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DEC 8 2014

S.C. Supreme Court

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenville County

D. Garrison Hill, Circuit Court Judge

DARRIN BRYANT,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001429

APPENDIX

WANDA H. CARTER
Deputy Chief Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
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P. O. Box 11549
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ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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State versus Bryant

1 STATE OF SOUTH CAROLINA) THE COURT OF GENERAL SESSION
 2 COUNTY OF GREENVILLE) 2011-GS-23-7859
 3)
 4 State of South Carolina) TRANSCRIPT OF RECORD
 5)
 6 -vs-)
 7 Darrin Bryant)

8 March 8, 2012
 9 Greenville, South Carolina

10 B E F O R E:

11 THE HONORABLE EDWARD MILLER, Judge.

12 A P P E A R A N C E S

13 Allen Fretwell, Esquire
14 Attorney for the State

15 Dorothy Manigault, Esquire
16 Attorney for the Defendant

17 CAROLINE HISKELL
18 Thirteenth Circuit Court Reporter

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State versus Bryant

I N D E X

(There were no witnesses or exhibits admitted.)

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State versus Bryant

1 P R O C E E D I N G S

2 THE CLERK: 2011-GS-23-7859, Darrin Bryant,
3 indicted for conspiracy to distribute cocaine, pleading to
4 narcotic drugs and schedule 1 cocaine, second offense and
5 it is a waiver.

6 Raise your right hand.

7 DARRIN BRYANT, having been duly sworn,
8 testified as follows:

9 THE COURT: Thank you.

10 In the last 24 hours have you had any drugs,
11 alcohol, or medication, Mr. Bryant?

12 DEFENDANT BRYANT: No.

13 THE COURT: Have you ever been treated for
14 the substance abuse or mental illness, Mr. Bryant?

15 DEFENDANT BRYANT: No, sir.

16 THE COURT: Mr. Sloan, Mr. Medina, Mr. Bryant
17 and Mr. Boyd, you each have at least one indictment that
18 has not been presented to the grand jury. You have an
19 absolute right to require the state to present those cases
20 to the grand jury where they would have to prove more
21 probably than not that a crime was committed and you did
22 it. You want to give that right up which would allow you
23 to go forward today, Mr. Bryant?

24 DEFENDANT BRYANT: Yes, sir.

25 THE COURT: Mr. Bryant, you're up here on

State versus Bryant

1 2011-7859 alleges you did in Greenville County between
2 June 2 and 12 of 2011 distribute to an undercover
3 operative a quantity of cocaine. This indictment is
4 entitled conspiracy to distribute cocaine. There are no
5 allegations contained in this indictment about conspiracy.
6 This is a straight distribution.

7 DEFENDANT BRYANT: There is no drugs in this.
8 There's never been drugs.

9 THE COURT: We haven't started talking about
10 the facts. I'm just talking about the clerical mistake of
11 the paperwork.

12 Do you have an explanation for that,
13 Mr. Fretwell?

14 MR. FRETWELL: I will certainly ask
15 Mr. Steinberg.

16 THE COURT: Well, what's he pleading too?
17 Possession, second.

18 DEFENDANT BRYANT: Correct.

19 THE COURT: If that's what you're pleading to
20 it's up to five years and a \$7500 fine. Do you understand
21 that? It's right there. The title of the indictment and
22 the substance of it.

23 DEFENDANT BRYANT: Okay.

24 THE COURT: To each of you understanding the
25 nature of the charge and the maximum possible punishment,

State versus Bryant

1 how do you want to plead, Mr. Bryant?

2 DEFENDANT BRYANT: Guilty.

3 THE COURT: Has anybody forced you in any
4 way, coerced you, threatened you or promised you anything
5 to get you to enter that plea, Mr. Bryant?

6 DEFENDANT BRYANT: No, sir.

7 THE COURT: Do you each understand you have
8 an absolute right to a trial by jury where you would be
9 presumed innocent unless and until the State would prove
10 you guilty beyond any reasonable doubt of each and every
11 element of each offense that you're charged with. You'd
12 have a right to confront and cross-examine the witnesses
13 and the evidence put up against you by the State. You'd
14 have a right to compel in court all relevant and competent
15 evidence in your own defense or you can remain silent and
16 your silence can not be held against you and you can never
17 be compelled to incriminate yourself.

18 Do you understand all those rights,
19 Mr. Bryant?

20 DEFENDANT BRYANT: Yes, sir.

21 THE COURT: Do you want to give all those
22 rights up to enter this plea, Mr. Bryant?

23 DEFENDANT BRYANT: Yes, sir.

24 THE COURT: Are you guilty, Mr. Bryant?

25 DEFENDANT BRYANT: Yes, sir.

State versus Bryant

1 THE COURT: Are you totally satisfied with
2 your lawyer, Mr. Bryant?

3 DEFENDANT BRYANT: Yes, sir.

4 THE COURT: Have you had enough time to
5 review the evidence the State has against you, Mr. Bryant?

6 DEFENDANT BRYANT: Yes, sir.

7 THE COURT: I don't have Mr. Bryant's
8 indictment yet.

9 MR. FRETWELL: I have it. Here's the issue,
10 Judge, the prosecutor is understanding that it's
11 distribution of cocaine second offense.

12 THE COURT: We have come to an impasse.

13 MS. MANIGAULT: The indictment says
14 conspiracy.

15 THE COURT: Conspiracy.

16 MS. MANIGAULT: He's serving 22 years on the
17 other charges which he started in 2002.

18 DEFENDANT BRYANT: I'm guilty of conspiracy,
19 can we go with the conspiracy?

20 THE COURT: Mr. Bryant, let me tell you, this
21 indictment is for second offense distribution. It carries
22 a mandatory minimum five to thirty years. It's a Serious
23 Offense*. If you got convictions for three or more
24 offenses, you're eligible for life in prison without
25 parole. It's also a Violent Offense and it's a non

State versus Bryant

1 parolable offense, 85 percent, do you understand that?

2 DEFENDANT BRYANT: Yes, sir.

3 THE COURT: Understanding all that, how do
4 you want to plead?

5 DEFENDANT BRYANT: Guilty.

6 THE COURT: Tell me the facts.

7 MR. FRETWELL: I don't know if Serious is
8 marked on there, but it should be marked.

9 THE COURT: It's marked.

10 MR. FRETWELL: The facts are, Your Honor,
11 between June 2nd and June 12th of 2011, this defendant
12 then an inmate conspired with his mother, Elnora(ph)
13 Bryant and another relative to bring cocaine into Perry
14 Correctional ---

15 THE COURT: Oh, yeah, there she is. I didn't
16 mean to interrupt. Go ahead.

17 MR. FRETWELL: To bring cocaine into Perry
18 Correctional Institute. They were recorded on jail
19 telephone calls and admitted their role. Drugs were
20 delivered to inmate Bryant and he stated that he received
21 the drugs. The amount of drugs could not be determined.

22 He has a prior record and the reduction per
23 the plea agreement is reduction to a second drug offense.

24 THE COURT: I want to know, Mr. Bryant, if I
25 go riding down Shetland(ph) Road, am I going to come out

State versus Bryant

1 of there alive?

2 DEFENDANT BRYANT: Of course.

3 THE COURT: Unscathed. Elnora is your
4 mother?

5 DEFENDANT BRYANT: Yes.

6 SPEAKER: Yes.

7 THE COURT: Who is that?

8 DEFENDANT BRYANT: That's my niece
9 (inaudible).

10 THE COURT: Who was the other girl that was
11 up there with Elnora, the other desperado?

12 DEFENDANT BRYANT: That was my other niece,
13 Christen.

14 THE COURT: I remember Elnora, never forget
15 her.

16 Anything you want to tell me?

17 MS. MANIGAULT: Your Honor, we'd ask for the
18 minimum in this case of five years to be run concurrent
19 with his present sentence.

20 THE COURT: When did you get your other
21 sentence?

22 DEFENDANT BRYANT: 2003.

23 THE COURT: Do you remember which month by
24 any chance?

25 PROBATION CLERK: 4/21/03.

State versus Bryant

1 THE COURT: Where did they move you?

2 DEFENDANT BRYANT: Leiber.

3 THE COURT: How you doing? Everything going
4 alright?

5 DEFENDANT BRYANT: I'm doing real good.

6 THE COURT: You graduate high school?

7 DEFENDANT BRYANT: I'm waiting to be enrolled
8 in the GED program at Leiber.

9 THE COURT: You need to do that.

10 MS. MANIGAULT: They closed it down. He said
11 they just got a new one up.

12 THE COURT: Just do everything you can in
13 there. We're going to keep an eye on Elnora. Five years,
14 good luck to you, concurrent.

15 DEFENDANT BRYANT: Thank you.

16 ---END OF TRANSCRIPT RECORD---

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State versus Bryant

1 I, the undersigned Caroline Hiskell, Official
2 Court Reporter for the Thirteenth Judicial Circuit of the
3 State of South Carolina, do hereby certify that the
4 foregoing is a true, accurate, and complete transcript of
5 record of all the proceedings had and evidence introduced
6 in the trial of the captioned case, relative to appeal, in
7 the Court of General Sessions, Greenville, South Carolina
8 on the 8th day of March, 2012.

9 I do further certify that I am neither of
10 kin, counsel, nor interest to any party hereto.

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14 Caroline Hiskell
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FORM 5

STATE OF SOUTH CAROLINA)

County of Greenville County)

DARRIN BRYANT #292565)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2013-CP-23- 01424

APPLICATION FOR
POST-CONVICTION REVIEW

FILED - CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. HENDERSON
2013 MAR 12 AM 10:50

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Turbeville C.I
PO Box 252, Turbeville, SC 29162
2. Name and location of Court which imposed sentence Greenville County
General Sessions court, Greenville, SC
3. Name(s) of co-defendant(s) (if any) EINORA BRYANT, Kristen Bryant
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2011GS2307859 (Cont, on back)
 - (b) N/A

Cont. #4[ⓐ] Indictment # 2011652307859 was originally for Drugs/mop
Narcotic (cocain) 2nd offence. But as part of the Plea
Judge Miller changed the charge to Dist. of Cocain 2nd offence.
As the Sentence sheet clearly shows, He sentenced my to
5yrs concurrent, Non violent, and he back dated it to
4-21-03 when I started this sentence.

- (c) N/A
- 5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) March 8, 2012 (Cont. on back)
 - (b) N/A
 - (c) N/A
- 6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty
 - (b) after a plea of not guilty N/A
 - (c) after a plea of nolo contendere N/A
- 7. Did you appeal from the judgment of conviction or the imposition of sentence?
NO
- 8. If you answered "yes" to (7), list:
 - (a) the name of each Court to which you appealed:
 - i. N/A
 - ii. N/A
 - iii. N/A
 - (b) the result in each such Court to which you appealed:
 - i. N/A
 - ii. N/A
 - iii. N/A
 - (c) the date of each such result:
 - i. N/A
 - ii. N/A
 - iii. N/A
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. N/A
 - ii. N/A
 - iii. N/A
- 9. If you answered "no" to (7), state your reasons for not so appealing:
 - (a) At the time of my sentencing I was under the impression that I was pleading to A 5 year, Concurrent, Nonviolent
 - (b) N/A

(Cont on Back)

Cont. #5 (A). Judge Miller changed the charge to Dist of Cocain 2nd offence as part of the plea, He sentenced me to 5yrs Concurrent, Non-violent and Back dated it to 4-21-03 when I started this sentence.

Cont. #9 (A). Sentence that the Judge ordered to be back dated to 4-21-03, It was Not until after I was back in the SC Department of Corrections that I found out that mistakes had been made. I WAS told that this sentence was a mandatory sentence as well as the sentence was never backdated to 4-21-03 as the Judge ordered. At No point before, during or after my plea was a mandatory sentence ever mentioned by the Judge or by my attorney as the Court transcripts will show, the mandatory box on the sentence sheet was never checked either. If my attorney or the Judge would have made me aware that this was a mandatory sentence, I would have never agreed to the plea.

(c) N/A

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Ineffective Counsel

(b) Due Process

(c) Indictment, transcripts, Sentencing sheets

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) (see back)

(b) 14th amendment

(c) (see back)

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? N/A

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A

(d) any other petitions, motions or applications in this or any other Court? N/A

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. N/A

ii. N/A

iii. N/A

iv. N/A

(b) the name and location of the Court in which each was filed:

i. N/A

ii. N/A

iii. N/A

iv. N/A

11. (A) It was my Lawyers Job and duty to make sure that all my paperwork was in order and drawn up without mistakes. Aswell as to make sure I recieved the plea that I Plead out to. She never made me aware that I was Pleading to a mandatory sentence.

11. (C) The Fact that it states in the court transcripts Aswell as on my Sentencing Sheets that I Was to Serve a Non violent 5 years, Concurrent and Back dated to 4-21-03 when I started this sentence.

At No Point Was I sentenced to a Mandatory sentence, the Court transcripts Aswell as the Sentencing sheet Says or shows Nothin about a mandatory sentence. nothin was ever mentioned about a mandatory sentence during this Plea by the Judge or my attorney or I would not have plead to this charge.

- (c) the disposition thereof:
 - i. N/A
 - ii. N/A
 - iii. N/A
 - iv. N/A

- (d) the date of each such disposition:
 - i. N/A
 - ii. N/A
 - iii. N/A
 - iv. N/A

- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. N/A
 - ii. N/A
 - iii. N/A
 - iv. N/A

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
(See Back)

15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
 - i. Copies of my Sentencing sheet outlining the problems
 - ii. Grievance filed with SCOC
 - iii. N/A
 - (b) the proceedings in which each ground was raised:
 - i. N/A
 - ii. N/A
 - iii. N/A

14. I wrote a letter to my attorney Dorothy Maniquat at the public defenders office and sent a copy of my sentence sheet showing the problems, asking for her to help me get the mandatory sentence lifted off of me since I knew nothing about it. As well as the sentence was never backdated to 4-21-03 As ordered. I've still NEVER got a Reply back to this letter. My Dad called my Attorney office and was told that this matter was settled and out of their hands. My Mother went to the Clerk of Court in Greenville and showed them the error, she was told I had to get my attorney to handle this matter. My Attorney still has not responded.

15. I also filed a grievance with South Carolina Dept of Corrections regarding the facts that they made my sentence a mandatory 5yrs and did not back date the charge to 4-21-03 As the Judge ordered. This motion is still pending in SCDC. SCDC grievance and classification both told me this is a matter that will have to be handled in the courts, but the outcome is still listed as pending.

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) My attorney never made me aware of the facts (cont on back)
- (b) _____
- (c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? Dorothy Manigault
- (b) your trial, if any? N/A
- (c) your sentencing? Dorothy Manigault
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
N/A

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 - i. Dorothy Manigault
 - 13th Circuit Public defender
 - ii. Greenville County Court House
 - 305. E. North St Suite 123
 - iii. Greenville SC 29601
- (b) the proceedings at which each such attorney represented you:
 - i. Dorothy Manigault Plea, Sentence
 - ii. N/A
 - iii. N/A

Cont. 16^(A) of the plea, After I found out and notified my attorney they have completely Failed to take any Kind of action to help me, My attorney has not even responded to my letter, or to my parents calls.

19. State clearly the relief you seek in filing this application:

I am seeking to have my sentence corrected to match the plea that I agreed upon. 5yrs Nonviolent, run concurrent and backdated to 4-21-03. (cont on back)

20. Are you now under sentence from any other court that you have not challenged?

yes. I've been incarcerated in SCOC since 4-21-03

STATE OF SOUTH CAROLINA)
County of Greenville)

VERIFICATION

I, Darrin Bryant, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Darrin Bryant

SWORN to and subscribed before me this 1st day of March, 2013.

Emily Haly (L.S.)
Notary Public

My Commission Expires: 4-27-2016

Cont. 19. as Judge Miller so ordered for Dist of Cocain
2nd offence. Not a mandatory 5yr sentence for Drug/MDP
that SCDC is showing. I want the sentence that Judge
Miller gave me that I agreed upon that court
transcripts and the sentence sheet shows to be true.
At no point did Judge Miller or my attorney ever mention
that this was a mandatory sentence, if I had been told
that this was a mandatory sentence I would not have agreed
upon the plea. I ask that I be given what I agreed to
in my plea as well as what the judge actually sentenced
me to. Please remove the mandatory part and back date my
sentence to 4-21-03 as ordered, or over turn this conviction
so I can have a fair trial and fair sentence as my rights
are suppose to guarantee me.

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, Darrin Bryant, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Darrin Bryant
Applicant

SWORN or affirmed to and subscribed before me this
1st day of March, 2013.

Ernie Haly
Notary Public

My Commission Expires: 4-27-2016

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Darrin Bryant,)
 S.C.D.C. No. 292565,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2013-CP-23-1424

RETURN

In response to the post-conviction relief application filed March 12, 2013, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Applicant waived presentment to the Greenville County Grand Jury for conspiracy to distribute cocaine (2011-GS-23-7859). Dorothy A. Manigault, Esquire represented the Applicant.

On March 8, 2012, the Applicant pled guilty to distribution of cocaine, second offense. The Honorable Edward W. Miller sentenced the Applicant to five years imprisonment. The Applicant did not appeal.

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject conviction and the Applicant's records from the South Carolina Department of Corrections. The plea transcript will be forwarded upon receipt.

II.

In his application for post-conviction relief, the Applicant alleges he is being held in

custody unlawfully for the following reasons:

1. Ineffective assistance of counsel:
 - a. "It was my lawyers job and duty to make sure that all my paperwork was in order and drawn up without mistakes. As well as to make sure I recieve [sic] the plea that I plead out to. She never made me aware that I was pleading to a mandatory sentence."
2. Due process.
3. "Indictment, transcripts, sentencing sheets."

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

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 on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel.

First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). 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. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The Respondent denies each allegation not expressly admitted, qualified or explained.

V.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,

ALAN WILSON
Attorney General

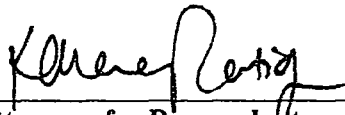
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Senior Assistant Deputy Attorney General

KAREN C. RATIGAN
Assistant Deputy Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

July 12, 2013

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

DARRIN BRYANT, 292565)

Applicant,)

vs)

STATE OF SOUTH CAROLINA,)

Respondent.)

IN THE COURT OF COMMON PLEAS

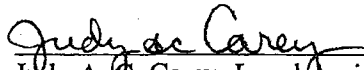
2013-CP-23-1424

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Darrin Bryant, 292565
Turbeville Correctional Institution
Post Office Box 252
Turbeville SC 29162

DATED this 12th day of July, 2013.


 Judy A. C. Carey, Legal Assistant
 For Respondent

I N D E X

(AW) - Denotes Applicant's Witness
(RW) - Denotes Respondent's Witness

Page No.

(AW) DARRIN COKE BRYANT:

Direct Examination by Ms. Horlbeck.....4
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Redirect Examination by Ms. Horlbeck.....13

(RW) DOROTHY A. MANIGAULT:

Direct Examination by Ms. Ratigan.....14
Cross-Examination by Ms. Horlbeck.....18

E X H I B I T S

(There were no exhibits introduced.)

P R O C E E D I N G S

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THE COURT: Yes, ma'am.

MS. RATIGAN: Thank you, Your Honor.

May it please the Court.

This is the case of Darrin Bryant v. the State of South Carolina. The docket number is 2013-CP-23-1424.

Mr. Bryant waived presentment to distribution of cocaine. He was represented by Dorothy Manigault. On March 8th of 2012, he pled guilty to distribution of cocaine second offense. Judge Miller levied a sentence of five years imprisonment. He did not file an appeal.

And the State is ready to proceed.

THE COURT: Yes, ma'am, Ms. Horlbeck.

MS. HORLBECK: Judge, that's correct. We would call Mr. Bryant to the stand.

THE CLERK: Mr. Bryant, please, place your left hand on the Bible and raise your right hand.

WHEREUPON,

DARRIN COKE BRYANT,

after first having been duly sworn, testified as follows:

THE CLERK: Thank you.

Please state your full name for the record.

THE WITNESS: Darrin Coke Bryant.

THE CLERK: Thank you.

DIRECT EXAMINATION

1

2 BY MS. HORLBECK:

3

4 Q Mr. Bryant, do you recall being charged with a drug
5 charge while you were in Perry Correctional?

6

7 A Yes, ma'am.

8

9 Q All right. And, at the time you were charged with
10 the distribution charge, you were serving a sentence; is
11 that correct?

12

13 A Yes, ma'am.

14

15 Q What sentence were you serving in Perry?

16

17 A I was there serving a 22-year sentence.

18

19 Q All right. Speak up just a little bit.

20

21 A I was serving a 22-year sentence.

22

23 Q All right. Well, when did your 22-year sentence
24 begin?

25

26 A April 21st, 2003.

27

28 Q Okay. And when you were charged with the
29 distribution charge or the conspiracy charge, whichever it
30 was, who represented you on that charge?

31

32 A Dorothy Manigault.

33

34 Q All right. How long did Ms. Manigault represent you?

35

36 A Just for that one charge.

37

38 Q But I mean length of time. Did -- was she on your
39 case for six months? Six weeks? What?

40

41 A I'd say about 10 and a half to 11 months.

42

1 Q All right. How many times did she meet with you to
2 discuss the case?

3 A Never. I seen her the first time when I come to
4 court.

5 Q Speak up just a little bit. Because I'm having
6 trouble hearing you.

7 A The first time I ever seen her was when I come to
8 court that day.

9 Q All right. And did you and she review the discovery
10 in your case?

11 A Not with me, no.

12 Q Okay. Did she -- was there an offer from the State?

13 A She sent me a letter in the mail that said that the
14 State was willing to run my charge concurrent with the
15 sentence that I was already running.

16 Q All right. Did she tell you what the State had
17 offered to allow you to plead to, what charge?

18 A No, sir -- no, ma'am.

19 Q What was your understanding of what plea you were --
20 what charge you were pleading to when you stood before
21 Judge Miller?

22 A Actually, when I went in front of Judge Miller, they
23 was -- all my indictments was wrong.

24 Q Right. That's what I'm asking you. What did you
25 think you were pleading to?

1 A They had it -- when they read the indictments off,
2 they was saying something about that I was caught selling
3 undisclosed amounts of powder cocaine to undercover
4 narcotics agents. The Judge stopped everything then and
5 asked the Solicitor, What's going on here with this? The
6 Solicitor said, Obviously, all the paperwork is wrong.

7 So the Judge told me, he said, Well, we're going to
8 send you back to prison and let the State get their
9 paperwork ready. I asked Ms. Manigault, I said, Well, I
10 come [sic] prepared to handle it. Can we not dismiss it
11 if it's wrong?

12 So the Judge said, No. The Judge told me that -- he
13 said, Well, if you're willing to plead out right now, I
14 have the indictments. I think it was for second offense
15 distribution. He said, The least I can give you is five
16 years for it. And I can run it concurrent with the
17 sentence you're already doing where it won't effect you.

18 Q Okay.

19 A And that's what I agreed to.

20 Q All right. So you knew what you were pleading to
21 when you pled to it?

22 A Yeah.

23 Q All right. And you, also, understood that there was
24 a five -- a potential five-year minimum on the sentence;
25 right?

1 A Well, I mean, I was --

2 Q That the sentence -- the potential sentence you faced
3 was five to 30 years; correct?

4 A Yeah.

5 Q Okay. And did Ms. Manigault explain all of that to
6 you before you ever went in front of Judge Miller?

7 A No, ma'am.

8 Q Okay. The first time -- when was the first time you
9 had a clear understanding of what you were pleading to?
10 Was that before the Judge --

11 A No. The first time I had a clear understanding of
12 what I pled to was in December -- mid -- end of December
13 when I got shipped from Lieber Correctional to
14 Turbeville where they broke it down to me and told me that
15 I --

16 Q Well, here's what I'm asking. So when you -- when
17 the Judge -- when Judge Miller told you what you were
18 pleading to and the minimum and maximum sentences, you
19 understood before you entered your plea what you were
20 pleading to; is that correct?

21 A Yeah. I understood I was pleading to five years run
22 concurrent.

23 Q Okay.

24 A And he said that he was going to run it concurrent
25 with the sentence I started in 2003, and that it wouldn't

1 effect me.

2 Q Okay. Did Ms. Manigault explain to you how much of
3 that sentence you would serve?

4 A No. Ms. Manigault didn't explain nothing to me.

5 Q Did she explain to you that you would likely serve
6 85 percent?

7 A No.

8 Q In fact, all offenses that carry a potential 20-year
9 sentence -- at least, a 20-year sentence are -- you have
10 to serve 85 percent of that?

11 A It never was explained to me.

12 Q Okay. And did you think -- when you said that -- you
13 testified just a second ago that pleading to this
14 distribution charge, it wouldn't effect you. What does
15 that mean?

16 A I was under the impression that it was -- that my
17 max-out date that I would -- my max-out date wouldn't
18 change none. That this charge was being run concurrent
19 with the sentence that I was already serving. And it
20 wouldn't effect my max out.

21 Q All right. Before you pled to the distribution
22 charge, what was your max-out date on your 22-year
23 sentence?

24 A 6/5 -- 6/17/15.

25 Q After you pled to the distribution charge, what

1 effect did that have on your max-out date?

2 A It pushed my max-out date back another year to 6/5/16
3 now.

4 Q All right. And was any of that -- was -- that
5 potential change, was that explained to you or addressed
6 with you --

7 A Never.

8 Q -- by Ms. Manigault?

9 A Never.

10 Q All right. And did Ms. Manigault request that --
11 well, let me back up.

12 Do you recall when you were, actually, served with
13 the distribution warrant?

14 A I wasn't -- I mean, they gave it to me. I mean, I
15 don't guess I was ever served with an actual distribution
16 warrant at all, to be honest with you. I mean, this is
17 the warrant that I was served. And it was MDP of drugs
18 second offense. But in court --

19 Q All right. But the facts were that this -- that the
20 distribution happened on or about June the 2nd and June
21 the 12th -- or between June the 2nd and June the 12th of
22 2011; is that correct?

23 A Yes, ma'am.

24 Q Okay. So, at that point -- they must have caught you
25 at that point; is that correct?

1 A That's what they say, somewhere along that line.

2 Q All right. Did Ms. Manigault request that your
3 sentence be backdated to the date of the offense, or the
4 date that you were arrested and charged?

5 A She never requested nothing.

6 Q Okay. Did you get credit for any of the time that
7 you served between being served with the warrant and
8 pleading?

9 A No, ma'am. They did not give me credit for nothing.

10 Q All right. Did -- have you asked the jail -- what's
11 your understanding of why SCDC is not crediting you those
12 days?

13 A Because SCDC says that I was, currently, already
14 serving one sentence. Plus, they say that because the
15 Judge put on my paper that it was backdated to 2003 when I
16 started the sentence that that can't be possible, that he
17 should have put that he was backdating it to 2011, the day
18 that I caught the charge.

19 Q Okay.

20 A That if he would have put it to 2011 when I caught
21 the charge, then that would have gave me -- made up the
22 difference for what they're saying the mandatory charge
23 is, and it would run my max-out date back.

24 Q Did Ms. Manigault ask the Judge to backdate your
25 sentence to the start of your original -- your 2003

1 sentence?

2 A No.

3 Q Okay. Did she ask that your sentence be backdated at
4 all?

5 A She never mentioned or said nothing.

6 Q Okay.

7 A The Judge is the one that did that. Plus, when I
8 found out about it, I wrote Ms. Manigault letters telling
9 her that my sentence got messed up. This ain't what I
10 pled to. She never responded.

11 My dad sitting in the first row, I had him call her
12 numerous times. They wouldn't respond back, told him that
13 it was my problem, and I had to handle it with SCDC.

14 Q Okay.

15 A I mean, so she's done nothing to help me in any way,
16 shape, form, or fashion.

17 Q All right. Are there any other allegations that you
18 have about Ms. Manigault's representation today?

19 A I mean, all my indictments was wrong to start with.
20 The paperwork was wrong.

21 Q Just anything you have not already addressed.

22 A No.

23 MS. HORLBECK: Okay. Please answer any questions
24 that Ms. Ratigan has for you.

25 THE WITNESS: All right.

CROSS-EXAMINATION

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BY MS. RATIGAN:

Q So your testimony today is that you never looked over the discovery materials with Ms. Manigault?

A No. Ms. Manigault, she mailed me a packet. And it just had the transcripts -- phone transcripts in it.

Q Did you feel like you had enough time to look over all that evidence before you pled guilty?

A I mean, it was -- I don't remember the exact time I had it. But, yeah, I had it a little while.

Q So you do feel like you had enough time to look over the evidence?

A Uh-huh.

Q Okay. And do you remember Judge Miller advising you during the plea hearing about 85 percent?

A I don't -- I'm not --

Q You don't recall?

A Huh-uh.

Q And were you happy with how Ms. Manigault had handled your case that day?

A I mean, if everything would have went like it was supposed to have went, I mean, I wouldn't have had a problem. I mean, I was willing to take the five-year plea. But that was under the understanding that it wasn't going to effect me, that it was going to be backdated to

1 where it wouldn't have changed my max-out date. But she
2 didn't make sure none of that happened. So, I mean...

3 Q So you're satisfied with the sentence?

4 A Yes. I'm satisfied with the five-year sentence.

5 Q You're just unhappy that the -- that it was not
6 backdated properly?

7 A Yeah. That she didn't do what she was supposed to do
8 to make sure that all of that was took care of.

9 MS. RATIGAN: That's all I have, Your Honor.

10 REDIRECT EXAMINATION

11 BY MS. HORLBECK:

12 Q And just to be clear. You're asking that the Court
13 grant your petition today?

14 A Yes, sir -- yes, ma'am.

15 Q And you're, also, asking that you be awarded credit
16 for time served between the date you were served with the
17 warrant and the date of your sentencing?

18 A From 2011 to 2012 when I was sentenced.

19 MS. HORLBECK: Okay. That's all I have.

20 Thank you.

21 THE WITNESS: Thank you.

22 THE COURT: Thank you, sir.

23 You may step down, Mr. Bryant.

24 MS. HORLBECK: Judge that's all we have.

25 THE COURT: All right. Yes, ma'am.

1 MS. RATIGAN: Your Honor, we call Ms. Manigault.

2 THE CLERK: Ms. Manigault.

3 WHEREUPON,

4 DOROTHY A. MANIGAULT,

5 after first having been duly affirmed, testified as follows:

6 THE CLERK: Thank you.

7 You may be seated.

8 And, please, state your full name for the record.

9 THE WITNESS: Dorothy A Manigault.

10 DIRECT EXAMINATION

11 BY MS. RATIGAN:

12 Q Ms. Manigault, do you recall representing Mr. Bryant
13 on this charge?

14 A Yes.

15 Q And were you appointed, or were you retained?

16 A Appointed through the Public Defender's Office.

17 Q And did you file the usual Brady and Rule 5 motions?

18 A Yes, I did.

19 Q Did you receive those materials from the State?

20 A Yes, I did.

21 Q Was Mr. Bryant in SCDC at the time, or was he at the
22 jail?

23 A SCDC.

24 Q Were you able to have any meetings with him while he
25 was incarcerated?

1 A I did not meet with him at SCDC. I met with him
2 only, as he said, the day of the plea.

3 Q Did you exchange correspondence with Mr. Bryant?

4 A Yes.

5 Q Did you send him the discovery materials?

6 A We sent him the discovery materials on September
7 16th, 2011.

8 Q Did you ask Mr. Bryant to kind of tell you his
9 version of what had happened?

10 A Mr. Bryant wrote me a couple of letters in February
11 of 2012 and January of 2012 asking for a plea offer,
12 asking that the charges on his co-defendants be dismissed.
13 And I responded to that. I wrote a letter to the
14 Solicitor asking him for an offer. That was Howard
15 Steinberg. And he presented me with an offer, which we
16 received on January the 3rd, 2012. We informed Mr. Bryant
17 of what the offer was.

18 Q And what was that offer?

19 A The offer -- the State's letter says, This is your
20 client's third drug offense, which is 15 to 30 years. I
21 will reduce this to a second offense, which carries five
22 to 30 years.

23 Q And you relayed that offer to Mr. Bryant?

24 A Yes, I did.

25 Q And what was his response when you relayed that offer

1 to him?

2 A He wrote back and asked for a concurrent sentence
3 with his present sentence that he was serving from 2003, I
4 think, 15 years -- several sentences, but the max was
5 15 years. And he, again, asked for the charges against
6 his co-defendants to be dismissed.

7 Q And did you approach the Solicitor's Office about his
8 request for the concurrent time?

9 A Yes.

10 Q And were they amenable to recommending concurrent
11 time?

12 A He said I could ask for it. He wouldn't ask for
13 anything over the minimum.

14 Q Now, there seemed to be some confusion in the
15 indictments about whether Mr. Bryant was charged for --
16 with conspiracy or distribution. Were you aware of that
17 issue prior to the plea?

18 A Probably not. We went through -- I went through the
19 discovery. I talked with him before we -- before the plea
20 to ask him did he have any questions about the discovery
21 materials that I sent him.

22 The indictment, as he said -- he's correct, it had
23 conspiracy on it. The discovery materials discussed
24 distribution, drugs entering into Perry Correctional
25 Institution through family members of his.

1 So it was -- the discovery materials made us aware
2 that it was a distribution charge, although the indictment
3 itself talked about conspiracy.

4 Q What -- in your opinion, what was Mr. Bryant there to
5 plead guilty to that day? Was it conspiracy or
6 distribution?

7 A Mr. Bryant was there to plead guilty to a charge
8 where he could get five years concurrent. It didn't
9 matter to him what the charge was. But as long as he
10 could get five years concurrent with his present sentence,
11 he was willing to negotiate that.

12 Q Okay. And did you advise Mr. Bryant that this would
13 be an 85 percent charge?

14 A No, I did not. The Court -- no, I did not. I did
15 not.

16 Q But Judge Miller advised him during the plea?

17 A I know he advised him of the minimum sentence. It
18 was five, and the maximum was 30. It's in the transcript.
19 But I can't recall offhand.

20 Q And there was -- was there an issue about backdating
21 Mr. Bryant's sentence that he received that day?

22 A There was no issue that day. Because all we asked
23 for was a concurrent sentence.

24 Q Did Mr. Bryant ever write to you after the plea
25 hearing that you recall?

1 A If he did, it's not in his public defender's file.
2 So I can't say he did not. But the correspondence that I
3 received from him before, I always responded to it.

4 Q Do you recall him ever writing you, calling you, or
5 having maybe a member of his family contact you about the
6 backdating issue?

7 A Okay. If they did, they would have called directly
8 to the Public Defender's Office. I'm in private practice.
9 And that call would have been handled through the staff
10 there. So I cannot say that he did not, or his family did
11 not.

12 Q But there's no record in the file of a phone call or
13 a letter?

14 A No.

15 MS. RATIGAN: That's all I have, Your Honor.

16 THE COURT: Yes, ma'am, Ms. Horlbeck.

17 CROSS-EXAMINATION

18 BY MS. HORLBECK:

19 Q Do you recall discussing with Mr. Bryant the
20 possibility of having the sentence backdated to the date
21 he was charged, which I believe was July the 20th of 2011?

22 A I don't recall that, but he may have said that. I
23 don't recall that.

24 Q Okay. And you don't -- you did not ask the Court to
25 do that; is that correct?

1 A That's correct.

2 Q Okay. And any -- do you -- you said that any
3 letters -- any follow-up letters from Mr. Bryant would
4 have been written to the Public Defender's Office?

5 A They would have been written to me, but it would have
6 been mailed to the Public Defender's Office.

7 Q Okay. Did you -- do you -- is there any evidence
8 that you received any follow-up letters from Mr. Bryant to
9 say that he was not getting credit for time served?

10 A I don't have it. It's not in the file.

11 Q Okay.

12 A If he wrote it and they received it, they did not
13 place it in his file.

14 Q Okay. And with no -- if there's no letters in there,
15 then there was -- there's no motion that was filed before
16 Judge Miller to try to fix that?

17 A No. I did not file any motions.

18 MS. HORLBECK: That's all I have.

19 Thank you.

20 MS. RATIGAN: I have no further questions of
21 Ms. Manigault.

22 And the State would rest.

23 THE COURT: Thank you, Ms. Manigault.

24 THE WITNESS: Thank you, Your Honor.

25 THE COURT: Okay. Anything further?

1 MS. HORLBECK: No, Judge.

2 MS. RATIGAN: I waive argument, Your Honor.

3 THE COURT: So the 22-year sentence began on -- in
4 April of 2011; is that right?

5 MS. HORLBECK: No, sir.

6 It began in 2003. I'm going to let him tell you the
7 exact date.

8 THE COURT: I'm sorry. April 21st, 2003, almost 11
9 years to the date.

10 MS. RATIGAN: And, Judge, I believe there's a statute
11 talking about credit for time served. I just can't lay my
12 brain on the exact statutory number.

13 THE COURT: It's 24-13-40, which is right here on the
14 sentencing sheet. The Department of Corrections has
15 exclusive jurisdiction to determine that credit.

16 And have you brought an action under their grievance
17 procedures?

18 MR. DARRIN BRYANT: Yes.

19 I'm all the way into the appellate law court on that.
20 I filed a grievance on step one and step two. And it's in
21 the appellate law court now.

22 THE COURT: About the credit for time served?

23 MR. DARRIN BRYANT: (Mr. Darrin Bryant nodded.)

24 THE COURT: Well, what happened with it?

25 MR. DARRIN BRYANT: They're denying it saying that I

1 needed to take care of it with the Court system because
2 they're the ones that sentenced me. They're saying that I
3 need to have the attorney -- the Judge to change the paper
4 to show that it was backdated to what? April -- I mean
5 June of 2011. And then I could receive my credit.

6 But until I have a paper from the Court saying that
7 it's to that time, then I'm not going to receive no
8 credit.

9 THE COURT: I thought it was automatic.

10 MR. DARRIN BRYANT: I mean, that's what it's --

11 THE COURT: Well, what's the status of your appeal?

12 MR. DARRIN BRYANT: It's pending.

13 THE COURT: With who? Who is it --

14 MR. DARRIN BRYANT: I was denied on my step one
15 grievance. I was denied on my step two grievance. I went
16 into the appellate law court. And that's been sitting
17 there for the last six or eight months without a response
18 yet.

19 THE COURT: Well --

20 MR. DARRIN BRYANT: But SCDC, they're pretty much
21 saying that everything I have to take care of through
22 General Sessions. That it's not something that they can
23 change. That because I didn't have it done when I was in
24 here, I didn't have the sentencing sheet fixed the way to
25 where it properly showed the right -- the date, then

1 that's the reason why they're not giving me the time.

2 THE COURT: Well, despite their efforts to do so,
3 they can't change the statute. I mean, the statute is
4 pretty clear that it's automatic, so. And one of the
5 reasons is to avoid situations just like this.

6 So I don't believe that it's something that a PCR
7 court can do for you, though, sir. Regrettably, I think
8 it's the Department of Corrections. And if they don't do
9 what they're supposed to do, then there are remedies for
10 that. But PCR is not one of them.

11 So I would have to deny your petition and wish you
12 luck on your appeal under the statute.

13 All right. Thank you.

14 *****END OF TRANSCRIPT OF RECORD*****
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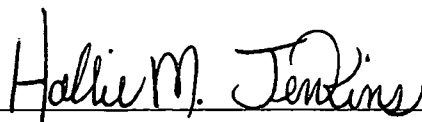
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the 22nd day of April, 2014.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

August 5, 2014

 _____

Hollie M. Jenkins, Court Reporter

My Commission Expires: 09/24/20

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Darrin Bryant,)
 S.C.D.C. No. 292565,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2013-CP-23-1424

FILED-CLERK OF COURT
 GREENVILLE CO. S.C.
 PAUL D. WICKENHUISMER
 2014 JUN 5 PM 10 24

ORDER OF DISMISSAL

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed March 12, 2013. The Respondent made its return on July 12, 2013. An evidentiary hearing into the matter was convened on April 22, 2014 at the Greenville County Courthouse. The Applicant was present at the hearing and represented by Caroline Horlbeck, 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, Dorothy A. Manigault, Esquire. The Court had before it the transcript of the guilty plea hearing, the Greenville County Clerk of Court records, the Applicant's South Carolina Department of Corrections (SCDC) 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 Greenville County Clerk of Court. The Applicant waived presentment to the Greenville County Grand Jury for distribution of cocaine (2011-GS-23-7859). He was represented by Dorothy A. Manigault, Esquire.

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On March 8, 2012, the Applicant pled guilty to distribution of cocaine, second offense. The Honorable Edward W. Miller sentenced the Applicant to five years imprisonment. The Applicant did not 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. "It was my lawyers job and duty to make sure that all my paperwork was in order and drawn up without mistakes. As well as to make sure I recieve [sic] the plea that I plead out to. She never made me aware that I was pleading to a mandatory sentence."
2. Due process.
3. "Indictment, transcripts, sentencing sheets."

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

The 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).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he

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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).

The Applicant stated he was serving a twenty-two year sentence (that began in 2003) when he received this charge. The Applicant stated plea counsel represented him for ten or eleven months but did not meet with him until the day of the plea hearing. The Applicant stated plea counsel did not review discovery materials with him. The Applicant stated he knew the charge he was pleading guilty to that day. The Applicant stated plea counsel did not explain he would serve 85% of this charge. The Applicant stated plea counsel should have asked the plea judge to backdate the sentence to 2011 instead of 2003. The Applicant stated SCDC has not given him the proper amount of credit and this has changed his max-out date from June 2015 to June 2016.

Plea counsel testified she filed discovery motions and sent those materials to the Applicant while he was housed in SCDC. Plea counsel testified the Applicant wrote her two letters in which he asked for a plea offer and for the charges against his co-defendants to be dismissed. Plea counsel testified she conveyed the State's plea offer (to reduce the charge to a second offense) to the Applicant, who asked if it would be concurrent. Plea counsel testified the State said they would not oppose such a request to the plea judge. Plea counsel confirmed she

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did not explain that this would be an 85% charge but noted the plea judge advised the Applicant of this. Plea counsel testified she did not ask the plea judge to backdate the sentence.

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. The Applicant admitted to the plea judge that he was guilty. (Plea transcript, p.5). 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.5-6).

This Court finds the Applicant failed to meet his burden of proving plea counsel should have asked the plea judge to backdate his sentence to 2011. The sentencing sheets indicate the plea judge ordered the sentence in this case to be concurrent with the Applicant's sentence from April 21, 2003. This Court finds S.C. Code Ann. § 24-13-40 (2003) is controlling in this matter. This Court further finds the issue of whether the Applicant's sentence was properly calculated is not a post-conviction relief issue but is rather an issue that must be handled administratively. See Al-Shabazz v. State, 338 S.C. 354, 369, 527 S.E.2d 742, 750 (2000) (holding a credit-related claim or challenge to other conditions of confinement are administrative matters and, thus, cannot be raised in a post-conviction relief proceeding).

This Court finds the Applicant failed to meet his burden of proving plea counsel did not properly review certain things with him. While the Applicant stated plea counsel never reviewed the discovery with him, the Applicant informed the plea judge that he had sufficient time to review the evidence in his case. (Plea transcript, p.6). This Court finds this allegation is refuted

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by the plea transcript. See Stalk v. State, 375 S.C. 289, 300, 652 S.E.2d 402, 407 (Cl. App. 2007). While plea counsel admits she did not advise the Applicant that he would serve 85% of this current charge, this Court finds any error was cured when the plea judge advised the Applicant of such during the colloquy. (Plea transcript, pp.6-7). See Holden v. State, 393 S.C. 565, 575, 713 S.E.2d 611, 616 (2011).

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. 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. Therefore, this PCR application must be denied and

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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 23rd day of May, 2014.

D. Garrison Hill

D. Garrison Hill
Presiding Judge
Thirteenth Judicial Circuit

Greenville, South Carolina.

WITNESSES

James Shugart

SCDC

7/20/2011

DOCKET NO. 2011-GS-23-

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The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

TERM 2011

THE STATE

VS.

DARRIN BRYANT

ARREST WARRANT NUMBER

1522194

ACTION OF GRAND JURY

SUN C

Foreperson of Grand Jury

VERDICT

M. Shugart
Indictment for

CONSPIRACY TO DISTRIBUTE COCAINE

VIOLATION § 44-53-0370

Foreperson of Petit Jury

Date:

RECEIVED

UCL 06 2011

Clerk of Court
Greenville County

