

RECEIVED

MAY 28 2015

IN THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM RICHLAND COUNTY

S.C. Supreme Court

COURT OF COMMON PLEAS

BROOKS P. GOLDSMITH, CIRCUIT COURT JUDGE

2013-CP-40-7338

Gregg C. Hiers,.....Petitioner.

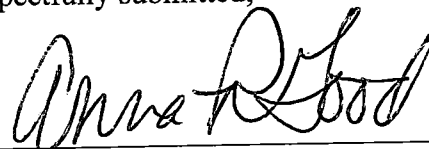
vs

The State of South Carolina,.....Respondent.

NOTICE OF APPEAL

Gregg C. Hiers appeals the Honorable Brooks P. Goldsmith's May 8, 2015, Order of Dismissal, clocked on May 18, 2015. Undersigned counsel received notice of entry of the order on May 26, 2015. A copy of the order on appeal is attached to this notice.

Respectfully submitted,



Anna R. Good
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Attorney for the Petitioner.

May 28, 2015.

OTHER COUNSEL OF RECORD:

J. Clayton Mitchell, Esquire
South Carolina Attorney General's Office
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Columbia, SC 29211-1549

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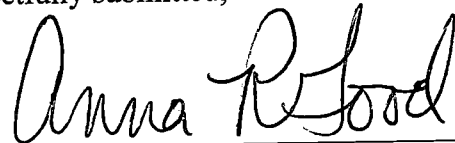
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PROOF OF SERVICE

I, Anna Good, 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 the attorney of record, J. Clayton Mitchell, P.O. Box 11549, Columbia, South Carolina 29211-1549. I further certify that all parties required by Rule to be served have been served this 28th day of May 2015.

Respectfully submitted,



Anna R. Good, Esquire
Law Office of Anna Good, LLC
PO Box 7284
Columbia, South Carolina 29202

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Gregg C. Hiers, #270630

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

2013-CP-40-07338

ORDER OF DISMISSAL

2015 MAY 18 AM 9:45
RICHLAND COUNTY
FILED
JENNIFER W. NORRIDGE
C.C.P. & G.S.

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed December 4, 2013. Respondent made its Return on March 5, 2014, requesting an evidentiary hearing be convened. Anna R. Good, Esquire was appointed by the Richland County Clerk of Court. An evidentiary hearing was held on April 2, 2015, at the Richland County Courthouse. Applicant was present and represented by Counsel Good. J. Clayton Mitchell, Esquire, of the South Carolina Attorney General's Office represented Respondent.

At the PCR hearing, Applicant testified on his own behalf. Also testifying was Applicant's plea counsel, Luke A. Shealey, Esquire. This Court had before it the Richland County Clerk of Court records, Applicant's South Carolina Department of Corrections records, the PCR application, the Return, and the guilty plea transcript.

I. PROCEDURAL HISTORY

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 represented by Luke Shealey, Esquire, and Brian Shealey, Esquire. On December 13, 2012, Applicant appeared before the Honorable J. Ernest Kinard, Jr., where he waived presentment to the Richland County Grand Jury and pled guilty to Armed Robbery (2012-GS-40-6498). Pursuant to negotiations

between Applicant and the State, Judge Kinard sentenced Applicant to ten (10) years' imprisonment. Applicant did not appeal his guilty plea or sentence.

In this action, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. The guilty plea was not entered into knowingly and voluntarily because of Applicant's mental condition at the time.
2. Ineffective assistance of counsel in failing to have Applicant evaluated and in not reviewing discovery with him prior to the plea.

II. SUMMARY AND EVIDENCE PRESENTED AT THE PCR HEARING

Applicant's Testimony

Applicant testified Counsel was assigned to represent him on the charges at issue. He testified Luke Shealey (Luke) represented him from July 2012 until he pleaded guilty. Applicant testified he was potentially facing a life without parole sentence if convicted because of his prior convictions. Applicant testified he agreed to plead guilty to a negotiated ten (10) year term of imprisonment with the State dropping the bomb threat charges in exchange for his plea. Applicant explained that Brian Shealey (Brian) represented him during the guilty plea hearing because Luke was ill. Applicant testified he sent four to five letters to the prosecuting solicitor asking her to not seek a life without parole sentence and to expedite his case.

Applicant explained the circumstances of the incident. He testified he went to Rite Aid in an attempt to commit suicide. He testified he told the drug store's employee that she was being robbed and that he had a bomb. He testified he repeated himself after the employee seemed to think he was joking. He testified she then reported him to authorities who apprehended him after he had passed out. He testified he ingested nearly two dozen Vicodin pills taken from the Rite Aid pharmacy in his suicide attempt. Applicant testified he was never evaluated and believed that he should have been. Applicant also testified that counsel did not review discovery with him.

Applicant testified he completed and reviewed an advice of rights form with Brian where they went the numerous rights that he was waiving by pleading guilty which included any challenge to the elements of the armed robbery charge.

Counsel Luke A. Shealey's Testimony

Luke Shealey testified he represented Applicant on the charges currently before the Court. Luke testified he was appointed to represent Applicant through his prior position with the Richland County Public Defenders' Office. Luke testified he reviewed discovery and the evidence the State would present if the case were to go to trial with Applicant. He explained that the case had made the news and was receiving some local attention. Luke testified he had concerns with whether the State could prove all elements of the armed robbery charge.

Luke testified Applicant sent numerous letters to the prosecuting solicitor demanding to get to court and to get the case resolved quickly. Luke testified Applicant was potentially facing a life without parole sentence because of prior convictions. Luke testified he advised Applicant of the negotiated ten (10) year offer and that Applicant chose to accept it. He testified Applicant was eager to get to prison where he believed he would be able to then successfully commit suicide. Luke testified that his brother, Brian, filled in for him because of a problem he was having with his back. Luke explained that since Applicant was entering into a negotiated plea, that his brother could easily cover for him at the hearing. He noted that Brian went through an advice of rights form with him.

Luke testified he was aware that Applicant may have had some mental issues in the past. Luke testified that Applicant was homeless at the time of the incident and that he hoped to get a housing solution worked out for him. Luke reiterated that Applicant was only trying to commit suicide and had no intention to hurt anyone else.

III. APPLICABLE LAW

In a post-conviction relief action, Applicant bears the burden of proving the allegations in the application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, 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, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order 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. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show 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, 59 (1985).

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the guilty plea transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

As a matter of general impression, this Court finds Applicant's testimony and assertions to be not credible. In contrast, this Court finds counsel's testimony to be credible and persuasive on all matters. These credibility findings have been applied to the Court's findings and conclusions set forth below.

Involuntary and Unintelligent Guilty Plea

Applicant argues he did not plead guilty knowingly and voluntarily because he was suffering from mental issues and was not competent to plead guilty. This Court finds otherwise and concludes that Applicant's guilty plea was entered freely and voluntarily. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709, 23 L.Ed.2d 274 (1969). Defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). A guilty plea is a solemn, judicial admission of the

truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing 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. United States, 519 F.2d 347 (4th Cir.1975).

Applicant claims he could not have pled guilty knowingly and voluntarily as he was not competent. This Court finds this contention without merit. This Court finds the record reflects Applicant was advised of the waiver of his constitutional rights by the plea court. This Court finds very credible Counsel's testimony regarding his preparation and advice concerning the case and the amount of time Applicant was facing. The record reflects Applicant admitted his guilt to the plea court. This Court finds that Applicant wrote numerous letters to the prosecuting solicitor that were described as very coherent and very intelligent. This Court finds Applicant's intent to plead guilty was made clear to the plea judge. Applicant was fully informed of the nature and consequences of his plea by his attorneys and was advised further by the plea court. This Court also relies on the advice of rights form in finding Applicant was thoroughly advised and made no objections in entering his plea. In fact, the record reflects that it was Applicant that urged the prosecuting solicitor and counsel to get the case resolved quickly. This Court finds the plea judge correctly found Applicant's plea was freely, voluntary, and intelligently made. This allegation is denied and dismissed with prejudice.

Ineffective Assistance of Counsel – Failure to have Applicant Evaluated / Failure to Review Discovery

Applicant alleges that counsel was ineffective in failing to get him evaluated for criminal responsibility and competency. Applicant presented no evidence to support this contention. This

allegation rests entirely on speculation. See Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998) (“failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result.”). This Court emphasizes that Applicant acted purposefully in his attempt to commit suicide and had a clear purpose in hoping to get his case resolved quickly. This Court further emphasizes the articulate letters written by Applicant in his attempt to persuade the prosecuting solicitor to take a life without parole sentence off the table in their plea discussions. Therefore, this allegation is readily denied and dismissed...

This Court finds Applicant’s allegation that Counsel failed to review discovery with him to be meritless. Counsel’s credible testimony on the issue is persuasive. Counsel met with Applicant and reviewed the discovery materials.

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, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

V. CONCLUSION

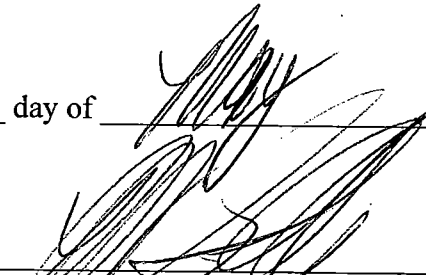
Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Applicant failed to demonstrate counsels’ performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt 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, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant will remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 8 day of July, 2015.



BROOKS P. GOLDSMITH
Presiding Judge

_____, South Carolina