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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APR 24 2015

APPEAL FROM CLARENDON COUNTY
Court of Common Pleas

SC Court of Appeals

W. Jeffrey Young, Circuit Court Judge

Case Nos. 2008-CP-14-0668 and 2013-CP-14-0271

Willie E. Dow, Appellant,

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v.

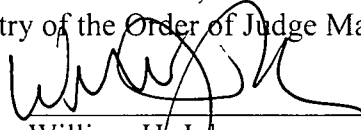
MAY - 5 2015

State of South Carolina, Respondent.

S.C. Supreme Court

NOTICE OF APPEAL

Willie E. Dow appeals the Order of the Honorable W. Jeffrey Young dated November 1, 2012. Appellant was granted leave to appeal said Order pursuant to Austin v. State by Order of the Honorable J. Cordell Maddox, Jr., dated March 12, 2015 in case no. 2013-CP-14-0271. Appellant received written notice of the entry of the Order of Judge Maddox on April 6, 2015.



William H. Johnson
Law Offices of William H. Johnson, LLC
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Telephone: (803) 435-0909
Facsimile: (803) 435-2858
Attorney for the Appellant

April 20, 2015

Other counsel of record:

Daniel Gourley, AAG
SC Attorney General's Office
PCR Division
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3970
Attorney for the Respondent

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Case Nos. 2008-CP-14-0668 and 2013-CP-14-0271

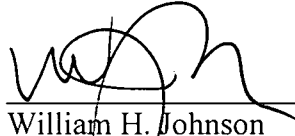
Willie E. Dow, Appellant,

v.

State of South Carolina, Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the Respondent, by depositing a copy of it in the United States Mail, postage prepaid, on April 20, 2015, addressed to Respondent's attorney of record, Daniel Gourley, AAG, SC Attorney General's Office, PCR Division, P.O. Box 11549, Columbia, SC 29211.



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APR 24 2015
SC Court of Appeals

William H. Johnson*

Christopher R. DuRant

April 20, 2015

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

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MAY - 5 2015

S.C. Supreme Court

Re: *Willie E. Dow, Appellant, v. State of South Carolina, Respondent*
Case No. 2008-CP-14-0668 and 2013-CP-14-0271

Dear Ms. Kitchings:

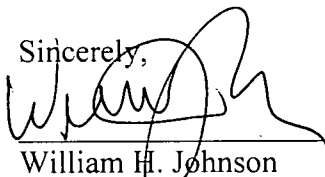
Enclosed for filing is the Appellant's Notice of Appeal in the above case. Also enclosed are the following:

1. A copy of the Order which is to be challenged on appeal; and
2. Proof of Service of the Notice of Appeal on the Respondent.

As I was appointed to represent Mr. Dow in the trial court, I am also copying Lorene French, of the South Carolina Commission on Indigent Defense, for future handling.

Thank you for your attention to this matter. If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,



William H. Johnson
Law Offices of William H. Johnson, LLC
Post Office Box 137 - 411 North Brooks St.
Manning, South Carolina 29102
Telephone: (803) 435-0909
Attorney for the Appellant

WHJ/jeh
Enclosure(s)

*The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
April 20, 2015
Page 2*

Other counsel of record:

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SC Attorney General's Office
PCR Division
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3970
Attorney for the Respondent

cc: Willie E. Dow
Lorene French, SC Commission on Indigent Defense

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STATE OF SOUTH CAROLINA)
COUNTY OF CLARENDON)

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Willie E. Dow, #326446

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Case No. 2008-CP-14-0668

Applicant, APR 24 2015

v.

SC Court of Appeals ORDER OF DISMISSAL

State of South Carolina,

Respondent.

BEULAH G. ROBERTS
CLERK OF COURT, SC
CLARENDON COUNTY, SC
2012 NOV -9 PM 3:21

PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed on filed December 29, 2008. The Respondent made its Return on April 13, 2009. An evidentiary hearing into the matter was convened on September 21, 2012, at the Sumter County Courthouse. The Applicant was present at the hearing and was represented by James O'Connor, Esquire. The Respondent was represented by Assistant Attorney General Megan E. Harrigan of the South Carolina Attorney General's Office.

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clarendon County Clerk of Court. The Applicant was indicted during the January 2008 of the Clarendon County Grand Jury for Criminal Sexual Conduct with a Minor in the Second Degree (2008-GS-14-0013). He was represented by Deborah Butcher, Esquire. On January 29, 2008, Applicant entered a guilty plea before the Honorable R. Ferrell Cothran, Jr., who sentenced Applicant to eighteen years imprisonment. Applicant did not appeal his convictions.

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following claims:

1. Ineffective Assistance of Counsel; and
2. Involuntary Plea; and
3. Due Process Violations.

In its Return, the Respondent interpreted Applicant's first two allegations to be ineffective assistance of counsel. These two allegations were both presented as ineffective assistance of counsel at the evidentiary hearing. Therefore, this Court will address these allegations as ineffective assistance of counsel.

TESTIMONY PRESENTED

At the evidentiary hearing, the Applicant testified on his own behalf. The State presented testimony from plea counsel, Deborah Butcher, Esquire ("Counsel"). This Court also had before it a copy of the Applicant's guilty plea transcript, the records of the Clarendon County Clerk of Court, and the Applicant's records from the South Carolina Department of Corrections.

During the evidentiary hearing, Applicant testified that he was originally represented by Harry Devoe, Esquire, a fellow public defender for Clarendon County, and was appointed Deborah Butcher shortly prior to his guilty plea. Applicant testified that he met with Counsel on at least two occasions prior to his guilty plea. Applicant testified that he felt coerced into pleading guilty and that Counsel told him that he would receive a life sentence if he did not plead guilty. Applicant did admit that he was arrested and charged with Criminal Sexual Conduct with a Minor in the First Degree¹ shortly before his guilty plea, a charge that carries up to life imprisonment.

Applicant did acknowledge that he told the plea court that he was satisfied with the services of Counsel and that he had no complaints against her at all. Trial Tr. 6 ln. 5-10. Applicant also acknowledged that he agreed with the recitation of the facts on the record,

¹ A review of the Clarendon County Clerk of Court Public Index shows that this charge has been dismissed.

responding “H’m, yes, most definitely. Yes, sir,” and replying in the affirmative when the plea court asked him if he had sexual relations with the minor child. Trial Tr. 10 ln. 23 – 11 ln. 3.

Following Applicant’s testimony, Counsel testified before the Court. Counsel testified that she has been practicing law since 2005 and approximately 50% of her practice is comprised of criminal defense work. Counsel stated that she had been appointed to Applicant’s case shortly before his guilty plea due to a conflict, as his former public defender, Harry Devoe, was representing the minor child victim in a family court matter. Counsel testified that as she and Devoe do not share any office space, there was no conflict in her representing Applicant. Counsel testified that although she only represented Applicant for a short time prior to his guilty plea, she met with him at least two or three times and discussed his case thoroughly with him. Counsel testified that she was given full access to the Solicitor’s file in this case and that she completely reviewed all of its contents with Applicant prior to his guilty plea.

Counsel testified that she did inform Applicant of potential sentences he faced, including up to twenty years imprisonment for the present charge, as well as up to life imprisonment for the Criminal Sexual Conduct with a Minor in the First Degree charge that was eventually dismissed. Counsel testified that Applicant understood that he was only entering a guilty plea for the Criminal Sexual Conduct with a Minor in the Second Degree charge and that he understood he could receive up to a twenty year prison sentence for this charge. Counsel stated that there was extensive evidence that would be presented by the State if the matter proceeded to trial. Counsel testified that she believed a plea was in her client’s best interest, as he acknowledged his guilt to her and did not indicate that he wished to proceed to trial. Counsel elaborated that ultimately, it was Applicant’s decision to enter a guilty plea.

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 (1985).

Ineffective Assistance of Counsel

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). 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, 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, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption 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. 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).

After careful review based on the standard discussed above, Applicant has failed to carry his burden in this action. Specifically, this Court finds that Counsel's testimony is credible while Applicant's testimony is not credible. Applicant has failed to prove that Counsel was ineffective in his representation of the Applicant. Counsel met with her client on two to three separate occasions and fully discussed the charges against the Applicant, the State's evidence, and Applicant's version of the facts. Additionally, Counsel fully reviewed all discovery materials and the entire Solicitor's file with Applicant, which included strong evidence of guilt that would be presented if the Applicant proceeded to trial. Following her discussions with Applicant, Counsel advised her client that it was in his best interest to plead guilty rather than proceed to trial. Counsel properly advised her client of potential sentences that he may receive for not only this charge, but his pending Criminal Sexual Conduct with a Minor in the First Degree charge that was also pending at the time of his plea. This Court finds that Counsel's performance was reasonable and effective.

Additionally, this Court finds that the Applicant has failed to establish any prejudice resulting from plea counsel's alleged ineffective assistance of counsel. Applicant acknowledged his guilt both to the plea court and this Court during the evidentiary hearing and received a less

than the maximum sentence for this charge. Therefore, this Court finds that the application must be denied and dismissed.

Due Process Violations

Applicant alleges in his application for post-conviction relief that he was in custody unlawfully due to a "due process violation." In its Return, Respondent moved to dismiss this allegation for failure to make even a *prima facie* showing that he is entitled to relief.

No testimony or evidence was presented at the evidentiary hearing regarding this allegation. This Court finds that as the Applicant failed to present any probative evidence regarding such allegation, the Applicant has waived this allegation and failed to meet his burden of proof regarding it. Accordingly, this allegation is denied and dismissed with prejudice.

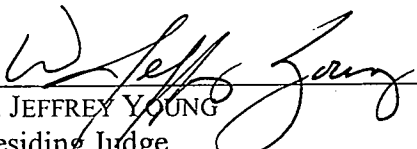
CONCLUSION

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.

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 1 day of Nov, 2012.


W. JEFFREY YOUNG
Presiding Judge
Third Judicial Circuit

Sumter, South Carolina.



ALAN WILSON
ATTORNEY GENERAL

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APR 24 2015

SC Court of Appeals

November 7, 2012

The Honorable Beulah G. Roberts
Clerk of Court, Clarendon County
Post Office Box 136
Manning SC 29102

Re: Willie E. Dow, 326446 v. State of South Carolina
2008-CP-14-0668

Dear Ms. Roberts:

Enclosed please find the original **Order of Dismissal**, signed by The Honorable W. Jeffrey Young, in the above-captioned case, for filing in your office. Please forward a **time stamped copy** back to our office for filing.

Sincerely,

Megan E. Harrigan
Assistant Attorney General

MEH/lm

Enclosure

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BEULAH G. ROBERTS
CLERK OF COURT
CLARENDON COUNTY, SC

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APR 24 2015

SC Court of Appeals

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Clerk, South Carolina Court of Appeals
PO Box 11629
Columbia SC 29211-1629



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