

SUPREME COURT OF SOUTH CAROLINA

APPEAL FROM GEORGETOWN COUNTY
In The Court of Common Pleas

Honorable Benjamin H. Culbertson
Common Pleas Judge of the Fifteenth Judicial Circuit

Case No.: 2013-CP-22-216

James Glisson, #285319,

Petitioner,

v.


State of South Carolina,

Respondent.

NOTICE OF APPEAL

Petitioner appeals the Order of Dismissal, dated August 1, 2014 of the Honorable Benjamin H. Culbertson, filed September 4, 2014 and received by Petitioner on September 11, 2014.

October 9, 2014



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OCT 10 2014

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

James Glisson, #285319,)

Case No. 2013-CP-22-216

Applicant,)

v.)

ORDER OF DISMISSAL

State of South Carolina,)

Respondent.)

FILED
GEORGETOWN COUNTY, S.C.
2014 SEP -4 PM 4:24
ALMA Y. WHITE
CLERK OF COURT

This matter comes before the Court by way of an Application for Post-Conviction Relief filed February 25, 2013. Respondent made a timely Return on or about April 16, 2013. The Court convened an evidentiary hearing into the matter on June 20, 2014, at the Georgetown County Courthouse. Applicant was present at the hearing and represented by Tristan M. Shaffer, Esquire. Joshua L. Thomas, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's plea counsel, Bobby G. Frederick, Esquire, also testified. The Court had before it a copy of the plea transcript, the records of the Georgetown County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the return. The Court finds as follows:

I. PROCEDURAL HISTORY

In May 2011, the Georgetown County Grand Jury indicted Applicant for first degree burglary (2011-GS-22-492). Bobby G. Frederick, Esquire ("plea counsel"), represented Applicant. On October 24, 2012, Applicant entered a plea of guilty to second degree burglary.

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Referred to Thomas/dm
Answered _____

The Honorable Edward B. Cottingham sentenced Applicant to four (4) years imprisonment. Applicant did not appeal his plea or sentence.

II. ALLEGATIONS

In his application, Applicant alleged the following grounds for relief:

1. "My attorney lied to me about the outcome"
2. "I never talked to my attorney about my case"
3. "I was innocent on these charges, he told me to plea"

At the evidentiary hearing, Applicant proceeded on the allegations of ineffective assistance of plea counsel for failure to properly advise him of the consequences of his plea.

Applicant also moved, pursuant to Rule 15(b), SCRPC, to amend his application to include an allegation of improper judicial interference with the plea process. Respondent objected to the amendment on the grounds Applicant did not provide notice of this allegation, and that the allegation was not a proper ground for relief. The Court denied Applicant's motion, finding the amendment improper because it was not timely and was not necessary to the presentation of the merits of the action. See Harden v. State, 276 S.C. 249, 257; 277 S.E.2d 692, 695 (1981).

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the evidentiary hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

A. Summary of Testimony

Plea counsel testified Applicant retained him in October 2011. He recalled meeting with Applicant at least six (6) times. Plea counsel further recalled Applicant had sixteen (16) pending burglary charges alleging he broke into various vacation homes in Georgetown County. Applicant retained plea counsel for all sixteen (16) charges. Plea counsel filed for discovery and received a complete response from the State. He testified he reviewed the discovery response with Applicant. He further testified he discussed with Applicant any potential defenses and what trial strategy they would employ.

Plea counsel also recalled the State initially offered to allow Applicant to enter a plea to all of his pending charges in exchange for a sixteen (16) year sentence. He further testified Applicant rejected the offer and wanted to go to trial. Plea counsel testified he attempted to negotiate a plea offer of ten (10) years to dispose of all charges, but the State refused. Instead, the State offered pleas of fifteen (15) and twelve (12) years to dispose of all charges. Applicant rejected these offers. Plea counsel testified he was prepared for a trial, having hired an investigator, interviewed witnesses, drafted arguments and questions, researched the law, and subpoenaed witnesses

Plea counsel recalled meeting with the presiding judge the morning of the plea. At that time, the State elected to go forward on the charge as a second degree burglary. The presiding judge informed plea counsel he would give Applicant four (4) years if he pled to the second degree burglary without negotiations or recommendations. Plea counsel testified the State still refused to dismiss the remaining charges if Applicant wanted to plea to the second degree burglary without negotiations or recommendations. Plea counsel recalled advising Applicant the

other charges would not be dismissed, and would likely be upgraded to first degree burglaries because the plea would result in his second burglary conviction. He also recalled advising Applicant of the constitutional rights he would waive by entering the plea. Plea counsel testified Applicant made the ultimate decision to enter the plea.

Applicant testified he believed the plea he entered would dispose of all but two (2) of his pending charges. Applicant alleged plea counsel claimed he would take care of the other two (2) cases while Applicant was incarcerated. He testified plea counsel also stated the assistant solicitor prosecuting the cases was leaving and the remaining charges would not be enhanced to first degree burglaries. Applicant claimed he would have gone to trial if he had known the other charges would not have been dismissed. Applicant also testified he never heard of a twelve (12) year offer to dispose of all his pending charges. He testified he only met with plea counsel twice and never discussed the case.

Respondent recalled plea counsel to the stand after Applicant rested his case. Plea counsel testified the discussed the twelve (12) year offer with Applicant and Applicant rejected the offer. He denied he ever told Applicant any other charges would be dismissed in exchange for the four (4) year plea. Instead, he told Applicant he would continue to represent him on the remaining charges. However, plea counsel testified his representation ended after Applicant sent an untruthful disparaging letter to the Supreme Court. At that time, he filed a motion to be relieved, which a circuit judge granted. Plea counsel did recall telling Applicant the assistant solicitor was leaving. However, he further recalled advising Applicant the next solicitor would also likely enhance the remaining charges based on Applicant's plea.

B. Ineffective Assistance of Plea 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, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove "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." Id. at 442, 334 S.E.2d at 814 (citing Strickland v. Washington, 466 U.S. 668 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty plea

counsel, the applicant must show 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, 59 (1985).

The Court finds Applicant failed to meet his burden of proving plea counsel ineffective for failing to properly advise him of the consequences of his plea. The Court finds plea counsel's testimony credible and Applicant's testimony wholly not credible. The Court further finds plea counsel adequately conferred with Applicant, conducted a proper investigation, and was thoroughly competent in his representation.

The Court is not persuaded Applicant did not have a full understanding of the consequences of his plea. Plea counsel explained to Applicant the remaining charges would not be dismissed by the plea and would likely be enhanced. The presiding judge informed Applicant the remaining charges would be subject to being called for trial. (Plea Tr. 7:4-6). The record likewise reflects Applicant was informed at the plea the remaining charges could be enhanced to first degree burglaries. (Plea Tr. 7:14-18). Accordingly, Applicant's allegation he believed the remaining charges would be dismissed is without merit. See, e.g. Wolfe v. State, 326 S.C. 158, 164, 485 S.E.2d 367, 370 (1997) (any possible misconceptions about terms of plea cured by colloquy at guilty plea hearing).

Furthermore, the Court is not persuaded Applicant did not have a full understanding of the rights he waived when entering the plea. Plea counsel properly advised Applicant of the nature of the charges against him. They discussed any possible defense to the charges. In fact, plea counsel was prepared to call witnesses in Applicant's defense if Applicant had proceeded with the trial. Instead, Applicant chose to plead guilty. The record reflects Applicant voluntarily

entered his plea with a full understanding of the nature of his plea. See Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (“A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. 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.” (citations omitted)). Accordingly, the Court finds Applicant has not shown plea counsel was deficient in any way nor that he was prejudiced by plea counsel’s performance.

C. 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 any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

IV. 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. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

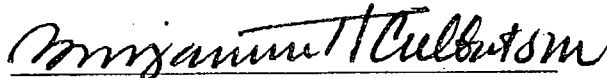
The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel’s receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a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

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 1st day of August, 2014.


THE HONORABLE BENJAMIN H. CULBERTSON
Resident Judge
Fifteenth Judicial Circuit

Georgetown, South Carolina

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S.C. SUPREME COURT

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Supreme Court of South Carolina
Post Office Box 11330
Columbia, SC 29211

RE: James Glisson #285319 v. State of South Carolina
Case No.: 2013-CP-22-216

Dear Clerk of Court:

Enclosed please find an original and one copy of a Notice of Appeal in the above referenced matter. If you would, please file the Notice of Appeal and return a clocked copy to me in the envelope provided.

Please be advised that I have been court appointed to represent Mr. Glisson in this matter.

Thank you for your assistance in this matter. If you have any questions or concerns, please feel free to contact my office.

With kind regards,



Tristan M. Shaffer

TMS/cdc

cc: Joshua L. Thomas, Esquire
Georgetown County Clerk of Court
Loreen French
James Glisson

AXELROD

& ASSOCIATES
ATTORNEYS AT LAW

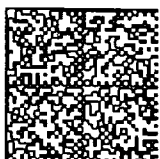
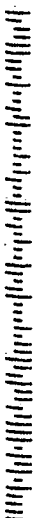
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