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JUN 18 2015

June 10, 2015

S.C. SUPREME COURT

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

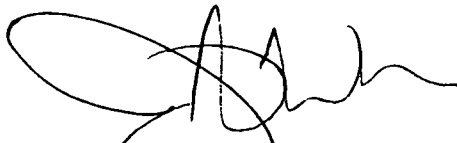
Re: Levon D. Black vs. State of South Carolina
C/A No: 2013-CP-21-00468

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. Black 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. Croom Hunter, South Carolina Office of Attorney General

Enclosures

STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

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

JUN 18 2015

S.C. SUPREME COURT

2013-CP-21-00468

Levon D. Black, #350129,

Appellant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Levon D. Black, #350129, 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

Giese Law Firm
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1315 Blanding Street
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803-708-6767 (phone)
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jonathanwallerlaw@gmail.com
ATTORNEY FOR PETITIONER

This 10 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

2013-CP-21-00468

RECEIVED

JUN 18 2015

S.C. SUPREME COURT

Levon D. Black, #350129,

Appellant,

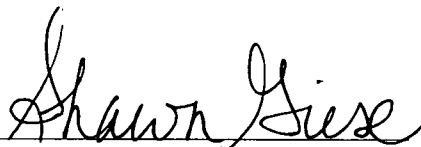
v.

STATE OF SOUTH CAROLINA,

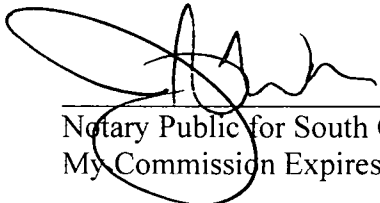
Respondent.

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 16 day of June 2015.


Kelly Giese

SWORN TO BEFORE me this 16 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. 2013 CP-21-468

Levon D. Black #350129

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : Plaintiff Defendant
or
 Self-Represented Litigant

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 10(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 order.

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained on 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 by the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

Judge Code

Date

2013 JUN -2 AM 11:41
 ON THE REEL SYSTEM
 COOP & CS
 FLORENCE COUNTY, S.C.
 CLERK OF COURT
 FLORENCE COUNTY, S.C.
 SCRPC & D.S.

CERTIFIED: A TRUE COPY
 Annie Paul Stealin

FILED

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT

2015 JUN -1 } PM 2:24

Levon D. Black, #350129,

CONNIE REE SHEAR
CCCP & GS
FLORENCE COUNTY, SC

Case No. 2013-CP-21-0468

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 February 15, 2013. Respondent made a Return on or about May 8, 2013. The Court convened an evidentiary hearing into the matter on April 13, 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, Richard W. Strobel, 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 October 2011 term of the Florence County Grand Jury for two counts of armed robbery and one

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Connie Ree Shear

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

count of possession of a weapon during the commission of a violent crime (2011-GS-21-1697). Applicant was represented by Richard W. Strobel, Esquire.

On March 12, 2012, Applicant pled guilty as indicted. The Honorable Thomas A. Russo sentenced Applicant to ten years imprisonment on all charges. Applicant did not appeal.

II. ALLEGATIONS

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

1. Ineffective assistance of counsel.

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 his family hired Mr. Strobel (Counsel). Applicant testified he was initially represented by Vick Meetze, Esquire, who he characterized as rude and inconsiderate. Applicant testified he never met with Counsel, and the first time he saw him was at the plea, four months after he had been retained. Applicant testified Counsel's assistant came to see him the Friday before his plea and said for him to have his money ready on the day of the plea. Applicant testified it was the first time he met with anyone from Counsel's

office, and the discussion revolved solely around payment. Applicant testified that prior to the plea, Counsel told him to be ready to plea to fifteen years, and that Counsel was adamant about the fifteen year term. Applicant testified that the solicitor had offered him a ten year plea while he was represented by Meetze. Applicant testified Counsel never went over the State's evidence with him, and that he had to write his own Rule 5 and *Brady* motion. Applicant testified he never had a chance to ask Counsel any questions. Applicant testified he did not understand how he could still be charged with armed robbery if the weapon charge was dismissed. Applicant testified he and Counsel never discussed his statement.

On cross-examination, Applicant testified he never wanted to go to trial. He testified he pled guilty because he was scared he would receive a longer sentence if he was convicted at trial. Applicant admitted he told the plea judge he was satisfied with Counsel and had no complaints about his representation. Upon further questioning, Applicant admitted he had not been truthful with the plea judge when he told him he was satisfied with Counsel's performance.

Counsel testified he has been practicing law for forty-five years, and eighty percent of his practice is devoted to criminal defense. Counsel testified Applicant's girlfriend retained him because she was friends with Counsel's assistant. Counsel testified he met with Applicant multiple times prior to the plea. Counsel testified he had no trouble getting the Rule 5 and *Brady* materials, and that he or his associate went over all of the discovery materials with Applicant. Counsel testified Applicant always wanted to plead guilty, and he explained to Applicant that the mandatory minimum was ten years, which Applicant received. Counsel testified he discussed the elements of armed robbery with Applicant and reviewed the constitutional rights he was waiving by pleading guilty. Counsel testified he never had any trouble communicating with Applicant,

and he never seemed to have trouble understanding their discussions. When Counsel was asked if he discussed Applicant's possible defenses, he responded Applicant did not have any legitimate chance to overcome the charges against him. Counsel testified Applicant went into a Papa John's pizza restaurant and robbed it, and before leaving with the money, Applicant apologized to the employees for robbing them. Counsel testified he explained that armed robbery carried a mandatory 85%, and he explained serious/most serious offenses as well as strikes to Applicant.

On cross-examination, Counsel testified he thought Applicant robbed the store to purchase Christmas presents for his children. When reminded the robbery took place in May, Counsel acknowledged it may have been birthday presents Applicant intended to purchase. Counsel testified he came to represent Applicant because Counsel's assistant told him her good friend's boyfriend was in trouble and asked if he would help. Counsel testified he did not remember the specific date he began representing Applicant. Counsel testified he notified the solicitor's office, not the clerk's office that he was representing Applicant. Counsel testified he usually reviews the discovery for a week or so before he goes and discusses it with his clients. Counsel testified he met with Applicant a few times, as did his associate. Counsel testified his strategy was to get Applicant the least amount of time he could on the armed robbery charge, and that is what he did by pleading to the mandatory minimum.

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 able to articulate his strategy in obtaining a favorable plea for Applicant. By Applicant's own admission, he was untruthful with the plea

judge, so this Court must evaluate his testimony at the PCR hearing with that in mind. This Court finds Counsel met with Applicant an adequate number of times and was familiar with the discovery materials. 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. 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), SCRPC, 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 complete service of his sentence.

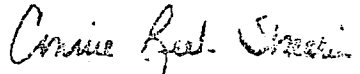
AND IT IS SO ORDERED this 26 day of May 2015.

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


D. CRAIG BROWN
Presiding Judge
Twelfth Judicial Circuit

Florence, South Carolina

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FLORENCE COUNTY, S.C.

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