

Brandt Rucker Attorney at Law, L.L.C.
522 North Church Street
Greenville, South Carolina 29601
t- 864-271-9925
f- 864-271-9554

RECEIVED

June 6, 2015

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S.C. SUPREME COURT

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

Re: ~~Curtis Wilkie v. State 2012-CP-42-1581~~; Frank Beckham v. State 2013-CP-42-0884

Dear Mr. Shearouse:

Please find enclosed the Notices of Appeal and Proofs of Service for Curtis Wilkie and Frank Beckham in their appeals from the dismissals of their Post Conviction Relief Actions.

If you have questions or concerns, please do not hesitate to contact me.

Sincerely,



Brandt Rucker, Esq.

ENCLOSURES

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

The Honorable Roger L. Couch, Circuit Court Judge

Case No. 2012-CP-42-0884

State of South Carolina

Respondent,

v.

Frank Beckham, Jr., #133580

Appellant.

Notice of Appeal

Frank Beckham, Jr. appeals the order of the Honorable Roger L. Couch dated April 23, 2015. Appellant received written notice of entry of this order on April 30, 2015.

May 29, 2015

Sincerely,

s/



Brandt Rucker
Attorney for Appellant Frank
Beckham, Jr.
522 North Church Street
Greenville, South Carolina 29601
(864) 271-9925
Attorney for Appellant

cc:
Other Counsel of Record:

Suzanne White
Office of the South Carolina Attorney General
P.O. Box 11549
Columbia, S.C. 29211

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

The Honorable Roger L. Couch, Circuit Court Judge

Case No. 2013-CP-42-0884

State of South Carolina

Respondent,

v.

Frank Beckham, Jr., #133580

Appellant.

Proof of Service

I certify that I have served the Notice of Appeal, the Proof of Service on the State of South Carolina by depositing a copy of those documents in the United States Mail, postage prepaid, on May 29, 2015, addressed to its attorney of record, Suzanne White, Office of the South Carolina Attorney General, P.O. Box 11549, Columbia, S.C. 29211.

June 6, 2015

Sincerely,

s/ 

Brandt Rucker

Attorney for Appellant Frank
Beckham

522 North Church Street
Greenville, South Carolina 29601
(864) 271-9925
Attorney for Appellant

cc:
Other Counsel of Record:

Suzanne White
Office of the South Carolina Attorney General
P.O. Box 11549

Columbia, S.C. 29211

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Frank Beckham, Jr., #133580,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2013-CP-42-0884

ORDER OF DISMISSAL

CLERK OF COURT
SPARTANBURG COUNTY
2015 APR 23 PM 3:21
M. HOPE BLACKLEY

This matter comes before this Court by way of an application for post-conviction relief filed February 25, 2013. Respondent filed its Return on April 1, 2014. A hearing was convened at the Spartanburg County Courthouse on September 15, 2014, at which time Applicant was present in court and represented J. Brandt Rucker, Esquire. J. Clayton Mitchell of the South Carolina Attorney General's Office represented Respondent. Applicant testified on his own behalf. Also testifying was Applicant's plea counsel, J. Roger Poole. The Court had before it the Spartanburg County Clerk of Court records', Applicant's South Carolina Department of Corrections records, the PCR application, the Return, Applicant's appellate records, 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 Spartanburg County Clerk of Court. He was indicted at the February 2012 term of the Spartanburg County Grand Jury for two counts of distribution of crack cocaine (2012-GS-42-0623, -0624)¹. Applicant was represented by J. Roger Poole, Esquire. On August 28, 2012, the Applicant pled guilty to the lesser included offense of possession of crack - 1st offense (-0623) and distribution of crack - 2nd offense (-0624). The

¹ A third indictment for distribution of crack cocaine - 2nd offense was dismissed in accordance with Applicant's agreement to plead guilty to the other charges.

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Honorable J. Derham Cole sentenced Applicant to concurrent sentences of five (5) years' imprisonment for distribution of crack cocaine – 2nd offense and three (3) years' imprisonment for possession – 1st offense.

A timely notice of appeal was filed on Applicant's behalf. The South Carolina Court of Appeals dismissed the appeal for failure to establish any preserved issues on October 24, 2012. The remittitur was returned on November 13, 2012.

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

1. Involuntary guilty plea in that Applicant believed he was pleading to a first offense rather than a second offense distribution charge.

II. SUMMARY AND EVIDENCE PRESENTED AT THE PCR HEARING

Applicant's Testimony

Applicant testified he pled guilty to possession of crack cocaine and to distribution of crack cocaine. Applicant testified he was represented by Counsel Poole for about a year before his guilty plea. He testified he reviewed discovery with his attorney and that they discussed the evidence the State was prepared to present against him if the case were to go to trial. Applicant recounted the plea deal that he ultimately entered into. The solicitor dropped one charge of distribution in exchange for his plea. Applicant testified that he was hoping to get a more lenient sentence because his codefendant received a probationary sentence. Applicant asserted that he could not be charged with second offense distribution of crack cocaine because he had no prior convictions for distribution. Applicant acknowledged that Judge Cole advised him that he was pleading to a second offense distribution charge.

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Counsel J. Roger Poole's Testimony

Counsel testified he represented Applicant on the charges currently before the Court. Counsel testified he was appointed to represent Applicant through his position with the Spartanburg County Public Defender's Office. Counsel testified he reviewed the charges Applicant was facing, including the maximum penalties for each charge. Counsel testified he reviewed discovery with Applicant which included a video and audio recording of Applicant purchasing crack cocaine. Counsel testified that there was some back and forth with the prosecuting solicitor discussing various plea options. Counsel noted that Applicant rejected an offer in May 2011 that would have allowed him to plead to one count of distribution of crack cocaine, 1st offense.

III. APPLICABLE LAW

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When the application 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, 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).

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CLERK OF COURT
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Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the 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 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." 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, the appellate records, 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.

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PARANBORG COUNTY
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M. HOWE B. MCKEY

Involuntary Guilty Plea

Applicant argues he did not plead guilty knowingly and voluntarily. 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, 43 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 did not know he was pleading guilty to a second offense charge of distribution of crack cocaine, but believed he was pleading to a first offense. Applicant testified he could not be charged with second offense distribution because he had never been charged with a first offense. This Court finds this contention meritless. This Court finds the record reflects Applicant was advised that he was pleading guilty to a second offense by the plea court's very thorough colloquy with Applicant. This Court finds very credible Counsel's testimony

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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 Applicant's testimony regarding his belief that he was pleading to a first offense to be unpersuasive. The record reflects that Applicant was further advised by the plea court of the minimum and maximum sentence he could receive on each charge, which included a thirty (30) year sentence on the distribution, second offense charge. (Plea Tr. p. 7); See Wolfe v. State, 326 S.C. 158, 164, 485 S.E.2d 367, 370 (1997) (any possible misconceptions about sentence length cured by colloquy at guilty plea hearing). This Court notes Applicant was properly charged with a second offense because he had prior drug convictions and charges to satisfy the statute. See S.C. Code § 44-53-375(B)(2).

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.

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 such allegations.

M. HOPKINS
CLERK OF COURT
SPARTANBURG COUNTY
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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,

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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), SCRCR, 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:

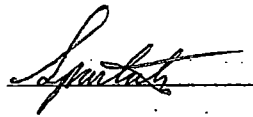
1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant will remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 23rd day of April

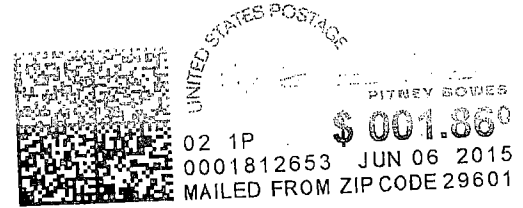


ROGER L. COUCH
Presiding Judge

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SPARTANBURG COUNTY
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M. HOPE BLACKLEY


_____, South Carolina

Brandt Rucker
Attorney at Law, L.L.C.
522 North Church Street
Greenville, South Carolina 29601



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

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