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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court Of Common Pleas

The Honorable Roger L. Couch, Circuit Court Judge

Case No. 2014-CP-42-4600

State of South Carolina

Respondent,

v.

Michael Dean Staggs,
#236145

Appellant.

Notice of Appeal

Michael Dean Staggs appeals the order of the Honorable Scott R. Sprouse dated July 6, 2015. Appellant received written notice of entry of this order on July 9, 2015.

August 7, 2015

Sincerely,

s/ _____

Brandt Rucker
522 North Church Street
Greenville, South Carolina 29601
(864) 271-9925
Attorney for Appellant

cc:
Other Counsel of Record:

Justin J. Hunter
Office of the South Carolina Attorney General
P.O. Box 11549
Columbia, S.C. 29211

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Proof of Service

I certify that I have served the Notice of Appeal, and the Proof of Service on the State of South Carolina by depositing a copy of those documents in the United States Mail, postage prepaid, on August 7, 2015, addressed to its attorney of record, Justin J. Hunter Office of the South Carolina Attorney General, P.O. Box 11549, Columbia, S.C. 29211.

August 7, 2015

Sincerely,

s/ _____

Brandt Rucker
522 North Church Street
Greenville, South Carolina 29601
(864) 271-9925
Attorney for Appellant

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Other Counsel of Record:

Justin J. Hunter
Office of the South Carolina Attorney General
P.O. Box 11549
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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	OF THE SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG)	
)	2013-CP-42-4600
Michael Dean Staggs,)	
S.C.D.C. No. 236145,)	
)	
Applicant,)	
)	**ORDER OF DISMISSAL**
v.)	
)	
State of South Carolina,)	
)	
Respondent.)	
)	

Presiding Judge:	Hon. R. Scott Sprouse
Applicant's Attorney:	J. Brandt Rucker, Esquire
Respondent's Attorney:	Justin J. Hunter, Esquire
Trial Counsel:	William Bean, Esquire
Date of Hearing:	June 8, 2015
Court Reporter:	Diane L. Marcengill

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed November 14, 2013. Respondent made its Return on or about August 20, 2014. An evidentiary hearing into the matter was convened on June 8, 2015, at the Spartanburg County Courthouse. Applicant was present at the hearing and represented by J. Brandt Rucker, Esquire. Justin J. Hunter, Esquire, of the South Carolina Attorney General's Office represented the Respondent. At the hearing, Applicant testified on his own behalf. William Bean, Esquire, also testified. This Court also had before it a copy of the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the Return, and the plea transcript.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. He was indicted at the April

2013 term of the Spartanburg County Grand Jury for two counts of felony DUI - great bodily injury (2013-GS-42-1393, counts 1 and 2). Applicant was represented by William Bean, Esquire. On June 26, 2013, Applicant pled under Alford[1] as indicted. The Honorable J. Mark Hayes, II, sentenced Applicant to concurrent terms of fifteen years imprisonment on each count and a fine of $5,100, provided that upon service of eight and one-half years, the balance is suspended to five years of probation payment of the fine. Applicant did not appeal his conviction or sentence.

Allegations

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

1. Ineffective assistance of counsel, in that;
    a. Counsel failed to inform Applicant the results of the SLED lab report,
    b. Counsel failed to fully investigate Applicant's background and medical history,
    c. Counsel failed to present and explain the variance between prescription drugs and "dangerous" drugs,
2. Involuntary guilty plea, in that;
    a. Applicant only pled because Counsel advised him he would receive a sentence of time served;
3. Actual innocence, in that;
    a. The evidence of urine and blood lab tests from SLED do not indicate that the Applicant was impaired at the time of the collision; and
4. Due process, in that;
    a. Applicant's Sixth and Fourteenth Amendment rights to effective counsel and due process were violated.

II. SUMMARY AND EVIDENCE PRESENTED AT PCR HEARING

Applicant's Testimony

Applicant testified that Counsel only met with him three times while he was in jail for fifteen to twenty minutes each time and did not go over the SLED lab report containing the

[1] North Carolina v. Alford, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970).

toxicology findings. Applicant testified that his Alford plea was involuntary because Counsel never explained the Alford plea and Applicant thought he would only get a time served sentence. Applicant also testified that he waived his right to a jury trial because he thought that the State had enough evidence to convict him of felony DUI based on his conversations with Counsel. Applicant testified that he wanted to go to trial but did now know of any evidence to help his case. Applicant testified that he gave Counsel his version of events and that he was guilty of some, but not all, of the wreck. Applicant testified that the only substances he was taking at the time of the wreck were prescribed to him by a doctor. Applicant further testified that he did not remember giving a statement to police describing which medications he was taking.

Counsel William Bean's Testimony

Counsel testified he represented Applicant on the charges currently before the Court. Counsel testified he was retained to represent Applicant and had also represented Applicant on a previous civil matter. Counsel testified that he met with Applicant at least four times, meeting for one hour the first time and for twenty minutes to one hour each time after that. He testified that he received discovery from the State on a CD and shared it with Applicant, including the toxicology report and Applicant's statement to police. Counsel testified that Applicant had difficulty understanding that he could be guilty of a DUI without consuming alcohol, however Counsel explained to Applicant that legally prescribed drugs can still support the elements of felony DUI. Counsel testified that he informed Applicant that his prior DUI would not look favorable to a jury and that pleading under Alford would be in Applicant's best interest. Counsel testified that he and Applicant discussed Applicant's medical history, however it was not relevant to the facts of this case. Counsel testified that he never received any plea deal that would offer a sentence of time served and did not tell Applicant that he would be receiving a time served

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sentence. Counsel further testified that he was fully prepared for a trial but Applicant made the decision to plead under Alford.

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

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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.

Ineffective Assistance of Counsel

Applicant alleges Counsel was ineffective in failing to advise him of the possibility of being sentenced to a sentence other than time served. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. See Al-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (1999) (citing Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993)). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the applicant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C.

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16, 20, 546 S.E.2d 417, 419 (2001) (citations omitted). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). 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).

Applicant has failed to meet his burden in proving Counsel was ineffective in any regard. This Court finds Counsel's testimony credible and persuasive on all matters. This Court finds Counsel is a criminal practitioner who has experience in the trial of serious offenses and specifically DUI cases. Counsel properly advised Applicant of the elements of the crime and that the State could likely produce evidence to find him guilty given the toxicology report and Applicant's statement. Counsel properly went over all discovery with Applicant and discussed with Applicant that prescription drugs can still result in a DUI offense. Counsel also properly relayed the plea negotiations that allowed Applicant to plead under Alford. Applicant now claims he would have elected to go to trial but has not shown any error in Counsel's assistance that led him to plead instead, and therefore he cannot prove any prejudice. Applicant made the decision to accept the State's offer to plead under Alford. Although Applicant asserts that Counsel informed him that he would be receiving a time-served sentence, Counsel testified that there was never an offer for a time-served sentence. Furthermore, it is clear from the record that the plea judge advised Applicant that he could be sentenced "between 30 days, but could [be sentenced] up to 15 years in prison" on the charges. (Plea Transcript, 12-13). When asked if he understood

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the sentencing range, Applicant answered in the affirmative. (Plea Transcript, 13). Accordingly, this allegation is denied and dismissed with prejudice.

Involuntary Guilty Plea

Applicant further argues his plea was not given freely and voluntarily. This Court finds otherwise and concludes that Applicant's 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 his plea was given involuntarily because he thought he would receive a time-served sentence. This Court finds this contention meritless. This Court finds the record reflects Applicant was fully advised that he was pleading under Alford and therefore waiving any challenges to the evidence against him. The plea court's thorough colloquy with Applicant demonstrates that he understood the consequences of pleading under Alford. This Court finds

Applicant's testimony not credible. Applicant presented no credible evidence as to why he should be able to depart from his statements at the plea hearing. This Court finds very credible Counsel's testimony regarding his preparation and advice concerning the case. The record reflects Applicant fully admitted his guilt to the plea court. "A guilty plea constitutes a waiver of nonjurisdictional defects and claims of violations of constitutional rights." Jamison v. State, 410 S.C. 456, 467, 765 S.E.2d 123, 129 (2014) (citing State v. Rice, 401 S.C. 330, 331-32, 737 S.E.2d 485, 485-86 (2013); Hyman v. State, 397 S.C. 35, 44, 723 S.E.2d 375, 379 (2012)). Notably the South Carolina Supreme Court has held "[a] guilty plea represents a break in the chain of events which has preceded it in the criminal process." Id. (citations omitted). "When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea." Id. (citing Rice, 401 S.C. at 332, 737 S.E.2d at 486). Therefore, this Court finds the plea judge correctly found Applicant's plea was freely, voluntary, and intelligently made.

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, this Court finds Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this 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 counsels' 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), SCRCP, 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 1 day of July, 2015.

R. SCOTT SPROUSE
Presiding Judge

Walhalla, South Carolina

Brandt Rucker
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t- 864-271-9925
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August 14, 2015

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

RE: Notice of Appeal and Proofs of Service for Staggs and Walker

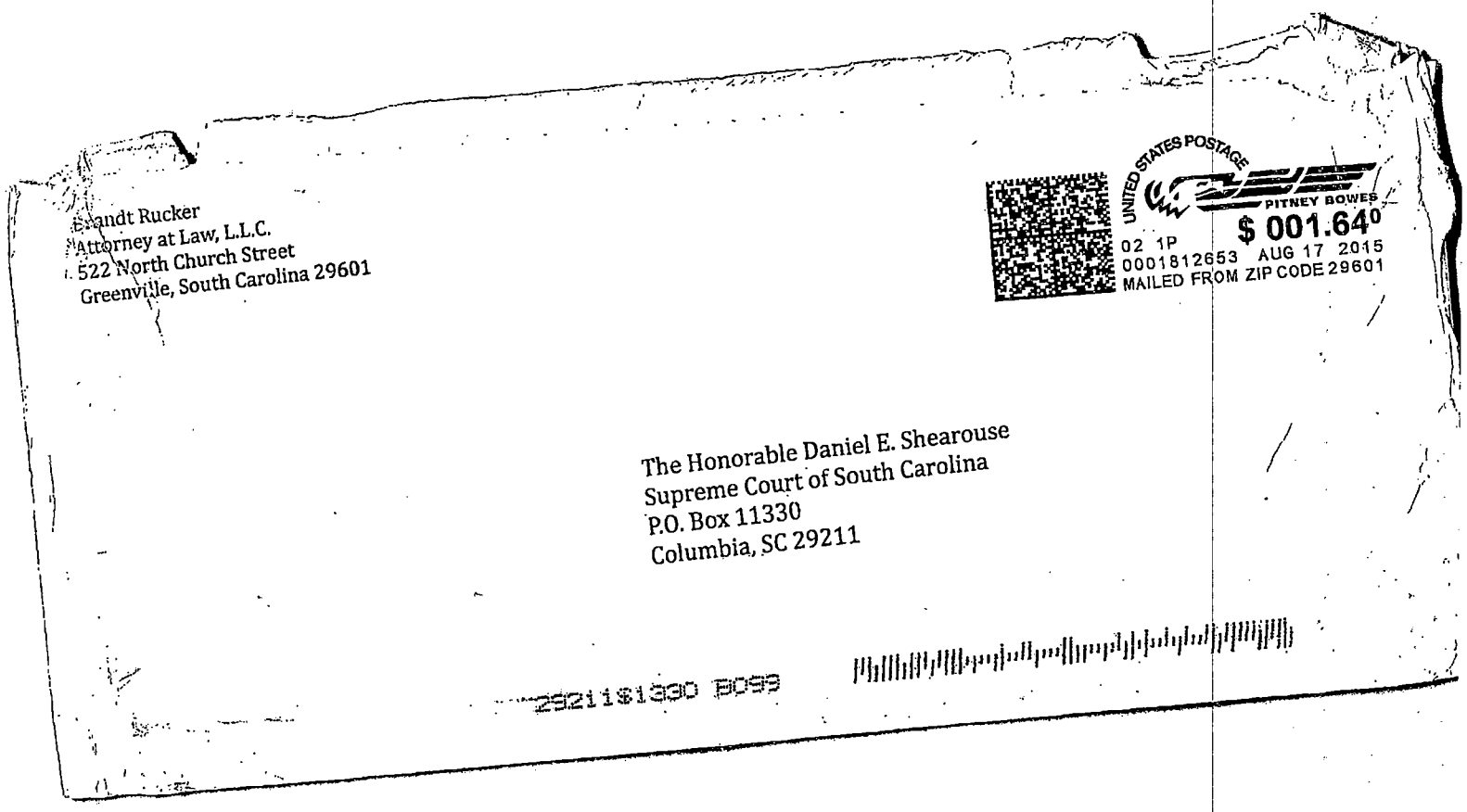
Dear Mr. Shearouse:

Please find enclosed the Notices of Appeal and Proofs of Service for Michael Staggs and Terrell Walker. These were 608 appointment post conviction relief actions.

Sincerely,

Brandt Rucker, Esq.

ENCLOSURES



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