

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. 2013-CP-42-2483

RECEIVED

SEP 18 2015

S.C. Supreme Court

State of South Carolina

Respondent,

v.

Freddie Edwards, Jr. ,
#353276

Appellant.


Notice of Appeal

Freddie Edwards, Jr. appeals the order of the Honorable Roger L. Couch dated August 17, 2015. Appellant received written notice of entry of this order on August 24, 2015.

September 4, 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 Hunter
Office of the South Carolina Attorney General
P.O. Box 11549
Columbia, S.C. 29211

THE STATE OF SOUTH CAROLINA
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Appellant.

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 September 4, 2015, addressed to its attorney of record, Justin Hunter Office of the South Carolina Attorney General, P.O. Box 11549, Columbia, S.C. 29211.

September 11, 2015

Sincerely,

s/ 

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

cc:
Other Counsel of Record:
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Office of the South Carolina Attorney General
P.O. Box 11549
Columbia, S.C. 29211

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
 Freddie Edwards, Jr., #353276,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 SEVENTH JUDICIAL CIRCUIT

2013-CP-42-2483

ORDER OF DISMISSAL

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 CLERK OF COURT
 SPARTANBURG COUNTY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed June 10, 2013. Respondent made its Return on or about July 9, 2014. An evidentiary hearing into the matter was convened on March 23, 2015, at the Spartanburg County Courthouse. Applicant was present at the hearing and was represented by J. Brandt Rucker, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

At the hearing, Applicant testified on his own behalf. Theo W. Mitchell, 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.

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 June 2011 term of the Spartanburg County Grand Jury for murder (2011-GS-42-2778), attempted murder (2011-GS-42-2779), and four counts of armed robbery (2011-GS-42-2780, -2781, -2782, -2783). Applicant was represented by Theo W. Mitchell, Esquire. On November 26, 2012,

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Applicant pled no contest to the lesser included offense of attempted murder, no contest to the charge of attempted murder, and guilty as indicted to the four armed robbery charges. The Honorable Lee S. Alford sentenced Applicant to six concurrent sentences of thirty years, pursuant to a negotiated sentence. Applicant did not appeal his convictions or sentences.

ALLEGATIONS

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

1. Ineffective assistance of counsel, in that;
 - i. Counsel advised the Applicant to plead guilty to four counts of attempted robbery when there was nothing taken,
 - ii. Counsel failed to investigate,
2. Involuntary guilty plea, in that;
 - i. Applicant did not have a full understanding of the charges,
 - ii. Counsel failed to review discovery materials with Applicant,
3. Illegal Sentence,
 - i. Co-defendant was found guilty of murder, but the victim was only shot once, so Applicant should never have been charged with attempted 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 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 their 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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Ineffective Assistance of Counsel

Applicant alleges he received ineffective assistance of counsel. This Court found the testimony of Counsel to be more credible than the testimony of Applicant as to all allegations raised at the hearing.

In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). 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, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 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, Id. The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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. "A reasonable probability is a probability

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sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland).

Applicant testified that he is serving a thirty-year sentence for attempted murder and four counts of armed robbery. Applicant testified that he also had three co-defendants, Pearson, Mills, and Crawford. Applicant testified that he retained Counsel to represent him on the charges and met with Counsel approximately three to four times during the seventeen months between his arrest and plea. Applicant testified that Counsel brought discovery materials to Applicant and read the materials to Applicant, but did not allow Applicant ample time to review the materials. Applicant testified that Counsel did not review any possible defenses with Applicant, including the fact that two of the victims indicated that they did not have anything to steal. Applicant testified that he was initially offered a thirty-year sentence for murder, which would require service of day for day, but then the offer was reduced to allow for service of 85%.

Counsel testified that he when he represented Applicant in 2012, he had been practicing law for almost forty years, handling both criminal and civil cases. Counsel testified that he had participated in six capital cases. Counsel testified that he met with Applicant more than four times and requested that a mental evaluation be taken of Applicant. However, Counsel testified that the evaluation did not reveal any issues that would provide a defense or mitigation. Counsel testified that he reviewed all discovery materials with Applicant, including the documents and discs received from the State. Counsel testified that the evidence indicated that Applicant and his three co-defendants went to rob the victim at his home, but when they arrived, the victim had friends at his home as well. The victim shot back, but only after he was shot by one of the co-defendants and hit over the head with a tool by Applicant. Further, the defendants consented to searches and items from the victim's home were found in their possession. Counsel testified that

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he did not believe there was a defense to present at trial and advised Applicant to consider a plea. Counsel testified that he was informed that Pearson, one of the co-defendants, intended to testify on behalf of the State if the case proceeded to trial. Counsel testified that Applicant was indicted following a preliminary hearing and never denied to Counsel that he was involved in the incident.

This Court finds that Applicant's allegations that Counsel did not conduct an adequate pre-trial investigation is without merit. The "brevity of time spent in consultation, without more, does not establish that counsel was ineffective." Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980). To establish counsel was inadequately prepared, an applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel been more fully prepared. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998); Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial).

This Court notes that Counsel has years of experience representing clients on similar charges. Applicant failed to point to any specific matters Counsel failed to discover or defenses that could have been pursued had Counsel completed additional investigation.

Where there has been a guilty plea, the applicant must prove prejudice by showing that but for counsel's errors, there is a reasonable probability he would not have pleaded guilty and instead would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59, 106 S.Ct. 366, 370, 88 L.Ed.2d 203, 210 (1985); Jordan v. State, 297 S.C. 52, 54, 374 S.E.2d 683, 684 (1988). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harres v. Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984).

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In making a fair assessment of attorney performance, a court must make every effort to "eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." Strickland, 466 U.S. at 689, 104 S. Ct. at 2065, 80 L. Ed. 2d 674. There is a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance and the "defendant must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy." Id. This Court finds that Applicant has failed to meet his burden of proof as to all claims that Counsel was ineffective.

Involuntary Guilty Plea

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, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. 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. U.S., 519 F.2d 317 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

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

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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. Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993).

Applicant testified that he did voluntarily enter into the plea, but then indicated that the plea was not voluntary because he was not aware of each of the elements of the charges. Applicant testified that he pled guilty to receive a lesser sentence and did not want to risk receiving a life sentence if he proceeded to trial. Counsel testified that he fully reviewed discovery materials with Applicant and reviewed the charges and possible sentences. Counsel testified that Applicant voluntarily chose to plead guilty to avoid a potential life sentence.

This Court also finds this allegation conclusively refuted by the record. This Court finds that Applicant has failed to carry his burden of proving that his guilty plea was not freely and voluntarily entered. The overwhelming evidence in the record and presented through the testimony of the witnesses at the hearing reflects that the plea was knowingly and voluntarily entered. Boykin v. Alabama, 395 U.S. 238 (1969); Vickery v. State, 258 S.C. 33, 186 S.E.2d 827 (1972). Therefore, this Court finds that Applicant's guilty plea was freely and voluntarily entered.

Illegal Sentence

Applicant alleged that his sentence was illegal. This Court finds that this allegation is without merit. A trial court has broad discretion in imposing criminal sentences within the limits prescribed by law. State v. Franklin, 267 S.C. 240, 226 S.E.2d 896 (1976); Clark v. State, 259 S.C. 378, 192 S.E.2d 209 (1972). The courts normally have no jurisdiction to correct a sentence given within statutory limits. To be entitled to relief, the applicant must prove that the alleged

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excessive sentence was the result of partiality, prejudice, oppression or corrupt motive, or that the sentence constitutes cruel and unusual punishment *per se*. Id., Clark; State v. Cogdell, 273 S.C. 563, 257 S.E.2d 748 (1979).

Applicant's allegation that his sentence is too harsh lacks merit. The court has the discretion to sentence codefendants to different punishment or treatment. State v. Dozier, 263 S.C. 267, 210 S.E.2d 225 (1974). The record shows that the sentencing judge reviewed the degree of participation of each codefendant as well as Applicant's prior criminal record.

The record further shows that Applicant did not object to the court's sentence. Applicant's failure to object waived any challenge to the length of the sentence on appeal or collateral review. Cummings v. State, 274 S.C. 26, 260 S.E.2d 187 (1979); Peeler v. State, 277 S.C. 70, 283 S.E.2d 826 (1981). Therefore, this allegation is dismissed.

Summary

This Court finds, in regards to the allegation of ineffective assistance of counsel and involuntary guilty plea, Counsel's testimony was most credible. This Court further finds Counsel adequately conferred with the Applicant, conducted a proper investigation, was thoroughly competent in his representation, and that Counsel's conduct does not fall below the objective standard of reasonableness.

Accordingly, this Court finds Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in his representation of Applicant.

This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. This Court concludes Applicant has not met his



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burden of proving Counsel failed to render reasonably effective assistance. See Frasier supra.
Therefore, this allegation is denied.

CONCLUSION

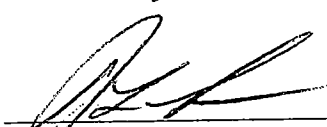
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court cautions Applicant that he must file and serve a notice of appeal within thirty (30) 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 PCR. Rule 71.1(g), SCRPC, provides that if an applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the applicant's behalf. Your attention 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.

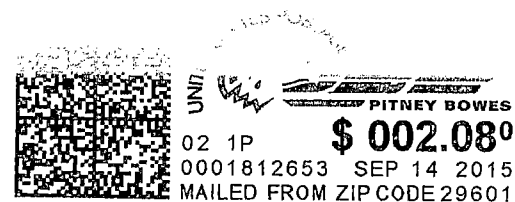
AND IT IS SO ORDERED this 17th day of August, 2015.



ROGER L. COUCH
Presiding Judge
Seventh Judicial Circuit

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