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RECEIVED

JUN 15 2015

June 11, 2015

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

S.C. SUPREME COURT

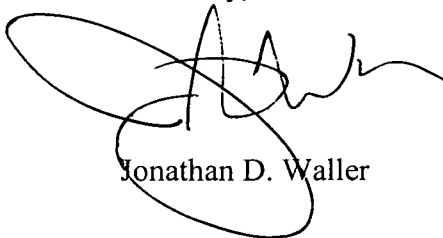
Re: Kendall M. Baccus vs. State of South Carolina
C/A No: 2014-CP-21-00119

Dear Mr. Shearouse:

Please find enclosed one (1) original and one (1) copy each of Applicant's Notice of Appeal and Certificate of Service in the above referenced case. I would appreciate you filing the original and returning the clocked copies in the enclosed envelope.

I was appointed to represent Mr. Baccus in this matter and am also enclosing a copy of the Order of Dismissal. If you have any questions, please do not hesitate to ask. My telephone number is 803-708-6767.

Sincerely,



Jonathan D. Waller

Cc: J. Clayton Mitchell, South Carolina Office of Attorney General

Enclosures

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM FLORENCE COUNTY
D. Craig Brown, Circuit Court Judge

2014-CP-21-00119

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JUN 15 2015

S.C. SUPREME COURT

Kendall M. Baccus, #355137,

Appellant,

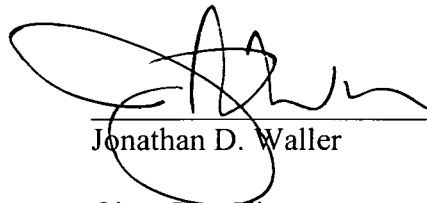
v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Kendall M. Baccus, #355137, appeals the Order of Dismissal denying his Application for Post-Conviction Relief filed June 2, 2015, issued by the Honorable D. Craig Brown, Presiding Judge, Twelfth Judicial Circuit.



Jonathan D. Waller

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1315 Blanding Street
Columbia, SC 29201
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jonathanwallerlaw@gmail.com
ATTORNEY FOR PETITIONER

This 11 day of June, 2015.

Other Counsel of Record:

J. Croom Hunter, Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3319

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM FLORENCE COUNTY
D. Craig Brown, Circuit Court Judge

RECEIVED

2014-CP-21-00119

JUN 15 2015

S.C. SUPREME COURT

Kendall M. Baccus, #355137,

Appellant,


v.

STATE OF SOUTH CAROLINA,

Respondent.

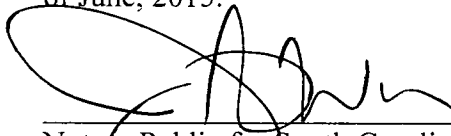
CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the Appellant's Notice of Appeal in the above-entitled case has been served upon opposing counsel, J. Croom Hunter, Assistant Attorney General, by mailing in an envelope properly addressed with postage prepaid on this 11th day of June 2015.



Kelly Giese

SWORN TO BEFORE me this 11 day
of June, 2015.



Notary Public for South Carolina
My Commission Expires: 3/25/23

STATE OF SOUTH CAROLINA
COUNTY OF Florence
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NO. 2014 CP-21-119

Kendall M. Baccus
355137
PLAINTIFF(S)

State of South Carolina
DEFENDANT(S)

Attorney for : Plaintiff Defendant
or
 Self-Represented Litigant

Submitted by:

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court: _____

ORDER INFORMATION

This order ends does not end the case.
Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount to be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the judgment.

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge _____ Judge Code _____ Date _____

FILED
15 JUN -2 AM 10:41
CLERK OF COURT
FLORENCE COUNTY, SC
COURT REPORTERS & G.S.
CERTIFIED: A TRUE COPY

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STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT

2015 JUN -1 PM 2:27

Kendall M. Baccus, #355137

CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, S.C.

Case No. 2014-CP-21-0119

Applicant,

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

This matter comes before the Court by way of an Application for Post-Conviction Relief filed January 15, 2014. Respondent made a Return on or about November 5, 2014. The Court convened an evidentiary hearing into the matter on April 16, 2015, at the Florence County Courthouse. Applicant was present at the hearing and represented by Jonathan Waller, Esquire. J. Croom Hunter, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's plea counsel, William Eugene Grove, Esquire, also testified. The Court had before it a copy of the plea transcript, the records of the Florence County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, and the pleadings in this matter. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Florence County Clerk of Court's orders of commitment. Applicant was indicted at the September 2012 term of the Florence County Grand Jury for attempted murder (2012-GS-21-

CERTIFIED: A TRUE COPY

Connie Reel Shearin

CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

1146). Applicant was represented by Will Grove, Esquire. On April 19, 2013, Applicant pled guilty as indicted. The Honorable William H. Seals, Jr., sentenced Applicant to twenty (20) years imprisonment.

Applicant filed a timely Notice of Appeal; however, it was dismissed by the South Carolina Court of Appeals for failing to provide a sufficient explanation under Rule 203(d)(1)(B)(iv). The Remittitur was sent on November 21, 2013.

II. ALLEGATIONS

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

1. Ineffective assistance of counsel.
 - a. Counsel "never made any attempt to ascertain whether or not I actually knew what the elements for the crime charged were or whether or not I understood exactly what the term 'criminal elements' actually meant."
 - b. Failure to conduct a Blair hearing.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the evidentiary hearing. The Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court finds Counsel's testimony credible and Applicant's testimony not credible. The Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

A. Summary of Testimony

Applicant testified at the PCR hearing that Will Grove (Counsel) was appointed to represent him. Applicant testified he is twenty-two years old but was nineteen when he was

arrested. Applicant testified he met with Counsel approximately ten times, with each meeting lasting between ten and twenty minutes. Applicant testified many of their conversations concerned trying to get Applicant a plea to a lesser charge. Applicant testified Counsel did not go over the charge in great detail. Applicant testified Counsel told him the charge carried up to thirty years in prison. Applicant testified he was not sure if Counsel discussed the elements of the crime. Applicant testified Counsel did not go over all of the discovery with him. Applicant testified he has been treated for ADHD in the past, and he is not a good reader. Applicant testified he does not comprehend things very well and has a bad memory. Applicant testified he did not provide Counsel with the names of any witnesses to contact. Applicant testified his brother was a co-defendant. Applicant testified he wanted to go to trial. Applicant testified Counsel explained his right to a jury trial but did not explain the procedures of a trial. Applicant testified his case was set for trial, but Counsel felt pleading to a cap of twenty years was his best option. Applicant testified Counsel felt ABHAN was a more appropriate charge, but the solicitor would not offer a plea to ABHAN. Applicant testified Counsel told him he would not get the full twenty years. Applicant reiterated that he wanted to go to trial, but he pled guilty because Counsel told him to do so.

On cross-examination, Applicant recalled the plea judge going over the constitutional rights he was waiving by pleading guilty. He recalled telling the plea judge he was satisfied with Counsel's performance. Applicant recalled telling the plea judge he wanted to plead guilty because he was guilty. Applicant recalled telling the plea judge he answered his questions truthfully. Applicant insisted that despite the fact Counsel met with him ten times, they did not discuss much. Applicant denied confessing to the crime, despite the solicitor saying so during the

plea colloquy. Applicant testified he pled guilty in order to avoid the possibility of receiving a longer sentence as the result of a guilty verdict at trial.

Counsel testified he has been practicing law since 2009 but has been with the Public Defender's Office for three years. Counsel testified he was appointed to Applicant's case and met with him around ten times. Counsel testified Rule 5 and *Brady* motions were filed in April of 2012, and he had no problems obtaining discovery. Counsel testified there was not much discovery, but he reviewed all of it with Applicant. Counsel testified Applicant never denied his involvement in the attempted murder, and their discussions mainly centered around attempting to get a reduction in the charge he was facing. Counsel testified he discussed the elements of the charge with Applicant. Counsel testified the State had a good case against Applicant, and the victim and Applicant's brother both identified him as the shooter. Counsel testified he reviewed the constitutional rights Applicant was waiving by pleading guilty, and that Applicant never seemed to have trouble understanding him. Counsel explained the concepts of competency and criminal responsibility and felt Applicant did not need a mental evaluation. Counsel testified the State initially offered a plea to a cap of twenty five years on March 13, and they followed that offer with a cap of twenty years on April 13. Counsel testified he discussed the offers with Applicant, and he seemed to understand those discussions. Counsel testified the case was called for trial due to its age, and Applicant made the decision to plead guilty. Counsel testified he tried to get a plea deal to ABHAN, but the State would not extend one. Counsel testified he did not think there was any need for a preliminary hearing because there was plenty of probable cause to support the charge. Counsel testified he never told Applicant he would get less than twenty years.

On cross-examination, Counsel testified he did not remember Applicant ever giving a statement to police, but that it was possible he did not overhear the solicitor mention that during the plea colloquy. Counsel testified he believed ABHAN was a more appropriate charge in Applicant's case, but he had no control over how the State chose to bring charges. Counsel testified he felt Applicant's plea was essentially equivalent to a plea to ABHAN, other than being a most serious versus a serious offense. Counsel testified he was surprised when the solicitor discussed Applicant's juvenile convictions at the plea colloquy. Counsel testified he and Applicant never discussed Applicant's juvenile convictions because his rap sheet did not indicate any priors, but that Applicant having a juvenile record would not have changed Counsel's advice to take the plea.

B. Ineffective Assistance of Counsel

In this post-conviction relief action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of trial counsel as a ground for relief, Applicant must prove trial 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." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether trial counsel provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The Court strongly presumes trial counsel rendered adequate assistance and made all

significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The Court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove trial counsel's performance was deficient. Id. Under this prong, the Court measures trial counsel's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, trial counsel's 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.

This Court finds Applicant has failed to show Counsel's performance fell below an objective standard of reasonableness. Counsel's testimony indicated he was extremely familiar with the facts of Applicant's case, and he was prepared to take Applicant's case to trial. This Court finds Counsel met with Applicant an adequate number of times and was familiar with the discovery materials. Counsel testified that even had he known about Applicant's prior juvenile convictions, he still would have offered Applicant the same advice. This Court further finds that based upon the solicitor's recitation of the facts at the plea colloquy, combined with Counsel's testimony at the PCR hearing, the evidence against Applicant was such that it was in Applicant's best interest to go forward with the plea. As such, Applicant has failed to show ineffectiveness of counsel, and the allegation is without merit.

C. Involuntary Guilty Plea

Although not specifically alleged, this Court finds Applicant's allegations could be construed as alleging his plea was involuntary. This Court finds the allegation to be without merit.

In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. See Al-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (1999) (citing Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993)). An Applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the Applicant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citations omitted). An Applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985); Bennett v. State, 371 S.C. 198, 204, 638 S.E.2d 673, 675 (2006).

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. See Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969). In Boykin, the United States Supreme Court held that before a court can accept a guilty plea, a criminal defendant must be advised of the constitutional rights he is waiving. Id. at 243, 89 S. Ct. at 1712. Specifically, the accused must be aware of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers. Id. Moreover, a criminal defendant

entering a guilty plea “must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived.” Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citation omitted). A criminal defendant’s knowing and voluntary waiver of statutory or constitutional rights in a guilty plea “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).

When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000).

This Court has had the opportunity to review the testimony from the PCR hearing, as well as the guilty plea transcript and finds Applicant knowingly, intelligently, and voluntarily entered his guilty plea. Applicant has presented no credible evidence to the contrary. Applicant’s testimony that he wishes he had proceeded to trial does not undermine the validity of his plea. As such, this Court finds the allegation is without merit.

D. 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.

IV. 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. 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 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, his post-conviction relief attorney must serve and file a notice of appeal on Applicant's behalf. Applicant and his attorney are 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 must be remanded to the custody of the Department of Corrections to complete service of his sentence.

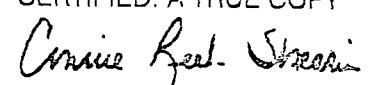
AND IT IS SO ORDERED this 26 day of May



D. CRAIG BROWN
Presiding Judge
Twelfth Judicial Circuit

Florence, South Carolina

FILED
2015 JUN -1 PM 2:24
DANNIE REEL-SHEARER
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

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CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

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