



LAW OFFICE OF
JEREMY A. THOMPSON
LLC

June 29, 2015

RECEIVED

JUL 01 2015

S.C. SUPREME COURT

The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
P.O. Box 11330
Columbia, SC 29211-1330

RE: Samuel Thompson, Jr., #124650 v. State of South Carolina; 2013-CP-10-5744

Dear Mr. Shearouse:

Enclosed please find the original and two (2) copies of my Notice of Appeal in the above-captioned action. I would appreciate your filing the original, clocking the copies, and returning the two (2) clocked copies to me in the envelope provided. I would note that Judge Griffith issued a written Order of Dismissal in this case which was filed with the Charleston County Clerk of Court's Office on June 11, 2015. A copy of that Order is also enclosed. Although I was retained to represent Mr. Thompson on his PCR action, he is seeking court-appointed counsel for this appeal. In accordance with Rule 608, SCACR, I will be providing Appellate Defense with my client's completed affidavit of indigency so that Appellate Defense can determine whether or not they will represent him on this appeal. With my thanks for your assistance in this matter and my best regards, I am,

Yours sincerely,


Jeremy A. Thompson
Attorney and Counselor at Law

JAT/
Enclosures

cc: J. Rutledge Johnson, Assistant Attorney General (w/ Notice of Appeal)
Sharon Graham, South Carolina Office of Appellate Defense (w/ Notice of Appeal)
Samuel Thompson, Jr., #124650 (w/ Notice of Appeal)
Carolyn Thompson (w/ Notice of Appeal)

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Eugene C. Griffith, Jr., Presiding Judge

2013-CP-10-5744

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JUL 01 2015

S.C. SUPREME COURT

SAMUEL THOMPSON, JR., #124650,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Samuel Thompson, Jr., #124650, appeals the Order of Dismissal denying his Application for Post-Conviction Relief filed June 11, 2015, and received by counsel on June 17, 2015, issued by the Honorable Eugene C. Griffith, Jr., presiding judge.



Jeremy A. Thompson
Attorney and Counselor at Law

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jeremyatlaw@yahoo.com E-mail

ATTORNEY FOR PETITIONER

This 29th day of June, 2015.

Other Counsel of Record:
J. Rutledge Johnson, Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211
Attorney for Respondent
(803) 734-3737

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Eugene C. Griffith, Jr., Presiding Judge

2013-CP-10-5744

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S.C. SUPREME COURT

SAMUEL THOMPSON, JR., #124650,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

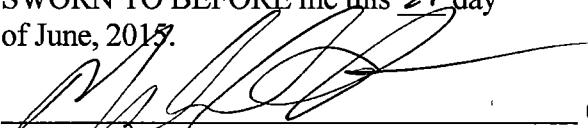
CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the Petitioner's Notice of Appeal in the above-entitled case has been served upon opposing counsel, J. Rutledge Johnson, Assistant Attorney General, P.O. Box 11549, Columbia, SC 29211, by mailing in an envelope properly addressed with postage prepaid on this 29th day of June, 2015.



Jeremy A. Thompson
Attorney and Counselor at Law

SWORN TO BEFORE me this 29th day
of June, 2015.



(L.S.)
Notary Public for South Carolina

My Commission Expires: 7/10/2022

cc
AG
AT

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
Samuel Thompson, #124650,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)

IN THE COURT OF COMMON PLEAS
2013-CP-10-5744

ORDER OF DISMISSAL

FILED
2015 JUN 11 PM 12:21
JULIE J. PARSONS
CLERK OF COURT

Presiding Judge: The Honorable Eugene C. Griffith, Jr.
Applicant's Attorney: Jeremy Thompson, Esquire
Respondent's Attorney: Ashleigh R. Wilson, Esquire
Plea Counsel: James Smiley, IV, Esquire
Date of Hearing: February 17, 2015
Court Reporter: Karen Anderson

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed September 27, 2013. The Respondent made its Return on February 10, 2014. An evidentiary hearing into the matter was convened on February 17, 2015 at the Charleston County Courthouse. The Applicant was present at the hearing and represented by Jeremy Thompson, Esquire. Ashleigh R. Wilson, Esquire, of the South Carolina Attorney General's Office represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. The Applicant's plea counsel, James Smiley, IV, Esquire, also testified at the hearing. This Court had before it the Applicant's trial and guilty plea transcripts, the records of the Charleston County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the PCR application, and Respondent's Return thereto.

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PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Charleston County. The Applicant was indicted at the March 2012 term of the Charleston County Grand Jury for reckless homicide (2012-GS-10-1466) and felony driving under the influence (2012-GS-10-1468). The Applicant was subsequently indicted for felony driving under the influence in November 2012 (2012-GS1-7652). The Applicant was represented by James Smiley, Esquire.

On January 9, 2013, the Applicant pled guilty to felony driving under the influence under indictment #2012-GS-10-7652. The two remaining indictments were *nolle prossed*. The Applicant was sentenced by the Honorable Deadra L. Jefferson to confinement for a period of nine (9) years. The Applicant did not appeal his conviction or sentence.

ALLEGATIONS

The Applicant alleges he is being held in custody unlawfully for the following sole reason:

1. Ineffective assistance of counsel.
 - a. Counsel advised the Applicant that if he pled guilty he would receive no more than a three to five year sentence for felony DUI.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon his or her credibility. This 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).

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Summary of the Testimony

The Applicant Samuel Thompson was present and testified he was represented by Jim Smiley. He testified he hired Smiley shortly after arrest to handle his bond hearing. The Applicant testified he went to speak to counsel at his office at least three times. He testified they discussed the difference between a plea and a trial. The Applicant testified counsel told him a guilty plea carries a one to twenty-five year sentence. He testified he told counsel he would accept a guilty plea offer for a sentence between three to five years. He testified there was no plea offer of three to five years so he proceeded to trial.

The Applicant testified he was told by counsel during his trial that if he pled guilty and stopped his trial he would definitely get a sentence between three to five years. He testified he accepted the offer and did not know the plea was to an open sentence between one and twenty-five years.

The Applicant testified he recalls the Court telling him he could face one to twenty-five years at his guilty plea. He testified he realized he could be sentenced to one to twenty-five years, but thought the three to five years counsel told him was definite. The Applicant also testified he recalled telling the Court that he was not promised anything to plead guilty. He testified he did not want to say anything about the three to five year sentence and thought everything was taken care of.

Plea counsel James Smiley, IV was present and testified he was retained to represent the Applicant shortly after arrest. He testified he represented the Applicant over one year and met with him at least three times. Counsel testified he reviewed the discovery materials with the Applicant and they discussed the elements of the charges the Applicant was facing and what the State was required to prove to convict him.

Counsel testified the State made no plea offers to the Applicant. He testified he told the Applicant any guilty plea would be straight up and that the Applicant was facing between one and twenty-five years. He testified they had developed a defense for trial and at the time there was no benefit to be gained by the Applicant pleading straight up.

Counsel testified after the start of the trial, the trial judge called them in to chambers to discuss a guilty plea. Counsel testified he was concerned that any long term prison sentence would be a life sentence for the Applicant. He testified in chambers, he told the trial judge he thought the Applicant could only do three years in prison and the State told the trial judge the victim would be pleased with something around a seven year sentence. Counsel testified the trial judge indicated she could accommodate the range preferred by the Applicant and the State. Counsel testified after speaking with the judge in chambers, he felt the Court would likely sentence the Applicant between the three years he requested and the seven years requested by the State.

Counsel testified he then met with the Applicant and his family. He testified he told them the State was not offering anything and conveyed the conversation he had in chambers with the judge. He testified he told them the trial testimony so far was not good, but would not kill them. He testified he told the Applicant that if he was going to plea, he would guess that the trial judge would lean towards a sentence between three and seven years. Counsel testified he told the Applicant that if he were to be convicted by the jury that he did not know what the sentence of the court would be.

Counsel testified the Applicant was well aware that he was facing between one and twenty-five years. Counsel testified he advised the Applicant that it was in his best interest to avail himself to a lesser sentence and that if he pled now he would likely get three to seven years.

He testified he conveyed to the Applicant what he believed his sentence would likely be. He testified he gave the Applicant no guarantee as to what sentence the judge would give.

Counsel testified the Applicant relied on his advice and pled guilty. He testified he was shocked at the Court's nine year sentence. He testified he considered a motion to reconsider, but when he approached the bench after the plea the Court indicated the Applicant was given a break with the nine year sentence he received.

Ineffective Assistance of Counsel

The Applicant alleges that he received ineffective assistance of counsel. In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged 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 (1984); Butler, 286 S.C. 441, 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. The 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 to evaluate allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Id. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. 668). Second, counsel's 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. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243-44 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). 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) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)). When a defendant pleads guilty on the advice of counsel, the plea may only be attacked through a claim of ineffective assistance of counsel. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2002) (citations omitted).

Counsel is a criminal practitioner who has extensive experience in the trial of serious offenses. Counsel conferred with the Applicant on numerous occasions. During conferences with the Applicant, counsel discussed the pending charges, the elements of the charges and what the State was required to prove, and possible defenses or lack thereof. The record reflects that Applicant's plea was entered freely, voluntarily, knowingly, and intelligently. The Applicant acknowledged that he was guilty of these offenses. The Applicant told the plea court that he was

satisfied with his attorney and that no one had threatened him or promised him anything to plead guilty.

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds that Applicant's attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, 466 U.S. at 668; Butler, 286 S.C. 441, 334 S.E.2d 813. This Court further finds counsel adequately conferred with the Applicant and provided thorough representation. This Court finds that counsel's representation did not fall below an objective standard of reasonableness.

The Applicant claims counsel provided ineffective assistance of counsel by advising the Applicant that if he pled guilty in the middle of his trial he would receive a sentence between three and five years. This Court finds this allegation is without merit. As an initial matter, this Court finds plea counsel's testimony to be credible. This Court does not find to be credible the Applicant's testimony. This Court finds counsel's performance was not deficient. Counsel's advice to the Applicant regarding his belief that the Applicant would receive a sentence between three and seven years if he pled guilty was not improper. In Griffin v. State, the Supreme Court held counsel's performance was not deficient when counsel related his belief to the defendant that the court would give a twenty-two year sentence instead of the thirty year sentence the defendant actually received. 361 S.C. 173, 177, 604 S.E.2d 394, 396 (2004). In both Griffin and the Applicant's case, counsel told the defendant the plea court had indicated it would likely give a certain sentence, counsel made no promises or guarantees as to what sentence the defendant would receive, and the defendant was informed by both counsel and the plea court of the

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maximum sentences he could receive. Id. This Court finds the Supreme Court's holding in Griffin dispositive in this matter. The Applicant's wishful thinking regarding sentence does not render his plea invalid or counsel's advice improper. See Wolfe v. State, 326 S.C. 158, 485 S.E.2d 3677 (1997). Therefore, the Applicant has failed to carry his burden of proving counsel's performance was deficient in this regard.

This Court finds further the voluntariness of the Applicant's guilty plea was not affected by counsel's advice regarding sentence. This Court finds the Applicant's guilty plea was entered freely and voluntarily and any alleged misadvice by counsel was cured by the plea colloquy¹. The record reflects the Court advised the Applicant that the charge he was pleading guilty carried a twenty-five year maximum sentence and a one year minimum sentence. (Plea Tran. 6:18-21). The Applicant also told the Court he had not been promised anything to get him to plead guilty. (Plea Tran. 11:18-21). The Court also advised the Applicant of his right to a jury trial, right to remain silent, and right to confront his accusers. (Plea Tran. 6:18-21, 9:21-10:9). The Applicant's plea colloquy reflects an awareness by the Applicant of the potential range of sentences he was facing and an understanding that he had not been promised anything in return for his guilty plea. Therefore, this Court finds the Applicant has failed to carry his burden of proving that but for counsel's advice regarding sentencing he would not have pled guilty. This Court finds further the record reflects the Applicant's guilty plea was entered freely and voluntarily. This application for

¹ See Bennett v. State, 371 S.C. 198, 205 n. 6, 638 S.E.2d 673, 676 n. 6 (2006) (reversing grant of PCR and stating that "even where counsel offers misinformation, this deficiency can be cured where the trial court properly informs the defendant about the sentencing range"); Burnett v. State, 352 S.C. 589, 576 S.E.2d 144 (2003) (reversing grant of PCR and holding that even if plea counsel erroneously informed defendant that his sentence would only be three years, the information conveyed at the plea hearing cured any misconception caused by counsel's alleged inaccurate advice); Moorehead v. State, 329 S.C. 329, 333, 496 S.E.2d 415, 417 (1998) (reversing grant of PCR on the ground that there was no evidence to support the PCR judge's finding that applicant received ineffective assistance of counsel due to erroneous sentencing advice where "any misconception was cured at the plea hearing"); Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997) (reversing grant of PCR and recognizing that in considering an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing).

post-conviction relief is denied and dismissed with prejudice.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test, specifically that counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that counsel committed either errors or omissions while representing the Applicant. The Applicant failed to show that counsel's performance was deficient. The Applicant's complaints concerning counsel's performance are without merit and are denied and dismissed.

All Other Allegations

As to any and all allegations that may have been raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant abandoned such allegations. Therefore, they are hereby dismissed.

CONCLUSION

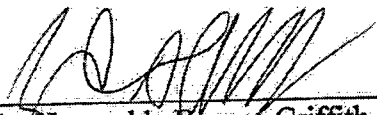
Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner, nor was the Applicant prejudiced by counsel's representation. Therefore, this application for PCR must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of written notice of entry of this Order to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely served and filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

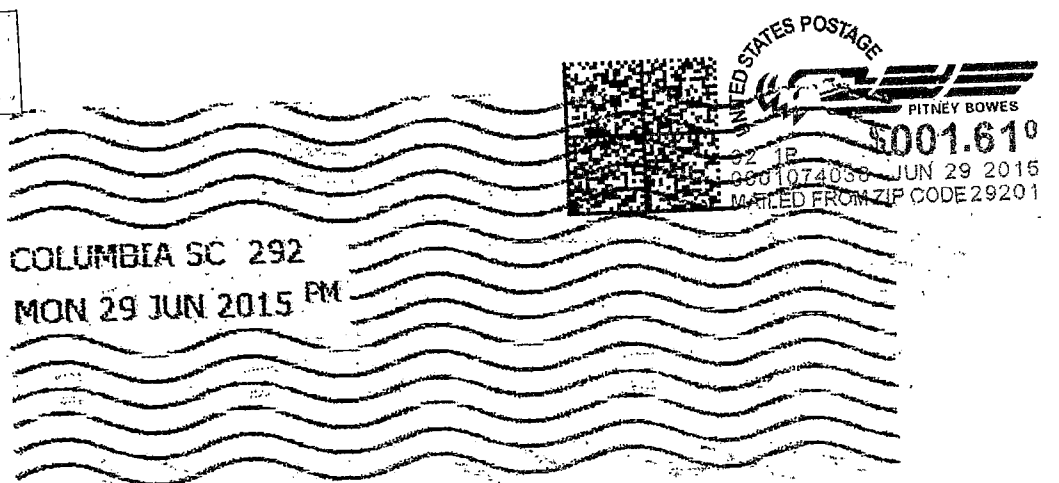
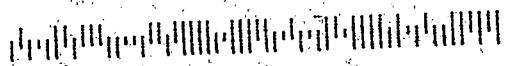
AND IT IS SO ORDERED this 3rd day of June, 2015



The Honorable Eugene Griffith, Jr.
Presiding Judge
9th Judicial Circuit

Newberry, South Carolina.

of Jeremy A.
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C 29211



COLUMBIA SC 292
MON 29 JUN 2015 PM

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
P.O. Box 11330
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