

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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OCT 24 2014

APPEAL FROM YORK COUNTY
Court of Common Pleas

S.C. Supreme Court

J. ERNEST KINARD, JR, Circuit Court Judge

Civil Action Number: 2013-CP-46-3702

CARLOS LUIS PINALES
MEJIA #354376,

Petitioner,

v.

STATE OF SOUTH
CAROLINA,

Respondent.

NOTICE OF APPEAL

The Petitioner above appeals the order of the Honorable J. Ernest Kinard, Jr. dated October 7, 2014 denying his application for Post-Conviction Relief.

October 15, 2014



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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 15, 2014, addressed to:

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Attorney for Appellant

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)
))
))
Carlos Luis Pinales-Mejia, #354376,)
))
Applicant,)
))
v.)
))
State of South Carolina,)
))
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

2013-CP-46-3702

ORDER OF DISMISSAL

FILED - RECEIVED
2014 OCT 7 AM 10:48
DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC

This matter comes before the Court by way of an Application for Post-Conviction Relief filed December 5, 2013. Respondent made its Return on March 4, 2014. An evidentiary hearing into the matter was convened on August 4, 2014, at the Moss Justice Center in York, SC. W. Michael Hemlepp, Jr., Esquire represented Applicant. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

At the hearing, Applicant testified on his own behalf. Harry Dest, Esquire also testified. This Court had before it a copy of the records of the York County Clerk of Court, records from the South Carolina Department of Corrections, the application, the State's Return and the guilty plea transcript.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. Applicant was indicted at the August 2007 term of the York County Grand Jury for Possession of Cocaine with Intent to Distribute (PWID) (2007-GS-46-2858) and PWID Cocaine within proximity of a school (2007-GS-46-2859). He was also indicted at the August 2008 term of the York County Grand Jury for Murder (2008-GS-

46-3480). Harry Dest, Esquire, represented him. On February 11, 2013, Applicant pled guilty as indicted to PWID Cocaine, 1st offense and PWID within proximity of a school and pled pursuant to North Carolina v. Alford to Voluntary Manslaughter as a lesser included offense of Murder before the Honorable Michael G. Nettles. Judge Nettles sentenced Applicant, pursuant to a recommendation from the State, to fifteen (15) years for Voluntary Manslaughter, fifteen (15) years, concurrent, for PWID Cocaine, 1st offense, and ten (10) years for PWID within proximity of a school. Applicant filed a notice of appeal, but his appeal was denied by the South Carolina Court of Appeals on April 3, 2013. The Remittitur was issued on April 22, 2013.

In his current Application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. “Ineffective Assistance of Trial Counsel”
 - a. “The applicant’s guilty plea was involuntary by reason of ineffective assistance of trial counsel’s failure to inform him of exculpatory evidence prior to the entrance of his guilty plea.”
 - b. “The applicant’s guilty plea was involuntary by reason of ineffective assistance of trial counsel’s failure to inform him that his drug indictments insufficiently charged his offenses.”

At the hearing, the Applicant proceeded on his claims of ineffective assistance of plea counsel.

SUMMARY OF TESTIMONY

At the evidentiary hearing, Applicant testified he pled guilty to the drug charges and pled under Alford to the Voluntary Manslaughter charge. He claimed he pled guilty to the drug charges because he was guilty and because of the advice of Counsel. He also claimed he pled under Alford

to Voluntary Manslaughter because he was not guilty of that charge. He testified he was represented by Counsel and spoke with him about the case on several occasions and told Counsel he was not guilty of the murder. Applicant also stated he took a polygraph test, which was arranged by Counsel, and passed it.

Applicant also testified that during the plea, the State recited its version of the facts. Applicant then claimed he knew about the gun-shot residue test and that Counsel spoke about it during the plea, but Counsel did not discuss it with him prior to the plea. Applicant claimed had he known about the gun-shot residue test before the plea, he would not have pled. Applicant further claimed the incident was an accident and Counsel advised him to plead under Alford. Applicant lastly testified he understood the drug charges could be worse if they were tried separately from the murder charge and also testified he understood he could face all of the charges again if he were successful in this PCR action.

On cross-examination, Applicant admitted he was not under the influence of drugs or alcohol and had no mental or emotion issues during the guilty plea. Applicant also agreed with the facts of the case as the solicitor articulated during the plea. Applicant admitted the plea judge advised him of his constitutional rights and that he waived them in order to plead guilty. Applicant testified he was satisfied with Counsel's representation and had no complaints about Counsel. Applicant stated it was his decision to plead guilty and that nobody threatened him or promised him anything to plead guilty.

Counsel testified he is the Chief Public Defender for the 16th Circuit and has been practicing criminal defense for twenty-four years. Counsel testified Applicant's drug charges stemmed from 2006 and 2007 while his murder charge was from 2008. Counsel stated the State would have tried

the drug cases separately from the murder case had Applicant not pled to all charges. Counsel testified he filed for discovery in both cases. Counsel also testified Applicant maintain that the killing of Victim was an accident. Counsel stated he engaged in negotiations with the State and even hired a polygraph examiner to test Applicant, which Applicant passed. Counsel testified that Applicant then absconded to the Dominican Republic and returned two years later.

Counsel additionally testified the forensic evidence revealed there was one shot to Victim's face with a .9mm and there was stippling on Victim's face from a contact wound. Counsel stated there were no defensive wounds found on Victim, which revealed there was no physical confrontation between Applicant and Victim. Counsel testified the evidence at trial would have been that Applicant and Victim were out at a bar and that Victim was looking for drugs. Applicant then called a drug dealer for Victim and Applicant facilitated a drug transaction at Applicant's apartment. Then Victim's friends came to Applicant's apartment and saw Applicant with a .9mm handgun. According to Applicant, while inside the apartment, Victim tried to grab the gun from Applicant and an unintentional shooting occurred, killing Victim. Counsel also testified the trace evidence would have shown gun-shot residue on Victim's hands had she grabbed the gun; the South Carolina Law Enforcement Division (SLED) report revealed there was no gun-shot residue on the palms of her hands. Counsel further stated Victim was wearing a long-sleeved sweater at the time of the incident and that SLED did not test Victim's sweater or the back of her hands for gun-shot residue. Counsel then testified he explained all of this to Applicant before the hearing and on the record.

Counsel again testified Applicant pled under Alford because Applicant never admitted to an intentional shooting. Counsel advised Applicant about Alford and argued for less time than what Applicant received; Counsel argued for around a ten-year sentencing range. Counsel also testified if

Applicant proceeded to trial, he would not know the outcome, but that it was Applicant's decision to plead to these charges.

On cross-examination, Counsel testified he explained the SLED results to Applicant and met with him many times. Counsel also stated he worked with the State to obtain a favorable plea offer and that the only way Applicant was going to plead was under Alford.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. This Court finds the testimony of the Applicant not credible while finding Counsel's testimony very credible. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

Ineffective Assistance of Counsel

Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged 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 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate

assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 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 (1985).

This Court finds Counsel provided effective assistance of counsel in this case. Counsel advised Applicant of all of the charges and the sentences the charges carried. Counsel also negotiated with the State in Applicant's best interest. This Court finds Applicant made the decision on his own accord with the help of learned counsel. Additionally, this Court finds Applicant made this decision freely and voluntarily without any threats or promises from anyone else. Furthermore, this Court finds that it was ultimately the Applicant's decision to plead guilty.

This Court finds the Applicant's testimony regarding Counsel's ineffectiveness is not credible while also finding Counsel's testimony is credible. This Court finds the Applicant has failed to meet his burden of proving counsel's performance was deficient or that he was prejudiced thereby. Accordingly, this allegation is denied.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the

Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in his representation of the Applicant.

This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel’s performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. Therefore, these allegations are denied.

CONCLUSION

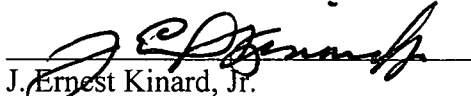
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel 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 (1991), an Applicant has a right to an appellate counsel’s assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant’s behalf. Your attention 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!



J. Ernest Kinard, Jr.
Presiding Circuit Court Judge
Sixteenth Judicial Circuit

9/3, 2014

Beaufort, South Carolina