

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Letitia H. Verdin, Circuit Court Judge

Case No. 2013-CP-23-02904

RECEIVED

JAN 20 2015

S.C. Supreme Court


Willie James Poole,..... Appellant,

v.

State of South Carolina Respondent.

NOTICE OF APPEAL

Appellant appeals the Honorable Letitia H. Verdin's Order of Dismissal dismissing Appellant's application for post-conviction relief. On December 8, 2014, the Honorable Letitia H. Verdin signed an order dismissing Appellant's application for post-conviction relief with prejudice. Appellant, through counsel, received written notice of entry of this order on December 20, 2014. A copy of the Honorable Letitia H. Verdin's Order of Dismissal is attached.



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Attorney for Willie James Poole

Greenville, South Carolina
January 12, 2015

Other Counsel of Record and Interested Parties:

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Assistant Attorney General
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Greenville County Clerk's Office
Greenville County Courthouse
305 East North Street
Greenville, SC 29601

SC Commission of Indigent Defense
Division of Appellate Defense
PO Box 11433
Columbia, SC 29211-1433

Willie James Poole SCDC# 270914
Perry Correctional Institution
430 Oaklawn Road
Pelzer, SC29669

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Case No.2013-CP-23-02904

Willie James Poole,..... Appellant,

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CERTIFICATE OF SERVICE

I, Denise Tanner LaBeck, paralegal to R. Mills Ariail, Jr., do hereby certify that on this January 12, 2015, I served upon the below named Respondents copies of the **NOTICE OF APPEAL** by depositing copies of the same via U.S. Mail, postage prepaid, Registered Mail in an envelope addressed as set forth herein below:

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Denise Tanner LaBeck
Denise Tanner LaBeck

January 12, 2015

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

JUDGMENT IN A CIVIL CASE
CASE NO: 2013CP2302904

FILED-COURT OF COMMON PLEAS
GREENVILLE, S.C.
PAUL B. WICKENSIMER
2014 DEC 19 PM 4:44

Willie Poole vs. South Carolina State Of

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):**
 - SCRCP (Vol. Nonsuit); Rule 43(k). SCRCP (Settled); Rule 12(b). SCRCP; Rule 41(a).
 - Other: _____
- ACTION STRICKEN (CHECK REASON):**
 - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 - Other: _____
 - Rule 40(j) SCRCP; Bankruptcy;
- 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; Statement of Judgment by the Court:
Dated at Greenville, South Carolina, this .

Court Reporter:

PRESIDING JUDGE - Letitia H Verdin

This judgment was entered on the . and a copy mailed first class this . to attorneys of record or to parties (when appearing pro se) as follows:

R. Mills Ariail Jr, 11 North Irvine Street, Suite 11
Greenville, SC 29601

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer - Greenville County Clerk Of Court
- Clerk of Court

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

Willie Poole, S.C.D.C. No. 270914,)
Applicant,)

v.)

State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS

C.A. No. 2013-CP-23-2904

ORDER OF DISMISSAL

FILED-COURT OF COURT
GREENVILLE CO. S.C.
PAUL S. WICKENBARGER
2014 DEC 19 PM 4:44

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed May 22, 2013. The Respondent made its return on January 2, 2014. A hearing into the matter was held on October 21, 2014 before Judge Letitia H. Verdin at the Greenville County Courthouse. The Applicant was present and represented by R. Mills Ariail, Jr., 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 brother Antonio Jones and the Applicant's plea counsel, C. Timothy Sullivan, Esquire. The Court had before it the transcript of the guilty plea hearing; the Greenville County Clerk of Court records, including the arrest warrant, indictment and sentencing sheet; the Applicant's South Carolina Department of Corrections Records; the PCR Application; and the Return.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted at the December 2009 term of the Greenville County Grand Jury for murder (2009-GS-23-5747,

Count 1) and possession of a weapon during the commission of a violent crime (2009-GS-23-5747, Count 2). He was represented by C. Timothy Sullivan, Esquire.

On January 16, 2012, the Applicant pled guilty. The Honorable Robin B. Stilwell sentenced the Applicant to concurrent terms of thirty years for the lesser-included offense of voluntary manslaughter and five years for possession of a weapon during the commission of a violent crime. The Applicant was given credit for time served beginning on January 20, 2009.

The Applicant filed a direct appeal. The Court of Appeals dismissed the appeal without publishing an opinion. (App. Case No. 2012-207186). The Remittitur was sent on August 13, 2012.

ALLEGATIONS

In this application, the Applicant alleges that he received ineffective assistance of counsel, that he experienced a violation of his due process rights, and that the Court lacked subject matter jurisdiction over his case.

Regarding the ineffective assistance of plea counsel claim, the Applicant particularly alleges the following:

- a. Failure to withdraw the plea for involuntariness;
- b. Failure to adequately prepare the Applicant for his plea; and
- c. Failure to discover potential alibi witnesses and properly investigate the Applicant's case.

At the PCR hearing, the Applicant proceeded upon his ineffective assistance claim.

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.

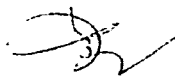


Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2014).

The Applicant was originally indicted for murder and possession of a weapon during the commission of a violent crime (2009-GS-23-5747). The Applicant did not make bond, and while in jail he was also indicted for armed robbery (2010-GS-23-3428A). Both indictments involved the same victim. Though all evidence in the case was circumstantial, the State was able to uncover a number of witnesses who would demonstrate the prolonged abusive relationship between the victim and the Applicant, the Applicant's familiarity and prior use of the location where the victim's body was found, and the Applicant's prior threats to the victim's life. The Applicant attempted to provide names of witnesses who might provide an alibi, but his attorney was unable to locate them or to find credible proof of the Applicant's whereabouts within the timeframe of the victim's death.

There were no plea offers made by the Solicitor's Office prior to the case being placed on the trial docket. The day of trial and in exchange for a plea, the Assistant Solicitor agreed to reduce the murder charge to voluntary manslaughter, dismiss the assault and battery charge, and to forego an attempt by the State to seek a sentence of life without parole. (Plea Tr. 24.) The Assistant Solicitor made clear that she would only assent to an offered plea if the Applicant pled to the original charge of murder. In the alternative, the State was prepared to go forward with the trial for murder.

After a discussion with his attorney, the Applicant pled guilty to voluntary manslaughter and possession of a weapon during the commission of a violent crime. (Plea Tr. 20.) He received concurrent sentences for thirty years and five years, respectively, for these charges. (Plea Tr. 32.) During the plea, the Applicant's attorney stated that he met with the Applicant



numerous times prior to the trial date to review the case, and believed that a plea was the Applicant's best option in light of the serious nature of the charges and the weight of the evidence that would be presented against him. (Plea Tr. 3, 16, 29.)

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 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, 686 (1984); Porter v. State, 368 S.C. 378, 629 S.E.2d 353, 356 (2006). Regarding the first prong, the Applicant must in essence show that counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56 (1985). In order to prove prejudice, an applicant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). 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, 466 U.S. at 686).

In a proceeding for post-conviction relief involving a guilty plea, an applicant may collaterally attack the voluntary or the intelligent character of his plea. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). Where ineffective assistance of counsel is the subject of the PCR action, the applicant must show that counsel's representation fell below an objective



standard of reasonableness and that, but for counsel's errors, there is a reasonable probability that he would have insisted on proceeding to trial. Suber v. State, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007) (citing Strickland, 466 U.S. at 686 and Roscoe, 345 S.C. at 20, 546 S.E.2d at 419); see also Rolen v. State, 384 S.C. 409, 413, 683 S.E.2d 471, 474 (2009).

To show that a guilty plea is made knowingly and voluntarily, the record must establish that the applicant had a full understanding of the consequences of his plea and the charges against him. See Boykin v. Alabama, 395 U.S. 238, 243–44 (1969). A criminal defendant must know the nature of the constitutional rights he is waiving, as well as the nature and crucial elements of the offense to which he is pleading. Boykin, 395 U.S. at 243–44; Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999). A criminal defendant's knowledge may be established by the plea colloquy between court and defendant, between the court and the defendant's counsel, or both. Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000).

Furthermore, the decisions and advice of trial counsel should be assessed for reasonableness under all the circumstances, with heavy deference given to counsel's judgment. Simpson v. Moore, 367 S.C. 587, 597, 627 S.E.2d 701, 706 (2006). A criminal defense attorney has a duty to conduct a reasonable investigation so that he may discover all reasonably available mitigation evidence, as well as any reasonably available evidence tending to rebut evidence produced by the state. McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 361 (2008). There is a strong presumption that adequate assistance of counsel was rendered, and that reasonable care was exercised—particularly in the arena of professional judgments. Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 597 (2007).

a. Failure to withdraw the plea for involuntariness.

The Applicant claims that his plea was involuntary, and should therefore have been withdrawn. However, the Applicant was given numerous opportunities during his plea to




confirm that he wished to proceed. (Plea Tr. 14–15, 27.) He conferred with his counsel for a period of time before deciding to enter the plea. (Plea Tr. 14–15.) After this discussion there was a thorough plea colloquy in which Judge Stilwell confirmed that the Applicant was pleading guilty of his own free will, was not under the influence of drugs or alcohol, was not suffering from any mental impairment, and was not being forced or threatened to plead guilty. (Plea Tr. 20–21.)

This Court notes that there was some discussion after the Assistant Solicitor described the facts as she would have presented them at trial. The Applicant appears to have been unable to affirmatively answer Judge Stilwell’s direct question, “did you shoot and kill the victim?” (Plea Tr. 26.) After this point, Judge Stilwell indicated that the case would go to trial as a result of the Applicant’s response. (*Id.*) However, upon the mention of a trial, the Applicant immediately admitted that he “did it” and stated “I’m not going to a trial. . . . I can’t go through with a trial.” (*Id.*) He subsequently affirmed that he did not feel pressured or coerced into entering his plea. (*Id.*) This Court notes that this conversation differs substantially from the plea scenario at issue in Rolen, 384 S.C. at 413, 683 S.E.2d at 474, and as a result of the Applicant’s immediate and adamant insistence on continuing with his plea, his counsel was under no obligation to move to withdraw the plea.

This Court finds that the Applicant failed to meet his burden of proving that his plea was involuntarily made and should have been withdrawn. There is sufficient evidence of voluntariness contained in the plea transcript and the PCR hearing.

b. Failure to adequately prepare the Applicant for his plea.

Both the testimony at the PCR hearing and the plea transcript reflect that the Applicant’s trial counsel met with him in jail several times before trial, reviewed all of the discovery received from the state, and discussed at length his options going forward. (Plea Tr. 3.) The plea



transcript further reflects substantial discussions of the merits of plea versus trial as well as the merits of a jury trial versus a bench trial. (Plea Tr. 7.) This Court consequently finds that the Applicant's trial counsel devoted sufficient time to the preparation of the Applicant's case prior to the plea.

c. Failure to discover potential alibi witnesses and properly investigate the Applicant's case.

Much discussion during the PCR hearing was devoted to the Applicant's suggestion that alibi witnesses were available—the final issue raised in his ineffective assistance argument. Testimony at the PCR hearing showed that the Applicant did provide his attorney with several names of potential witnesses. However, most of the witnesses named by the Applicant were unable to be found. Those witnesses who were able to be located were, in the attorney's professional judgment, not likely to be helpful at trial. As a result, trial counsel's reasonable efforts to discover any mitigation evidence such as alibi witnesses do not constitute inadequate assistance. The simple fact that no other witnesses were found does not in the totality of the circumstances give rise to ineffective assistance.

Trial counsel reviewed the evidence, charges, and possible penalties with the Applicant and also discussed his version of events. This Court finds trial counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his representation.

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. The Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier, 351 S.C. at 389, 570 S.E.2d at 174.

Due Process

In this case, the Applicant also asserts that his 14th Amendment right to due process was violated. Particularly, in his application for PCR he lists "abandonment" as a fact supporting this argument. (Appl. for PCR 3.) The Applicant further asserts that the indictment and plea in this case were invalid. (Id.) In spite of these assertions, this Court finds that there is no discernable error with the indictment or with the Applicant's plea as preserved in the transcript. Further, this Court finds that the indictment in this case was presented to the Greenville County Grand Jury in proper form. The Grant Jury returned a true bill on December 15, 2009.

This Court consequently finds that the Applicant has not met his burden of proving that his 14th Amendment right to due process of law was violated.

Subject Matter Jurisdiction

Finally, the Applicant also asserts that the trial court lacked subject matter jurisdiction. (Appl. for PCR 3.) The events that were the subject of this matter occurred in Greenville County, and Judge Stilwell accepted the Applicant's plea during a term of the Court of General Sessions in Greenville County. (Plea Tr. 1.) The Applicant has shown the court no error in this document. This Court finds that the Applicant has not met his burden of proving that the Circuit Court lacked subject matter jurisdiction over his case.

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 that the Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient and the Applicant was not prejudiced by Counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure 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 8 day of ^{Dec.}~~November~~, 2014.



Letitia H. Verdin
Circuit Court Judge
Thirteenth Judicial Circuit



R. MILLS ARIAIL, JR.
ATTORNEY AT LAW

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January 12, 2015

Via US Mail

Daniel Shearouse
Clerk of Court
South Carolina Supreme Court
Post Office Box 11330
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S.C. SUPREME COURT

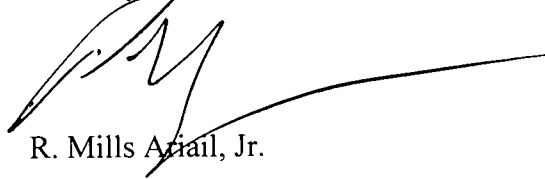
Re: *Notice of Intent to Appeal from Willie James Poole vs. State of South Carolina*
C.A. No.: 2013-CP-23-02904

Dear Mr. Shearouse:

I was Court Appointed in the above referenced matter, and I expect that appellate defense will handle the appeal and petition for certiorari. On behalf of my client, enclosed for filing please find the Notice of Appeal and proof of service. I've enclosed a copy of the Honorable Letitia H. Verdin's Order of Dismissal to be challenged on appeal. By copy of this letter, I am also serving my client, counsel for the State of South Carolina, the South Carolina Commission of Indigent Defense - Appellate Defense Division and the Greenville County Clerk's Office.

Thank you for your assistance in this matter and if you have any questions, please feel free to contact me.

Sincerely,
LAW OFFICE OF R. MILLS ARIAIL, JR.
Attorney at Law



R. Mills Ariail, Jr.

RMAjr/dl
Enclosures (as stated)

cc: Greenville County Clerk's Office
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S.C. SUPREME COURT

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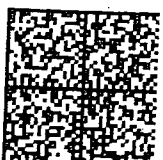
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