

THE BOOZER LAW FIRM, LLC

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November 10, 2015

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

RECEIVED

NOV 12 2015

S.C. SUPREME COURT

The Honorable Sharon W. Staggers
Clerk of Court
125 W Main St.
Kingstree, SC 29556

**RE: Jherwaski Pressley, #361485, v. State of South Carolina
2014-CP-45-648**

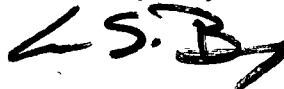
Dear Mr. Shearouse and Ms. Staggers:

Enclosed for filing is a Notice of Appeal in the above-referenced case. Also enclosed are the following:

- (1) Proof of Service of the Notice of Appeal;
- (2) A copy of the Order which is to be challenged on appeal; and
- (3) Prior Order of Appointment of Counsel.

As I was appointed to represent Mr. Pressley in his PCR proceeding, I anticipate that the Office of Appellate Defense will represent Mr. Pressley in this appeal.

Yours very truly,



Lance S. Boozer

Enclosures

cc: Daniel Gourley, AAG
Loriene French, OAD
Jherwaski Pressley, #361485

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM WILLIAMSBURG COUNTY
Court of Common Pleas

The Honorable Steven H. John, Circuit Court Judge

Case No. 2014-CP-45-648

RECEIVED

NOV 12 2015

S.C. SUPREME COURT

Jherwaski Pressley, #361485,Petitioner,

v.

State of South Carolina,Respondent.

NOTICE OF APPEAL

The Petitioner appeals the Honorable Steven H. John's Order dated July 23, 2015, denying post-conviction relief to the Petitioner and received by undersigned counsel on October 23, 2015. A copy of the Order on appeal is attached to this notice.

Respectfully submitted,



Lance S. Boozer
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Columbia, SC 29201
Tele: 803-608-5543

November 10, 2015

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM WILLIAMSBURG COUNTY
Court of Common Pleas

The Honorable Steven H. John, Circuit Court Judge

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S.C. SUPREME COURT

Case No. 2014-CP-45-648

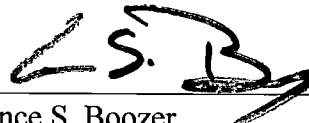
Jherwaski Pressley, #361485,Petitioner,

v.

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

PROOF OF SERVICE

I, Lance S. Boozer, attorney for Petitioner, certify that I have today served within Notice of Appeal upon the Respondent by depositing a copy of it in the United States Mail, postage prepaid, addressed to Assistant Attorney General Daniel Gourley, P.O. Box 11549, Columbia, SC 29211. I further certify that all parties required by Rule to be served have been served this 10th day of November, 2015.



Lance S. Boozer
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Tele: 803-608-5543

STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

Jherwaski Pressley, #361485

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) FOR THE THIRD JUDICIAL CIRCUIT

) 2014-CP-45-648

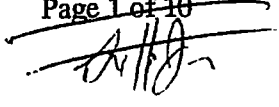
) **ORDER OF DISMISSAL**

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CLERK OF COURT

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on December 16, 2014. Respondent made its return on February 11, 2015. An evidentiary hearing into the matter was convened on July 15, 2015, at the Sumter County Courthouse. Applicant was present at the hearing and was represented by Lance Boozer, Esquire. Respondent was represented by Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Williamsburg County Clerk of Court. The Applicant was true bill indicted at the May 2012 term of the Williamsburg County Grand Jury for armed robbery, criminal conspiracy, assault and battery-first degree, possession of a firearm during a violent crime, and four counts of pointing and presenting a firearm (2012-GS-45-0114). Steve McKenzie, Esquire represented Applicant. On September 15, 2014, Applicant pled guilty as indicted to armed robbery and assault and battery-first degree before the Honorable R. Ferrell Cothran, Jr. Judge Cothran sentenced Applicant pursuant to a recommendation by the State to ten years for armed robbery and ten years for



assault and battery-first degree to run concurrently. Applicant did not appeal his guilty plea or sentence.

ALLEGATIONS

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

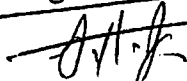
1. Ineffective Assistance of Counsel
 - a. Attorney misrepresented me.
 - b. Didn't investigate foul play involved.
 - c. He promise me the Y.O.A. program.
 - d. He had ties with the victim.

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. Applicant also presented testimony from his mother. (hereinafter "Mother"). The State presented testimony from Steve McKenzie, Esquire. (hereinafter "Plea Counsel"). This Court also had before it a copy of the plea transcript, the Williamsburg County Clerk of Court records, Applicant's South Carolina Department of Correction records, the PCR application, and return.

Applicant testified that Steve McKenzie was retained to represent him during his plea. Applicant stated that Plea Counsel misrepresented him. Specifically, Applicant stated that Plea Counsel informed him that he would be receiving a sentence under the Youthful Offender Act. Applicant stated that he was out on bond and met with Plea Counsel at his office. Applicant stated that his parents were present at the meetings. Applicant stated that his parents thought Applicant would be receiving a Y.O.A. sentence. Applicant stated that he was scheduled to go to trial.

Applicant stated Plea Counsel failed to properly investigate his case. Applicant stated that this issue was not brought before the plea judge. Applicant stated that Plea Counsel should

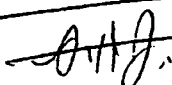


have further investigated into the fact that they were shot at when they fled the scene. Applicant admitted that he committed the armed robbery, but felt Plea Counsel should have explained to the plea judge that they were shot at by the victims as they fled the scene. Applicant stated Plea Counsel should have spoken with the victims. Applicant further acknowledged that he confessed to the police.

Applicant recalled waiving his constitutional rights during the plea. Applicant recalled the plea court advising him that the minimum sentence for armed robbery was ten years. Applicant stated that he received the ten year minimum.

Following Applicant's testimony, Mother was called to testify. Mother stated that Applicant was her son. Mother stated that she loved her son, but was present at the hearing to tell the truth. Mother stated that Plea Counsel advised them that he thought they would receive a Y.O.A. sentence. Specifically, Mother recalled Plea Counsel advising them that Applicant would be approximately twenty-six years old when he got out prison. Mother stated approximately five weeks before the plea, Plea Counsel presented a ten year plea offer. Mother stated that she discussed the offer with Applicant and Applicant chose to accept the offer. Mother further recalled her testimony during the plea, where she acknowledged that Applicant would be required to serve a ten year sentence.

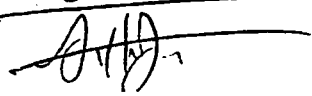
Following mother's testimony, Plea Counsel was called to testify. Plea Counsel stated that he represented Applicant for approximately two years. Plea Counsel stated he attempted to delay the case for as long as possible in hopes that the state's case would weaken over time. Plea Counsel stated that State's case against Applicant was very strong. Specifically, Plea Counsel stated Applicant was captured on video, multiple witnesses identified Applicant, and Applicant confessed to the crime on video.



Plea Counsel stated that there was no question that this was going to be a guilty plea. Plea Counsel referenced his fee agreement which specifically states that he was retained to do a guilty plea only. Plea Counsel stated that he was retained on March 30, 2012. Plea Counsel stated that he met with Applicant's parents and discussed his fee agreement and got basic background information. Plea Counsel stated that he felt bad for Applicant's parents because they did not raise Applicant to be a criminal.

Plea Counsel stated that he attempted to get the assistant solicitor to drop the charges to strong armed robbery. Plea Counsel reasoned that a strong armed robbery conviction would allow for a Y.O.A. sentence. Plea Counsel stated that the assistant solicitor refused to offer anything lower than a recommended ten year sentence for armed robbery. Plea Counsel noted that the victim of the store would not agree with anything less than an armed robbery conviction. Plea Counsel stated that he presented the assistant solicitor's ten year plea offer to Applicant and his family approximately five weeks prior to the plea. Plea Counsel stated that he advised Applicant that he was not going to be eligible for a Y.O.A. sentence when he pled guilty to armed robbery.

Plea Counsel stated that he grew up in Williamsburg County. Plea Counsel stated that he moved away from Williamsburg County approximately twenty years ago. Plea Counsel stated that he recognized some of the names of the victims, but did not have a personal relationship with any of the victims. Plea Counsel stated the fact that he recognized the names of the victims did not impact his representation of Applicant. Plea Counsel stated that he discussed this information with Applicant. Plea Counsel stated Applicant did not express any concerns about him recognizing the victims' names.

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

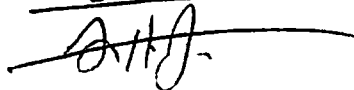
This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. 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).

INEFFECTIVE 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



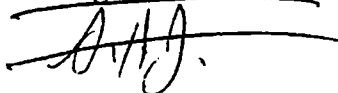
performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show 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 (1985).

ALLEGATIONS

1. Ineffective assistance of counsel for misrepresenting him.¹

Applicant alleges that he received ineffective assistance of counsel due to plea counsel's advisement that he would receive a Y.O.A. sentence. This Court finds Applicant's allegation is meritless. A defendant who pleads guilty on the advice of counsel may collaterally attack the voluntariness of his plea only by showing that (1) counsel was ineffective and that (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty. Wolfe v. State, 326 S.C. 158, 485 S.E.2d 367 (1997). When considering an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether information conveyed by the plea judge cured any possible error made by counsel. Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998). In the instant case, Applicant testified that Plea Counsel told him he would receive a Y.O.A. sentence. This Court finds Applicant's testimony that Plea Counsel advised him that he would be receiving a Y.O.A. sentence when he entered his guilty plea to armed robbery is not credible. This Court finds Plea Counsel credibly testified that he relayed a ten year plea offer for armed robbery to Applicant and his family. Notably, mother corroborated Plea Counsel's testimony.

¹ This Court notes Applicant's allegations "a" and "c" are essentially one allegation of ineffective assistance of counsel for advising Applicant that he would receive a Y.O.A. sentence. Therefore, this Court will address allegations "a" and "c" as one allegation.

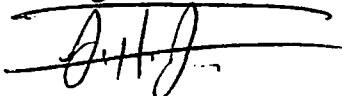


Specifically, Mother stated that Plea Counsel relayed the ten year plea offer five weeks before the plea. This Court further finds credible Plea Counsel's testimony that he advised Applicant that he would not be receiving a Y.O.A. sentence when he entered a plea to armed robbery. This Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test – that Plea Counsel failed to render reasonably effective assistance under prevailing professional norms.

This Court notes the colloquy between the plea judge and Applicant reveals the plea judge advising Applicant of the maximum penalties for each of his crimes and that he does not have to follow the State's recommendation of ten years. (Pl. p. 5 line 25—p. 6 line 8). Furthermore, this Court notes, Applicant's mother acknowledged during the plea that "ten years is the minimum" that Applicant could receive. (Pl. p. 17 lines 2-3). Based off of the foregoing, this Court finds Applicant has failed to present specific and compelling evidence that Plea Counsel committed either errors or omissions to prove the second prong of Strickland – that he was prejudiced by Plea Counsel's performance. This Court finds Applicant's allegation should be denied and dismissed with prejudice.

2. Ineffective Assistance of Counsel for failing to investigate foul play.

This Court notes Applicant argued that Plea Counsel should have investigated into the fact that the victims shot at the Applicant as they fled the scene. This Court finds Applicant's allegation is wholly meritless. Applicant presented no credible evidence to show why Plea Counsel should have investigated into the victims shooting at Applicant as he fled following the armed robbery. This Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test – that Plea Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, this Court finds Applicant has

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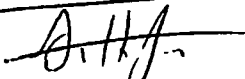
failed to present specific and compelling evidence that Plea Counsel committed either errors or omissions to prove the second prong of Strickland – that he was prejudiced by Plea Counsel’s performance. This Court finds Applicant’s allegation should be denied and dismissed with prejudice.

3. Ineffective assistance due to conflict of interest.

This Court notes Applicant argued that Plea Counsel labored under a conflict of interest due to his prior relationship with some of the victims of the armed robbery. This Court finds Applicant’s allegation is meritless.

It is well established that the fact that counsel does not advise a defendant of a potential conflict of interest does not affect the constitutionality of a conviction. Jackson v. State, 328 S.C. 345, 354, 495 S.E.2d 768, 773 (1998). Furthermore, the mere possibility of a conflict of interest is insufficient to impugn a criminal conviction. State v. Gregory, 364 S.C. 150, 612 S.E.2d 449 (2005). Additionally, an applicant must show that his counsel actively represented conflicting interest to establish a claim of ineffective assistance of counsel. Duncan v. State, 281 S.C. 435, 315 S.E.2d 809 (1984). “To establish a violation of the Sixth Amendment right to effective counsel due to a conflict of interest arising from multiple representation, a defendant who did not object at trial must show an actual conflict of interest adversely affected his attorney's performance.” Thomas v. State, 346 S.C. 140, 143, 551 S.E.2d 254, 256 (2001) (emphasis added).

In the instant case, Plea Counsel stated that he grew up in Williamsburg County. However, Plea Counsel stated that he moved to Manning approximately twenty years ago. As a result, Plea Counsel stated that he was familiar with some of the victim’s names, but did not have a personal relationship with any of the victims. This Court notes Plea Counsel credibly testified



that he advised Applicant and his family of his prior knowledge of some of the victims of the case. Plea Counsel stated Applicant and his family still wished Plea Counsel to represent him. This Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test – that Plea Counsel failed to render reasonably effective assistance under prevailing professional norms.

Furthermore, this Court notes Applicant failed to present any credible evidence that Plea Counsel's prior relationship with the victims amounted to a conflict of interest. Based off of the foregoing, this Court finds Applicant has failed to present specific and compelling evidence that Plea Counsel committed either errors or omissions to prove the second prong of Strickland – that he was prejudiced by Plea Counsel's performance. This Court finds Applicant's allegation should be denied and dismissed with prejudice.

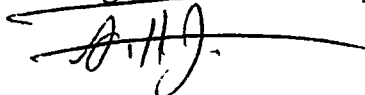
ALL OTHER ALLEGATIONS

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, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the 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

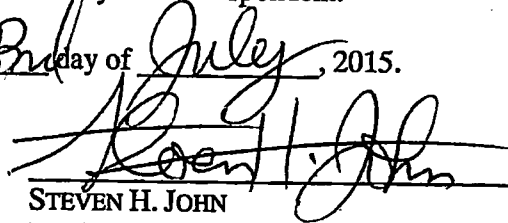
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appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if 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.

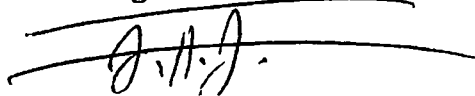
IT IS THEREFORE ORDERED:

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 2nd day of July, 2015.


STEVEN H. JOHN
Presiding Judge
Third Judicial Circuit

At Denville, South Carolina



STATE OF SOUTH CAROLINA

County of Williamsburg

Jherwaski D. Pressley

Petitioner

vs.

STATE OF SOUTH CAROLINA

Defendant

IN THE COURT OF
COMMON PLEAS

3rd Judicial Circuit

NOTICE OF APPOINTMENT
FOR LEGAL COUNSEL

Case Number 2014-CP-45- 648

To: Lance Boozer, Attorney at Law

By order of the Chief Administrative Judge and pursuant to Rule 608, SCACR, you are hereby appointed to act as attorney for Jherwaski D.Pressley, the Petitioner, in this action.

This 5th day of February, 2015.

Sharon W. Skaggs
Judge/Clerk of Court

RECEIVED

FEB 09 2015

Referred to Jourley/RM
Answered _____

THE BOOZER LAW FIRM, LLC

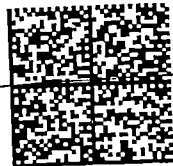
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Clerk, Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

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