

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

DaQuan Jones, #351398,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

2014-CP-40-02810

ORDER OF DISMISSAL

RECEIVED

FEB 24 2015

SC Court of Appeals

2015 FEB 13 AM 9:11
RICHLAND COUNTY
COURT FILED
JANETTE W. HEBBARD
C.C.P. & G.S.

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed May 2, 2014. Respondent made its Return on August 19, 2014, requesting an evidentiary hearing be convened. Anna R. Good, Esquire, was appointed by the Richland County Clerk of Court.

An evidentiary hearing was held on January 21, 2015, at the Richland County Courthouse. Applicant was present and represented by Counsel Anna R. Good. J. Clayton Mitchell, Esquire, of the South Carolina Attorney General's Office represented Respondent.

Applicant testified on his own behalf at the PCR hearing. Also testifying were Applicant's plea counsel, Constantine G. Pournaras, Esquire. The Court had before it the Richland County Clerk of Court records, Applicant's South Carolina Department of Corrections records, the PCR application, the Return, and the guilty plea transcript.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. Applicant was indicted during the April 2013 term of the Richland County Grand Jury for Attempted Burglary – Second Degree (Non-Violent) (2013-GS-40-02368) and Petit Larceny – Value \$2,000 or Less (2013-GS-

40-02369). Applicant was represented by Constantine G. Pournaras, Esquire. On October 14, 2013, Applicant appeared before the Honorable Alison R. Lee, where he pleaded guilty as indicted. Judge Lee sentenced Applicant to a sentence not to exceed five (5) years under the Youthful Offender Act (YOA) for Attempted Burglary – Second Degree (Non-Violent) and thirty days for Petit Larceny – Value \$2,000 or Less.¹ Applicant did not appeal his guilty pleas or sentences.

Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance counsel in that counsel failed to oppose a sentence under the YOA.

II. SUMMARY AND EVIDENCE PRESENTED AT THE PCR HEARING

Applicant's Testimony

Applicant alleged that his trial counsel was ineffective in failing to object to the sentence imposed pursuant to the Youthful Offender Act and in failing to request an active sentence. Applicant testified that Counsel had represented him for about two months prior to his guilty plea and that he was represented by another member of the Richland County Public Defenders' Office before. He testified that he and Counsel had met two times before the guilty plea hearing. In those meetings, Applicant testified Counsel discussed pleading guilty and that he would be pleading guilty to an open plea where he would be sentenced within a range of 0-10 year's imprisonment. Applicant stated that he understood there were no plea agreements in place and that he would be pleading "straight up". Applicant testified he did not take issue with his guilt, but only with the sentence imposed and his Counsel's failure to argue for an active sentence and in failing to object to the YOA sentence.

¹ Applicant was given credit for time served for this sentence and does not challenge this conviction in his application.

Counsel Constantine G. Pournaras's Testimony

Trial counsel testified he was appointed to represent Applicant through his position with the Richland County Public Defender's Office. Counsel testified he had discussions with Applicant about a proper disposition to the case and the length of the sentence. Counsel testified the case was scheduled for trial and through his discussions with Applicant, he advised him to plead guilty. Counsel testified that he did not ask the plea court to impose a sentence pursuant to the YOA, but that is what Judge Lee ultimately imposed. Counsel testified he believed the sentence to be a legal sentence and did not see any reason to object to it. Counsel testified that there was a discussion of how Applicant was unlikely to be admitted into the Shock Incarceration Program since it was his understanding that the South Carolina Department of Corrections does not honor a court's recommendation when a defendant is convicted of Second Degree Burglary. Counsel also testified that Applicant did not inform him that he would prefer an active sentence as opposed to a sentence pursuant to the YOA.

III. APPLICABLE LAW

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel 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, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable

professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order 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. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any 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." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show 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, 59 (1985).

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the trial transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

As a matter of general impression, this Court finds Applicant's testimony and assertions to be not credible. In contrast, this Court finds counsel's testimony to be credible and persuasive

on all matters. These credibility findings have been applied to the Court's findings and conclusions set forth below.

Failure to Oppose a Sentence Pursuant to the YOA and Failure to Object to the Sentence Imposed

This Court finds Applicant failed to meet his burden to prove counsel was ineffective in failing to object to the sentence imposed and in failing to oppose a sentence pursuant to the YOA. Applicant testified he did not wish to be sentenced pursuant to the YOA and hoped to receive an active adult sentence. This Court finds that testimony not credible. Applicant presented no testimony to support his argument that he desired an active adult sentence. More importantly, Applicant testified that he did not convey this request to Counsel. Counsel had no way of knowing what sentence Applicant hoped to receive. Our supreme court has maintained that criminal defense attorneys are not expected to be clairvoyant. See Thornes v. State, 310 S.C. 306, 426 S.E.2d 764 (1993) ("This Court has never required an attorney to anticipate or discover changes in the law, or facts which did not exist, at the time of the trial."). See Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 371 (1997).

It is also of significant note that there were no plea deals in place. The State made no recommendation to the court regarding sentencing. Applicant corroborated this when he testified that he understood he was entering into an open plea with a possible sentencing range of 0-10 year's imprisonment. Counsel also confirmed this in his testimony that Applicant was entering into an open plea. This Court finds Applicant's hope that he would not be sentenced under the YOA to be a product of wishful thinking. See Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 371 (1997) ("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."). The record,

especially the plea proceeding transcript, makes clear that Applicant was not promised any specific sentence by Counsel. This Court finds Applicant has failed to meet his burden of proof of showing Counsel was deficient and finds Counsel's action reasonable under the circumstances.

This Court finds Applicant's contention that he was allegedly prejudiced by Counsel's failure to object to the sentence and to oppose a YOA sentence unfounded. A trial court has broad discretion in imposing criminal sentences within the limits prescribed by law. State v. Franklin, 267 S.C. 240, 226 S.E.2d 896 (1976); Clark v. State, 259 S.C. 378, 192 S.E.2d 209 (1972). The courts normally have no jurisdiction to correct a sentence given within statutory limits. To be entitled to relief, the Applicant must prove that the alleged excessive sentence was the result of partiality, prejudice, oppression or corrupt motive, or that the sentence constitutes cruel and unusual punishment per se. Clark, Id.; State v. Cogdell, 273 S.C. 563, 257 S.E.2d 748 (1979).

The sentence imposed by the plea court was legal, fully within the court's discretion, and was within the statutory limits. See S.C. Code § 16-11-312 (C)(1) ("Burglary in the second degree pursuant to subsection (A) is a felony punishable by imprisonment for not more than ten years."). Applicant was properly sentenced under the YOA since he was less than twenty-one (21) years of age at the time of the guilty plea. See S.C. Code § 24-19-10(d)(iv) ("'Youthful offender' means an offender who is: seventeen but less than twenty-one years of age at the time of conviction for burglary in the second degree."). This Court finds applicant has failed to meet his burden in proving that he was prejudiced by Counsel's alleged erroneous decisions.

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, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

V. CONCLUSION

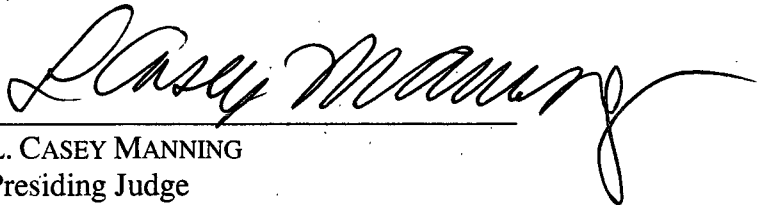
Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Applicant failed to demonstrate counsels' performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt 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, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant will remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 11 day of Feb., 2015.


L. CASEY MANNING
Presiding Judge

Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

JUDGMENT IN A CIVIL CASE

IN THE COURT OF COMMON PLEAS

CASE NUMBER: **2014CP4002810**

Da Quan #351398 Jones

State of South Carolina

FEB 24 2015

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

SC Court of Appeals

Attorney for : Plaintiff Defendant or 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), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; 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:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

| Judgment in Favor of (List name(s) below) | Judgment Against (List name(s) below) | Judgment Amount To be Enrolled |
|---|---------------------------------------|--------------------------------|
| | | \$ |
| | | \$ |
| | | \$ |

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 13 February 2015 to attorneys of record or to parties (when appearing pro se) as follows:

Da Quan #351398 Jones

Anna Rawl Good

Megan Harrigan Jameson

Da Quan #351398 Jones

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court _____

Jeanette W. McBride

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 DaQuan Jones, #351398)
 _____)
 Plaintiff,)
 vs.)
)
 State of South Carolina)
 _____)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 FIFTH JUDICIAL CIRCUIT
 CASE NO.: 2014-CP-40-02810

MOTION AND ORDER INFORMATION

RECEIVED

FEB 24 2015

SC Court of Appeals

RICHLAND COUNTY
 FILED
 2015 FEB 13 AM 9:11
 JEANETTE W. BRIDGE
 C.C.P. # 2015-00000000

| | |
|---|--|
| Plaintiff's Attorney: Anna R. Good, Bar No. 72808 Address: PO Box 7284 Columbia SC 29202 Phone: _____ Fax _____ E-mail: _____ Other: _____ | Defendant's Attorney: J. Clayton Mitchell, Bar No. 101443 Address: PO Box 11549 Columbia SC 29211 Phone: _____ Fax _____ E-mail: _____ Other: _____ |
|---|--|

MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
 PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: _____
 Estimated Time Needed: _____ Court Reporter Needed: YES / NO

SECTION II: Motion/Order Type

Written motion attached
 Form Motion/Order
 I hereby move for relief or action by the court as set forth in the attached proposed order.

_____ 2/5/2015
 Signature of Attorney for Plaintiff / Defendant Date submitted

SECTION III: Motion Fee

PAID - AMOUNT: \$ _____
 EXEMPT:

(check reason)

Rule to Show Cause in Child or Spousal Support
 Domestic Abuse or Abuse and Neglect
 Indigent Status State Agency v. Indigent Party
 Sexually Violent Predator Act Post-Conviction Relief
 Motion for Stay in Bankruptcy
 Motion for Publication Motion for Execution (Rule 69, SCRPC)
 Proposed order submitted at request of the court; or,
 reduced to writing from motion made in open court per judge's instructions
 Name of Court Reporter: _____
 Other: _____

JUDGE'S SECTION

| | |
|--|---------------------------------|
| <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____ | JUDGE CODE _____ Date: _____ |
|--|---------------------------------|

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____
 MOTION FEE COLLECTED: \$ _____
 CONTESTED - AMOUNT DUE: \$ _____

SCANNED