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July 23, 2015

RECEIVED

JUL 27 2015

South Carolina Supreme Court
Post Office Box 11330
Columbia, SC 29211

S.C. Supreme Court

RE: *Landon Thomas Sanders v. State of South Carolina, Case #2013-CP-04-0294*

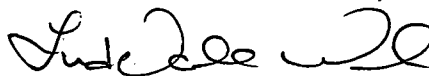
Dear Sir or Madam:

Please find enclosed the original and one (1) copy of the Appellant's Notice of Appeal and Proof of Service on J. Walt Whitmire of the Office Attorney General in connection with the above-referenced matter. Please file the original and return a clocked copy to my office in the enclosed self-addressed stamped envelope. Also enclosed is a copy of the Order of Dismissal.

Please contact me if you have any questions.

Sincerely,

Linda Vallar Whisenhunt, LLC



Linda Vallar Whisenhunt

LVW/
Enclosure

cc: Landon Thomas Sanders
J. Walt Whitmire, South Carolina Office of Attorney General
Kimberly McCall, South Carolina Commission on Indigent Defense

NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

J. Cordell Maddox, Jr., Circuit Court Judge

Case No. 2013-CP-04-294

Landon Thomas Sanders,
S.C.D.C. No. 236967

Appellant,

v.

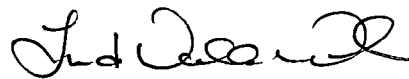
State of South Carolina,

Respondent.

NOTICE OF APPEAL

Landon Thomas Sanders appeals the denial of his Post Conviction Relief by the order of the Honorable J. Cordell Maddox, Jr., dated July 15, 2015 and filed July 16, 2015. Appellant received written notice of entry of this order on July 21, 2015.

July 23, 2015



Linda Vallar Whisenhunt
Linda Vallar Whisenhunt, LLC
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Attorney for Appellant

Other Counsel of Record:
J. Walt Whitmire
South Carolina Office of Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Attorney for Respondent
(803) 253-6283

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JUL 27 2015

S.C. Supreme Court

PROOF OF SERVICE OF A NOTICE OF APPEAL

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

J. Cordell Maddox, Jr., Circuit Court Judge

Case No. 2013-CP-04-0294

Landon Thomas Sanders,
S.C.D.C. No. 236967

Respondent,

RECEIVED

State of South Carolina,

Appellant.

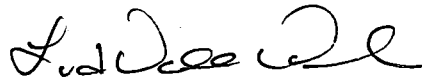
JUL 27 2015

S.C. Supreme Court

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on State of South Carolina by depositing a copy of it in the United States Mail, postage prepaid, on July 23, 2015, addressed to its attorney of record, Walt Whitmire, South Carolina Office of Attorney General, Post Office Box 11549, Columbia, South Carolina 29211.

July 23, 2015



Linda Vallar Whisenhunt
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213 South Main Street
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(864) 225-3125
Attorney for Appellant



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ANDERSON SC

2015 JUL 16 AM 10:03

COMMON PLEAS AND
GENERAL SESSIONS

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF ANDERSON) TENTH JUDICIAL CIRCUIT

Landon T. Sanders,)
S.C.D.C. No. 236967,) C.A. No. 2013-CP-04-294

A TRUE COPY
JUL 16 2015
Richard W. King
CLERK OF COURT

Applicant,)

v.)

State of South Carolina,)

Respondent.)

**ORDER OF DISMISSAL
(with prejudice)**

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on February 12, 2013. Respondent filed its responsive pleadings. An evidentiary hearing into the matter was convened on February 19, 2014 at the Anderson County Courthouse. Applicant was present at the hearing and was represented by Linda Whisenhunt, Esq. Respondent was represented by Walt Whitmire, Esq., of the Office of the Attorney General.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Anderson County Clerk of Court. Applicant was indicted at the June 2011 term of the Anderson County Grand Jury for two counts of murder (2011-GS-04-1030; -1031) and two counts of possession of a weapon during a violent crime (2011-GS-04-1032; -1033). Applicant was represented by Scott Robinson, Esq. On May 9, 2012, Applicant pled guilty as indicted. Applicant was sentenced by the Honorable R. Lawton McIntosh pursuant to negotiations to two terms of confinement for thirty years (30) for both indictments of murder, and five years for both indictments of possession of a weapon during a violent crime. The sentences were to be served concurrently. Applicant did not

appeal.

In his current Application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. The Circuit Court lacked subject matter jurisdiction to take his plea.
2. Ineffective Assistance of Counsel:
 - a. failure to investigate State's evidence and exculpatory evidence limited to ballistics, phone records, fingerprints, and witness statements;
 - b. failure to expend an sufficient amount of time discussing the consequences of pleading guilty with Applicant;
 - c. failure to object to the Circuit Court's lack of subject matter jurisdiction.

SUMMARY OF EVIDENCE AND TESTIMONY PRESENTED

(a) Applicant's Testimony

Applicant alleged counsel was ineffective for failing to investigate ballistics, fingerprints, phone records, and exculpatory statements made by witnesses. He testified that he recently obtained a copy of the State's discovery disclosures in his case. He stated that he was unaware of certain evidence that included phone records, text messages and fingerprints obtained from the victim's vehicle. Applicant testified he recently learned that State disclosed witness statements. He vaguely exclaimed that one witness placed the murder weapon in another person's possession. He also vaguely exclaimed that another witness gave a statement that put unknown persons in the backseat of the victims' vehicle at the time of the murders. Applicant did not name these unknown witnesses. Next Applicant testified that counsel never looked into ballistics evidence to determine the trajectory of the shots fired into the vehicle. He speculated that the ballistics investigation would have constituted exculpatory evidence. He claimed that he never confessed and accused the police of forging his confession. However, Applicant stated that he met with counsel and his two investigators prior to trial.

Applicant alleged counsel was ineffective for failing to object to plea judge's lack of subject matter jurisdiction to accept his negotiated plea. According to Applicant, the Anderson County Grand Jury did not meet during a scheduled term of General Sessions when he was true billed. Applicant cited to a discrete code section in support of his allegation. Applicant claimed counsel never discussed the indictments with him. Yet, he testified that the four arrest warrants, two murder charges and two weapons possession during the commission of a violent offense, were served on him soon after the murders. Furthermore, he acknowledged that he understood that the State accused him of murder and was planning on taking his case to trial. Applicant also alleged the same baseline facts and arguments substantiated an involuntary guilty plea claim based on the plea judge's lack of subject matter jurisdiction.

Last, Applicant alleged counsel's performance rendered his guilty plea involuntary. He testified that counsel advised him of his constitutional waiver of rights with Applicant prior to the plea hearing but claimed counsel should have spent more time explaining the plea to him. Applicant recalled hearing about PCR when the plea judge cautioned him to speak candidly because he did not want the entire case relitigated at a future PCR hearing.

(b) Counsel's Testimony

Counsel testified to his course of conduct during the representation. Counsel was retained and inherited Applicant's case from the seasoned Anderson County Public Defender, Andy Potter, Esq. Applicant had made court appearances with his Attorney Potter when his representation began. Counsel labored for over one year on this case. He stated that his efforts were aided by his defense team that included two private investigators. The defense team would meet with Applicant at his beckon call. He stated that they met with Applicant numerous times prior to his plea hearing. Counsel noted that the State's ballistics evidence was not beneficial to

Applicant's defense. The phone records were immaterial where there was no alibi evidence. Counsel echoed the same sentiment regarding irrelevant fingerprints found in the victims' vehicle. He stated, "[Applicant] killed his father and step mother. We didn't have an alibi or anything like that." Applicant had the gun and shot through the victims' vehicle and killed them. Counsel testified he extensively sought out any and all witnesses in formulating a defense theory of the case. He noted that there were no helpful witnesses here. Counsel testified he would have pursued any viable defense during the representation had it been warranted.

Counsel stated Applicant knew exactly what he was facing. The arrest warrant served on Applicant clearly stated that the police had probable cause to believe Applicant killed both victims with malice aforethought. He recalled no reason to make a motion to quash the indictments. Furthermore, counsel noted that a successful motion to quash would have only resulted in Applicant being reindicted. Counsel was incredulous that Code Section Fourteen carried any real practice significance because South Carolina is a notice jurisdiction.

Last, counsel testified to the terms and conditions of the plea offer. He advised counsel of every germane aspect about the plea offer. Counsel adamantly testified that he would not have allowed Applicant to go forward with the plea had he been aware Applicant was not on notice that he was charged with murder.

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 at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

As a matter of general impression, this Court finds Applicant received the benefit of competent counsel concerning the allegations at issue. The representation lasted over a year where counsel was aided by two private investigators. The seasoned solicitor's comments at Applicant's plea hearing evidenced the defense team's success in exploiting minor weaknesses in the State's evidence despite the overwhelming evidence of Applicant's guilt. As a result Applicant received a generous plea deal from the State. Despite Applicant's recent consternation to the contrary, this court finds that the credible evidence unequivocally shows Applicant entered a knowing, intelligent and voluntary guilty plea. This Court finds Applicant's allegation that the plea court lacked subject matter jurisdiction based upon an alleged procedural irregularity in the manner the Grand Jury indicted Applicant to be facially without merit.

EFFECTIVE 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), SCRPC; 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 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant must overcome this presumption 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. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). 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." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that 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, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985). After careful review based on the standard discussed above, the Applicant has failed to carry his burden in this action.

A.

This Court finds Applicant's allegation that Judge McIntosh lacked the subject matter jurisdiction to take accept his plea and impose a sentence to be wholly without merit.

"[T]he United States Supreme Court, in United States v. Cotton, 535 U.S. 625 (2002), held that a defective indictment does not deprive a court of jurisdiction." State v. Gentry, 363 S.C. 93, 99, 610 S.E.2d 494, 498 (2005). The indictment is a notice document, and any challenges to its sufficiency must be made in accordance with S.C. Code Ann. § 17-19-90 (2003). See also S.C. Code § 17-19-20 (2003). Subject matter jurisdiction is the power of a court to hear a particular class of cases, and it has nothing to do with the indictment document. See Gentry, 363 S.C. 93, 610 S.E.2d 494; Dove v. Gold Kist, Inc., 314 S.C. 235, 442 S.E.2d 598 (1994). An Applicant may still challenge the subject matter jurisdiction of the trial court, and such a claim is one that may be raised at any time. See Brown v. State, 343 S.C. 342, 540 S.E.2d

846 (2001), overruled in part by Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). However, "[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters." Gentry, 363 S.C. 93, 610 S.E.2d 494, 499 (2005); see also S.C. Const. Art. V, § 7.

This Court finds Applicant's argument that the Grand Jury was not scheduled to convene when his indictments were signed is without merit. While terms of court are technically prescribed by statute, this Court notes general sessions matters may be transacted during common pleas terms of court and vice versa. See S.C. Code Ann. §§ 14-5-410, -420 (Supp. 2003). Regardless, this Court finds counsel's testimony that Applicant was certainly on notice of the State's charges to be dispositive. Therefore, this allegation is denied and dismissed with prejudice.

Similarly, this Court finds Applicant's companion allegation that counsel was ineffective for failing to object to Circuit Court's lack of subject matter jurisdiction to be without merit. For reasons announced above, this Court cannot assign error to counsel for failing to make frivolous jurisdiction argument. Therefore, this allegation is also denied and dismissed with prejudice.

B.

This Court finds Applicant entirely failed to meet his burden to prove ineffective assistance of counsel – failure to investigate State's evidence and exculpatory evidence limited to ballistics, phone records, fingerprints, and witness statements.

"Criminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." Edwards v. State, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011) (internal citations omitted). "A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's

representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial." Kolle v. State, 386 S.C. 578, 588, 690 S.E.2d 73, 78 (2010)

The allegation was defective and conclusory. See Miller v. Johnson, 200 F.3d 274, 282 (5th Cir. 2000) (A conclusory allegation of ineffectiveness raises no constitutional issue because a petitioner must show how counsel was deficient and how there was prejudice); see also U.S. v. Taylor, 802 F.2d 1108, 1119 (9th Cir. 1986) (Vague and speculative assertions are deficient). In light of counsel's credible testimony on the matter, this Court finds Applicant's allegation rested upon his suspect testimony and speculation. See Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998) (Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result). Therefore, this allegation is readily denied and dismissed with prejudice.

C.

This Court finds Applicant entirely failed to meet his burden to prove ineffective assistance of counsel -- failure to expend an sufficient amount of time discussing the consequences of pleading guilty with Applicant.

"Specifically, the voluntariness of a guilty plea is not determined by an examination of a specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea, and also from the record of the PCR hearing." Roddy v. State, 339 S.C. 29, 33, 528 S.E.2d 418, 420 (2000). "A guilty pleas act as a waiver of all non-jurisdictional defects and defenses, including claims of constitutional violations." Whetsell v. State, 276 S.C. 295, 277 S.E.2d 891 (1981).

This allegation is similarly defective. Turner v. Calderon, 281 F.3d 851, 878 (9th Cir. 2002) (A claim that counsel was ineffective for failure to safeguard defendant's interests failed). Regardless, Applicant has provided this Court with no compelling, let alone credible, justification of why he should be allowed to depart from the presumption of verity in his statements and assurances made to Judge McIntosh during the colloquy. See Crawford v. United States, 519 F.2d 347 (4th Cir.1975) (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). Again, in light of counsel's sufficient testimony on the matter, and for reasons announced above, 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.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the 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.


This Court notes that that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel 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 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-

conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 15 day of July, 2015.



HONORABLE J. CORDELL MADDOX
Presiding Judge
Tenth Judicial Circuit

Anderson, South Carolina

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