STATE OF SOUTH CAROLINA

COUNTY OF MARLBORO

IN THE COURT OF COMMON PLEAS

2011-CP-34-0222

CODY INMAN, 311682

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

AFFIDAVIT OF SERVICE BY MAIL

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CLERK OF COURT MARLBORO COUNTY

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CLERK OF COURT
MARLBORO COUNTY, S.C.

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 **Order of Dismissal** of the Respondent in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

J. Marshall Biddle, Esquire
Post Office Box 50460
Myrtle Beach SC 29579

DATED this 5th day of February 2013.

Judy A. C. Carey, Legal Assistant
For Respondent

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SC Court of Appeals

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	11-CP-34-222
COUNTY OF MARLBORO	)	
Cody Inman, 311682	)	
Applicant,	)	ORDER OF DISMISSAL
v.	)	
State of South Carolina,	)	
Respondent.	)	

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William B. Sunderland
CLERK OF COURT
MARLBORO COUNTY

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This matter is before this Court by way of an application for post-conviction relief (PCR) filed November 2, 2011. The State made a timely return. A hearing on the matter was convened at the Darlington County Courthouse on January 9, 2013. Applicant was present and represented by J. Marshall Biddle, Esquire. The State was represented by Tyson Andrew Johnson, Sr. of the South Carolina Office of the Attorney General.

Applicant testified on his own behalf at the hearing. His plea counsel, Emily Crayton, Esquire, also testified. In addition, this Court had before it the transcript of Applicant's guilty plea proceeding, the Clerk of Court's records regarding the subject convictions, the Applicant's records from the Department of Corrections, the PCR application and the State's return.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Marlboro County Clerk of Court. The Applicant was indicted at the May 2010 term of the Marlboro County Grand Jury for Assault and Battery With Intent to Kill (ABWIK), 2010-GS-34-0367). He was represented by Emily Crayton, Esquire. On May

25, 2011, the Applicant pled guilty as indicted and was sentenced by the Honorable J. Michael Baxley to six years imprisonment, to run consecutively with his existing prison sentence.

ALLEGATIONS

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

1. "Ineffective assistance of counsel"
2. "Prosecutor Misconduct"
3. "Sixth and Fourteenth Amendment violations."

Applicant seeks to have his conviction reversed, plea agreement withdrawn, and remanded for trial as a result of this proceeding.

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.

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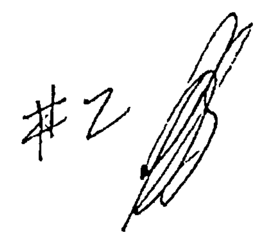
Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1985).

Ineffective Assistance of Counsel and Involuntary Plea

Applicant alleges his plea was rendered involuntary by ineffective assistance of counsel. The burden of proof is on the applicant in a PCR proceeding to prove the allegations in his application. Bell v. State, 321 S.C. 238, 467 S.E.2d 926 (1996); Rule 71.1(e), SCRCP.

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. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1996). In order to prove prejudice, an applicant must show that but for counsel's errors, there is a reasonable probability the result at trial would have been different. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Id. Where trial counsel articulates a valid reason for employing certain trial strategy, such conduct should not be deemed ineffective assistance of counsel. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1995); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). 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); Stalk v. State, 383 S.C. 559, 681 S.E.2d 592 (2009); Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001).

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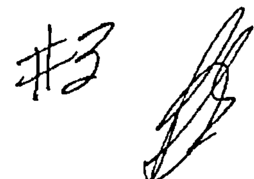
To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to 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).

This Court will now address each allegation of ineffective assistance of counsel:

Applicant's expectation of a lower sentence

Applicant alleges that he only met with counsel once, and then the investigator on the case was in the room. Applicant failed to call this person as a witness, or otherwise to identify them, so whether the person overheard discussions about the case was not established. Applicant avers he told Mrs. Crayton he did not want to enter a plea, and that instead he wanted a trial. He



alleges that he only met with her once. Applicant avers that Crayton told him if he would plea, he would get ten years non violent, and that it would run concurrently with his existing sentence and that therefore he agreed to this plea. Applicant claims on the day of his plea he still did not have his Rule 5 materials, yet counsel encouraged him to enter a plea. Applicant claims he was not prepared to try the case on the day of his plea, and neither was his lawyer. Applicant finally claimed he asked counsel to file an appeal for him, but that she did not.

Applicant also objected to comments by the prosecutor during the portion of the plea where the Solicitor puts the factual basis for the plea on the record. Applicant claims the Solicitor "went his own way."

On cross examination, Applicant admitted he had an opportunity to contest the facts as given by the Solicitor directly with his plea judge. Applicant also admitted that he was not denying that he "shanked" or stabbed a fellow inmate.

Counsel testified she was with the Fourth Circuit Public Defender for roughly two years and thereafter joined the Solicitor's office. Counsel was assigned the defense of Applicant's case on August 12th 2010 and met with Applicant at Evans Correctional Institution on or about August 17th 2010. While a person from SCDC was in the room as per their safety policy, the case investigator was not in the room and there was no opportunity for a barrier room/partition room for the meeting.

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Counsel testified that at this meeting, Applicant wanted her to work on a plea offer for him. Counsel indicated Applicant never gave her names of witnesses to be called at a trial, but that he was fairly cooperative in her investigation.

When asked whether she would have discussed any offers by the State at that time, she indicated she always discussed offers with her clients, and that she thoroughly talked about the

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plea offer with Applicant. When asked by counsel for Applicant if she was prepared for trial on the day Applicant entered a plea, counsel indicated she was not prepared for trial because the case had not been called for trial. Had the case been on the trial list and had it been called for trial, counsel would have adequately prepared. Counsel told Applicant if he wanted a trial he could have a trial, but counsel was clear in her testimony that Applicant never said he wanted a trial. Further, counsel testified that she told Applicant on the day of his plea that his trial "would not be today."

Regarding sharing the Rule 5 discovery with Applicant, counsel testified that she gave Applicant the warrants and incident report, and that was all the Rule 5 responses she received at the time of the plea, with the suggestion more could be forthcoming but that is all that was produced at that time.

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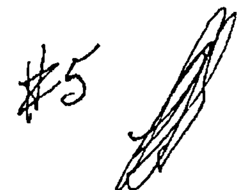
When counsel for the State asked Crayton why she recommended that Applicant accept the plea, she indicated that in her professional opinion she did not believe he would be successful at trial, and that he had not asked for a trial. Counsel testified that Applicant decided to accept the plea as he felt it was a good offer reduced from 20 to 10 years.

Counsel remembered that she specifically told Applicant she was asking the Court to run Applicant's time concurrently, but that Judge Baxley refused to do that. Crayton indicated she told Applicant that was up to the judge. Crayton also testified that if Applicant wanted a trial she would have tried the case and if Applicant had expressed any reservation in entering a plea that she would have stopped the plea, but he expressed none. Regarding the appeal, Crayton indicated she did not file a notice of intent to appeal because Applicant did not ask her to.

Counsel indicates she never promised Applicant how much time he would receive or even attempted to predict how much time Applicant would receive when he pled guilty.



Through this trial, Applicant admitted his role in stabbing the victim who was a fellow inmate.

This Court finds that applicant was aware of the charges, elements of the offense, and potential defenses. Further, this Court finds that Applicant was not coerced, pressured, or promised anything in return for his guilty plea. Applicant admitted his guilt at the plea hearing and acknowledged his involvement at the PCR hearing. Under these circumstances, Counsel's advice to Applicant to plead guilty was well within the professional norms of competent representation. This Court further finds Counsel's testimony credible and gives it great weight, finding in particular that Counsel did not promise Applicant a lighter or concurrent sentence.

This Court finds Applicant's testimony to the contrary lacks credibility. Further, Applicant's hopes for a lighter sentence does not render his plea involuntary where he was advised of the possible sentences he could receive and chose to plead guilty. See Wolfe v. State, 326 S.C. 158, 164-165, 485 S.E.2d 367, 370 (1997) (finding "wishful thinking" does not equal misapprehension as to the possible sentence the applicant would receive). This Court denies this allegation.

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CONCLUSION

Based on 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 the parties that in order to secure the appropriate appellate review, notice of appeal must be served and filed within thirty (30) days after receipt by counsel of notice of entry of this order. See Rules 203 and 243 of the South Carolina Appellate Court Rules. This Court notes that post-conviction relief counsel must advise an applicant of the right

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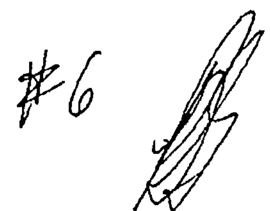


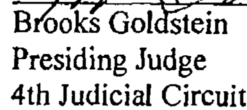
to seek appellate review of a post-conviction relief order. State v. Bray, 366 S.C. 137, 620 S.E.2d 743 (2005). Also, pursuant to Austin v. State, 305 S.C. 453, 409 S.E. 2d 395 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. 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 an applicant's behalf.

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 30 day of January, 2013.



Brooks Goldstein
Presiding Judge
4th Judicial Circuit

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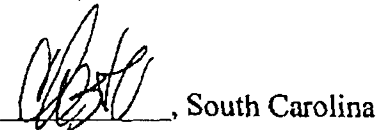

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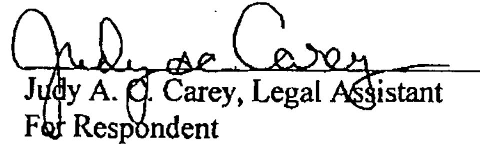
DATED this 5th day of February 2013.



Judy A. C. Carey, Legal Assistant
For Respondent