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FRIEDMAN, MATTHEW
P O BOX 11549
COLUMBIA, SC 29211

NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRPC
ORDER - ORDER OF DISMISSAL

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FRIEDMAN, MATTHEW
P O BOX 11549
COLUMBIA, SC 29211

2008-CP-10-006010
LOUIS, DARRYL KEITH JR #279494
VS.
SOUTH CAROLINA STATE OF

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AG
AT

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STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
)
 Darryl Louis, #279494,)
)
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 Applicant,)
)
)
 v.)
)
 State of South Carolina,)
)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 2008-CP-10-6010

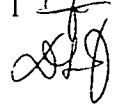
ORDER OF DISMISSAL

FILED
 2010 FEB -9 PM 12:49
 JULIE J. ARMSTRONG
 CLERK OF COURT

Presiding Judge:	Deadra L. Jefferson
Applicant's Attorney:	Charles T. Brooks, III, Esq.
Respondent's Attorney:	Matthew J. Friedman, Esq.
Plea Counsel:	F. Renee Gaters, Esq.
Date of Hearing:	January 15, 2010
Court Reporter:	Anne Meyer

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed October 21, 2008 and an amended PCR filed January 12, 2010. The Respondent made its Return on March 25, 2009. An evidentiary hearing into the matter was convened on January 15, 2010 at the Charleston County Courthouse. The Applicant was present at the hearing and represented by Charles T. Brooks, III, Esquire. Matthew J. Friedman, Esquire, of the South Carolina Attorney General's Office represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Applicant's plea counsel, F. Renee Gaters, Esquire, also testified at the hearing. This Court had before it the guilty plea transcript, the records of the Charleston County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the PCR application, and Respondent's Return thereto.

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PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted at the June 2007 term of the Charleston County Grand Jury for four counts of armed robbery (2007-GS-10-7478, 7479, 7480, and 7481). F. Renee Gaters, Esquire, represented the Applicant. On May 28, 2008, the Applicant pled guilty as indicted to one count of armed robbery. The State dismissed the other charges in exchange for the plea. Pursuant to a negotiated plea agreement, the Honorable James C. Williams, Jr. sentenced him to confinement for thirty (30) years. The sentence was to run concurrently with Applicant's armed robbery sentences in Berkeley County and Dorchester County. The Applicant did not appeal his conviction or sentence.

ALLEGATIONS

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

1. Ineffective assistance of counsel.
2. Lack of subject matter jurisdiction.
3. Due process violation and unconstitutional sentence.

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 his or her 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).

The Applicant testified that counsel told him if he did not plead guilty, then he could be

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found guilty of more than one armed robbery and could face life in prison. He asserted that he did not fully comprehend what he was doing during the plea hearing and that he did not understand that he could be sentenced to 30 years. Applicant testified that counsel did not explain the subject matter jurisdiction issue to him. Applicant also argued that he did not understand the community supervision program (CSP), under which he could end up serving more than thirty (30) years in prison. The Applicant didn't request any additional witnesses to be called at the hearing and was uncooperative with the Court and his PCR counsel during the hearing.

Plea counsel testified that she was originally appointed to represent Applicant on one armed robbery and one kidnapping, but the Applicant was subsequently charged with sixteen armed robberies and several counts of kidnapping, carjacking, and gun possession. She testified that she was concerned about a life without parole (LWOP) sentence. Counsel testified that she met with Applicant more than twenty times. She asserted that the Solicitor presented documents which had been floating around the jail from Applicant to his co-defendants, in which Applicant told the co-defendants what to do and say during trial. Counsel testified that when she showed Applicant the documents, he smiled and agreed to accept a plea offer.

Ineffective Assistance of Counsel

The Applicant alleges that he received ineffective assistance of counsel. In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. S.C. R. Civ. P. 71.1(e); 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

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relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668, 686, 104 S.Ct. 2052, 2054 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

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, 104 S.Ct. 1052. The 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 to evaluate 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 prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 688, 104 S.Ct. at 2065). 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.” Id. (citing Strickland, 466 U.S. at 694, 104 S.Ct. at 2068). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

When there has been a guilty plea, the applicant must prove that counsel’s representation was below the standard of reasonableness and that, but for counsel’s unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S.Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

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, 243-44, 89 S.Ct.

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1709, 1712 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 650 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)). When a defendant pleads guilty on the advice of counsel, the plea may only be attacked through a claim of ineffective assistance of counsel. Roscoe, 345 S.C. at 20, 546 S.E.2d at 419 (citations omitted).

This Court finds that Applicant's testimony is not credible while also finding that counsel's testimony is credible. This Court finds that counsel is a trial practitioner who has extensive experience in the trial of serious offenses. Counsel conferred with the Applicant on numerous occasions. During conferences with the Applicant, counsel discussed the pending charges, the elements of the charges and what the State was required to prove, Applicant's constitutional rights, Applicant's version of the facts, and possible defenses or lack thereof. (Tr. 111:1-25; 113:1-10.)

The record reflects that the Applicant had sufficient education and experience to understand the proceedings. (Tr. 110:1-15.) The Applicant understood the nature of the charges against him, his Constitutional rights, including his right to present witnesses at trial and his right to a jury trial, and the possible punishments for his charges. (Tr. 111:3-17; 113:1-114:13.) Applicant told the court that he wanted to waive his right to a jury trial and wanted to waive his right to have the Dorchester armed robbery charge heard in St. George. (Tr. 114:12-115:2.) In regards to the Dorchester charge, the Applicant specifically stated, "I'll waive that right, your honor." (Tr. 115:2.) Applicant understood that the plea was negotiated and that the offense was a "violent," "most serious," and "no parole" offense. (Tr. 102:9-103:12; 116:9-17.)

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The Applicant told the court he was "absolutely" satisfied with his attorney and that he gave his attorney truthful information so that she could advise him. (Tr. 117:11-19.) The Applicant also testified that no one threatened him or promised him anything to get him to plead guilty and that no one had pressured him to plead guilty. (Tr. 116:18-117:10.) The Applicant told the Court that he understood the questions asked and had answered all questions truthfully. (Tr. 117:20-24.) The Applicant also told the Court that he understood his appellate rights. (Tr. 117:25-118:7.) This Court finds that it was Applicant's decision to plead guilty, and he entered the plea freely, voluntarily, knowingly, and intelligently and not as the result of any duress or the influence of drugs, alcohol or other impairments. (Tr. 110:8-15; 116:18-117:10.)

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds that Applicant's attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, 466 U.S. 668, 104 S.Ct. 2052; Butler, 286 S.C. 441, 334 S.E.2d 813. This Court further finds counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in her representation. Counsel successfully negotiated a favorable sentence for the Applicant. This Court finds that counsel's representation did not fall below an objective standard of reasonableness.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test, specifically that counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that counsel committed either errors or omissions in her representation of the Applicant. The

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Applicant failed to show that counsel's performance was deficient. This Court also finds the Applicant has failed to prove the second prong of Strickland, specifically that he was prejudiced by plea counsel's performance. Applicant's complaints concerning counsel's performance are without merit and are denied and dismissed.

Subject Matter Jurisdiction

The Applicant alleged that the plea court did not have jurisdiction to hear his Dorchester County armed robbery charge. This Court finds that Applicant knowingly and voluntarily waived jurisdiction on his Dorchester charge. (Tr. 110:8-15; 114:16-115:2; 116:18-117:10.) This allegation is without merit.

Community Supervision Program (CSP)

The Applicant alleged that he did not understand the CSP program when he pled guilty. He asserted that under the CSP he could end up serving more time than the length of his original sentence and that the CSP program creates an unconstitutional sentence. This Court explained during the hearing and hereby finds for the record that the Supreme Court of South Carolina clarified this issue in State v. McGrier, 378 S.C. 320, 663 S.E.2d 15 (2008), finding that the maximum aggregate amount of time the prisoner may be required to serve when sentenced for successive revocations may not exceed an amount of time equal to the length of incarceration imposed for the original "no parole offense." Moreover, the CSP is a collateral consequence of the plea, and thus counsel was not ineffective for failing to advise Applicant of the CSP requirement.

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, including the due process claim, this Court

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finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

CONCLUSION

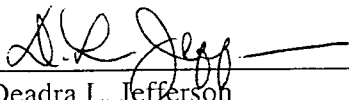
Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner, nor was the Applicant prejudiced by counsel's representation. Therefore, this application for PCR 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 written notice of entry of this Order to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 227 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely served and 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 5th day of Feb., 2010.



Deadra L. Jefferson
Presiding Judge
9th Judicial Circuit

Charleston, South Carolina.