



DANIEL A. SELWA, II
Attorney at Law, L.L.C.

RECEIVED

JUN 30 2015

S.C. SUPREME COURT

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June 25, 2015

Daniel E. Shearouse
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Supreme Court
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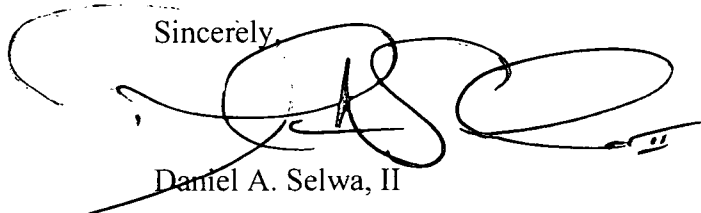
Re: Saire Castro #352370 v. State of South Carolina
2013-CP-26-3626

Dear Mr. Shearouse:

Enclosed please find the original Notice of Appeal in the above-entitled action and one copy. Please file and return the copy to me in the self addressed stamped envelope enclosed.

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

Sincerely,



Daniel A. Selwa, II

RECEIVED

THE STATE OF SOUTH CAROLINA
In The Supreme Court

JUN 30 2015

APPEAL FROM Horry County
Court of Common Pleas

S.C. SUPREME COURT

Honorable G. Thomas Cooper, Jr., Circuit Court Judge

Case No.: 2013-CP-26-3626

Saire Castro #352370, Petitioner,

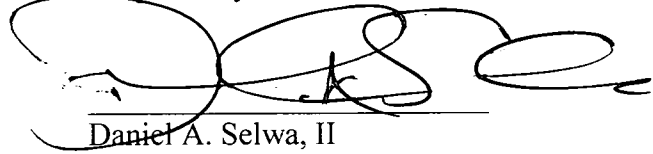
v.

State of South Carolina, Respondent.

NOTICE OF APPEAL

The Petitioner appeals the Honorable G. Thomas Cooper, Jr., April 27, 2015, order, denying the Applicant's Petition for post-conviction relief. 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,



Daniel A. Selwa, II
1053 London Street, Suite A
Myrtle Beach, SC 29577
Attorney for the PCR Applicant

June 25, 2015

Other counsel of record:

Alan Wilson, Attorney General

Joshua L. Thomas, Assistant Attorney General

Post Office Box 11549

Columbia, SC 29211-1549

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM Horry COUNTY
Honorable G. Thomas Cooper, Jr., Circuit Court Judge

Case No.: 2013-CP-26-3626

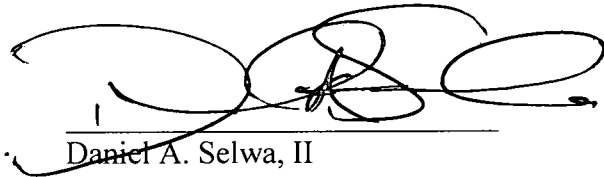
Saire Castro #352370, Petitioner,

v.

State of South Carolina, Respondent.

PROOF OF SERVICE

I, Daniel A. Selwa, II, certify that I have served the within Notice of Appeal on the Respondent, the State of South Carolina, by depositing a copy of the same in the United States Mail, postage prepaid, addressed to his attorney of record, Alan Wilson, Attorney General, Post Office Box 11549, Columbia, SC 29211-1549. I further certify that all parties required by Rule to be served have been served this 25th day of June 2015.



Daniel A. Selwa, II
1053 London Street, Suite A
Myrtle Beach, SC 29577
Attorney for the PCR Applicant

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Saire Castro, #352370,)

Case No. 2013-CP-26-3626

Applicant,)

v.)

State of South Carolina,)

Respondent.)

ORDER OF DISMISSAL

FILED
HORRY COUNTY
2015 MAY -5 PM 3:00
LANIE HIGGINS-WARD
CLERK OF COURT

This matter comes before the Court by way of an Application for Post-Conviction Relief filed May 24, 2013. Respondent made a timely Return on or about October 23, 2013. The Court convened an evidentiary hearing into the matter on February 4, 2015, at the Horry County Courthouse. Applicant was present at the hearing and represented by Daniel A. Selwa II, Esquire. Joshua L. Thomas, 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, Randall K. Mullins, Esquire, also testified. The Court had before it a copy of the plea transcript, the records of the Horry County Clerk of Court regarding the subject conviction, 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 presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. In August 2012, the Horry County Grand Jury indicted Applicant for murder (2012-GS-26-2937). Randall K. Mullins, Esquire

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("plea counsel"), represented Applicant. On September 12, 2012, Applicant pled guilty to the lesser included offense of voluntary manslaughter. The Honorable J. Derham Cole sentenced Applicant to thirty (30) years imprisonment. Applicant did not appeal his plea or sentence.

II. ALLEGATIONS

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

1. "Applicant was denied the right to effective assistance of counsel guaranteed by the Sixth and 5th and 14th Amendments, when trial counsel failed to investigate. Counsel only met with applicant two times during his stay at detention, 'Jail.' Counsel failed to request Blair Hearing to determine Applicants state of mind at time of offense. Counsel was ineffective in that counsel did not evaluate applicant applicants educational background to determine if applicant could knowingly and intelligently take a plea."

At the evidentiary hearing, Applicant proceeded on only the allegations of ineffective assistance of plea counsel for failure to investigate.

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. The Court has weighed the testimony accordingly. Generally, the Court finds plea counsel's testimony credible, and finds Applicant's testimony not credible. 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 plea counsel failed to investigate possible defenses. He recalled

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reviewing all discovery with plea counsel. Applicant testified his discovery did not include any information that the victim had a gun and drugs in his possession at the time Applicant shot him. He recalled discussing the "stand your ground" law with plea counsel. Applicant testified he explained to plea counsel that he shot the victim after the victim pulled a gun on his co-defendant. He recalled plea counsel explaining the law did not protect him because he was not acting lawfully leading up to the shooting. Applicant testified he could have been convicted of voluntary manslaughter if he had gone to trial, but he recalled understanding a plea was better than a trial in his case.

Plea counsel testified he has been a practicing attorney since 1986. He recalled meeting with Applicant at least seven (7) times prior to the plea. He recalled personally reviewing discovery with Applicant, as well as sending a copy to a relative. Plea counsel testified Applicant believed he acted in defense of his co-defendant. Plea counsel testified he explained self-defense, defense of others, and "stand your ground" to Applicant. Plea counsel further testified he did not think Applicant could avail himself of any of these defenses because he went to the victim's property for a confrontation. Plea counsel testified he was familiar with the victim's girlfriend's testimony that she removed drugs and a gun from the victim's body before the police arrived. He recalled discussing the girlfriend's actions with Applicant.

Plea counsel testified he advised Applicant a plea was in his best interest. He recalled explaining to Applicant the difference between murder and voluntary manslaughter. Plea counsel also recalled explaining the fact the plea offer was without negotiations or recommendations, and the judge would determine the sentence. Plea counsel testified he advised Applicant the ultimate decision to plea was Applicant's to make.

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B. Ineffective Assistance of Plea Counsel

In a 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 plea counsel as a ground for relief, Applicant must prove plea counsel's "conduct so undermined the proper functioning of the adversarial process" that the plea proceedings "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 plea 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 plea 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 plea counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove plea counsel's performance was deficient. Id. Under this prong, the Court measures plea counsel's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, plea 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. In the context of

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a guilty plea, Applicant must show there is a reasonable probability that, but for plea 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).

The Court finds Applicant failed to meet his burden to prove plea counsel ineffective. The Court finds plea counsel's testimony very credible, and gives it great weight. Correspondingly, the Court finds Applicant's testimony not credible. Failure to conduct an independent investigation is not *per se* ineffective assistance of counsel, especially where an investigation would not have uncovered any helpful information. See Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998). Here, Applicant has not shown how a further investigation would have uncovered any information to assist his defense. Trial counsel was fully aware of the facts regarding the missing gun and drugs. He reviewed the facts of this case thoroughly with Applicant prior to his plea. Applicant understood the facts were not favorable to his presentation of an affirmative defense. He also understood, as he testified at the hearing, that a conviction for voluntary manslaughter was the best case scenario if he went to trial. However, he was also faced with the likelihood of being convicted of murder. Under the facts of this case, Applicant has not demonstrated how a further investigation would have changed his decision to plead guilty. See Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009) (applicant must show "something that would have affected counsel's advice to [the applicant] to accept the plea bargain offered or that would have caused [the applicant] to decline to accept it").

Regardless, Applicant admitted his guilt at the guilty plea and indicated he was satisfied with counsel's representation. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) ("A guilty plea is a solemn, judicial admission of the truth of the charges against an

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individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. 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." (citations omitted)). Applicant admitted at the evidentiary hearing he knew the victim had a gun. He also admitted he told plea counsel the victim had a gun. Thus, he cannot now claim his plea was entered with no understanding of the facts regarding the missing gun and drugs. See Whetsell v. State, 276 S.C. 295, 297, 277 S.E.2d 891, 892 (1981) (knowing and voluntary plea waives non-jurisdictional defects and defenses, including challenges to the sufficiency of the evidence (citing Rivers v. Strickland, 264 S.C. 121, 213 S.E.2d 97 (1975); State v. Fuller, 254 S.C. 260, 174 S.E.2d 774 (1970))); Kolle v. State, 386 S.C. 578, 597 n.7, 690 S.E.2d 73, 83 n.7 (2010) (Kittredge, J., dissenting) (an inmate should not be able to collaterally attack a plea where counsel's alleged deficiency was known at the time of the plea and the inmate lied about counsel's performance at the plea). Accordingly, the Court finds trial counsel conducted a proper investigation, adequately conferred with Applicant, and was thoroughly competent in his representation.

C. 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 his attorney'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, his attorney 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 must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 27 day of April, 2015.



THE HONORABLE C. THOMAS COOPER, JR.
Presiding Judge

Cooper, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)
)
SAIRE CASTRO, #352370)
)
)
vs)
)
STATE OF SOUTH CAROLINA,)
)
)
Respondent.)
_____)


IN THE COURT OF COMMON PLEAS
2013-CP-26-3626

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a filed copy of the Order of Dismissal, in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Daniel A. Selwa, II, Esquire
1053 London St., Suite A
Myrtle Beach, SC 29577

DATED this 19th day of May, 2015.

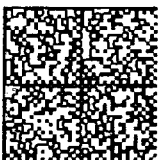

Norma Bigbee, Legal Assistant
For Respondent



DANIEL A. SELWA, II
Attorney at Law, L.L.C.

1053 London Street, Suite A
Myrtle Beach, SC 29577

Daniel E. Shearouse
Clerk of Court – SC Supreme Court
Supreme Court
P.O. Box 11330
Columbia, SC 29211



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