

NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM CHESTER COUNTY
Court of Common Pleas

OCT 23 2014

W. Jeffrey Young, Circuit Court Judge

S.C. SUPREME COURT

Case No. 2014-CP-12-0189

State of South Carolina,

 Respondent,

v.

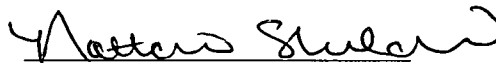
Anthony O. Isom,

 Appellant.

NOTICE OF APPEAL

Anthony O. Isom appeals the order of the Honorable W. Jeffrey Young dated September 16, 2014. Appellant received written notice of entry of this order on September 28, 2014.

October 20, 2014



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1169 Ebenezer Rd.
Rock Hill, South Carolina 29732
(803) 329-4200
Attorney for Appellant

Other Counsel of Record:
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v.

Anthony O. Isom Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the below listed people by depositing a copy of them in the United States Mail, postage prepaid, on October 20, 2014, to the addresses listed below.

J. Croom Hunter
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Post Office Box 11549
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Hon. Sue K. Carpenter
Chester County Clerk of Court
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Nathan Sheldon
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October 20, 2014

ruled Applicant was not entitled to immunity. Applicant filed a Notice of Appeal from Judge Goldsmith's ruling. By Order filed December 17, 2013 the South Carolina Court of Appeals dismissed the appeal. The Remittitur was sent on January 9, 2014.

The Applicant subsequently pled guilty to the lesser-included offense of voluntary manslaughter. On January 28, 2014, the Honorable Brian M. Gibbons sentenced Applicant to fifteen (15) years imprisonment.

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.
2. Involuntary guilty plea.

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 Chester 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 Mike Lifsey, Esquire. Applicant testified that he pled guilty to voluntary manslaughter. Applicant testified he was seeking a sentence reduction or a new trial. Applicant testified that prior to his plea, he sought immunity from prosecution pursuant to the Protection of Persons and Property Act. Applicant testified Judge Goldsmith denied immunity. Applicant testified he asked Counsel to appeal the denial of immunity but that Counsel never did. Applicant testified that he told the plea judge he was entering his plea voluntarily. Applicant testified Counsel only saw him

twice prior to his plea. Applicant testified he received discovery two weeks prior to his plea. Applicant testified he decided to plea on the morning his case was called for trial. Applicant testified he thought he could still appeal his denial of immunity, even after he pled guilty. Applicant testified he wanted to appeal the denial of immunity, and that he has not received any information regarding that appeal. Applicant testified he never received pictures of the knife that was used in the crime as part of his discovery. Applicant testified that Counsel explained the consequences of Applicant entering a guilty plea.

On cross-examination, Applicant testified that he told the plea judge he understood the crimes he was charged with and the possible sentences. Applicant testified he recalled telling the plea judge he was satisfied with Counsel, Counsel had answered all of his questions, and Counsel gone over his case with him. Applicant testified he told the plea judge that no one forced him to plead guilty. Applicant testified that he recalled the plea judge going over the rights he was giving up by pleading guilty. Applicant testified that he apologized to the victim's family when he pled guilty.

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 made three trips to Lieber Correctional to visit Applicant. Counsel testified that after Applicant was released on bond, he visited Counsel at his office, until Applicant was re-incarcerated on other charges. Counsel testified he received discovery and went over it with Applicant. Counsel testified the knife Applicant referred to in his testimony was found on the bathroom floor, and the victim was in the bathtub. Counsel testified Applicant claimed the victim attacked Applicant with the knife. Counsel further testified that law enforcement did not take the knife into evidence, but they did

have pictures of the knife.

With regard to the immunity hearing, Counsel testified that at the time of Applicant's immunity hearing, the controlling case law was State v. Duncan, 392 S.C. 404, 709 S.E.2d 662 (2011), which said the denial of immunity was immediately appealable. Counsel testified the solicitor moved quickly in Applicant's case. Counsel testified the immunity hearing was held on May 30, 2013, at which point Judge Goldsmith ruled from the bench in denying immunity. Counsel testified Judge Goldsmith did not issue a written order. Counsel testified that at that point he filed an appeal, which stayed Applicant's case. Counsel testified that at that point, State v. Isaac, 405 S.C. 177, 747 S.E.2d 677 (2013) came out, which changed the manner in which appeals from immunity hearings were handled. Counsel testified that at that point, the solicitor set a trial date for January 13, 2014. Counsel testified that on November 26, 2013, he received a request from the South Carolina Court of Appeals for a copy of Judge Goldsmith's order. Counsel testified he called the Court of Appeals and left a voicemail message, in which he explained the order was verbal and Judge Goldsmith had never issued a written order. Counsel testified the Court of Appeals subsequently dismissed Applicant's appeal in December, 2013. Counsel testified he told Applicant he would waive any further appeal from the denial of immunity by entering a guilty plea. Counsel testified Applicant still made the decision to plead guilty.

Counsel testified that he and Applicant discussed the merits of going to trial and arguing Applicant acted in self-defense. Counsel testified there were some facts that might work in Applicant's favor, such as the fact that Applicant was unarmed, Applicant received a minor stab wound, and the victim had a knife. Counsel testified the negative factors that might influence a jury were the fact that the murder occurred at the victim's home, the dispute was over drugs, and

the victim died of repeated blows to his head. Counsel testified the victim died of traumatic brain injury, and the autopsy revealed several different poolings of blood inside the victim's head. Counsel testified he thought the likely outcome at trial would have been a manslaughter verdict. Counsel testified he thought Applicant made a wise decision to plead guilty because the plea judge tended to give tougher sentences for trials than guilty pleas. Counsel testified that he usually has his clients sign a plea affidavit for serious crimes, but he did not think he had Applicant do one in this case. Counsel testified there is no rule requiring him to have his clients sign plea affidavits. Counsel testified he went over everything with Applicant that would be contained in a plea affidavit prior to Applicant's plea.

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 further finds that Counsel thoroughly prepared Applicant's case. 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 further finds that Counsel did not commit any errors in his handling of Applicant's immunity hearing and the appeal thereafter. This Court finds, additionally, that even if Counsel did commit any errors in his handling of the immunity hearing, any error would be harmless because Applicant was well-aware that he was waiving any further challenge to the ruling by entering his guilty plea. 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. 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 additionally finds that Applicant was well aware that he waived any challenges to the outcome of the immunity hearing by pleading guilty. 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 murder charge. This Court further finds that Applicant pled guilty voluntarily and of his own free will. 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.

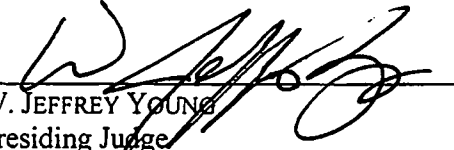
The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a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

2014 SEP 23 A 10:13
FILED
CLERK OF COURT
CHESTER CO S.C.

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October 20, 2014

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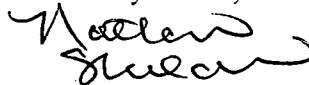
Re.: Isom v. State of SC (2014-CP-12-0189)

S.C. SUPREME COURT

Dear Mr. Shearouse:

Please find enclosed the original and two copies of the Notice of Appeal and Proof of Service on the above referenced case. Please file the originals and mail the stamped copies back to me in the also enclosed self addressed stamped envelope. Please let me know if you have any other questions or concerns. Thank you.

Sincerely Yours,



Nathan Sheldon
Shaw Law Firm

