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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

2012-CP-10-2655

Darryl K. Louis,
S.C.D.C. No. 279494,

Applicant,

v.

State of South Carolina,

Respondent.

ORDER

BY _____
2014 JUN 23 AM 10:24
CLERK OF COURT

In response to the post-conviction relief application filed April 20, 2012 and amended on May 16, 2014, this Court finds:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Charleston County. The Applicant was indicted at the June 2007 term of the Charleston County Grand Jury for four (4) counts of armed robbery (2007-GS-10-7478, 7479, 7480, 7481). F. Renee Gaters, Esquire, represented the Applicant.

On May 28, 2008, the Applicant pled guilty as indicted to one (1) count of armed robbery. The Honorable James C. Williams, Jr., sentenced the Applicant to thirty (30) years imprisonment pursuant to a negotiated plea agreement. The sentence was to run concurrently with Applicant's armed robbery sentences in Berkeley and Dorchester Counties. The Applicant did not appeal.

The Applicant subsequently filed an application for post-conviction relief (PCR) on October 21, 2008 (2008-CP-10-6010). The Applicant raised the following grounds for relief:

YORIN GILBERT
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ATTORNEY GENERAL'S OFFICE

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ADMINISTRATIVE INSTRUCTIONS

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ORDER: _____ TRANSCRIPT _____

PEN RECORDS _____ CLERK RECORDS _____

OTHER: _____

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

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 and represented by Charles T. Brooks, Esquire. By Order of Dismissal dated February 5, 2010 and filed February 9, 2010, the Honorable Deadra L. Jefferson denied and dismissed the application with prejudice. The Applicant did not appeal.

II.

In his current and original application for post-conviction relief, the Applicant alleges that he is being held unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. "Counsel failed to object when plea court failed to advise Applicant of the full consequences of his plea."
 - b. "Counsel and Court failed to apprise Applicant of mandates of S.C. Code Ann. § 24-21-560(D), which results in DOUBLE SENTENCING."
2. Due process violation and unconstitutional sentence.
3. Lack of subject matter jurisdiction.

The State filed a Return and Motion to Dismiss on March 31, 2014. In its Return, the State asks this Court to summarily dismiss the Applicant's application for post-conviction relief as being successive and untimely filed. The Honorable Stephanie P. McDonald conditionally dismissed the Applicant's application for post-conviction relief by Order filed on April 23, 2014. In the Applicant's Response to the Conditional Order of Dismissal dated May 16, 2014, he claims this application should not be dismissed because the "Applicant seeks Appellate review for Post-Conviction relief due to P.C.R. Counsel failure to timely appeal the hearing." On May 16, 2014, the Applicant also amended his application for post-conviction to allege "Post-Conviction Relief counsel was ineffective for failing to file an appeal on the Applicant's behalf

following the denial of his PCR application. See Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).” In his amended application, the Applicant withdrew “any other allegations raised in his original Application for Post-Conviction Relief.”

III.

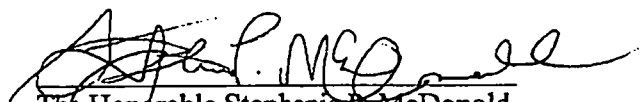
Based on the Applicant’s representations in his amended application and Response to the Conditional Order of Dismissal, this Court finds all allegations raised in the Applicant’s original application for post-conviction relief filed April 20, 2012 are hereby deemed withdrawn by the Applicant. This Court also orders an evidentiary hearing be held solely to address the issue of whether “Post-Conviction Relief counsel was ineffective for failing to file an appeal on the Applicant’s behalf following the denial of his PCR application. See Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991)” which was raised by the Applicant in his amended application for post-conviction relief.

THEREFORE, THIS COURT FINDS:

1. That all allegations raised in the Applicant’s original application for post-conviction relief are deemed withdrawn; and
2. That an evidentiary hearing be convened to address the sole issue of whether post-conviction relief counsel was ineffective for failing to file an appeal of the denial of the Applicant’s first application for post-conviction relief.

IT IS SO ORDERED this 19th day of June, 2014.

June 19, South Carolina


The Honorable Stephanie P. McDonald
Chief Administrative Judge
9th Judicial Circuit