

STATE OF SOUTH CAROLINA)
)
 COUNTY OF DARLINGTON)
)
 Warren Smith,)
 S.C.D.C. No. 184653,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS

2012-CP-16-0732

ORDER OF DISMISSAL
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S.C. Supreme Court

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 DARLINGTON COUNTY, S.C.

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed August 28, 2012. The Respondent made its return on January 17, 2013. An evidentiary hearing into the matter was convened on July 16, 2013 at the Darlington County Courthouse. The Applicant was present at the hearing and represented by Parker Howle, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's plea counsel, Chelsea McNeill, Esquire. The Court had before it the transcript of the guilty plea hearing, the Darlington County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, and the return

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Darlington County Clerk of Court. The Applicant was indicted at the August 2011 term of the Darlington County Grand Jury for petit larceny (2011-GS-16-1059), kidnapping (2011-GS-16-1061), first-degree burglary (2011-GS-16-1062) and first-

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degree assault and battery (2011-GS-16-1063) and at the May 2012 term for armed robbery (2012-GS-16-0525). He was represented by Chelsea McNeill, Esquire.

On August 29, 2012, the Applicant pled guilty to all of the charges as indicted – except the armed robbery charge was reduced to strong arm robbery during the guilty plea hearing. He was sentenced by the Honorable J. Michael Baxley to concurrent terms of thirty days for petit larceny, twenty-five years for kidnapping, twenty-five years for first-degree burglary, ten years for first-degree assault and battery, and fifteen years for strong arm robbery. The Applicant did not file an appeal.

ALLEGATIONS

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

1. Ineffective assistance of counsel:
 - a. “The court gave me a public defender that was not known to me.”
2. Involuntary guilty plea:
 - a. “May [sic] paid attorney was not present at my hearing.”

In an amended application for post-conviction relief filed April 26, 2013, the Applicant made the following allegations:

1. Ineffective assistance of counsel:
 - a. “My paid attorney, James C. Cox, was not present for my plea, even though he had been paid to appear at same. I was given an offer of 15 years by the Solicitor, which my plea counsel, Chelsea McNeill, failed to address in the time period leading up to and during my plea.”

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 and arguments presented at the PCR 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).

Ineffective Assistance of Counsel/Involuntary Guilty Plea

The Applicant alleges his guilty plea was involuntary and that 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).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel’s ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). When there has been a guilty plea, the applicant must prove that counsel’s representation was below the standard of reasonableness and that, but for counsel’s unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). 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)).

The Applicant stated he hired James Cox to represent him and that Cox was never relieved as his attorney. The Applicant stated there was a fifteen-year plea offer but that he did not accept it because Mr. Cox was not there. The Applicant stated he had two meetings with plea counsel and that they discussed the case and what he had discussed with Mr. Cox. The Applicant stated they did not discuss either his version of events or the victim's identification. The Applicant stated plea counsel pressured him into pleading guilty. The Applicant stated his plea was involuntary because Mr. Cox was not present. The Applicant admitted he told the plea judge he committed these crimes. The Applicant stated he did not tell the plea judge about Mr. Cox's representation because this information was already on the record. The Applicant admitted he did not tell the plea judge he felt pressured. The Applicant stated he believed he would receive a fifteen-year sentence if he pled guilty but admitted he did not mention this to the plea judge. The Applicant stated plea counsel did not advise him of the right to appeal.

Plea counsel testified she was aware of Mr. Cox's prior representation. Plea counsel testified she called Mr. Cox and was told he had been retained on a prior matter, not this one. Plea counsel testified a fifteen-year plea offer on these charges had been made while Mr. Cox still had the case but that the Applicant had rejected it. Plea counsel testified she had three or four meetings with the Applicant and that they reviewed: the discovery materials, the elements of the charges, and the sentencing ranges for those charges. Plea counsel the State never conveyed a plea offer on this case after she was appointed. Plea counsel testified she was prepared for trial but that the Applicant decided to plead guilty. Plea counsel testified the Applicant knew he was pleading guilty without a sentence recommendation and that the fifteen-year offer was no longer in place.

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds the Applicant's testimony is not credible, while also finding plea counsel's testimony is credible. This Court further finds plea counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his representation.

This Court finds the Applicant failed to meet his burden of proving his guilty plea was involuntary. The Applicant admitted to the plea judge both that he was guilty and that the facts recited by the solicitor were true. (Plea transcript, p.12; pp.18-19; p.24). The Applicant also told the plea judge that he understood the trial rights he was waiving in pleading guilty, was satisfied with counsel, and had not been coerced in any way. (Plea transcript, pp.13-15). This Court finds there is no evidence in the guilty plea transcript to support the Applicant's assertion that he was pressured into entering a guilty plea; therefore the transcript has refuted this allegation. See Stalk v. State, 375 S.C. 289, 300, 652 S.E.2d 402, 407 (Ct. App. 2007); see also Rayford v. State, 314 S.C. 46, 48-49, 443 S.E.2d 805, 806 (1994) (where transcript of guilty plea proceeding refuted applicant's claim that he did not understand the terms of a plea bargain, grant of PCR was inappropriate notwithstanding applicant's claim lawyer misadvised him). This Court finds the Applicant entered a knowing and voluntary guilty plea. See Boykin v. Alabama, 395 U.S. at 243-44, 89 S. Ct. at 1712.

This Court finds the Applicant failed to meet his burden of proving plea counsel did not adequately represent him at the guilty plea hearing. Plea counsel testified she had several meetings with the Applicant and they reviewed the State's evidence, charges, and possible penalties. Plea counsel testified they discussed that the prior fifteen-year plea offer was no longer available. Plea counsel testified they had prepared the case for trial but the Applicant

chose to plead guilty instead. This Court finds plea counsel's testimony is credible. This Court finds plea counsel adequately discussed the case with the Applicant and the Applicant was aware he was pleading guilty without a sentence recommendation. While the Applicant now claims he was actually represented by Mr. Cox and not plea counsel, this Court notes the Applicant never made such a statement at the plea hearing; rather, the Applicant admitted his satisfaction with plea counsel's representation. This Court finds and concludes the Applicant has failed to articulate what else plea counsel should or could have done to better represent him. Xxx.

This Court finds the Applicant failed to meet his burden of proving he is entitled to a review of his direct appeal issues. Plea counsel has a constitutionally imposed duty to consult with the defendant about an appeal only when there is reason to think either: (1) that a rational defendant would want to appeal or (2) that this defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores-Ortega, 528 U.S. 470, 480, 120 S. Ct. 1029, 1036 (2000). In order to make this determination, "courts must take into account all the information counsel knew or should have known." Id. (citing Strickland, 466 U.S. at 690, 104 S. Ct. at 2066). Although not determinative, a highly relevant factor will be whether the conviction follows a trial or a guilty plea, both because a guilty plea reduces the scope of potentially appealable issues and because a plea may indicate the defendant seeks an end to judicial proceedings. Id. This Court finds the Applicant has failed to articulate a rational defendant would have wanted to appeal in this situation or that he informed plea counsel of his desire to do so. As such, the Applicant is not entitled to an appeal of potential direct appeal issues from his guilty plea hearing.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that plea counsel failed to render reasonably effective assistance under

prevailing professional norms. The Applicant failed to present specific and compelling evidence that plea 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 plea counsel's performance.

This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. This Court also concludes the Applicant has failed to meet his burden of proving his guilty plea was not knowing and voluntary. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

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, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner and the Applicant was not prejudiced by counsel's representation. Furthermore, the Applicant's guilty plea was entered knowingly and voluntarily within the mandates of Boykin. Therefore, this PCR application must be denied and dismissed with prejudice.

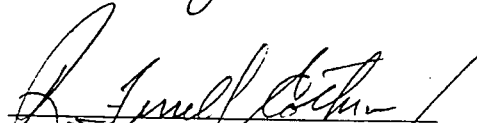
This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules

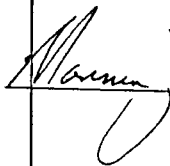
for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 20 day of Aug, 2013.

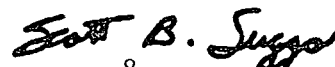

R. Ferrell Cothran, Jr.
Presiding Judge

, South Carolina.

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