

IN THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT  
APPEAL FROM LEXINGTON COUNTY  
COURT OF COMMON PLEAS  
DEANDREA G. BENJAMIN, CIRCUIT COURT JUDGE  
2013-CP-32-4162

**RECEIVED**

JUL - 9 2015

**S.C. Supreme Court**

Henry Y. Caudle, #356436,.....Petitioner.

vs

The State of South Carolina,.....Respondent.

**NOTICE OF APPEAL**

Henry Y. Caudle appeals the Honorable DeAndrea G. Benjamin's June 11, 2015, order denying post-conviction relief to the Petitioner. This order was clocked on June 25, 2015 and undersigned counsel received notice of entry of the order on July 7, 2015. A copy of the order on appeal is attached to this notice.

Respectfully submitted,



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Anna R. Good  
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Attorney for the Petitioner.

July 9, 2015

Clayton Mitchell  
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Post Office Box 11549  
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**PROOF OF SERVICE**

I, Anna Good, certify that I have today served the within Notice of Appeal upon the Respondent by depositing a copy of it in the United States Mail, postage prepaid, addressed to the attorney of record, Clayton Mitchell, P.O. Box 11549, Columbia, South Carolina 29211-1549. I further certify that all parties required by Rule to be served have been served this 9<sup>th</sup> day of July 2015.

Respectfully submitted,



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Anna R. Good, Esquire  
Law Office of Anna Good, LLC  
PO Box 7284  
Columbia, South Carolina 29202

STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

FILED

IN THE COURT OF COMMON PLEAS  
ELEVENTH JUDICIAL CIRCUIT

Henry Y. Caudle, #356436

JUN 25 A 11: 28

2013-CP-32-04162

Applicant: BETH A. CARRIGG  
CLERK OF COURT  
LEXINGTON SC

v.

ORDER OF DISMISSAL

ORIGINAL

State of South Carolina,

Respondent.

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed December 2, 2013. Respondent made its Return on May 21, 2014, requesting an evidentiary hearing be convened. Anna R. Good, Esquire, was appointed by the Lexington County Clerk of Court. An evidentiary hearing was held on October 15, 2014, at the Lexington County Courthouse. Applicant was present and represented by Counsel Good. J. Clayton Mitchell, Esquire, of the South Carolina Attorney General's Office represented Respondent.

At the PCR hearing, Applicant testified on his own behalf. Also testifying was Applicant's plea counsel Sally J. Henry, Esquire. The Court had before it the Lexington County Clerk of Court records, Applicant's South Carolina Department of Corrections records, the PCR application, the Return, 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 Clerk of Court for Lexington County. Applicant was indicted at the January 2013 term of the Court of General Sessions for Lexington County for assault and battery, high and aggravated nature (ABHAN) (2013-GS-32-0015). Applicant was represented

by Counsel Henry. On August 13, 2013, Applicant entered a guilty plea as indicted. A Blair<sup>1</sup> hearing was conducted. The Honorable Edward B. Cottingham sentenced Applicant to a term of twelve (12) years' imprisonment suspended upon the service of six (6) years' service and six (6) years' probation. Applicant did not appeal his sentence or conviction.

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

1. Involuntary guilty plea.

## **II. SUMMARY AND EVIDENCE PRESENTED AT THE PCR HEARING**

### **Applicant's Testimony**

Applicant testified he was sentenced to twelve (12) years imprisonment suspended to six (6) years' probation. He testified Counsel represented him for close to a year and that they met with each other two times: once in November 2012 and then in June 2013. He claimed he tried to get in touch with Counsel and wrote her letters. There was a motion to relieve counsel hearing held before the Honorable William P. Keesley. He noted that he believed Counsel should have met with him more frequently, but told the plea court that he was fully satisfied with her services.

Applicant testified that he did agree to ultimately plead guilty to ABHAN. He claimed that he did not feel well at the plea hearing and that he had been suffering from seizures. He conceded that the plea judge advised him that he was pleading guilty to ABHAN and that the State had recommended a cap of twelve (12) years. He also acknowledged that in exchange for the plea the State dismissed a kidnapping charge. He also acknowledged an "Affidavit of

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<sup>1</sup>State v. Blair, 275 S.C. 529, 273 S.E.2d 536 (1981)

Defendant for Guilty Plea” was admitted at the plea hearing, which confirmed Applicant understood the plea agreement and its consequences.

### **Counsel Sally J. Henry’s Testimony**

Counsel testified she was appointed to represent Applicant through her position at the Lexington County Public Defenders Office. She testified that she reviewed the charge with Applicant and met with him multiple times. She detailed her discussion with Applicant when reviewing the plea affidavit that was admitted at the plea hearing. In that affidavit Applicant acknowledged that he understood the plea offer, the waiver of his constitutional rights, the nature of the charges and consequences of pleading guilty, and that he must voluntarily plead guilty. Counsel also testified that in her opinion Applicant fully understood the proceedings and was competent to enter the plea.

### **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). Where 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).

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, 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.

### **Involuntary and Unintelligent 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, 431 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 plead guilty knowingly and voluntarily. This Court finds this contention without merit. This Court finds the record reflects Applicant was advised of the waiver of his constitutional rights by the plea court. This Court finds very credible Counsel's testimony regarding her 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 intent to plead guilty was made clear to the plea judge. Applicant was

fully informed of the nature and consequences of his plea by his attorney and was advised further by the plea court. The plea court advised Applicant of the State's recommendation, the maximum possible punishment, and the specifics of the ABHAN charge. The plea court also had an extensive colloquy with Applicant on whether he was satisfied with Counsel where he concluded he was fully satisfied. This Court also finds the plea court expressly took into consideration the competency evaluation submitted in formulating the sentence. (Plea Trans. p. 17, lines 13-16). This Court also relies on the affidavit introduced at the plea hearing in finding Applicant was thoroughly advised of all the rights he was waiving and that he had a full understanding of the ABHAN charge. 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 any such allegations.

#### **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 counsel's 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, 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 11 day of June, 2015.

  
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DEANDREA G. BENJAMIN  
Presiding Judge

Columbia, South Carolina