

THE BOOZER LAW FIRM, LLC

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December 15, 2014

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

The Honorable James C. Campbell
Clerk of Court
215 N. Harvin Street
Sumter, SC 29150

RECEIVED

DEC 17 2014

S.C. SUPREME COURT

**RE: Asherdon Holloway, #349764, v. State of South Carolina
2014-CP-43-378**

Dear Mr. Shearouse and Mr. Campbell:

Enclosed for filing is a Notice of Appeal in the above-referenced case. Also enclosed are the following:

- (1) Proof of Service of the Notice of Appeal;
- (2) A copy of the Order which is to be challenged on appeal; and
- (3) Prior Order of Appointment of Counsel.

As I was appointed to represent Mr. Holloway in his PCR proceeding, I anticipate that the Office of Appellate Defense will represent Mr. Holloway in this appeal.

Yours very truly,



Lance S. Boozer

Enclosure

cc: Daniel Gourley, AAG
Office of Appellate Defense
Asherdon Holloway, #349764

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

The Honorable Clifton Newman Circuit Court Judge

Case No. 2014-CP-43-378

Asherdon Holloway, #349764,Petitioner,

v.

State of South Carolina,.....Respondent.

NOTICE OF APPEAL

The Petitioner appeals the Honorable Clifton Newman's Order dated November 12, 2014, denying post-conviction relief to the Petitioner. Undersigned counsel received notice of entry of the Order on November 24, 2014. A copy of the Order on appeal is attached to this notice.

Respectfully submitted,

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DEC 17 2014

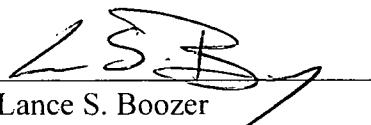
S.C. SUPREME COURT

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THE STATE OF SOUTH CAROLINA
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APPEAL FROM SUMTER COUNTY
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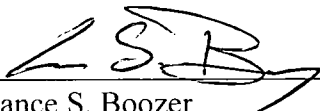
Asherdon Holloway, #349764,Petitioner,

v.

State of South Carolina,.....Respondent.

PROOF OF SERVICE

I, Lance S. Boozer, appointed attorney for Petitioner, certify that I have today served within Notice of Appeal upon the Respondent by depositing a copy of it in the United States Mail, postage prepaid, addressed to Assistant Attorney General Daniel Gourley, P.O. Box 11549, Columbia, SC 29211. I further certify that all parties required by Rule to be served have been served this 15th day of December 2014.


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consecutively. Judge Cothran further sentenced Applicant to a fifteen year term of imprisonment for Attempted Armed Robbery running concurrently.

A timely Notice of Appeal was filed on Applicant's behalf by Robert Michael Dudek, Esquire. The South Carolina Court of Appeals affirmed Applicant's conviction. State v. Asherdon Fari Holloway, No. 3014-UP-023 (Ct. App. filed January 22, 2014). The Remittitur was issued on February 24, 2014.

ALLEGATIONS

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

1. Ineffective Assistance of Counsel
 - a. Counsel was ineffective for failing to object to the fifty year murder.
 - b. Counsel was ineffective for failing to ask that the consecutive sentences handed down by the court be ran concurrent.
2. Involuntary Guilty Plea
3. Denial of Due Process

During the evidentiary hearing, Applicant proceeded on claims on ineffective assistance of counsel for failing to object to the fifty year murder sentence and failing to request the plea judge to run his sentences concurrently. Applicant further proceeded on a claim that his guilty plea was involuntary due to Plea Counsel's poor representation.

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. The State presented testimony from John D. Clark (hereinafter "Plea Counsel"). This Court also had before it a copy of the plea transcript, the Sumter County Clerk of Court records, Applicant's South Carolina Department of Correction records, appellate records, the PCR application, and return.

During the evidentiary hearing, Applicant testified he met with Plea Counsel approximately two times prior to his plea. Applicant recalled reviewing discovery material. Applicant stated that

he did not discuss any defenses with Plea Counsel. However, Applicant stated that he had various witnesses who could testify on his behalf and potentially form a defense. Applicant stated that the witnesses were not present for the PCR evidentiary hearing. Applicant recalled waiving his constitutional rights during his guilty plea proceeding. Applicant recalled telling the judge that he was satisfied with Plea Counsel's services. Applicant recalled the plea judge advising him that he was facing a mandatory minimum of thirty years up to life without parole. Applicant stated that he confessed to the crimes. Applicant recalled telling the plea judge that he was pleading guilty freely and voluntarily. Applicant recalled telling the plea judge that he wanted to plead guilty because he was guilty. During the evidentiary hearing, Applicant stated again that he was guilty.

However, Applicant stated Plea Counsel was ineffective for failing to object to the fifty year murder sentence. Applicant stated had Plea Counsel objected it would have been properly preserved for appellate review. Applicant further stated Plea Counsel was ineffective for failing to request that the plea judge run his sentences concurrently. However, Applicant stated that he understood the plea judge had no obligation to run the sentences concurrently. Applicant stated that he was prejudiced against because he must serve every day of the murder sentence prior to him serving any time on his assault and battery with intent to kill sentence.

Applicant further stated that his plea was involuntary because Plea Counsel's performance was deficient. Applicant stated that there were various witnesses who saw the shooting and could have testified on his behalf. Specifically, Applicant stated Brandon Wright would have testified on his behalf. Applicant further stated that Plea Counsel should have gotten expert's to process the crime scene. However, Applicant stated none of the witnesses nor experts were present at the PCR hearing to testify. Applicant concluded that he wanted an opportunity to present mitigating evidence and does not want a trial.

Following Applicant's testimony, Plea Counsel was called to testify. Plea Counsel stated that he has been practicing law for twenty three years. Plea Counsel stated that he was appointed to represent Applicant due to a conflict of interest within the Public Defender's office. Plea Counsel stated that he met with Applicant more than once, but could not recall the specific number of meetings. Plea Counsel stated he filed for and reviewed with Applicant all Rule 5 and Brady material. Plea Counsel stated he discussed the various elements of the charges and the State's burden of proof.

Plea Counsel stated the evidence against Applicant was "overwhelming." Plea Counsel stated Applicant gave a detailed confession. Specifically, Applicant went to victim's house to rob him because he was under the impression that victim was a drug dealer. Plea Counsel stated victim answered the door with his infant child in his arms. Plea Counsel stated Applicant shot both victim and infant child. Plea Counsel stated the infant child died and the victim suffered serious injuries as a result of multiple gunshot wounds. Plea Counsel recalled the child's mother stating that she left to go do laundry, came back to her house and her child was dead. Plea Counsel stated it was a very sad situation.

Plea Counsel stated Applicant did not provide any witnesses or leads to investigate. Plea Counsel stated Brandon Wright was the person who dropped Applicant off at victim's house prior to the shooting. Plea Counsel stated that Brandon Wright testimony would not have helped Applicant. Plea Counsel stated that there was no need to hire experts to conduct a crime scene investigation because Applicant confessed to the crime. Plea Counsel stated that there was no real mitigation evidence to present outside of Applicant's personal life history.

Plea Counsel stated it was Applicant's decision to plead guilty. Plea Counsel stated he advised Applicant that it was probable that he was be sentenced to life without parole if he

proceeded to a jury trial and was found guilty. Plea Counsel stated that he recommended that he plead guilty in an attempt to avoid life without parole. Plea Counsel stated that the solicitor was not going to recommend life without parole if Applicant pled guilty. Plea Counsel stated that he had no basis to object to the fifty year murder sentence given by the plea judge. Plea Counsel further stated that he could not object to the plea judge running the sentences consecutively. Plea Counsel concluded that Applicant did not receive the sentence that he was hoping to get but it was lawful sentence. Plea Counsel stated that any objection made to the sentencing would not have changed the plea judge's decision. Plea Counsel stated that he discussed the possibility of filing a motion for reconsideration with Applicant. However, Plea Counsel stated Applicant never requested he file the motion.

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. Specifically, this Court finds Counsel's testimony credible while Applicant's testimony is not 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 (1985).

INEFFECTIVE ASSISTANCE OF COUNSEL

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). 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, (1984); Butler, 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, 286 S.C. 441, 334 S.E.2d 813 (1985). Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. 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).

Plea Counsel was ineffective for failing to object to the plea judge sentence.

This Court finds Applicant's allegation that Plea Counsel was ineffective for failing to object the plea judge's sentence to be without merit. Specifically, Applicant alleges that Plea Counsel should have objected to the fifty year sentence for murder and should have objected to the plea judge running the twelve year sentence for assault and battery with intent to kill consecutively. However, Applicant recalled and the plea transcript reflects, the plea judge advised Applicant that he was facing thirty years to life without parole for the murder charge and up to twenty years for the

assault and battery with intent to kill charge. (Pl t. p. 4). Furthermore, Plea Counsel stated he discussed the possibility of filing a motion for reconsideration with Applicant. However, Applicant never requested that he file the motion. This Court notes Applicant received a lawful sentence and Applicant is merely displeased by the decision of the plea court to give him consecutive sentences. Cf. Holden v. State, 713 S.E.2d 611, 617, 393 S.C. 565, 575-76 (2011) (citing Roddy v. State, 339 S.C. 29, 36, 528 S.E.2d 418, 422 (2000)) ("Wishful thinking regarding sentencing does not equal a misapprehension concerning the possible range of sentences, especially where one acknowledges on the record that one knows the range of sentences and that no promises have been made."). This Court finds Counsel's actions were reasonable in the circumstances, and did not fall below professional norms of reasonableness. Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Furthermore, this Court finds Applicant has failed to allege sufficient evidence to meet his burden of proving that he was prejudiced by Counsel's alleged ineffectiveness as Applicant received a lawful sentence.

Involuntary Guilty Plea

This Court finds that the Applicant's guilty plea was entered freely and voluntarily. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). Defendant's knowing and voluntary waiver of statutory or constitutional rights 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)). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea

is usually, but not invariably, foreclosed. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977)). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. United States, 519 F.2d 347 (4th Cir.1975).

This Court finds that this allegation is without merit and the Applicant has failed to carry his burden of proving that his guilty plea was involuntarily made. This Court finds that the Applicant's testimony was entered freely and voluntarily. The Applicant testified at the evidentiary hearing that he was pleading guilty freely and voluntarily. This Court finds further that the record reflects the Applicant was thoroughly advised of the waiver of his constitutional rights by both Plea Counsel and the plea judge. The record reflects the Applicant at his plea proceeding told the court that he wished to plead guilty. (Pl. p. 3). The record also reflects that the Applicant told the court that he had not been promised or threatened by anyone to get him to plead guilty. (Pl. p. 4). This Court finds that the Applicant had a full understanding of the consequences of his plea and the charges against him. This Court finds that the plea judge correctly found that the Applicant's plea was freely, voluntarily, and intelligently made. (Pl. p. 10).

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

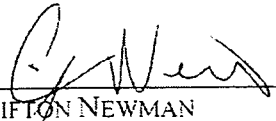
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that that Applicant must file and serve a notice of appeal within thirty 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 post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the 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 12th day of November, 2014.



CLIFTON NEWMAN
Presiding Judge
Third Judicial Circuit

Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF

Anderson Fari Holloway

Plaintiff(s),

-vs-

State of South Carolina

Defendant(s).

RECORDED

IN THE COURT OF (Select one.)

COMMON PLEAS FAMILY COURT

JUDICIAL CIRCUIT

CASE NO.: 2014-CA43-378

APPOINTMENT OF COUNSEL OR GAL

(Select one.)

ORDER

AMENDED ORDER

TYPE OF CASE/PROCEEDING: (Check one.)

- Post-Conviction Relief (PCR)/habeas case
- SVP case
- Minor Name Change
- Adoption
- Custody and/or Visitation
- Other:
- Juvenile
- Abuse and Neglect

Anderson Holloway, who is a litigant in this case, is entitled to court-appointed counsel or a guardian ad litem.

It further appears that: (Select only one.)

- counsel/guardian ad litem has not yet been appointed by the court; therefore, an appointment for counsel/guardian ad litem is necessary.
- counsel or a guardian ad litem was previously appointed by the court but has indicated either a possible conflict of interest, an entitlement to exemption, or other good cause warranting the appointment of new counsel or guardian ad litem based on: _____
- counsel was previously appointed by the court but has not indicated that the litigant has retained private counsel and is no longer entitled to appointed counsel.
- court appointed counsel has obtained _____, Esquire as substitute counsel pursuant to Rule 608(h)(2); provided, however, only the member who originally received the appointment and who sought substitute counsel shall receive credit.

Other: Lance Boozer
1331 Part St
Columbia, SC 29201

counsel lead counsel (if capital PCR case) guardian ad litem

Therefore, it is ordered that Boozer, hereby is appointed as (Select one.)
for the above-named person. Any counsel or GAL previously appointed is/are hereby relieved.

(If Death Penalty PCR Case) It is further ordered that _____, Esquire, is hereby appointed as second counsel in this capital PCR case.

The clerk of court is directed to forward a copy of this order to all persons entitled to notice.

IT IS SO ORDERED THIS 5th DAY OF MAR, 2014 .

James C. Campbell

Circuit Judge

Clerk of Court

NOTICE: SC Supreme Court Order of September 29, 2006, requires appointed counsel entitled to payment from the Office of Indigent Defense (OID) to register the case online with OID within fifteen (15) days of this appointment at www.sccid.sc.gov, and further directs that reimbursement vouchers be submitted directly to SCCID and not to the trial judge or clerk of court. See SCCID website for further details.

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