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April 16, 2015

Via Regular Mail

Mr. Daniel E. Shearouse
Clerk, The S.C. Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

RECEIVED

APR 21 2015

Re: HAROLD WATTS v. State

S.G. Supreme Court

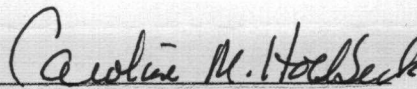
Dear Mr. Shearouse:

Enclosed you will find the original Notice of Appeal in the above matter along with Proof of Service upon the Respondents. The Notice has been filed with the Greenville County Clerk of Court.

These matters are being referred to the Office of Appellate Defense in that we were participating as Court appointed counsel at trial.

Thank you for your attention to this matter.

Yours very truly,


Caroline M. Horlbeck, Esq.

Enclosure

cc: Office of the Attorney General
Office of Appellate Defense

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
THE HONORABLE Eugene C. Griffith

CA No. 2014-CP-23-1117

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMMER
2015 APR 16 PM 2:58

HAROLD WATTS,

APPELLANT,

vs.

STATE OF SOUTH CAROLINA

RESPONDENT.

RECEIVED

APR 21 2015

S.C. Supreme Court

NOTICE OF APPEAL

Appellant HAROLD WATTS, appeals from the Order of the Honorable Eugene C. Griffith, Circuit Court Judge clocked March 16, 2015.

Respectfully submitted,

Caroline M. Horlbeck

Caroline M. Horlbeck, Esq.
101 Whitsett St
Greenville, SC 29601

Date: April 16, 2015

Other Counsel of Record: Karen Ratigan, Esq.
Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

Harold Watts,)

Appellant,)

-vs-)

State of South Carolina,)

Respondent.)

IN THE SUPREME COURT

C.A. No. 2014-CP-23-1117

CERTIFICATE OF SERVICE

This is to certify that I am an employee in the law office of Caroline M. Horlbeck, attorneys for Applicant, and that I have this day caused to be served upon the person(s) named below Applicant's Notice of Appeal by placing copies of same in the United States mail, with adequate postage thereon, addressed as follows:

Ms. Lorie French
S.C. Office of Appellate Defense
PO Box 11433
Columbia, SC 29211

Karen Ratigan, Esq.
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

RECEIVED

APR 21 2015

S.C. Supreme Court

Caroline M. Horlbeck
Caroline M. Horlbeck

Greenville, South Carolina

April 14, 2015

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

Harold Watts,
S.C.D.C. No. 127180,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
C.A. No. 2014-CP-23-1117

FILED - CLERK OF COURT
GREENVILLE CO. S.C.
PAUL D. WICKENSIMMER
2015 MAR 16 PM 2 53

ORDER OF DISMISSAL

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed February 28, 2014. The Respondent made its return on August 22, 2014. An evidentiary hearing was held on December 16, 2014 at the Greenville County Courthouse. The Applicant was present and represented by Caroline Horlbeck, 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 were Dr. Richardson and the Applicant's plea counsel, James W. Bannister, Esquire. The Court had before it the transcript of the guilty plea hearing, the Greenville 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 Greenville County Clerk of Court. The Applicant was indicted at the September 2012 term of the Greenville County Grand Jury for attempted murder (2012-GS-23-5528, count 1) and first-degree burglary (2012-GS-23-5528, count 2). He was

represented by James W. Bannister, Esquire.

On April 8, 2013, the Applicant pled guilty. The Honorable Letitia H. Verdin sentenced the Applicant to concurrent terms of thirty years for attempted murder and thirty-five years for first-degree burglary.

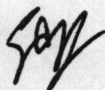
The Applicant filed a pro se notice of appeal at the South Carolina Court of Appeals. By order dated July 1, 2013, the Court of Appeals dismissed the matter due to the Applicant's failure to timely serve and file the notice of appeal. The Remittitur was sent on August 16, 2013.

ALLEGATIONS

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

1. Ineffective assistance of counsel:
 - a. "[F]ailed to file notice of appeal as I requested. Counsel should have raised the concerns with the indictment. The court accepting a conditioned plea."
 - b. "[F]ailed to investigate the Burglary Charge. Had he investigated he would have found that this was my leagal [sic] residence and the victim my common law wife."
 - c. "[F]ailed to seek a charge of a lesser offense than Burglary. When the facts prove that this was not Burglary. Counsel even stated on the record that defendant denies entering the residence."
 - d. "[F]ailed to object to the court having jurisdiction to accept a plea to a defective indictment."
 - e. Failed to provide the Applicant with all discovery material.
 - f. Failed to request a competency evaluation.
 - g. Failed "to protect my constitutional right to have a bond hearing."
 - h. Failed to investigate the indictment.
 - i. Failed to request a change of venue.
 - j. "[F]ailed to have a crime scene investigation done. Had he had an investigation done he would have found that the facts as presented by the State did not line up with the crime area."
2. Lack of subject matter jurisdiction.
3. Defective Indictment.
4. Prosecutorial misconduct.

In a pro se "Memorandum in Support of Post Conviction Application" filed September 5,



2014, the Applicant made the following allegations:

1. Ineffective assistance of counsel:
 - a. Failed to file a notice of appeal as requested.
 - b. Allowed the Applicant to plead guilty when plea counsel told the plea judge he denied any intent in the attempted murder charge.
 - c. Failed to request a change of venue as requested.
 - d. Failed to request a mental health exam or inform the plea judge of the Applicant's mental health history.
 - e. Failed to conduct an investigation to discover mitigating evidence.
 - f. Failed to raise concerns that the attempted murder indictment lacked the elements necessary to put the Applicant on notice of the charge.
 - g. Failed to inform the plea judge of improper conduct by the solicitor's office.

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). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

The Applicant stated plea counsel visited him at the jail eight times and that they reviewed the State's case and his version of events. The Applicant stated he wanted the first-degree burglary charge reduced, as he had been living in the residence with the victim. The Applicant stated he asked plea counsel to collect evidence to prove this. The Applicant stated he told plea counsel about a prior mental evaluation but did not tell plea counsel he wanted another evaluation. The Applicant stated he understood some of the conversations with plea counsel. The Applicant stated he decided to plead guilty because of plea counsel's errors. The Applicant stated he went along with the plea and did not tell the plea judge he was unhappy with plea counsel. The Applicant stated he asked plea counsel to file an appeal because he wanted to argue the facts of the case.

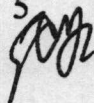
Dr. Richardson stated he has known the Applicant since two years before his incarceration because the Applicant was one of his mother-in-law's caregivers. Dr. Richardson stated he received a letter¹ from the State dated December 20, 2012 about a pre-trial conference. Dr. Richardson stated he and his wife met with the assistant solicitor, who said he was sure the Applicant would receive a life sentence if he went to trial. Dr. Richardson stated the assistant solicitor did not ask him to speak to the Applicant, but that he did tell him about the conversation. Dr. Richardson stated the Applicant did not ask him to tell plea counsel about this.

¹ Applicant's Exhibit 1.

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[Signature]

Plea counsel testified he was appointed in this case and filed discovery motions. Plea counsel testified he received those materials and reviewed them with the Applicant. Plea counsel testified his notes indicated he had lengthy reviews of the materials with the Applicant on April 3-4, 2012. Plea counsel testified they discussed the elements of the charges, sentence ranges, and the Applicant's version of events. Plea counsel testified a notice of intent to seek life without parole was served and that he explained this to the Applicant. Plea counsel testified the Applicant said he was not formally evicted from the victim's home so he was still a resident and had a right to be there. Plea counsel testified the Applicant was fixated on this but that he told the Applicant this was an argument for a jury to consider. Plea counsel testified he had no recollection of whether the Applicant had prior mental health treatment. Plea counsel testified there was no indication the Applicant had a mental defect and that the Applicant never said he did not understand their conversations. Plea counsel reviewed Applicant's Exhibit 1 and stated this letter was not unusual and he had no basis to object. Plea counsel testified the Applicant wanted to plead guilty once they were ready for trial and that there were no recommendations available at that time. Plea counsel testified he did not recall the Applicant requesting an appeal and that he had a procedure for reviewing these rights with his appointed clients.

This Court finds plea counsel had numerous meetings with the Applicant and that they reviewed all aspects of his case. This Court finds they discussed the discovery materials, the elements of the charges, the sentence ranges, and the Applicant's version of events. This Court notes the Applicant admitted to the plea judge that, while he may have disputed some of the State's facts, he did not dispute the elements of the charges. (Plea transcript, pp.11-12). The Applicant also told the plea judge that he understood the trial rights he was waiving in pleading guilty, was satisfied with counsel, and had not been coerced in any way. (Plea transcript, pp.3-

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5). This Court finds plea counsel thoroughly and properly reviewed and prepared this case for trial. While the Applicant stated he was not happy with plea counsel's representation at the time he pled guilty, this Court finds this testimony is not credible.

This Court finds the Applicant failed to meet his burden of proving plea counsel should have challenged the first-degree burglary charge. Plea counsel testified the Applicant was fixated on the idea that, as he had not been formally evicted by the sheriff, he had the right to be in the victim's residence. The State's presentation of facts at the guilty plea hearing, however, was that the Applicant had moved out of the victim's house before he subsequently broke the chain on the door, entered the victim's home, and chased the victim outside and set her on fire. (Plea transcript, pp.7-10). While plea counsel disputed some of the State's facts, he did not argue the Applicant was a resident of the house. The Applicant told the plea judge he agreed with the comments made by his attorney. (Plea transcript, pp.11-12). The Applicant entered a voluntary plea to the first-degree burglary charge. See, e.g., Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (finding that, before a defendant can enter a guilty plea, he "must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived"). This Court finds the Applicant failed to present any evidence he was a resident of the victim's home. This Court also finds the Applicant failed to present any evidence that one is a resident of a home – even after he has moved out – unless formally evicted by the sheriff. This Court finds the Applicant failed to present compelling evidence that plea counsel would have been successful in having the first-degree burglary charge reduced if he had advanced the argument that he was a resident of the victim's home because there had not been a formal eviction process. See Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (holding in a post-conviction relief proceeding, the

applicant bears the burden of proving the allegations in their application).

This Court finds the Applicant failed to meet his burden of proving plea counsel should have requested a competency evaluation. Plea counsel testified he did not recall the Applicant informing him of any prior mental health history and that there were no signs the Applicant had a mental defect. This Court finds plea counsel's testimony is credible and he did not render deficient representation. This Court also finds the Applicant failed to demonstrate prejudice. A PCR applicant "bears the burden of proof and is required to show by a preponderance of the evidence he was incompetent at the time of his plea." Jeter v. State, 308 S.C. 230, 232, 417 S.E.2d 594, 596 (1992). To sustain a claim that plea counsel was ineffective for failing to request competency hearing, the petitioner must show reasonable probability that he would have been found incompetent. Id. at 233, 417 S.E.2d at 596. The Applicant failed to present any credible testimony or evidence to support his claim either that he had prior mental health treatment or was in need of a competency evaluation before he pled guilty.

This Court finds the Applicant failed to meet his burden of proving plea counsel should have objected to the letter sent to Dr. Richardson and the subsequent meeting between Richardson and the State. Dr. Richardson stated he received a letter and had a meeting with the assistant solicitor, who stated the Applicant would likely receive a life sentence if he went to trial. Dr. Richardson admitted (1) the assistant solicitor did not ask him to talk to the Applicant and (2) the Applicant did not ask him to tell plea counsel about this conversation. Plea counsel testified such letters were not unusual and that there was no basis to object to such. Based upon the testimony presented at the PCR hearing, this Court finds the Applicant has failed to demonstrate there was a legitimate, cognizable basis for plea counsel to object to the letter and meeting, and that his case was prejudiced because counsel did not make such an objection. See

Butler v. State, 286 S.C. at 442, 334 S.E.2d at 814.

This Court finds the Applicant failed to meet his burden of proving plea counsel did not file an appeal as requested. Plea counsel testified he did not recall the Applicant asking him to file an appeal and that he has a procedure he follows in advising his appointed clients of this right. This Court finds plea counsel's testimony is credible. This Court finds the Applicant, after having been advised of his appellate rights, chose not to pursue them. See Sheppard v. State, 357 S.C. 646, 651, 594 S.E.2d 462, 465 (2004) ("To waive a direct appeal, a defendant must make a knowing and intelligent decision not to pursue the appeal.").

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that plea counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that plea 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 plea counsel's performance.

This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

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 the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not

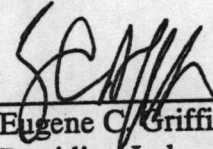
established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His 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.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 10th day of February 2015.



Eugene C. Griffith, Jr.
Presiding Judge
Thirteenth Judicial Circuit

Newberry, South Carolina.

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