THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM YORK COUNTY
Court of Common Pleas

ALISON R. LEE, Circuit Court Judge

Civil Action Number: 2014-CP-46-1199

JOHN THOMAS ROBINSON,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

The Petitioner above appeals the order of the Honorable Alison Renee Lee, filed February 6, 2015 and received February 9, 2015 denying his application for Post-Conviction Relief.

March 2, 2015

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John T. Robinson,

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State of South Carolina, Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal in the above captioned case on the following individuals by depositing a copy of it in the United States Mail, postage prepaid, on March 2, 2015, addressed to:

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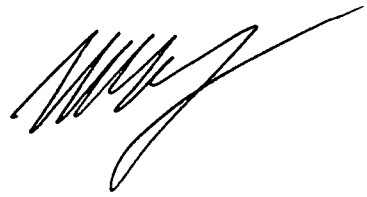
March 2, 2014



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STATE OF SOUTH CAROLINA COUNTY OF YORK	)	IN THE COURT OF COMMON PLEAS SIXTEENTH JUDICIAL CIRCUIT
John Thomas Robinson, Applicant, v. State of South Carolina, Respondent.	)	DOCKET NO.: 2014-CP-46-1199 **ORDER OF DISMISSAL**

This matter comes before the Court by way of an Application for Post-Conviction Relief filed April 15, 2014. Respondent made its Return on July 18, 2014. An evidentiary hearing into the matter was convened on November 17, 2014, at the Moss Justice Center in York, SC. W. Michael Hemlepp, Jr., Esquire represented Applicant. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

At the hearing, Applicant testified on his own behalf. Ashley Anderson, Esquire also testified. This Court had before it a copy of the records of the York County Clerk of Court, the application, the State's Return and the guilty plea transcript.

PROCEDURAL HISTORY

Applicant is not presently confined. Applicant was indicted at the December 2013 term of the York County Grand Jury for Criminal Domestic Violence (2013-GS-46-4291). Applicant was represented by Ashley Anderson, Esquire. On March 12, 2014, Applicant pled no contest to Assault and Battery, 3rd degree as a lesser included offense before the Honorable Paul M. Burch and was sentenced, pursuant to a recommendation by the State, to thirty (30) days, with credit for time served. Applicant did not appeal his convictions or sentences.

In his current Application, Applicant alleges that he was held in custody unlawfully for the "Ineffective Assistance of Counsel for prejudice advisement of plea; I stayed lock-up (sic) for more than seven (7) months excessive bail. My charge was Criminal Domestic Violence, 2nd offense. My bond was set at $15,000 just that simple. Insufficient evidence to convict beyond reasonable doubt." At the hearing, Applicant proceeded on his claims of ineffective assistance of plea counsel.

SUMMARY OF TESTIMONY

At the evidentiary hearing, Applicant testified he had difficulty in his marriage and was charged with Criminal Domestic Violence (CDV), 2nd offense. His bond was set at $15,000. Applicant was screened by the public defender's office and Ashley Anderson, Esquire was appointed as counsel. Applicant discussed his case with Counsel, but did not make bond. Applicant also discussed with Counsel any defenses and the law concerning CDV. Applicant wanted to have the matter disposed of as soon as possible. He would not plead guilty as indicted because he did not think there was enough evidence in his case.

The State consented to a guilty plea where Applicant would plead no contest to Assault and Battery, 3rd degree. Counsel did not need to explain the guilty plea versus no contest concept to Applicant because he was familiar with the process. Applicant filed a PCR against Counsel because he wanted Counsel to petition to have his bond reduced. Applicant pled no contest to the Assault and Battery, 3rd degree and was sentenced to time served.

Counsel testified she was appointed to Applicant's case and first met with Applicant in October of 2013. Applicant refused to speak with her investigator, but she corresponded with Applicant via letters and met with him on several occasions. Counsel met with Applicant for his preliminary hearing and provided him with a copy of the CDV statute and a copy of the 8th Amendment. Counsel knew the $15,000 bond would not be possible for Applicant to afford, but thought it was reasonable, given that his criminal history dates back to 1966. She did not request a reduction in the bond because she did not have proper grounds to ask for reconsideration of the bond.

The State first offered a plea agreement for Applicant to plead guilty to CDV, 1st offense with a sentence to run concurrent with his Probation Revocation. Applicant was on probation for possession with intent to distribute crack cocaine, 2nd offense. Applicant rejected the offer because he denied the facts of the case. Counsel was aware that she was also dealing with a potential probation violation.

Counsel further testified Applicant's case was set for trial and when the sitting judge was consulted about the case, there was a recommendation on the probation to revoke only time already served. Applicant agreed with this resolution and it was his decision to plead no contest. Counsel did not force or threaten Applicant to plead guilty.

According to Counsel, Applicant believed his wife (the victim) would contact the State to drop the charges. The victim did not deny the allegations against Applicant, contrary to what Applicant thought. Although, the victim had been arrested on drug charges, the State was prepared to present her as a witness. There was also a recorded statement from the victim in this case.

On rebuttal, Applicant testified he should not have pled guilty and that he communicated this to Counsel. Upon the Court's questioning, Applicant testified he pled guilty on the advice of Counsel.

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 at the post conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

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) (citing Rule 71.1(e), SCRCP). 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 relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, *citing* Strickland. 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." Cherry, 300 S.C. at

117-18, 386 S.E.2d at 625. 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 (1985).

This Court finds Counsel provided effective assistance of counsel in this case. Counsel advised Applicant of the charge and the sentence the charge carried. Counsel also negotiated with the State in Applicant's best interest. Applicant was facing one years' imprisonment, but was incarcerated for seven months awaiting disposition of his case. Counsel was able to secure a no contest plea to a lesser included offense and a sentence of time served while not having Applicant's probation for another charge revoked. According to the records before the Court, Applicant could have been sent to the Department of Corrections for up to ten years on the probation revocation for the crack cocaine conviction. This Court finds this agreement benefitted Applicant tremendously and thus, Counsel was very effective in her representation. This Court finds Applicant made the decision on his own accord with the help of learned counsel.

The transcript of the plea reveals that Applicant made this decision freely and voluntarily without any threats or promises. Furthermore, this Court finds that it was ultimately the Applicant's decision to plead guilty and he did to receive the benefit of the discussions. Counsel at the plea discussed some discrepancy in the statements made by the victim and acknowledged that Applicant was receiving a benefit based upon the time he spent in jail and the probation matter.

This Court finds the Applicant's testimony regarding Counsel's ineffectiveness is not credible and that Counsel's testimony was credible. Applicant has failed to meet his burden of proving Counsel's performance was deficient or that he was prejudiced thereby. Accordingly, this allegation is denied.

Concerning Applicant's claim that Counsel was ineffective for not filing a motion for reduction of his bond, this Court finds this claim without merit. Applicant did not deny that his criminal history dates back to 1966 and is very extensive. A $15,000 bond was quite reasonable based on the charges and Applicant's prior history. Counsel testified she had no legal basis to request a reconsideration of Applicant's bond. This Court also finds Counsel credible on this allegation. Thus, this allegation is denied.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – 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 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 Counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. Therefore, these allegations are denied.

CONCLUSION

Based on all 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 notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel 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 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED that the Application for Post-Conviction Relief is denied and dismissed with prejudice.

AND IT IS SO ORDERED.

ALISON RENEE LEE
Presiding Circuit Court Judge
Sixteenth Judicial Circuit

January 27, 2015
Columbia, South Carolina