

STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM PICKENS COUNTY
Court of Common Pleas

The Honorable Eugene C. Griffith, Jr., Circuit Court Judge

S.C. Supreme Court

Case No. 2013-CP-39-1380

Brandon Kevin Garren, Respondent,

v.

State of South Carolina, Petitioner.

NOTICE OF APPEAL


The State of South Carolina appeals the Honorable Eugene C. Griffith, Jr.'s order filed March 12, 2015 granting post-conviction relief to the Respondent. The State received notice of entry of the order on March 12, 2015. A copy of the order on appeal is attached to this notice.

Respectfully submitted,

ALAN WILSON
Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General
S.C. Bar # 68331

Post Office Box 11549
Columbia, S.C. 29211
(803) 734-3737

By: 
Attorneys for the Petitioner

Columbia, South Carolina

April 1, 2015

Other counsel of record:

R. Mills Ariail, Jr., Esquire
11 North Irvine Street; Suite 11
Greenville, SC 29601

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PROOF OF SERVICE

I, Karen C. Ratigan, Counsel for the Petitioner, 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 his attorney of record:

R. Mills Ariail, Jr., Esquire
11 North Irvine Street; Suite 11
Greenville, SC 29601

I further certify that all parties required by Rule to be served have been served this 1st day April, 2015.


KAREN C. RATIGAN
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737
Attorney for the Petitioner

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STATE OF SOUTH CAROLINA CLERK OF COURT IN THE COURT OF COMMON PLEAS
COUNTY OF PICKENS PICKENS COUNTY C.A. NUMBER: 2013-CP-39-1380
SOUTH CAROLINA

BRANDON GARREN #354160,)
)
) **ORDER GRANTING APPLICATION**
) **FOR POST CONVICTION RELIEF**
)
VS.)
)
)
STATE OF SOUTH CAROLINA,)
)
)
)
RESPONDENT.)
_____)

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed November 4, 2013. The Respondent made its return on August 22, 2014. An evidentiary hearing into the matter was held on December 15, 2014 at the Pickens County Courthouse. The Applicant was present and represented by R. Mills Ariail, Jr., Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's trial counsel, Frank Eppes, Esquire. The Court had before it the trial transcript, the Pickens County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, the return, the appellate records, and Applicant's Exhibit 1.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Pickens County Clerk of Court. The Applicant was indicted at the December 2012 term of the Pickens County Grand Jury for attempted murder (2012-GS-39-

2677). The Applicant waived presentment to the Grand Jury for criminal domestic violence of a high and aggravated nature (2012-CP-39-311). He was represented by Frank Eppes.

On January 31, 2013, the applicant pled guilty. On January 31, 2013, the Honorable Letitia H. Verdin sentenced the Applicant to concurrent terms of 15 years for ABHAN and 10 years for criminal domestic violence of a high and aggravated nature. The Applicant did not appeal.

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "Due to being in a state of lethargy from medication given to me by the Pickens County jail which was mind altering, and the result of medical treatment given me by the Cancer Center of the Carolinas, the combined effects rendered me unable to, or incompetent to enter a plea".
2. "Being in a state of lethargy when my attorney spoke to me he knew, I was in no condition to enter a plea and should have had me evaluated."
3. Ineffective assistance of counsel.
4. Involuntary guilty plea.
5. Not being mentally competent to plead guilty.

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 and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. §17-27-80 (2003).

INEFFECTIVE ASSISTANCE OF COUNSEL

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).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052).

Trial counsel testified he was retained in this case and filed discovery motions. Trial counsel testified he received discovery materials and reviewed them with the Applicant. Trial counsel testified he also reviewed the charges, elements, and sentence ranges and that the Applicant relayed his version of events.

At Applicant's PCR hearing, Applicant testified that he could not remember the specifics of his guilty plea. Applicant also testified that he was under the influence of medication which he believes affected his ability to understand what he was doing on the day of his plea. Applicant's attorney testified that he was not aware of any mental health issues with Applicant but that he believed that a psychological evaluation was needed.

The Court finds the Applicant has met his burden proving trial counsel should have

requested that Applicant have a psychological evaluation before Applicant plead guilty and that applicant was under the influence of medication which affected his ability to understand what he was doing on the day of his plea. The Applicant can demonstrate prejudice in this regard by showing that he did not understand the specifics of his guilty plea because of his mental incapacity and that he would not have pled guilty if he was not under the influence of medication at the time of his plea.

Accordingly, this Court finds the Applicant has proved the first prong of the Strickland test-that trial counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant has presented specific and compelling evidence that trial counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has proven the second prong of Strickland-that he was prejudiced by trial counsel's performance. This Court concludes the Applicant has met his burden of proving counsel failed to render reasonably effective assistance.

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has established constitutional violations or deprivations before or during his plea and sentencing proceedings. Counsel was deficient and the Applicant was prejudiced by counsel's representation. Therefore, this PCR application must be granted.

This Court advises the Respondent that they can file a notice of intent to appeal within thirty (30) days from the receipt of this Order if Respondent wants to secure the appropriate appellant review. Attention is also directed to Rules 203, 206 and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal



has been timely filed.

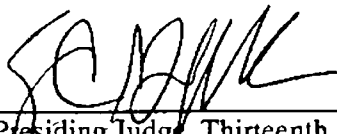
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CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be granted; and
2. That the Applicant's convictions be vacated and his charges remanded for a new trial.

AND IT IS SO ORDERED this 9th day of March, 2015.



Presiding Judge, Thirteenth Judicial Circuit #2154

Pickens, SC
Date: March 9, 2015
@ Newberry, S.C.

Eugene C. Griffin





ALAN WILSON
ATTORNEY GENERAL

April 1, 2015

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S.C. Supreme Court

The Honorable Daniel E. Shearouse
Clerk of the South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re: Brandon Kevin Garren, Respondent v. State, Petitioner
Case No. 2013-CP-39-1380

Dear Mr. Shearouse:

Enclosed for filing is a notice of appeal in the above case. Also enclosed are the following:

1. A copy of the order which is to be challenged on appeal.
2. Proof of service of notice of appeal on the Respondent.
3. A letter ordering the PCR transcript from the court reporter.

Sincerely,

Karen C. Ratigan
Senior Assistant Deputy Attorney General

cc: R. Mills Ariail, Jr., Esquire
South Carolina Department of Corrections
Pickens County Clerk of Court
Solicitor Walt Wilkins
Office of Appellate Defense
Trisha Allen, Victim Services