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July 22, 2015

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

RECEIVED

JUL 24 2015

S.C. Supreme Court

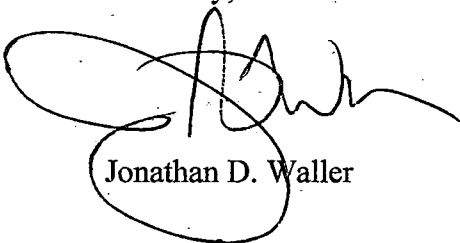
Re: Carylnias Pettigrew vs. State of South Carolina
C/A No: 2013-CP-21-0327

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. Pettigrew 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

APPEAL FROM FLORENCE COUNTY
Edgar W. Dickson, Circuit Court Judge

2013-CP-21-0327

RECEIVED

JUL 24 2015

S.C. Supreme Court

Carylnias Pettigrew, #351719,

Appellant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Carylnias Pettigrew, #351719, appeals the Order of Dismissal denying his Application for Post-Conviction Relief filed July 6, 2015, issued by the Honorable Edgar W. Dickson, Presiding Judge, Twelfth Judicial Circuit.



Jonathan D. Waller

Giese Law Firm
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jwaller@thegieselawfirm.com
ATTORNEY FOR PETITIONER

This 22 day of July, 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

RECEIVED

JUL 24 2015

APPEAL FROM FLORENCE COUNTY
Edgar W. Dickson, Circuit Court Judge

S.C. Supreme Court

2013-CP-21-0327

Carylnias Pettigrew, #351719,

Appellant,

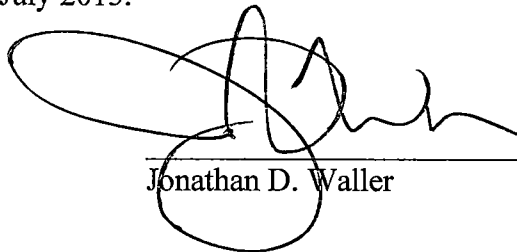
v.

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 22 day of July 2015.



Jonathan D. Waller

SWORN TO BEFORE me this 22 day
of July, 2015.

Charlotte Reese
Notary Public for South Carolina

My Commission Expires: 1/24/2021

FORM 4

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

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2013CP2100327

Carlynias Marguis
 Pettigrew

South Carolina State of

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: Plaintiff Defendant
 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 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: _____

FILED
 JUL - 7 AM 11:37
 CLERK OF COURT C.P. & G.S.
 FLORENCE COUNTY, SC

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 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

7/7/2015

CPFORM4Cm
 SCCA SCRPC Form 4C (Revised 3/2013)

CERTIFIED: Judge Code COPY

Date

Cornie Reel Shearin

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

For Clerk of Court Office Use Only

This judgment was entered on **July 6, 2015**, and a copy mailed first class or placed in the appropriate attorney's box on **July 7, 2015**, to attorneys of record or to parties (when appearing pro se) as follows:

Jonathan D Waller
1315 Blanding Street
Columbia, SC 29201

John Croom Colvin Hunter
PO Box 11549
Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Connie Reel-Shearin

Court Reporter

Connie Reel-Shearin - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT

Carylnias Pettigrew,
S.C.D.C. No. 351719,

Case No. 2013-CP-21-0327

Applicant,

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

FILED
2015 JUL -6 PM 12:23
CONNIE REEL-SHEARIN
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

Procedural History

The Applicant is presently confined in SCDC pursuant to orders of commitment from the Florence County Clerk of Court. Applicant was indicted at the July 2011 term of the Florence County Grand Jury for murder (2011-GS-21-1187). Vick Meetze, Esquire, represented Applicant.

On July 26, 2012, Applicant pled guilty to the lesser included offense of voluntary manslaughter and was sentenced by the Honorable D. Craig Brown to thirty (30) years imprisonment. Applicant did not appeal his pleas or sentences.

Applicant filed a timely application for post-conviction relief (PCR) on February 5, 2013. An evidentiary hearing was held on October 9, 2014 at the Florence County Courthouse. Applicant was present and represented by Jonathan Waller, Esquire. The State was represented by Assistant Attorney General J. Croom Hunter, Esquire.

Allegations

Applicant alleges in his PCR application that he is being held in custody unlawfully for the following reasons:

- 1. Ineffective assistance of counsel.

CERTIFIED: A TRUE COPY

Connie Reel-Shearin

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

2. Involuntary guilty plea.

Summary of Testimony Presented

At the evidentiary hearing, Applicant testified on his own behalf. Respondent also presented testimony from trial counsel, Vick Meetze, Esquire (Counsel). As an initial matter, this Court finds Counsel's testimony credible and Applicant's testimony not credible. The Court also had before it a copy of the plea transcript, the Florence County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, and the return.

During the evidentiary hearing, Applicant testified he is twenty eight (28) years old and from Timmonsville, South Carolina. Applicant testified he was charged with murder. Applicant testified he met with Counsel three (3) times prior to his guilty plea. Applicant testified he and Counsel spoke about his discovery and a bond hearing. Applicant testified he received and went over the discovery in his case. Applicant testified he told Counsel he was not satisfied with taking a plea. Applicant testified Counsel told him he would "say anything to save his ass." Applicant testified Counsel never explained self-defense. Applicant testified he could not remember if Counsel discussed the elements of the charge. Applicant testified Counsel never discussed any possible defenses. Applicant testified there were no witnesses to the shooting except for Applicant and the victim. Applicant testified Counsel never discussed Applicant's statements or the possibility of their suppression. Applicant testified he did not recall discussing his waiver of rights. Applicant testified he decided to plead guilty based upon his family's influence and the fact that they said he was going to get life if he went to trial. Applicant testified the plea transcript reflects that he was not satisfied with Counsel. Applicant testified he and Counsel did not discuss any lesser-included offenses and that Counsel told him he would not be

able to get a jury charge for involuntary manslaughter. Applicant testified he wanted to utilize a "stand your ground" defense. Applicant testified he and Counsel never discussed challenging the State's evidence. Applicant testified the only evidence that he did not act in self-defense were his own statements that Counsel did not discuss attempting to suppress. Applicant testified he initialed a guilty plea affidavit. Applicant testified that he said on the affidavit that he was unsatisfied. Applicant testified he sent letters to the Commission on Lawyer Conduct complaining about Counsel. Applicant testified he did not get along with Counsel. Applicant testified he gave his statement to police before he was mirandized and that he was in shock. Applicant testified Counsel showed him his videotaped statement. Applicant testified he did not understand everything. Applicant testified he did not understand the difference between a negotiated and an open plea.

After Applicant's testimony, the State presented testimony from Vick Meetze (Counsel). Counsel testified he has been practicing criminal defense law since 2002. Counsel testified he recalled representing Applicant and he reviewed the file prior to the PCR hearing. Counsel testified he met with Applicant more than three times. Counsel testified he received all of the Rule 5 and Brady materials from the State and went over everything with Applicant. Counsel testified he went over the elements of murder, voluntary, and involuntary manslaughter with Applicant. Counsel testified he went over the reasons why a "Stand Your Ground" defense would not work in Applicant's case. Counsel also testified he explained to Applicant why he would not be able to get an involuntary manslaughter charge. Counsel testified he did file a motion for a bond hearing in Applicant's case. Counsel testified he was prepared to go to trial, but Applicant did not want to go to trial with him as defense counsel. Counsel testified it was Applicant's decision to plead guilty. Counsel testified Applicant admitted to shooting the victim

but claimed the victim attempted to run over him with his car. Counsel testified the evidence in the case did not support Applicant's version of events, but that the victim appeared to be attempting to flee from Applicant when he was gunned down. Counsel testified he did not have any concerns with Applicant's mental competency. Counsel testified he reviewed Applicant's waiver of rights with him. Counsel testified he discussed Applicant's statements with him but did not think there were any legal grounds on which the statements could successfully be suppressed. Finally, Counsel testified he discussed with Applicant the difference between a negotiated and an open plea.

On cross-examination, Counsel testified he discussed with Applicant the offer for voluntary manslaughter. Counsel testified he did not discuss the step by step procedures of a trial with Applicant. Counsel testified he did discuss with Applicant that by pleading guilty he was giving up his right to challenge the evidence. Counsel testified Applicant did call 911 after he shot the victim. Counsel testified he did not recall offhand the statement made by Applicant at the scene of the crime. Counsel testified it was his opinion that it was in Applicant's best interest to accept the State's plea offer. Counsel testified he received the video of Applicant's statement within two or three weeks of the plea, and he had enough time to prepare for trial.

Findings of Fact and Conclusions of Law

In a post-conviction relief action, the 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 counsel as a ground for relief, the applicant must prove "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. at 442, 334 S.E.2d at 814 (citing Strickland v. Washington, 466 U.S. 668 (1984)).

The proper measure of performance is whether the attorney 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)). Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The 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).

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).

Applicant alleges Counsel was ineffective for failing to advise Applicant that he could challenge the State's evidence against him. This Court finds this argument is without merit.

A. Argument

Counsel was not ineffective because in light of the testimony at the guilty plea and the evidentiary hearing. This Court finds Applicant knowingly and voluntarily waived his right to challenge the admissibility of his statement. This exact question was answered by the SC Supreme Court in Whetsell v. State, 276 S.C. 295, 277 S.E.2d 891 (1981). There, the applicants alleged their counsels were ineffective for failing to make a motion to suppress evidence. Whetsell, 276 S.C. at 296, 277 S.E.2d at 892. The Court held an applicant cannot raise allegations of ineffective assistance of counsel for failure to make a motion to suppress a statement where the applicant, at the time of the plea, "made an informed judgment as to whether the motion to suppress should be made and the guilty plea entered." Id. at 299, 277 S.E.2d at 893.

Applicant cites Shirley v. State, 411 S.E.2d 215 (1991) in furtherance of his argument that Counsel was ineffective for not informing him that his statements to police must have been made voluntarily and subject to a Jackson v. Denno hearing prior to the statements' admittance. However, the record clearly reflects that Applicant waived his right to challenge any evidence against him by pleading guilty. Counsel went over all of the evidence with Applicant and explained to Applicant why various defenses were unavailable. Counsel's testimony shows that Applicant would not have been able to mount a "stand your ground" defense or claim self-defense based on the evidence, including Applicant's own statements. Nor was involuntary manslaughter an option, based upon Counsel's testimony. Additionally, Counsel's testimony that he did not know of any legal basis on which Applicant's statements could have been suppressed further shows Applicant's allegations are groundless. Counsel's testimony reflects that he went over all of the evidence, elements, and charges with Applicant, and that Applicant made a

knowing, informed, and voluntary decision to plead guilty. Even Applicant's testimony reflects that he pled guilty because he wanted to avoid receiving a life sentence.

By pleading guilty with a full understanding of his right to challenge the admissibility of the statement, Applicant has waived collateral review of this issue. Id. at 297, 277 S.E.2d at 892 ("The general rule is that guilty pleas, freely and voluntarily entered, act as a waiver of all non-jurisdictional defects and defenses, including the claims of a violation of a constitutional right prior to the plea." (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))). Furthermore, plea counsel's "informed advice should not be subject now to retrospective examination." Id. at 299, 277 S.E.2d at 893. Instead, the record demonstrates Applicant pled guilty without challenging the statement in hopes of receiving the benefit of the negotiated sentence. See Bennett v. State, 371 S.C. 198, 204-05, 638 S.E.2d 673, 676 (2006) (counsel not ineffective for advising client to plea to avoid maximum penalty if convicted). Accordingly, Applicant's argument he did not understand the statements could have been challenged at trial is without merit.

The record contains significant probative evidence Applicant fully understood the risks and benefits of proceeding to trial and challenging the admissibility of his statement. These risks and benefits factored into his calculated decision to enter a guilty plea and waive any right to challenge the evidence against him. Accordingly, this Court finds the post-conviction relief application should be denied and dismissed with prejudice.

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 to complete service of his sentence.

AND IT IS SO ORDERED this 12th day of June



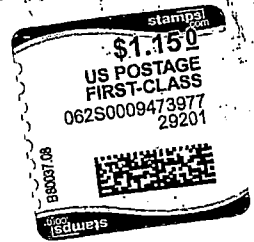
Edgar W. Dickson
Presiding Judge
Twelfth Judicial Circuit

FILED
2016 JUL -6 PM 12:23
CONNIE REEL-SHEARIN
C.C.P. & G.S.
FLORENCE COUNTY, SC

Orangeburg, South Carolina

CERTIFIED: A TRUE COPY
Connie Reel Shearin
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

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