

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
 Juan Carlos Vazquez, #351021,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 SEVENTH JUDICIAL CIRCUIT

2013-CP-42-0518

ORDER OF DISMISSAL

SPARTANBURG COUNTY
 2014 DEC -2 AM 8:36
 M. HOPE BLACKEY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed February 4, 2013. The Respondent made its Return on February 25, 2014. An evidentiary hearing was convened on November 4, 2014, at the Spartanburg County Courthouse. The Applicant was present at the hearing and represented by J. Brandt Rucker. Suzanne H. White, Esquire, of the South Carolina Attorney General’s Office, represented the Respondent.

At the hearing, testimony was provided by the Applicant and H. Chase Harbin, Esquire. A certified language interpreter was also present to provide interpretation for the Applicant. This Court also had before it a copy of the records of the Spartanburg County Clerk of Court regarding the subject convictions, the PCR Application, the Return, and the guilty plea transcript.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. He was indicted at the May 2009 term of the Spartanburg County Grand Jury for trafficking in cocaine more than 400 grams (2009-GS-42-2337) and possession with intent to distribute marijuana (2009-GS-42-2338). Applicant was then indicted at the May 2010 term for two counts of accessory before the fact to murder and one count of accessory before the fact to burglary – 1st degree (2010-GS-42-

3207, counts 1-3, respectively). The Applicant was represented by H. Chase Harbin, Esquire. On July 12, 2010, the Applicant pled guilty before the Honorable J. Derham Cole to all charges as indicted. Sentencing in the case was delayed. The Honorable J. Mark Hayes II sentenced Applicant on May 23, 2012, to concurrent sentences of life for accessory before the fact to burglary – 1st degree and each count of accessory after the fact to murder, and concurrent sentences of thirty years for trafficking and five years for possession with intent to distribute. Upon information and belief, a motion for reconsideration was filed on Applicant's behalf on June 4, 2012, but was denied. The Applicant did not appeal his conviction or sentence.

ALLEGATIONS

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

1. Ineffective assistance of counsel, in that;
 - i. Counsel failed to properly research and investigate the facts surrounding Applicant's case,
2. Involuntary guilty plea, in that;
 - i. Applicant would have insisted on proceeding to trial, but for the improper actions of Counsel and the prosecution,
3. Prosecutorial misconduct, in that;
 - i. Brady violation.

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 notes that the Applicant waived any potential issues with the interpreter present for this hearing and instructed the Court that he had no issues with the interpretation. This Court also denied the Applicant's motion to continue the case for additional time to locate witnesses and investigate, as Mr. Rucker had been appointed on the case for over a year and the application had been filed at the beginning of 2013,

enabling the Applicant to have sufficient time to communicate with his attorney as to any witnesses or issues he wished to present.

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) (citing Rule 71.1(e), SCRCPP). 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 v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, *citing* Strickland. Second, counsel's deficient

performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "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).

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).

The Applicant testified that he had problems communicating with Counsel and felt that there had not been enough research done on his case. Applicant acknowledged that he cooperated with the State and provided statements to police before retaining Counsel to represent him. However, Applicant testified that he requested an attorney several times while giving his statements and explained that to Counsel. Additionally, Applicant informed Counsel that he had trouble with understanding the Officer who interpreted for the Sheriff's office. Applicant also testified that he has seen copies of his statements, but he does not believe that he signed that number of forms.

Applicant testified that he retained Counsel approximately one and a half years prior to the plea. Applicant testified that he met with Counsel four times for brief meetings lasting maybe 20 minutes each and Applicant wanted more time to review the case with Counsel. Applicant testified that Counsel had an interpreter with him each time they met, but Applicant felt that he needed a better interpreter. Applicant testified that Counsel never discussed how this plea may affect his residency in the United States.

Applicant testified that Counsel never explained any of the elements of the charges that Applicant was pleading guilty to or the potential sentences. Applicant testified that he did not understand the charge of accessory before the fact and wanted to go to trial. However, Applicant acknowledged that he believed he would get less time because the charge was not murder. Applicant testified that he never received any discovery materials before his plea, but did receive copies of materials following his plea in November 2012. However, Applicant testified that the statements from his co-defendants, Cortez and Lopez, were not included in the materials he received.

Counsel testified that he was retained one and a half years prior to the plea. Counsel testified that the case revolved around missing money that Applicant believed the victims had taken from him through drug transactions and the fact that Applicant had contacted someone to come get the money from the victims. The victims ended up being tortured and killed by several men who arrived from Atlanta. Counsel testified that the allegation was that the Applicant was the one who essentially hired hit men. Counsel testified that he talked with the Applicant about his Miranda rights and whether or not they could challenge Applicant's statements. Counsel testified that he also discussed the charges, elements of the charges, and potential sentences with the Applicant. Counsel testified that the Applicant always told him that he did not want the victims killed or know that they would be killed. However, Counsel testified that he believed Applicant would at least be found guilty of accessory to burglary – 1st degree, even based on Applicant's statements, which still was a potential life sentence. Counsel testified that he discussed with the Applicant that the best option of receiving less than a life sentence was to fully cooperate and plead guilty to those lesser charges in the hopes of consideration as to the sentence.

Counsel acknowledged that he did not give a copy of discovery materials to the Applicant while he was in the local detention center because Counsel's policy was to review it with client and not leave copy because of the risk of jail house snitches. Counsel testified that he reviewed all of the co-defendant's statements with the Applicant prior to the plea, as well as pictures and phone records showing phone calls between other co-defendants. Counsel acknowledged that the statements of Cortez and Arevalos were not in his file at the present, but Counsel testified that he specifically recalled reviewing each of the co-defendant's statements with the Applicant.

Counsel testified that he did discuss with Applicant the consequences of the plea as it related to potential deportation risks. Counsel testified that the Applicant never indicated to Counsel that he was having problems with the interpreters prior to the plea or at the plea. Applicant never asked Counsel to hire another interpreter. Counsel testified that he never had a question if the Applicant was pleading guilty freely and voluntarily and believed that Applicant was pleading guilty with the hope of receiving a lesser sentence.

This Court finds the testimony of Counsel to be more credible than the testimony of the Applicant. This Court finds no merit to the claim that Counsel was ineffective for failing to obtain another interpreter. There is no appearance of misunderstanding with the interpreter and as the record reflects, the Applicant answered appropriately to plea judge at his plea on July 12, 2010, as well as at the sentencing hearing on May 12, 2012. In fact, the Applicant was instructed to ask for the proceedings to stop if he ever had trouble understanding. (Plea Tr. p. 7; p. 10). The plea judge also asked Applicant if he had any difficulty with his interpreter and Applicant indicated he did not. (Plea Tr. p. 23). At the plea, Judge Cole explained each charge Applicant was pleading guilty to and the possible penalties he faced. (Plea Tr. p. 18-20). Applicant's own

testimony at the plea indicates that he discussed the charges and potential sentences. (Plea Tr. p. 15; p. 18; p. 20)

This Court also finds that the allegation that Counsel failed to properly research and investigate the case is without merit. Counsel's testimony was credible and the record reflects that Counsel investigated case as well as reviewed the facts and discovery materials with the Applicant. (Plea Tr. p. 30-1). Counsel's articulated strategy was reasonable under the circumstances and facts of this case. This Court finds that the Applicant has failed to meet his burden of proof as to this claim. Therefore, it is denied and dismissed.

Involuntary Guilty Plea

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. 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. U.S., 519 F.2d 317 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective

standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993).

This Court finds that Applicant's claim of involuntary guilty plea is without merit. As indicated previously, the Applicant appeared not only at the guilty plea but also 22 months later at the sentencing before a different judge and answered appropriately to the Court's inquiry at each hearing. Further, the transcript reflects that the guilty plea was knowingly and voluntarily entered with a full understanding of the charges and consequences of the plea. Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, an Applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621 (1977). Statements made during a guilty plea should be considered conclusively, unless an Applicant presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975) overruled on other grounds by U.S. v. Whitley, 759 F.2d 327 (4th Cir.1985). This Court finds that the Applicant presented no reasons to show that he should be allowed to depart from the truth of the statements he made during his guilty plea or sentencing hearing and finds Applicant knowingly, intelligently, and voluntarily accepted the plea. Therefore, this claim is denied and dismissed.

Prosecutorial Misconduct

In regards to the claim of prosecutorial misconduct, this Court finds that the Applicant failed to meet his burden of proof. Applicant failed to offer any evidence or testimony to prove

that the prosecutor suppressed evidence and that evidence would have been favorable to him. Therefore, this claim is 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 cautions Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 26 day of November, 2014.

Gaffney, South Carolina

R. Keith Kelly
R. KEITH KELLY
Presiding Judge

CLERK OF COURT
MARION BIRDSONG
2014 DEC -2 AM 8:36
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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

The Honorable R. Keith Kelly, Circuit Court Judge

Case No. 2013-CP-42-0518

State of South Carolina

Respondent,

v.

Juan Carlos Vazquez,
#351021

Appellant.

Proof of Service

I certify that I have served the Notice of Appeal, Notice and Motion to Proceed In Forma Pauperis, and the Proof of Service on the State of South Carolina by depositing a copy of those documents in the United States Mail, postage prepaid, on January 7, 2015, addressed to its attorney of record, Suzanne White Office of the South Carolina Attorney General, P.O. Box 11549, Columbia, S.C. 29211

January 7, 2015

Sincerely,

s/


Brandt Rucker

Attorney for Appellant Juan Carlos
Vazquez

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(864) 271-9925

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cc:

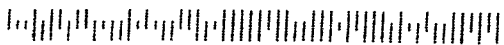
Other Counsel of Record:

Suzanne White
Office of the South Carolina Attorney General

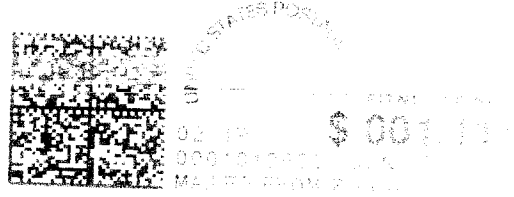
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JAN 16 2015

SC Court of Appeals



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