

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: 2013-CP-46-3954

JOHN THOMAS
ROBINSON,

Petitioner,

v.

STATE OF SOUTH
CAROLINA,

Respondent.

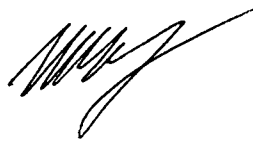
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MAR - 3 2015

S.C. Supreme Court

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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APPEAL FROM YORK COUNTY
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Civil Action Number: 2013-CP-46-3954

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S.C. Supreme Court

John T. Robinson,

Petitioner,

v.

State of South Carolina,

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PROOF OF SERVICE

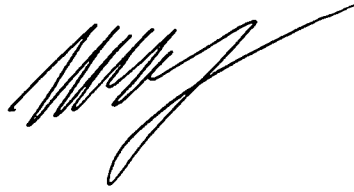
I certify that I have served the Notice of Appeal in the above captioned case on the following individuals by depositing a copy of it in the United States Mail, postage prepaid, on March 2, 2015, addressed to:

David Hamilton, Clerk of Court
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March 2, 2014



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STATE OF SOUTH CAROLINA)
 COUNTY OF YORK)
)
 John Thomas Robinson,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 SIXTEENTH JUDICIAL CIRCUIT
 DOCKET NO.: 2013-CP-46-3954

ORDER OF DISMISSAL
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 DAVID J. JOHNSON
 C.C. C.P. & G.S.
 YORK COUNTY, SC

This matter comes before the Court by way of an Application for Post-Conviction Relief filed December 27, 2013. The Respondent made its Return on May 21, 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 the Applicant. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. Toni Johnson, Esquire also testified. This Court had before it a copy of the records of the application, the disposition sheet and a plea affidavit. There was no transcript of the proceedings before the trial court.

PROCEDURAL HISTORY

The Applicant is presently not confined. The Applicant was charged with Criminal Domestic Violence, 1st offense. The Applicant was represented by Toni Johnson, Esquire. On July 3, 2013, the Applicant pled no contest before the Honorable Herman Howell and was sentenced to time served. Applicant did not appeal his conviction or sentence.

In his current Application, the Applicant alleges that he received Ineffective Assistance of Counsel, specifically "was attorney ineffective when failed to advise defendant of all the provisions of the law?" At the hearing, the Applicant proceeded on his claim of ineffective assistance of plea counsel.

SUMMARY OF TESTIMONY

Applicant testified he was represented by Counsel on a charge of Criminal Domestic Violence, 1st offense, which was initiated by the York County Sheriff's Office. The alleged victim in the case is the Applicant's wife. Applicant was confined in jail for only one day, but was represented

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by Counsel for over one year. He was also arrested on a felony charge. After that charge was handled, Applicant moved forward with the CDV charge. There was an order requiring Applicant to stay away from his wife. Applicant testified this matter was disposed of on July 3, 2013, but he did not appear in CDV court for this proceeding. He pled guilty for a sentence of time-served by agreement, but that he does not agree with that disposition at the current time.

Applicant claims Counsel was ineffective because she could have advised him that if his wife were to sign an agreement with the Victim's Advocate's Office, the charges could be dismissed. He lost his job because of this charge and subsequently had issues with his landlord. According to Applicant, Counsel did not explain to him about the potential dismissal of this charge.

Counsel testified she has been a public defender for 9 years and has handled numerous CDV cases. She was appointed to Applicant's case and met with him once or twice before the disposition of his charge. She obtained a signed plea affidavit from Applicant that was approved by the Honorable Herman Howell and the Solicitor. Applicant pled no contest to CDV, 1st offense for a sentence of time-served. It was his decision to plead to the charge and he was not threatened or coerced.

Counsel did not advise Applicant that his wife could sign an affidavit and have the charge dismissed because it was the Solicitor's decision whether to prosecute the case or not. Although the Applicant's wife, as the victim, can advise the Solicitor's office as to her desire about the charge, it was ultimately the Solicitor's decision to prosecute. The Solicitor can take the Victim's opinion into account when deciding whether to proceed with the charge.

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).

The 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

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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 was competent and diligent in her representation of the Applicant in this case. Counsel sufficiently advised the Applicant of the charges against him, the potential penalties if convicted at trial, and the evidence the State would produce at trial. Counsel also engaged in plea negotiations which were beneficial to the Applicant. This Court also finds the Applicant was well informed by Counsel in this case. The Applicant expressed through his plea affidavit that he was satisfied with Counsel, had sufficient time with Counsel, and Counsel did all that the Applicant requested. The Applicant pled guilty without any threat or coercion. The Applicant also waived his Constitutional rights afforded to him. This Court finds the Applicant pled knowingly, voluntarily, and on his own free will.

Applicant argues Counsel failed to advise him that because his wife was willing to sign an affidavit to dismiss the charge, the charge would have been dismissed. This argument is erroneous. In South Carolina, "[t]he criminal justice system gives prosecutors, as opposed to victims, broad discretion in deciding which cases to try because prosecutors are less likely to be prejudiced by personal and emotional motives." Ex parte Littlefield, 343 S.C. 212, 218, 540 S.E.2d 81, 84 (2000).

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Additionally, “[p]rosecutors may pursue a case to trial, or they may plea bargain it down to a lesser offense, or they can simply decide not to prosecute the offense in its entirety.” State v. Thrift, 312 S.C. 282, 292, 440 S.E.2d 341, 346-47 (1994). Counsel testified she correctly advised Applicant that it is the Solicitor’s decision whether to prosecute a charge or to dismiss it, not the Victim’s. This Court finds Counsel’s testimony credible and finds Counsel provided effective assistance of counsel in this case.

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.

Handwritten signature and initials, possibly "C. J. [unclear]" and "#4".

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 29, 2015
Columbia, South Carolina

