

5
MH

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER
IN THE COURT OF COMMON PLEAS

RECORDED
2012 OCT 23 PM 4: 14

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2010CP4301449

Troy L. Pearson #328627

FILED
CLERK OF COURT
SUMTER COUNTY S.C.

South-Carolina State of

CERTIFIED TRUE COPY
OF ORIGINAL FILED

Sandra C. Dickerson

DEPUTY CLERK OF COURT
SUMTER COUNTY (S)
SOUTH CAROLINA

PLAINTIFF(S)

Submitted by: Clerk of Court

Attorney for: Plaintiff Defendant
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON): Rule 12(b), SCRCP; Rule 41(a), SCRCP (Vol. Nonsuit);
 Rule 43(k), SCRCP (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON): Rule 40(j) SCRCP; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
 Affirmed; Reversed; Remanded; Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:

See attached order; (formal order to follow)

Statement of Judgment by the Court:

See attached Order.

RECEIVED

JAN 12 2015

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk:

S.C. Supreme Court

For Clerk of Court Office Use Only

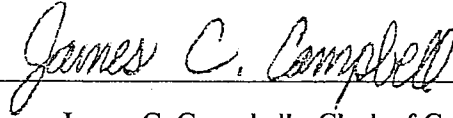
This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on , to attorneys of record or to parties (when appearing pro se) as follows:

James David Weeks PO Box 370 Sumter, SC 29151

ATTORNEY(S) FOR THE PLAINTIFF(S)

Megan Elizabeth Harrigan PO Box 11549 Columbia, SC
29211

ATTORNEY(S) FOR THE DEFENDANT(S)



James C. Campbell - Clerk of Court

Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

2012 OCT 23 PM 5:09

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Troy Pearson, #328627,

JANET M. MITCHELL
CLERK OF COURT
SUMTER COUNTY, S.C.

Case No. 2010-CP-43-1449

Applicant,

v.

State of South Carolina,

Respondent.

ORDER OF DISMISSAL

CERTIFIED TRUE COPY
OF ORIGINAL FILED

Andrea C. Dickerson
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed July 9, 2010. The Respondent made its Return on February 17, 2011. An evidentiary hearing into the matter was convened on September 17, 2012, at the Sumter County Courthouse. The Applicant was present at the hearing and was represented by J. David Weeks, Esquire. The Respondent was represented by Assistant Attorney General Megan E. Harrigan of the South Carolina Attorney General's Office.

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. The Applicant was true bill indicted during the October 2007 term of the Sumter County Grand Jury for Murder and Possession of a Firearm during Commission of a Violent Crime (2007-GS-43-0849). Applicant was represented by Jack D. Howle, Jr., Esquire. On May 29, 2008, the Applicant pled guilty to the lesser included offense of Voluntary Manslaughter before the Honorable R. Ferrell Cothran, Jr. Pursuant to negotiations between the

Applicant and the State, Judge Cothran sentenced the applicant to thirty years imprisonment; the weapons charge was dismissed pursuant to this plea agreement.

A notice of appeal was filed and an appeal perfected. The South Carolina Court of Appeals dismissed the appeal following submission of an Anders brief on Applicant's behalf. State v. Pearson, Op. No. 2010-UP-042 (S.C. Ct. App. filed January 26, 2010). The Remittitur was sent on February 12, 2010.

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

1. Ineffective assistance of counsel.
 - a. "Did not preserve through pre-trial motions a fair opportunity to litigate 6th Amendment."
2. "Inadequate/misrepresentation of counsel."
 - a. "Did not preserve the applicant's 'due process' rights pursuant to 5th Amendment."
3. "Prosecutorial misconduct."
 - a. "The withholding of motion of Brady Discovery through an act of collusion Brady v. Maryland violation."

In its Return, Respondent interpreted Applicant's grounds as ineffective assistance of counsel; Applicant's claims were framed at the evidentiary hearing as ineffective assistance of counsel.

TESTIMONY PRESENTED

At the evidentiary hearing, the Applicant testified on his own behalf. The State presented testimony from plea counsel, Jack D. Howle, Jr., Esquire ("Counsel"). This Court also had before it a copy of the Applicant's guilty plea transcript, Applicant's appellate records, the records of the Sumter County Clerk of Court, and the Applicant's records from the South Carolina Department of Corrections.

During the evidentiary hearing, Applicant testified that he entered his plea knowing that it was pursuant to a negotiation with the State for a determinate sentence of thirty years of incarceration. Applicant further stated that now and at the time of his plea, he was aware that based on South Carolina law, he would be required to serve his full thirty year sentence in full. Applicant acknowledged that he admitted his guilt under oath to the plea court and stated that he was satisfied with his attorney. Applicant testified that ultimately, he pled guilty because he did not want to proceed to trial and risk exposure to a life sentence.

Applicant testified that he now feels that Counsel was ineffective for numerous reasons. Specifically, Applicant testified that he didn't feel that Counsel supported him enough or gave Applicant and his case enough time and attention. He stated that Counsel only visited him twice during his two year representation of Applicant; however, Applicant did acknowledge that he corresponded with Counsel in various other ways. Applicant testified that he wanted to pursue a self-defense defense and is upset because since his incarceration, he now understands the law better than at the time of his plea.

Applicant also testified that Counsel did not thoroughly go over his discovery with him. Specifically, Applicant stated that he did not know prior to his plea that the victim was a known prostitute and had AIDS, and that this information might have made a difference in his decision to plead guilty. Applicant acknowledged that he did meet with Counsel's investigator at least twice to review his case. Applicant elaborated that he is a good person and this was an accident that occurred while he was trying to protect his life. Applicant did acknowledge that he did discuss the possibility of self-defense with Counsel and that Counsel advised him why such a defense would not be successful.

Following Applicant's testimony, Counsel testified. Counsel testified that he has been practicing law since 1974 and almost all of his practice has been devoted to criminal defense; he stated that he is the Chief Public Defender for the Third Judicial Circuit. Counsel stated that he was appointed on this matter roughly two years prior to Applicant's guilty plea. Counsel stated that during his meetings with the Applicant, he had thoroughly discussed all elements of the crimes in which Applicant was charged and what the State was required to prove for each crime.

Counsel testified that he discussed Applicant's version of the facts with Applicant many times, and he fully explained to Applicant why a theory of self-defense would prove unsuccessful. Specifically, Counsel testified that the final two or three shots to the victim were with the muzzle of the gun directly placed on the victim's head after she had already been shot several times and was seriously injured. Counsel testified that following this discussion with Applicant, Applicant understood why a defense of self would not be legally sufficient and indicated to Counsel that he wanted to plead guilty.

Thereafter, Counsel entered into plea negotiations with the State. Counsel testified that plea negotiations resulted in an offer from the State for Applicant to plead guilty to the lesser included offense of voluntary manslaughter for a determinate term of thirty years imprisonment and the dismissal of the related weapons charge. Counsel testified that he fully informed Applicant of all aspects of the plea offer, including that Applicant would be required to serve the full thirty years without the possibility of early release. When questioned by the Applicant regarding the possibility of a twenty-five year sentence, Counsel stated that he may have told Applicant prior to plea negotiations that he would try to secure him a twenty-five year plea deal, but that Applicant was fully aware that the negotiations were for a thirty year sentence when he entered his guilty plea.

Counsel testified that he filed motions for discovery pursuant to Rule 5, SCRCrimP, and Brady, as is his standard practice in every case. He did not feel that the State withheld any information or did not fully provide discovery to him. Counsel testified that within the discovery was Applicant's statement to police and an autopsy of the victim, which further negated any possibility of a defense of self. Counsel testified that he thoroughly reviewed this material with Applicant and Applicant did not indicate that he did not understand any of their discussions. When questioned by Applicant regarding the information that the victim had cocaine in her system at the time of the incident, Counsel testified that he did not think this made any difference in Applicant's case, and in fact, may have been more damaging to Applicant, as he would have had more of a duty to walk away from the situation without using lethal force.

Based on all of the above, Counsel indicated that in his professional opinion a plea was in the best interest of Applicant and that it was Applicant's decision alone to plead guilty.

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. 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).

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCRP; 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, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (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). The 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, 88 L.Ed. 2d 203 (1985).

After careful review based on the standard discussed above, the Applicant has failed to carry his burden in this action. Specifically, this Court finds that Counsel's testimony is credible while Applicant's testimony is not credible. The Applicant has failed to prove that Counsel was ineffective in his representation of the Applicant. Counsel met with his client on at least two separate occasions and fully discussed the charges against the Applicant, the State's evidence,

and Applicant's version of the facts. Based on these consultations, Counsel performed a thorough investigation and at the request of his client, entered into negotiations with the State to secure a favorable plea deal for his client. This Court finds that Counsel's performance was reasonable and effective.

Additionally, this Court finds that the Applicant has failed to establish any prejudice resulting from plea counsel's alleged ineffective assistance of counsel, as the Applicant was sentenced according to the negotiation between himself and State. Additionally, Applicant indicated to plea counsel and testified at the evidentiary hearing that he wished to pursue a plea in lieu of a trial on these charges, where he risked exposure of life imprisonment if convicted. Therefore, this Court finds that the application must be denied and dismissed.

CONCLUSION

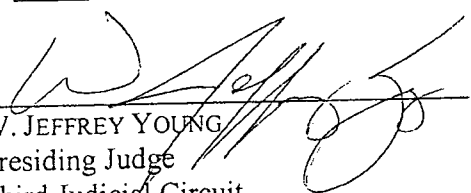
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court advises Applicant that he 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), SCRCR, 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. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 16 day of Oct, 2012.


W. JEFFREY YOUNG
Presiding Judge
Third Judicial Circuit

Sumter, South Carolina.