

IN THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
APPEAL FROM RICHLAND COUNTY
COURT OF COMMON PLEAS

RECEIVED

MAR - 9 2015

S.C. Supreme Court

J. ERNEST KINARD JR., CIRCUIT COURT JUDGE

2013-CP-40-3673

Reginald Spellman,.....Petitioner.

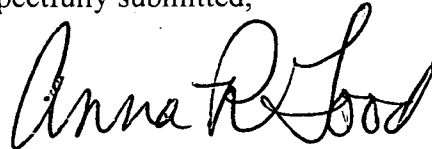
vs

The State of South Carolina,.....Respondent.

NOTICE OF APPEAL

Reginald Spellman appeals the Honorable J. Ernest Kinard, Jr.'s February 13, 2015, order denying post-conviction relief to the Petitioner, clocked on February 20, 2015. Undersigned counsel received notice of entry of the order on March 3, 2015. A copy of the order on appeal is attached to this notice.

Respectfully submitted,



Anna R. Good, Esquire
O'Neil, Good & Li, LLC
PO Box 7284
Columbia, South Carolina 29202
Telephone: (803) 661-6758
Fax: (803) 403-8752

Attorney for the Petitioner.

March 9, 2015.

J. Clayton Mitchell, Esquire
South Carolina Attorney General's Office
Post Office Box 11549
Columbia, SC 29211-1549

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APPEAL FROM RICHLAND COUNTY
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J. ERNEST KINARD JR., CIRCUIT COURT JUDGE

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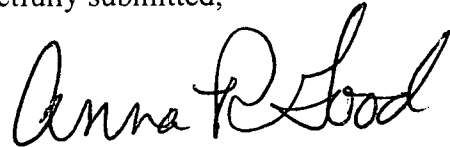
vs

The State of South Carolina,.....Respondent.

PROOF OF SERVICE

I, Anna Good, certify that I have today served the within notice of appeal upon the Respondent by depositing a copy of it in the United States Mail, postage prepaid, addressed to the attorney of record, J. Clayton Mitchell, P.O. Box 11549, Columbia, South Carolina 29211-1549. I further certify that all parties required by Rule to be served have been served this 9th day of March 2015.

Respectfully submitted,



Anna R. Good, Esquire
O'Neil, Good & Li, LLC
PO Box 7284
Columbia, South Carolina 29202

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Reginald B. Spellman, #251838,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

2013-CP-40-03673

ORDER OF DISMISSAL

RICHLAND COUNTY
FILED
2015 FEB 20 AM 10:36
JEANNETTE W. MORRISON
C.C.P. & C.S.

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed June 24, 2013. Respondent made its Return on December 13, 2013, requesting an evidentiary hearing be convened. Anna R. Good, Esquire, was appointed by the Richland County Clerk of Court. Applicant filed an Amended Application for Post-Conviction Relief on October 14, 2014.

An evidentiary hearing was held on December 9, 2014, at the Richland County Courthouse. Applicant was present and represented by Counsel 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 was Applicant's plea counsel, Reynolds H. Blankenship, Jr., 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, the appellate records, 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 Clerk of Court for Richland County. Applicant was indicted during the December 2010 term of the Richland County Grand Jury for Assault with Intent to

Commit CSC with a Minor in the First Degree (2010-GS-40-7590). Applicant was represented by Counsel Blankenship. Applicant's case was called for trial the week of January 9, 2012, before the Honorable G. Thomas Cooper, Jr., where the jury returned a guilty verdict on the charge as indicted. Subsequent to the guilty verdict being received and before sentencing was imposed, a juror came forward and revealed that she unintentionally failed to disclose a repressed memory that only surfaced after jury deliberations began. The court noted in detail that Counsel and the prosecuting solicitor were present during this revelation. (Guilty Plea Transcript p. 3 – 5). At this juncture, Counsel made a motion for a mistrial. The court took this motion under advisement. Counsel and the prosecuting solicitor then entered into plea discussions where they agreed upon a negotiated plea deal of fifteen (15) years imprisonment on the lesser included charge of Lewd Act Upon a Child Under 16.

On February 27, 2012, Applicant waived presentment to the Lewd Act indictment (2010-GS-40-7590) and pleaded guilty. Judge Cooper accepted the parties' negotiations and sentenced Applicant to fifteen (15) years imprisonment.

A Notice of Appeal was filed with the South Carolina Court of Appeals. An Order of Dismissal was issued on February 2, 2013, because Applicant failed to provide a sufficient explanation as required by Rule 203(d)(1)(B)(iv), SCACR. The Remittitur was issued on March 28, 2013. Thereafter, Applicant filed a motion to recall the Remittitur, which was subsequently denied on September 11, 2013. This PCR action follows.

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

1. Involuntary guilty plea in that Applicant pleaded guilty because he was previously convicted at trial.

II. SUMMARY AND EVIDENCE PRESENTED AT THE PCR HEARING

Applicant's Testimony

Applicant alleged that he pleaded guilty involuntarily. Applicant testified he retained Counsel Blankenship and met with him four times. During those meetings Counsel advised Applicant of his rights to a trial and made the decision to take the case to trial.

Applicant conceded he was facing a maximum sentence of thirty (30) years imprisonment on the CSC charge, but pled to the fifteen (15) year negotiated sentence to avoid the risk of being convicted if the motion for mistrial was granted. Applicant claimed he only pled guilty because he had already been found guilty by the jury. Applicant also testified that his testimony and answers given at the guilty plea hearing were at odds with his testimony at the PCR hearing. He acknowledged that he fully admitted his guilt, understood and waived his various constitutional rights, and even stated that he was satisfied with Counsel's performance and representation at the guilty plea hearing.

Applicant also testified in support of his allegations that Counsel was ineffective during the trial preceding his admission of guilt and his plea of guilty.

Counsel Reynolds H. Blankenship, Jr.'s Testimony

Counsel testified he was retained by Applicant to represent him on the charges he is currently challenging. Counsel testified he advised Applicant of his rights to a jury trial and that they proceeded to trial where the jury rendered a verdict of guilty. Counsel testified that a juror came forward and expressed that she may have failed to disclose a repressed memory during voir dire questioning. Counsel then moved for a mistrial. The trial court took the motion under advisement.¹ Counsel explained that the prosecuting solicitor and he then entered into plea

¹ This Court notes that Judge Cooper indicated that he would have denied Applicant's motion for a mistrial and let the jury's guilty verdict stand.

discussions in an attempt to come to a disposition agreeable to both sides. Counsel testified he apprised Applicant of the juror's disclosure and his motion for a mistrial. Counsel stated he reviewed with Applicant the lewd act charge and the plea offer that Applicant ultimately entered into. Counsel testified that he advised Applicant of the rights he was waiving by pleading guilty. In Counsel's opinion, Applicant had a full understanding of those rights.

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, the appellate records, 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.

Ineffective Assistance of Counsel at Trial

In Applicant's Amended Application for Post Conviction Relief, he set forth numerous allegations that Counsel was ineffective at Applicant's trial which preceded his guilty plea. Respondent made a motion to dismiss all allegations as to Counsel's effectiveness at trial and argued Applicant waived those allegations by pleading guilty. This Court agrees. "A guilty plea constitutes a waiver of nonjurisdictional defects and claims of violations of constitutional rights." Jamison v. State, 410 S.C. 456, 467, 765 S.E.2d 123, 129 (2014) (citing State v. Rice, 401 S.C.

330, 331-32, 737 S.E.2d 485, 485-86 (2013); Hyman v. State, 397 S.C. 35, 44, 723 S.E.2d 375, 379 (2012)). Notably the South Carolina Supreme Court has held “A guilty plea represents a break in the chain of events which has preceded it in the criminal process.” Id (citations omitted). “When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea.” Id (citing Rice, 401 S.C. at 332, 737 S.E.2d at 486). Applicant argues he should be allowed to litigate his claims regarding Counsel’s performance at trial. This Court finds that by pleading guilty Applicant expressly waived any challenge to those prior proceedings. This Court also finds it unnecessary to detail the testimony relating to the allegations of Counsel’s ineffectiveness at trial as they are not relevant in its determination. Therefore, this Court will only consider Applicant’s allegation that he did not plead guilty voluntarily.

Involuntary Guilty Plea

This Court finds Applicant failed to meet his burden to show his plea was involuntarily entered. This Court finds Counsel’s testimony very credible regarding his advice to Applicant concerning the guilty plea. Accordingly, this Court finds Counsel adequately conferred with Applicant and was thoroughly competent in his representation. Applicant was fully informed of the nature and consequences of his plea.

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709, 23 L.Ed.2d 274 (1969). Defendant’s knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and “may be accomplished by colloquy between court and defendant, between

court and defendant's counsel, or both.” Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). This Court finds Judge Cooper carefully explained the various rights Applicant was waiving by pleading guilty. (Plea Tr. P. 5-7). The record fully reflects that Applicant admitted his guilty to the court. Applicant answered in the affirmative when asked whether he understood the rights he was waiving. Applicant cannot now contest those sworn responses. See Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (“[S]tatements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements.” (citing Crawford v. United States, 519 F.2d 347 (4th Cir.1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir.1976))). Applicant told the court that he had not been promised or threatened by anyone to entice him to plead guilty. This Court finds Applicant’s testimony on this issue not credible as his testimony at the PCR hearing is wholly inconsistent with his testimony at his guilty plea hearing. This Court finds that Applicant had a full understanding of the consequences of the plea and the charges against him. This Court finds Judge Cooper correctly found that Applicant’s plea was freely, voluntarily and intelligently made.

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

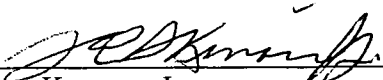
Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Applicant failed to demonstrate counsels' performance was unreasonable under prevailing professional norms. Cherry, 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 13 day of February, 2015.



J. ERNEST KINARD, JR.
Presiding Judge

Camden, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2013CP4003673

Reginald Bryan #251838 Spellman

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

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. Non Suit); 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 23 February 2015 to attorneys of record or to parties (when appearing pro se) as follows:

Reginald Bryan #251838 Anna Rawl Good
Spellman

Megan Harrigan Jameson

Reginald Bryan #251838
Spellman

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court Jeanette W. [Signature]

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Reginald B. Spellman)

Plaintiff,)

vs.)

State of South Carolina)

Defendant.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CASE NO.: 2013-CP-40-03673

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

FILED
RICHLAND COUNTY
FEB 20 AM 10:36
JANNETTE M. MCBRIDE
C.C.P. & C.S.

Plaintiff's Attorney:
Anna R. Good, Bar No. 72808
Address:
PO Box 7284 Columbia SC 29202
Phone: _____ Fax _____
E-mail: _____ Other: _____

Defendant's Attorney:
Clay 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.

Signature of Attorney for Plaintiff / Defendant 2/9/15
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, SCRCP)
 - 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

- Motion Fee to be paid upon filing of the attached order.
- Other: _____

JUDGE CODE _____
Date: _____

CLERK'S VERIFICATION

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