



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
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Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

March 22, 2012

RECEIVED

MAR 22 2012

Ms. Desiree R. Allen
Court Services Manager
1015 Sumter Street
Columbia, SC 29201

S.C. Supreme Court

Dear Ms. Allen:

Please provide us with the following transcript:

William Eaddy v. State of South Carolina Case #: 10-CP-43-00516

County: Sumter Date of Trial: October 27, 2011

Presiding Judge: R. Ferrell Cothran, Jr.

To ensure prompt payment, please sign and complete the enclosed CID FORM 3500 and include the original criminal case number (Indictment number) where the space is provided.

Please number the lines on the paper from 1-25, and include any and all recorded motions, pre and post-trial. Additionally, please transcribe the jury selection, and the State and defense counsel's opening and closing arguments.

If you are aware of any co-defendants or if the Attorney General's Office has already requested a transcript, please let us know.

Sincerely,

Lorlene French
Legal Services Coordinator

cc: S.C. Supreme Court
Attorney General's Office

The Brooks Law Offices, LLC

Charles T. Brooks, III
Attorney

309 Broad Street
Sumter, South Carolina 29150
Post Office Box 3512, Sumter, SC 29151
Post Office Box 291226, Columbia, SC 29229
OFFICE: (803) 418-5708
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Email: cbrooks@ctbrooks.com

Irma R. Brooks
Attorney

PCR

February 14, 2012

South Carolina Supreme Court
PO Box 11330
Columbia, SC 29211

RE: William Eaddy v State of South Carolina
Case No. 2010-CP-43-0516

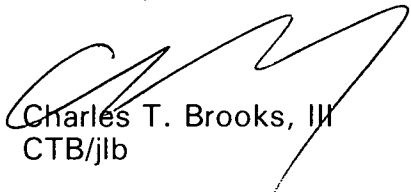
Dear Sir or Madam:

Enclosed herewith you will find the **Notice of Appeal, Order of Dismissal**, along with a **Proof of Service** in reference to the above named Applicant.

If you have any questions or concerns, please contact my office at the number stated above.

With kind regards, I am

Sincerely,



Charles T. Brooks, III
CTB/jlb

RECEIVED

FEB 14 2012

S.C. SUPREME COURT

Enclosed as stated

Cc: J. Rutledge Johnson, Office of Attorney's General
South Carolina Office of Appellate Defense
William Eaddy, 305838

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM SUMTER COUNTY
Court of Common Pleas
Honorable R. Ferrell Cothran, Jr. Circuit Court Judge

Case No: 2010-CP-43-0516

William Eaddy,..... Appellant
S.C.D.C. No.: 305838

v.
The State.....Respondent

NOTICE OF APPEAL

William Eaddy appeals his Denial for Post Conviction Relief in this case. The Order of Dismissal was imposed and signed by the Honorable R. Ferrell Cothran, Jr, on February 3, 2012, which I, Charles T. Brooks, III, received on February 14, 2012.

February 14, 2012

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FEB 16 2012

S.C. SUPREME COURT

Charles T. Brooks, III
309 Broad Street
Post Office Box 3512
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(803) 418-5708
Attorney for Appellant

Other Counsel on Record:
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THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM SUMTER COUNTY
Court of Common Pleas
Honorable R. Ferrell Cothran, Jr., Circuit Court Judge

Case No: 2010-CP-43-0516

William Eaddy.....Appellant
S.C.D.C. No.: 305838

v.

The State.....Respondent

PROOF OF SERVICE

I, the undersigned, do hereby certify that on this 14th day of February 2012, I served the foregoing **Notice of Appeal, Order of Dismissal**, as well as **Proof of Service** in this matter by depositing a true copy of it in the United States Mail, postage prepaid, on February 14, 2012 addressed to the following as indicated below:


South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

South Carolina Office of Appellate Defense
1330 Lady Street, Suite 401
PO Box 11589
Columbia, SC 29211-1589

Office of Attorney's General
Attn: J. Rutledge Johnson, Esquire
Post Office Box 11549
Columbia, South Carolina 29211-1549

William Eaddy, 305838
Lee Correctional Institution
990 Wisacky Highway
Bishopville, South Carolina, 29010

Dated: February 14, 2012



Charles T. Brooks, III
Attorney for the Appellant
309 Broad Street
Sumter, South Carolina 29150
(803) 418-5708

STATE OF SOUTH CAROLINA) RECORDED IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER)) THIRD JUDICIAL CIRCUIT

2012 FEB 10) PH 12: 35

William Eaddy, #305838,

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

2010-CP-43-0516

Applicant,)

v.)

State of South Carolina,)

Respondent.)

ORDER OF DISMISSAL

CERTIFIED TRUE COPY
OF ORIGINAL FILED

Sherry H. [Signature]
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

This matter comes before the Court by way of an Application for Post-Conviction Relief filed March 3, 2010. The Respondent made its Return on August 25, 2010. An evidentiary hearing into the matter was convened on October 27, 2011, at the Sumter County Courthouse. Charles T. Brooks, III, 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. W. Ashley Boyd, Esquire, also testified. This Court also had before it a copy of the records of the Sumter County Clerk of Court, records from the South Carolina Department of Corrections, and the guilty plea transcript.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. The Applicant was indicted at the May 2008 term of the Sumter County Grand Jury for (1) Burglary, 1st Degree, (2) Possession of a Knife During the Commission of a Violent Crime, and (3) Assault and Battery of a High and Aggravated Nature (ABHAN). W. Ashley Boyd, Esquire, represented the Applicant. On September

21, 2009, the Applicant pled guilty to Burglary, 1st Degree. The Honorable W. Jeffery Young sentenced him to confinement for a period of twenty (20) years. The Applicant did not appeal his conviction or sentence.

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

1. Ineffective Assistance of Counsel
 - a. "Counsel stated it would be best for me to plea because he didn't have a defense."
2. Involuntary Guilty Plea
 - a. "Intimidated by counsel's statements disregarding his pursue of trial."
 - b. "Counsel advised me to plea and told me I would get the minimum for my 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).

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) (citing Rule 71.1(e), SCRPC). Where ineffective assistance of counsel is alleged 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 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, 88 L.Ed. 2d 203 (1985).

Sentencing Advice

The Applicant testified that the main reason he pled guilty was Counsel told him (the Applicant) that he would only receive the minimum sentence of fifteen (15) years, as recommended by the State, if he pled guilty. He also testified that understood Judge Young did not have to follow the State's recommendation. The Applicant further stated that Judge Young explained the maximum penalty of life in prison to him, and he understood.

Counsel, then, testified that he fully explained the State's recommendation to the Applicant. Counsel also testified that he explained the difference between a recommended sentence and a negotiated sentence to the Applicant, and the Applicant understood. Counsel testified that he did not promise the Applicant that the Plea Court would or had to follow the State's recommendation.

This Court finds the Applicant understood that Judge Young did not have to follow the State's recommendation of fifteen (15) years. This Court also finds Counsel did not promise that Judge Young would or had to follow the State's recommendation. Knowing this information, the Applicant still chose to plea. Accordingly, this allegation is dismissed.

Involuntary Guilty Plea

The Applicant further alleges his involuntarily pled guilty to Burglary, 1st Degree.

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984). Further, because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977). Therefore, statements 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. Crawford v. U.S., 519 F.2d 317 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

A defendant who enters a plea on the advice of counsel may only attack the voluntary and

intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993).

The Applicant testified he pled guilty because he was guilty. He also testified there were no threats or coercion involved in his plea. Counsel testified he did not threaten or coerce the Applicant to plea guilty. Counsel also testified that it was ultimately the Applicant's decision to plead guilty.

This Court finds the Applicant's plea was freely and voluntarily made. This Court also finds the Applicant failed to present any evidence to the contrary. Accordingly, this allegation is dismissed.

Improper Consideration by the Court

At the Plea hearing, the Applicant alleged Judge Young improperly considered the Applicant's juvenile record in imposing his current sentence.

The court has broad discretion in imposing criminal sentences. State v. Franklin, 267 S.C. 240, 226 S.E.2d 896 (1976). Absent a showing of partiality, prejudice, oppression or corrupt motive by the sentencing court, or absent a showing that the statutory punishment in and of itself constitutes cruel and unusual punishment, the post-conviction relief court has no authority or jurisdiction to review or change a sentence falling within statutory limits. State v. Cogdell, 273 S.C. 563, 257 S.E.2d 748 (1979).

Furthermore, the Applicant did not object to the sentence handed down by the trial court. The Applicant's failure to object has waived any allegation that his sentence was excessive or otherwise improper. Cummings v. State, 274 S.C. 26, 260 S.E.2d 187 (1979); Peeler v. State, 277

S.C. 70, 283 S.E.2d 826 (1981).

Counsel testified that he explained the right to an appeal to the Applicant. Counsel also testified that he told Applicant that if the Applicant wanted to appeal to contact him. Counsel further stated that the Applicant never contacted Counsel about an appeal.

This Court finds Judge Young was well within his discretion in imposing a twenty (20) sentence when the statutory range is fifteen (15) years to life. This Court also finds the Applicant presented no evidence that the Applicant was prejudiced by the sentence. This Court further finds the Applicant did not appeal the Plea Court's ruling. Therefore, this allegation is dismissed.

Summary

This Court finds in regards to the allegations of ineffective assistance of counsel, involuntary guilty plea, and improper consideration by the Plea Court, that the Applicant's testimony is not credible, while also finding Plea Counsel's testimony is credible. This Court further finds Plea Counsel adequately conferred with the Applicant, sufficiently explained the potential sentences, was thoroughly competent in her representation, and that Plea Counsel's conduct did not fall below the objective standard of reasonableness. Further, this Court also finds that the record in this case fully demonstrates that the Applicant understood the nature of his plea, and that his plea was made freely and voluntarily. Moreover, this Court finds Judge Young to be within his discretion in his sentencing of the Applicant.

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. 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.

Except as discussed above, this Court finds that the Applicant failed to raise the remaining allegations set forth in his application at the hearing and has, thereby, waived them. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

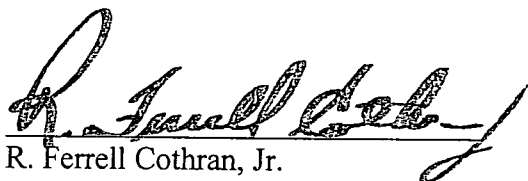
This Court advises Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a 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.

IT IS THEREFORE ORDERED:

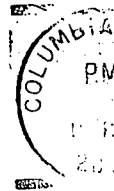
1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED!


R. Ferrell Cothran, Jr.
Presiding Circuit Court Judge

Feb 3, 2012
Marion, South Carolina

CHARLES T. BROOKS, III
THE BROOKS LAW OFFICE, LLC
POST OFFICE BOX 3512
SUMTER, S. C., 29151



South Carolina Supreme Court
PO Box 11330
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*William
Eaddy*

