

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
))
Vander Davon Meetze, #351032,)
))
Applicant,)
))
v.)
))
State of South Carolina,)
))
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Case No. 2013-CP-40-03117

**RESPONDENT’S MOTION TO
RECONSIDER, ALTER, OR AMEND
PURSUANT TO RULE 59(e), SCRCP**

Respondent, by and through undersigned counsel, making its Motion to Reconsider, Alter, or Amend, pursuant to Rule 59(e), SCRCP, would respectfully show unto this Court:

PROCEDURAL HISTORY

This matter comes before the Court by way of an application for post-conviction relief filed May 23, 2013. Respondent made its Return on September 25, 2013, requesting an evidentiary hearing be held. An evidentiary hearing was convened November 21, 2013, at the Richland County Courthouse. Applicant was present at the hearing and was represented by Tom Young, Jr., Esquire, and Andrew Walden, Esquire. Respondent was represented by Assistant Attorney General Megan E. Harrigan of the South Carolina Attorney General's Office. At the evidentiary hearing, Applicant testified on his own behalf. Respondent presented testimony from plea counsel Nathaniel Roberson, Esquire (hereinafter “Counsel”) and the prosecuting Assistant Solicitor Dolly J. Garfield, Esquire (hereinafter “Garfield”). At the conclusion of the evidentiary hearing, this Court instructed both parties to prepare proposed Orders for the Court’s consideration.

Respondent’s proposed Order of Dismissal was submitted on January 7, 2014 and is attached hereto. Applicant’s Proposed Order Granting Post-Conviction Relief was submitted on

January 20, 2014. This Court signed its Order Granting Post-Conviction Relief on June 2, 2014; the Order was filed on June 9, 2014. Respondent received a copy of the Order on June 13, 2014. This Motion to Reconsider follows.

ARGUMENT IN SUPPORT OF RECONSIDERATION

Respondent moves this Court to reverse its earlier decision and deny post-conviction relief where Applicant failed to meet his burden as set forth in Strickland v. Washington, 466 U.S. 668 (1984). Under Strickland, an applicant must first prove that counsel's performance was deficient as measured by its "reasonableness under professional norms." Id. Second, an applicant must establish that counsel's deficient performance 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, an 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 (1985). Respondent asserts that Applicant has failed to carry his burden in regards to each prong. In support of this motion, Respondent has attached its proposed Order of Dismissal, setting forth its argument as to why this Court should deny post-conviction relief. Respondent requests that the arguments set forth in its proposed Order be incorporated fully into this Motion. Specifically, Respondent draws this Court's attention to the following:

Counsel did not provide erroneous or incorrect advice regarding parole eligibility

In his application, Applicant alleged that Counsel was ineffective for providing him with erroneous advice regarding parole eligibility; specifically, Applicant alleged that Counsel advised him that he would be eligible for parole after serving approximately one-third of his

sentence. However, the uncontroverted testimony reveals that no such advice was given by Counsel. Counsel testified that he informed Applicant and various trusted members of Applicant's family that Applicant would be required to serve approximately eighty-five percent of whatever sentence was imposed by the plea court before he would be eligible for early release. Counsel testified that he never informed Applicant or any member of Applicant's family that Applicant would only be required to serve one-third of his sentence before becoming parole eligible. Additionally, Applicant testified that he received this erroneous information about parole eligibility from family, friends, and various other members of the community – not from Counsel. As the undisputed testimony is that Counsel did not provide any erroneous advice to parole eligibility, but rather appropriately, correctly, and adequately advised him as to his parole, Respondent urges this Court to deny this allegation for post-conviction relief.

The Order Granting Post-Conviction Relief Omits Significant Portions of Testimony

In its Order Granting Post-Conviction Relief, this Court included testimony presented at the post-conviction relief hearing. However, Respondent respectfully disagrees with the testimony included in the Court's Order. Specifically, Respondent notes that the following portions of testimony were erroneously omitted from the Court's Order:

- Testimony from prosecuting Assistant Solicitor Garfield regarding parole eligibility, her discussions with Counsel, and her previous appearances before the plea court (See pages 4-5 of the State's proposed Order of Dismissal);
- Testimony from Counsel regarding his discussions with Applicant and his family where he correctly advised Applicant that he would be required to serve eighty-five percent of his sentence before being eligible for early release and adamantly denied ever informing Applicant or any member of his family that he would be eligible for parole after serving one-third of his sentence (See pages 5-6 of the State's proposed Order of Dismissal); and
- Testimony from Applicant that his misunderstanding as to his parole eligibility after serving one-third of his sentence came from

outside sources, *not from Counsel* (See pages 2-3 of the State's proposed Order of Dismissal.

Respondent respectfully urges this Court to reconsider its ruling to include all pertinent portions of testimony presented, including the portions highlighted above.

CONCLUSION

Based on all the foregoing, Respondent requests that this Court reconsider its prior ruling and deny Applicant's post-conviction relief. Respondent requests a hearing to fully argue this 59(e), SCRCP, motion and address each of the raised issues before this Court.

Respectfully submitted,

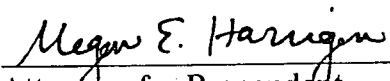
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June 18, 2014

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
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Vander Davon Meetze, #351032,)
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Applicant,)
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State of South Carolina,)
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Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Case No. 2013-CP-40-3117

ORDER OF DISMISSAL

PROCEDURAL HISTORY

This matter comes before the Court by way of an application for post-conviction relief filed May 23, 2013. Respondent made its Return on September 25, 2013, requesting an evidentiary hearing be held. An evidentiary hearing was convened November 21, 2013, at the Richland County Courthouse. Applicant was present at the hearing and was represented by Tom Young, Jr., Esquire, and Andrew Walden, Esquire. 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 Richland County Clerk of Court. Applicant was indicted during the April 2010 term of the Richland County Grand Jury for Murder (2010-GS-40-9525). Nathaniel Roberson, Esquire, represented Applicant. On April 24, 2013, Applicant proceeded to jury trial before the Honorable R. Knox McMahon. On April 25, 2013, Applicant decided forgo trial and pled guilty to the lesser-included offense of Voluntary Manslaughter; sentencing was deferred to allow a pre-sentencing investigation and report to be completed. On May 24, 2012, Judge McMahon sentenced Applicant to twenty-one years imprisonment. No direct appeal was taken.

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for the following allegations of ineffective assistance of counsel:

1. Ineffective assistance of counsel
 - a. "Counsel provide Applicant with erroneous advice regarding parole eligibility; and
 - b. Counsel failed to object to the sentence recommendation presented by the solicitor.
2. Involuntary guilty plea due to Counsel's failure to adequately inform Applicant.

At the evidentiary hearing, Applicant expressly abandoned and waived all grounds for relief beyond his allegation that Counsel was ineffective for providing erroneous advice as to parole eligibility.

TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. Respondent presented testimony from plea counsel Nathaniel Roberson, Esquire (hereafter "Counsel") and the prosecuting Assistant Solicitor Dolly J. Garfield, Esquire. This Court also had before it a copy of the Applicant's plea transcript, the records of the Richland County Clerk of Court, and Applicant's records from the South Carolina Department of Corrections.

During the evidentiary hearing, Applicant testified that Counsel was retained to represent him "a couple of days after [he] was first arrested." He testified that he met with Counsel five times prior to his guilty plea, as well as discussed the case with Counsel by telephone. He testified that Counsel reviewed discovery with him, including various witness statements, but did not provide him with a copy of discovery materials. He testified that he was originally charged with murder, which Counsel informed him carried a sentence range of a mandatory minimum of thirty years imprisonment, which must be served day-for-day, up to a maximum sentence of life without parole. He testified that Counsel advised him that the lesser-included offense of

voluntary manslaughter carried a sentence range of a mandatory minimum of two years imprisonment up to a maximum sentence of thirty years imprisonment. He testified that he understood that his guilty plea was being entered without any recommendation or negotiation as to sentence range, but that he thought the sentence would be parole eligible. He testified that Counsel did not define what parole eligibility meant, but that based on his discussions with family, friends, and other various members of the community, he thought parole eligibility meant that he would only be required to serve approximately one-third of his sentence before he would be eligible for parole. He testified that he thought that "worst case scenario" would be that he would only be required to serve ten years of a thirty year sentence before becoming parole eligible. Applicant testified that this belief was based on the information he received from various community and family members, not Counsel. Applicant acknowledged that he understood that being parole eligible does not guarantee early release, but merely makes one eligible for early release. He testified that he now understands that voluntary manslaughter requires an inmate to serve at least eighty-five percent of his sentence before becoming eligible for early release. He testified that if he had understood this at the time of his guilty plea, he would not have pled and would have continued forward with his trial.

Applicant testified that he recalls his guilty plea proceeding clearly because it was taken during his trial. He testified that he recalls Counsel, the prosecuting assistant solicitor, and the Court all stating that voluntary manslaughter was parole eligible. However, he acknowledged that his understanding as to what parole eligibility meant came for various other sources in the community, not Counsel. He testified that that he recalled telling the plea court that he wanted to plead guilty, that he was guilty, and admitted to kicking the victim several times while he was on the ground injured. He testified at that he is indeed guilty.

Following Applicant's testimony, Respondent presented testimony from prosecuting Assistant Solicitor Dolly J. Garfield, Esquire (hereafter "Garfield"). Garfield testified that she has been practicing law for sixteen years and is the Chief Prosecutor for the City of Columbia. She testified that she oversees ten other attorneys at the Fifth Circuit Solicitor's Office and has extensive experience prosecuting violent and most serious crimes. Garfield testified that she was the lead prosecutor assigned to Applicant's case and that assisting her on the trial team were Katherine Luck Campbell and Meghan Walker, also from the Fifth Circuit Solicitor's Office. She testified that this case involved Applicant kicking and violently beating the victim, who needed hospitalization for his injuries and ultimately died a few days later as a result of a specific strain of pneumonia that is only contracted within a hospital setting. She testified that the victim this case had a very low intellect and was developmentally delayed. She testified that at the time of the altercation, the victim was walking alone following a verbal altercation between Applicant's mother and the victim. She testified that multiple witnesses gave statements to law enforcement that Applicant was the sole aggressor and that during and immediately following the beating, Applicant made threats to other observers.

Garfield testified that Applicant was indicted for murder, but the State made an initial plea offer for the lesser-included offense of voluntary manslaughter without and recommendation or negotiation as to sentence length. She testified that Applicant originally turned down this offer and a jury was selected for his trial. She testified that following jury selection, Applicant accepted the State's offer for a plea to voluntary manslaughter without any negotiations or recommendation as to sentence length. She testified that she recalled discussing parole eligibility on the record with the plea court and Counsel, and that her meaning of "parole eligible" in this context was that Applicant would be eligible for early release under the

community supervision program after serving eighty-five percent of his sentence, as opposed to murder, which requires a defendant to serve thirty years, day-for-day, without any possibility of early release. She testified that she has been before Judge McMahon numerous times and work with Counsel multiple times, and she believes that this was the meaning all parties were attributing to the term "parole" in the context for Applicant's case.

Following Garfield's testimony, Respondent presented testimony from Counsel. Counsel testified that he has been practicing law for more than twenty years and approximately seventy percent of his practice is criminal defense. He testified that he has ample experience representing clients charged with both violent and most serious crimes. He testified that he was retained by Applicant days following his arrest and that he met with Applicant between eight to ten times before his guilty plea. Counsel testified that he also met with various members of Applicant's family, as his standard practice is to meet with parents or a trusted friend or family member whenever a client is charged with a crime carrying a sentence of more than ten years. He testified that he thoroughly explained the elements of murder, what the State would be required to prove at trial, and Applicant's constitutional rights to Applicant and his family members. He testified that he advised Applicant and his family members that murder carries a mandatory minimum sentence of thirty years, which must be served day-for-day, up to a maximum sentence of life without parole. He testified that he also explained that the lesser-included offense of voluntary manslaughter carries a mandatory minimum of two years imprisonment up to maximum sentence of thirty years imprisonment. He testified that he explained to Applicant and his family members that a significant benefit of pleading to voluntary manslaughter was that Applicant would be eligible for early release after serving eight-five percent of his sentence. He testified that he never advised Applicant of a particular sentence he

would serve or exactly when he should expect to become eligible for parole. He adamantly denied ever informing Applicant or any member of Applicant's family that Applicant would be eligible for parole or any type of early release after serving one-third of his sentence. Counsel agreed with the characterization provided to the Court by Garfield regarding the term "parole" as discussed by the court and both parties, with all having the understanding that Applicant would be eligible for early release after serving approximately eight-five percent of his sentence as opposed to murder, which requires day-for-day service would a possibility of early release.

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, an applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant 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 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813.

The proper measure of performance is whether an 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. 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 (1985).

"A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of a 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." Holden v. State, 393 S.C. 565, 572, 713 S.E.2d 611, 615 (2011), citing Rolen v. State, 384 S.C. 409, 413, 683 S.E.2d 471, 474 (2009).

After careful review based on the standard discussed above, this Court finds that Applicant has failed to carry his burden in this action. Specifically, this Court finds that Counsel's testimony is very credible. In his application, Applicant alleges that Counsel was ineffective for providing him with erroneous advice regarding parole eligibility; specifically, Applicant alleges that Counsel advised him that he would be eligible for parole after serving

approximately one-third of his sentence. However, the uncontroverted testimony reveals that no such advice was given by Counsel. Counsel testified that he informed Applicant and various trusted members of Applicant's family that Applicant would be required to serve approximately eight-five percent of whatever sentence was imposed by the plea court before he would be eligible for early release. Counsel testified that he never informed Applicant or any member of Applicant's family that Applicant would only be required to serve one-third of his sentence before becoming parole eligible. Additionally, Applicant testified that he received this erroneous information about parole eligibility from family, friends, and various other members of the community – not from Counsel. As the undisputed testimony is that Counsel did not provide any erroneous advise to parole eligibility, but rather appropriately, correctly, and adequately advised him as to his parole, this allegation for post-conviction relief must be 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.

This Court notes that that Applicant must file and serve a notice of appeal within thirty 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 post-conviction relief. Rule 71.1(g), SCRCR, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's

behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That this application for post-conviction relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to and remain in the custody of the State

AND IT IS SO ORDERED this ____ day of _____, 2014.

ROBERT E. HOOD
Presiding Judge
Fifth Judicial Circuit

_____, South Carolina