentiary hearing into the matter was convened on September 2, 2014, at the Richland County Courthouse. Applicant was present at the hearing and was represented by Anna R. Good, Esquire. Respondent was represented by Assistant Attorney General J. Croom Hunter of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. Applicant was indicted during the January 2011 term of the Richland County Grand Jury for Armed Robbery (2011-GS-40-0599) and two counts of Kidnapping (2011-GS-40-0560, -561). Applicant was represented by Courtney A. Gibbes, Esquire. On February 11-12, 2013, Applicant proceeded to a jury trial before the Honorable Diane S. Goodstein. During his trial, Applicant elected to abandon his trial and plead guilty to Armed Robbery pursuant to negations with the State for a sentence of twenty-

five years imprisonment. Pursuant to these negations, Judge Goodstein sentenced Applicant to twenty-five years imprisonment. Applicant did not appeal his guilty pleas or sentences.

ALLEGATIONS

In his application for post-conviction relief, and in an Amendment to the application filed on July 9, 2014, Applicant alleges that he is being held in custody unlawfully based on the following grounds:

1. Ineffective assistance of counsel – Trial counsel failed to file a motion to reconsider.
2. Ineffective assistance of trial counsel – Trial counsel failed to discuss and present testimony from Applicant on behalf of the defense during the Jackson v. Denno hearing.
3. Ineffective assistance of counsel – Trial counsel gave erroneous advice regarding the elements of kidnapping and the corresponding video with the case.
4. Ineffective assistance of counsel – trial counsel prepared to have a hearing regarding life without parole prior to the trial date.

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. The State presented testimony from plea counsel, Courtney A. Gibbes, Esquire (Counsel). This Court also had before it a copy of the plea transcript, the Richland County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, the return, and an exhibit presented by Applicant.

During the evidentiary hearing, Applicant testified that he was represented at his plea by Courtney A. Gibbes, Esquire. Applicant testified he pled guilty to kidnapping and armed robbery. Applicant testified he met with counsel three or four times prior to his plea. Applicant testified he and Counsel discussed his case and talked about Applicant being served with notice of LWOP. Applicant testified the attorney who represented him prior to Gibbes told him he would need to have a hearing to see if he was eligible for LWOP. Applicant testified he received

some plea offers from the solicitor, but he rejected them. Applicant further testified that Counsel never discussed the elements of kidnapping with him. Applicant testified Counsel told him he would get LWOP if convicted, and that Counsel's strategy was to try and attack the LWOP enhancement. Applicant testified he and Counsel never discussed trial strategy. Applicant testified that prior to his decision to plead guilty, Counsel held a motion to suppress the statement he gave to police. Applicant testified that Counsel asked him if he wanted to testify, and he told her did want to testify, but Counsel never called him to the stand. Applicant testified he would have testified at the hearing if Counsel had called him to the stand. Applicant testified he did not know all the motions Counsel was planning to present. Applicant testified that on the second morning of the trial, Counsel told him the solicitor offered an open plea, but then Counsel told him there was no offer. Applicant testified Counsel told him he would be convicted if he proceeded to trial. Applicant testified Counsel told him if he pled to twenty-five (25) years, Counsel would testify on his behalf at the PCR hearing. Applicant testified he felt forced to take the plea because of Counsel's comments regarding his likelihood of success at trial and the possibility of receiving LWOP. Applicant testified that after his plea, Counsel never filed a motion to reconsider. Applicant testified he sent a letter to Counsel requesting she file a motion to reconsider, and he presented this letter to the Court as an exhibit.

On cross-examination, Applicant testified he recalled the plea judge asking him if he understood that armed robbery and kidnapping carry up to thirty (30) years imprisonment. Applicant testified he recalled the plea judge telling him he could not receive less than ten (10) years imprisonment. Applicant testified he recalled the plea judge telling him he needed to count on serving whatever sentence he received due to the non-parolable nature of the charges. Applicant testified he recalled the plea judge going over the Two strike/Three strike law with

him. Applicant testified he recalled the plea judge telling him that if he received LWOP, he would die in prison. Applicant testified he recalled the plea judge advising him that he was giving up his constitutional rights to trial by jury and his ability to challenge the evidence against him by pleading guilty. Applicant testified he recalled telling the plea judge that he still wished to plead guilty. Applicant testified he recalled telling the plea judge no one had promised or threatened him in order to force him to plead guilty. Applicant testified he recalled telling the plea judge that he understood he was pleading to a negotiated sentence of twenty-five (25) years imprisonment in exchange for the solicitor dropping the threat of LWOP. Applicant testified he gave a statement to the police. Applicant testified he did not disagree with the solicitor's version of the facts at his plea. Applicant testified he recalled telling the plea judge he was entering his plea freely and voluntarily. Applicant testified he did not tell Counsel at the Denno hearing that he wanted to testify.

Following Applicant's testimony, Courtney A. Gibbes, Esquire (Counsel) was called to testify. Counsel testified she has been practicing for seven (7) years and was with the Public Defender's office when she was appointed to this case. Counsel testified that 90% of her practice consists of criminal law. Counsel testified she met with Applicant between ten and twelve times. Counsel testified she was Applicant's third attorney on these charges. Counsel testified her office filed the appropriate Rule 5 and Brady motions. She testified she received the discovery and went over it with Applicant. Counsel testified she discussed with Applicant the elements of the charges he was facing, including the kidnapping charges. Counsel testified she decided not to have Applicant testify at the Denno hearing because she felt that was the best strategy at the time. Counsel testified that in hindsight, perhaps she should have put Applicant on the stand. Counsel testified Applicant was on videotape committing the crimes. Counsel testified Applicant

claimed he did not use a real gun. Counsel testified she discussed with Applicant the fact that whether or not the gun actually was real was immaterial; rather, all that mattered was if the victims believed the gun was real. Counsel testified she argued a motion before the trial judge to determine whether Applicant was eligible for LWOP enhancement based on his aggravated robbery conviction from Texas; however, Applicant decided to plead guilty before the judge made a ruling. Counsel testified Applicant was not overly concerned with the threat of LWOP because he had been in jail for three (3) years leading up to his plea, and Applicant did not think the solicitor was serious. Counsel testified the solicitor's office routinely uses the threat of LWOP to force suspects to plead guilty. Counsel testified Applicant did not ask her to file a motion for reconsideration or to appeal his plea. Counsel testified she never received a letter from Applicant asking her to do so.

On cross-examination, Counsel testified the plea judge did tell her that her argument against the sentence enhancement for LWOP was a good argument. Counsel testified she did not recall whether she discussed the judge's comment with Applicant prior to his decision to plead guilty. Counsel testified Applicant wanted to testify, but she made a decision not to put him on the stand. Counsel testified it is possible the outcome of the hearing could have been different if Applicant testified. Counsel testified she spoke with Applicant in the holding cell after he pled guilty. Counsel testified Applicant was initially offered a deal to plead straight up, but he rejected that offer. Counsel testified Applicant did not receive any further plea offers after that. Counsel testified she had a difference of opinion with the solicitor as to what the offer actually was. Counsel testified Applicant finally received another offer of a negotiated plea to a range between twenty-five (25) and thirty (30) years, which he chose to accept rather than going forward with a jury trial. Counsel testified Applicant was caught on video. Counsel testified

Applicant did not ask her at the time of the Denno hearing to put him on the stand.

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 finds Applicant understood he was pleading pursuant to a negotiated sentence. This Court further finds Counsel obtained discovery from the solicitor and went over it with Applicant. This Court finds that Counsel did go over the elements of armed robbery and kidnapping with Applicant. This Court finds Applicant has failed to show trial counsel gave any erroneous advice, particularly concerning the elements of kidnapping. This Court finds Counsel explained to Applicant the terms of his plea and the fact that if he went to trial he was facing life in prison. This Court finds Counsel's decision not to put Applicant on the stand to testify at the Denno hearing was reasonable strategic decision at the time. As such, this Court finds Counsel's testimony that putting Applicant on the stand may have changed the outcome of the hearing is irrelevant to whether the decision was a reasonable strategic decision at the time. See Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992) (where counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel). This Court further finds Counsel presented competent and well-reasoned arguments to the plea court regarding the solicitor's ability to use Applicant's prior Texas conviction as a sentence enhancement for LWOP. This Court finds Counsel's testimony that she did not receive Applicant's letter requesting a motion for reconsideration credible. Accordingly, this Court finds Counsel was under no duty to file a motion for reconsideration where she was unaware of Applicant's wishes. This Court further finds that Applicant pleaded guilty pursuant to a

negotiated sentence, and a motion for reconsideration would not have benefitted Applicant. This Court finds that the evidence against Applicant was overwhelming, and Counsel did everything she could reasonably have done to obtain a favorable outcome for Applicant.

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.

This Court finds Applicant was aware of the nature of the charges he was facing and the possible penalties. This Court finds Applicant did not disagree with the solicitor's recitation of the facts at his plea. This Court further finds that Applicant told the plea judge that he was guilty, and he was pleading guilty freely and voluntarily. This Court finds Applicant told the plea judge he was satisfied with his attorney and did not need any more time. This Court finds Applicant was made well-aware of the constitutional rights he was waiving prior to his guilty plea. Accordingly, this Court finds Applicant was well aware that by pleading guilty he was waiving his ability to challenge the evidence against him, as well as any possible defenses, particularly the outcome of the Denno hearing, as well as the argument against the sentence enhancement for LWOP. This Court further finds that Applicant knew he was pleading to a negotiated sentence of between twenty-five (25) and thirty (30) years in prison, and that he pled guilty voluntarily. This Court finds Applicant made an intelligent decision to plead guilty because he did not want to face LWOP if convicted at trial. This Court finds nothing improper in Counsel's advice or the solicitor's attempt to use Applicant's prior Texas conviction as a sentence enhancement for LWOP. Thus, this Court finds Applicant's decision to plead guilty was his choice, and he did not enter his plea involuntarily.

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 22 day of Sept, 2014.

Re Hood

ROBERT E. HOOD
Presiding Judge
Fifth Judicial Circuit

Columbia, South Carolina