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(1933-2012)

February 5, 2015

The Honorable Jenny Abbott Kitchings
Court of Appeals Clerk of Court
Post Office Box 11629
Columbia, South Carolina 29211

Re: Travis McLaughlin v. State of South Carolina
C/A#: 2012-CP-33-231
Our File No.: 12407

Dear Madam Clerk:

Enclosed for filing please find one original and one copy of our Notice of Appeal and certificate of service in connection with the above-referenced Post-Conviction Relief matter. I request that the original be filed and the date-stamped copy returned to my office in the envelope enclosed.

Thank you for your assistance and please contact me with any questions.

With kindest regards, I am

Very truly yours,

JOSHUA A. BAILEY

JAB/dah
Enclosures

cc: Croom Hunter, Esquire
Travis McLaughlin

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STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM MARION COUNTY
Court of Common Pleas

Edgar W. Dickson, Presiding Judge

2012-CP-33-0231

TRAVIS MCLAUGHLIN, #291562, Petitioner,

v.

STATE OF SOUTH CAROLINA, Respondent.

NOTICE OF APPEAL

Travis McLaughlin, #291562, appeals the Order of Dismissal denying his Application for Post-Conviction relief filed December 9, 2014, and received by counsel on January 9, 2015, issued by the Honorable Edgar W. Dickson, presiding judge.

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This 5th Day of February, 2015.

Other Counsel of Record:
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Attorney for Respondent

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of Petitioner's Notice of Appeal in the above-captioned matter has been served upon opposing counsel, Croom Hunter, Esquire, of the Office of the Attorney General, Post Office Box 11549, Columbia, South Carolina, 29211, by mailing in an envelope properly addressed with postage prepaid on this 5th day of February, 2015.

Carolyn Thompkins
Assistant to Joshua A. Bailey, Esquire

STATE OF SOUTH CAROLINA COUNTY OF MARION	)	IN THE COURT OF COMMON PLEAS TWELFTH JUDICIAL CIRCUIT
Travis McLaughlin, #291562,	)	Case No. 2012-CP-33-0231
Applicant,	)	
v.	)	**ORDER OF DISMISSAL**
State of South Carolina,	)	
Respondent.	)	

This matter comes before this Court by way of a post-conviction relief (PCR) application filed on March 9, 2012. Respondent made its return on February 4, 2013.[1] Applicant filed an amended application for post-conviction relief on September 6, 2013. An evidentiary hearing into the matter was convened on October 8, 2014, at the Florence County Courthouse. Applicant was present at the hearing and was represented by Joshua A. Bailey, Esquire. Respondent was represented by Assistant Attorney General J. Croom Hunter of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

Applicant is currently incarcerated in the South Carolina Department of Corrections pursuant to orders of commitment from the Marion County Clerk of Court. In May 2010, the Marion County Grand Jury indicted Applicant for murder and possession of a weapon during a violent crime (2010-GS-33-0176). Henry M. Anderson, Jr., Esquire, represented Applicant. On December 2, 2011, Applicant pled guilty to the lesser included offense of voluntary

[1] Respondent did not receive the Application from the Marion County Clerk of Court until November 20, 2012.

manslaughter. The Honorable William H. Seals sentenced Applicant to twenty-five (25) years imprisonment. Applicant did not appeal his plea or sentence.

ALLEGATIONS

At the post-conviction relief hearing, Applicant proceeded to argue his confinement is unlawful based upon the following grounds:

1. Ineffective assistance of counsel.
   a. Plea counsel failed to adequately conduct an investigation into the facts and circumstances of Applicant's case.
   b. Plea counsel failed to retain experts necessary to refute the theory of the State's case against Applicant.
   c. Plea counsel failed to adequately inform Applicant of available defenses.
2. Involuntary guilty plea.
   a. Plea counsel failed to properly and adequately inform Applicant of the applicable law in his case to the extent that his guilty plea was not entered freely, voluntarily, and with sufficient knowledge to render it valid.

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. This Court also heard testimony from trial counsel, Henry M. Anderson, Esquire (Counsel). Applicant also called Don Girndt, who was qualified as an expert in crime scene investigation and forensics. This Court also had before it a copy of the trial transcript, the Marion County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, and the return.

At the evidentiary hearing, Applicant initially called Don Girndt to testify. Girndt testified he is a forensic consultant, specializing in the fields of fingerprint and footprint analysis, as well as general evidence collection procedures. Girndt testified he received his undergraduate

degree from the University of South Carolina. He testified he is a certified crime scene analyst. Girndt testified that after serving in the United States Marine Corps, he worked for the following agencies in the field of crime scene investigation: the University of South Carolina Police Department, SLED, the Richland County Sheriff's Department, and the Lexington County Sheriff's Department. Girndt testified his work as a crime scene analyst entails going over photographs, statements, evidence, and lab reports, in order to get a better idea of what events may or may not have transpired at a crime scene. Girndt testified he has investigated several hundred homicides. Applicant moved to qualify Girndt as an expert. Respondent did not object. This Court then qualified Girndt as an expert in the field of crime scene investigation and forensics. Counsel for Applicant subsequently showed Girndt a depiction of the crime scene, which was marked as Applicant's Exhibit 2. Girndt testified he reviewed the exhibit prior to the evidentiary hearing. When asked whether the depiction accurately showed the crime scene, Respondent objected, arguing Girndt could only speculate whether the depiction accurately represented the crime scene on the day of the homicide. This Court sustained the objection. Girndt testified that based upon the depiction, the crime scene was a confined area, although the depiction did not list any dimensions. Girndt testified the evidence collected during the investigation suggested there was a struggle between Applicant and the victim prior to Applicant killing the victim. Girndt based this assessment upon the autopsy report which indicated lacerations on one of the victim's fingers, as well as bruising on the victim's body. Girndt also testified that the fact two shots were fired, but the victim was only hit once, indicated a struggle could have a caused Applicant to fire wildly and miss the victim with one of the shots. Girdnt further testified that the angle of the victim's wound indicated a "shored-up wound," which was consistent with being shot while struggling on the floor. Finally, Girndt testified with respect to

evidence collection. He testified that when gunshot residue (GSR) kits are collected, the body is normally bagged and removed to the morgue, where the test is performed. Girndt testified that gunshot residue is very fragile, and if the deceased is suspected to have fired a weapon, paper bags should be taped around the hands to preserve the evidence until the test can be performed. Girndt testified that in this case, no gunshot residue was collected from the victim, but there was also no indication the victim's hands had been bagged.

On cross-examination, Girndt testified he did not visit the crime scene, and that his testimony was based solely on his review of the documents and photographs he was provided prior to the hearing. Girndt testified he could not definitively state whether the cuts and bruises on the victim came from a struggle with Applicant, but he based his opinion on the notes in the autopsy report. Finally, Girndt testified that normally if hands are bagged at the crime scene, it is noted in the autopsy report.

After Girndt's testimony, Applicant took the stand. Applicant testified that he was represented at his plea by Henry M. Anderson, Esquire (Counsel). Applicant testified he was charged with murder, but he pled guilty to voluntary manslaughter. Applicant testified he was sentenced to twenty-five (25) years imprisonment. Applicant testified the shooting occurred on December 7, 2009 and he was arrested on December 8, 2009. Applicant testified he did not plead guilty until two (2) years later in December of 2011. Applicant testified he never made bond during that time and was held at the Marion County jail. Applicant testified he only met with Counsel one (1) time prior to his plea. Applicant testified the only way he could speak with his attorney was by informing the corrections staff he wished to plead guilty. Applicant testified that when he met with Counsel, Applicant told Counsel his version of events. Applicant testified he and the victim were uptown drinking, and Applicant reluctantly agreed to drive the victim home.

Applicant testified the victim became belligerent and pulled out a gun. Applicant testified he grabbed the gun, and it started going off. Applicant testified that after relaying his story to Counsel, he did not see Counsel again until the day before his guilty plea. Applicant testified he told Counsel he would rather go to trial than plea. Applicant testified Counsel told him the State would let him plead to voluntary manslaughter with a sentencing range of a minimum of two (2) years and a maximum of thirty (30) years imprisonment. Applicant testified he felt like he had no alternative but to plead guilty. Applicant testified he did not recall whether Counsel went over the elements of murder. Applicant testified Counsel did explain the elements of voluntary manslaughter but not involuntary manslaughter. Applicant testified Counsel never explained the elements of self-defense. Applicant testified that all of his discussion with Counsel centered on entering a guilty plea. Applicant testified that when he was arrested, he gave a statement and told the officers about his struggle with the victim. Applicant testified he never reviewed the photos of the crime scene with Counsel. Applicant testified Counsel never discussed using an expert. Applicant testified if he knew then what Girndt testified to at the evidentiary hearing, he would have insisted on going to trial. Applicant testified he only told the plea judge he was satisfied with Counsel because Counsel told him to say that. Applicant testified he only pled guilty upon Counsel's advice. Applicant testified he recalled Counsel discussing mitigating evidence with the plea judge.

On cross-examination, Applicant testified he told the plea judge he knew he could receive between two (2) and thirty (30) years imprisonment. Applicant testified he told the judge he knew he was giving up his right to a jury trial and his right to challenge the evidence against him. Applicant testified he told the judge he had no questions regarding his waiver of rights. Applicant testified he told the judge he wished to give up his constitutional rights in order to

enter his guilty plea. Applicant testified he told the judge no one had promised him anything or forced him to plead guilty. Applicant testified he told the judge he was satisfied with Counsel because Counsel told him to say that. Applicant testified he was untruthful when he told the plea judge he was satisfied with Counsel. Applicant testified he only told the plea judge he was guilty because Counsel told him to say that.

Following Applicant's testimony, Henry M. Anderson, Esquire (Counsel) testified. Counsel testified he took this case as a contract public defender with the Twelfth Circuit Public Defender's Office. Counsel testified he has been practicing law for twenty-three (23) years, with the vast majority focused on criminal defense. Counsel testified he obtained full discovery from the State and went over Applicant's statement, as well as photographs of the crime scene, and the autopsy photos with Applicant. Counsel also testified he talked about the blood splatter with Applicant. Counsel testified he met with Applicant at least four (4) times at the jail prior to Applicant's plea. Counsel testified he discussed the elements of voluntary and involuntary manslaughter, as well as the elements of murder with Applicant. Counsel testified he and Applicant discussed Applicant's version of the facts. Counsel testified Applicant told him the victim was known to carry a gun. Counsel also testified the victim did not have any convictions for violent crimes on his record. Counsel testified there was no need to hire an investigator in Applicant's case because the evidence against Applicant was straightforward. Counsel testified he spoke with the law enforcement officers who investigated the case. Counsel testified that while there was some sign of a struggle, he did not believe the facts of the case presented a viable self-defense or involuntary manslaughter claim. Counsel testified he gave his defense file to PCR counsel and did not believe anything was missing from the file. Counsel testified he tried to get in touch with possible witnesses the victim told him about, but he was unable to contact

them. Counsel testified the State also offered a negotiated plea of thirty (30) years. Counsel testified he was ready to go to trial when he met with Applicant on November 29, 2011, but he also discussed the problems he found with Applicant's case. Counsel testified he prepared the case for trial two weeks prior to the guilty plea. Counsel testified he did not need more time to prepare. Counsel testified he reviewed Applicant's constitutional rights with him prior to the plea. Counsel testified he agreed with Applicant's decision to plead guilty. Counsel testified Applicant made the decision to plead guilty.

INEFFECTIVE ASSISTANCE OF COUNSEL

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his 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. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 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, 88 L.Ed. 2d 203 (1985).

This Court finds Applicant failed to demonstrate that Counsel's performance was deficient in any way. This Court further finds that Applicant presented no evidence to show any prejudice resulting from Counsel's representation. Additionally, this Court finds Counsel's testimony credible and Applicant's testimony not credible. This Court finds Girndt's expert testimony credible but unpersuasive.

1. Failure to Investigate

Counsel met with Applicant an adequate number of times prior to the guilty plea. Counsel also obtained discovery from the solicitor and went over it with Applicant. Counsel interviewed the officers who investigated the case and reviewed the evidence against Applicant. Counsel also attempted to speak with witnesses whose names he was given by Applicant. Because Applicant did not produce these witnesses at the PCR hearing, he has not shown any prejudice. See Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992). Accordingly, this Court finds Counsel thoroughly investigated and prepared Applicant's case.

2. Failure to Retain Expert Witness

Counsel explained at the PCR hearing that based upon the evidence against Applicant, he did not believe it was necessary to hire an investigator or expert witness. Council's belief was confirmed at the PCR hearing, where the expert testimony presented by Applicant added little

either factually or theoretically, and it did not negate the fact that all of the elements necessary for a manslaughter conviction were present. As such, Applicant has not shown a reasonable probability that the added testimony would have been enough to change the outcome if the case went to trial. "Counsel has a duty . . . to make a reasonable decision that makes particular investigations unnecessary" Strickland, 466 U.S. at 691. Finally, the record is clear that Applicant was well aware that by pleading guilty, he waived any right to challenge the evidence against him. Accordingly, this Court finds no deficiency in Counsel's decision not to retain an investigator or an expert.

3. Failure to Inform of Available Defenses

Applicant argues that he was not informed by counsel of the elements of involuntary manslaughter or a possible claim of self-defense. However, Counsel testified that he did go over the elements of involuntary manslaughter, as well as the reasons he did not believe Applicant had a legitimate self-defense claim. Even assuming *arguendo* that Applicant's claims were true, Applicant is still not entitled to relief. The following exert from State v. Gibson is directly on point:

> "Regardless of whether Jacques was lawfully armed in self-defense, the essence of involuntary manslaughter is the involuntary nature of the killing. See Douglas v. State, 332 S.C. 67, 74, 504 S.E.2d 307, 310 (1998) (finding no involuntary manslaughter charge warranted where defendant admitted he intentionally fired a gun into a crowd in self-defense despite testimony that the defendant had been rushed by a group of people during a fight); State v. Pickens, 320 S.C. 528, 466 S.E.2d 364 (1996) (holding where a defendant admitted he intentionally shot his gun, contending he was acting recklessly but lawfully in self-defense, involuntary manslaughter charge was not warranted); State v. Morris, 307 S.C. 480, 483–84, 415 S.E.2d 819, 821–22 (Ct.App.1991) (noting that under involuntary manslaughter, the act must be unintentional and defendant intentionally shot his gun though he claimed self-defense); *accord* Light, 378 S.C. at 648–49,

> 664 S.E.2d at 468–69 (finding the defendant had lawfully armed himself in self-defense and was entitled to an instruction on involuntary manslaughter, in a case in which there existed evidence the gun *unintentionally discharged*); Brayboy, 387 S.C. at 181–82, 691 S.E.2d at 486 (holding that although unlawful to point and present a firearm, when a defendant lawfully armed himself in self-defense his failure to immediately disarm himself when the threat subsided did not amount to unlawful pointing and presenting a firearm and evidence suggesting the gun *accidentally discharged* was sufficient to warrant instruction on involuntary manslaughter).

State v. Gibson, 390 S.C. 347, 357-58, 701 S.E.2d 766, 771-72 (Ct. App. 2010).

Applicant claims he would not have pled guilty if he had been aware of the possible charge of involuntary manslaughter as well as the possible claim for self-defense. However, as the above referenced case law explains, the "essence of an involuntary manslaughter charge is the involuntary nature of the killing." Douglas, 332 S.C. at 74. Applicant testified during his PCR hearing that the victim flinched as he began to back away, at which point Applicant pulled the trigger, shooting and killing the victim. While this may have all occurred during the heat of passion, the shot that killed the victim was intentional. Therefore, even assuming plea counsel failed to inform the Applicant of the charge of involuntary manslaughter as well as a possible defense, it is highly unlikely the results would have changed Applicant's decision to plea, because the Applicant could not have succeeded on getting his charges reduced to involuntary manslaughter in the first place.

Accordingly, this Court finds Applicant did not demonstrate any deficiencies in Counsel's representation. This Court finds that because Counsel's representation was well within the range of competence required in criminal cases, Applicant has failed to make any showing that, but for Counsel's alleged deficiencies, the result of Applicant's case would have been any different.

INVOLUNTARY GUILTY PLEA

The voluntariness of a guilty plea is determined in light of the entire record before the court. Hyman v. State, 397 S.C. 35, 44, 723 S.E.2d 375, 379 (2012) (citing Roddy v. State, 339 S.C. 29, 528 S.E.2d 418 (2000)). "To knowingly and voluntarily enter a plea of guilty, all that is required is that a defendant have a full understanding of the consequences of his plea and of the charges against him." Simpson v. State, 317 S.C. 506, 508, 455 S.E.2d 175, 176 (1995) (citing Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991)). Furthermore, a defendant must only be informed of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers. Roddy, 339 S.C. at 33, 528 S.E.2d at 421 (citing Boykin v. Alabama, 395 U.S. 238 (1969)). "When attempting to determine the voluntary and intelligent nature of a plea, the plea colloquy ordinarily serves as confirmation that a criminal defendant is waiving the right to raise certain constitutional claims by pleading guilty." Hyman, 397 S.C. at 44, 723 S.E.2d at 379 (citing Rivers v. Strickland, 264 S.C. 121, 213 S.E.2d 97, 98 (1975)). However, the plea judge need not provide an "enumeration of specific rights waived ... where the record otherwise reveals affirmative awareness of the consequences of a guilty plea." State v. Lambert, 266 S.C. 574, 579, 225 S.E.2d 340, 342 (1976) (citing Stinson v. Turner, 473 F.2d 913 (10th Cir. 1973)). Furthermore, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant. Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Admissions "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." Id. at 137-38, 654 S.E.2d at 874 (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)). Pleading guilty to avoid a possibly greater sentence, without more, does not render a

guilty plea involuntary. Brady v. United States, 397 U.S. 742, 90 S.Ct. 1463, 25 L.Ed. 2d 747 (1970); Wicker v. State, 310 S.C. 8, 12, 425 S.E.2d 25, 27 (1992).

The record before this Court clearly shows that Applicant was fully informed of the consequences of entering his guilty plea. The record shows Applicant's plea was not coerced, and it was Applicant's decision to plead guilty. Additionally, this Court finds Applicant's testimony that he lied to the plea judge on Counsel's advice not credible. Applicant was advised that by pleading guilty he gave up his right to challenge the evidence the State had against him, as well as his right to put up any affirmative defenses. Applicant has failed to present any valid reasons why he should be allowed to depart from his valid plea of guilty. Accordingly, this Court finds Applicant's plea was knowingly, intelligently, and voluntarily entered.

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, this Court finds Applicant failed to present sufficient evidence regarding such allegations. Accordingly, this Court finds Applicant has abandoned any such allegations.

CONCLUSION

Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Plea counsel rendered effective assistance in regard to the claims raised by Applicant. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This 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:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and

2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 10th day of December, 2014.

EDGAR W. DICKSON
Presiding Judge
Twelfth Judicial Circuit

Orangeburg, South Carolina