November 9, 2015

RECEIVED
NOV 12 2015
S.C. SUPREME COURT

South Carolina Commission
On Indigent Defense
Attention: Loriene French
P. O. Box 11589
Columbia, SC 29211

RE: NOTICE OF INTENT TO APPEAL
Julius Rogers #247422
Johnson v. State PCR

Dear Mrs. French:

Please find enclosed copies of Notice of Intent to Appeal and Order of Dismissal for the above referenced case.

Mr. Roger's PCR was dismissed on April 23, 2015 and filed on October 13, 2015.

I am available to discuss this case if you so desire.

Sincerely,

Courtney Clyburn Pope, Esq.
Clyburn Pope & Price, LLC

Enclosure

CERTIFICATE OF SERVICE

I, Courtney Clyburn Pope, do herby certify that I have this day served the original of Appellate's Notice to Appeal upon the South Carolina Court of Appeals, and copies of Appellate's Notice of Intent to Appeal to the Clerk of Court of Aiken County, and to J. Strom Thurmond, Solicitor, Second Judicial Circuit, by placing same in the United States Mail properly addressed and with correct postage affixed thereto:

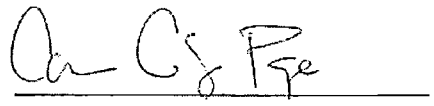
Supreme Court of South Carolina
Post Office Box 11330
Columbia, SC 29211

South Carolina Commission
Of Appellate Defense
P. O. Box 11589
Columbia, SC 29211

Attorney General's Office
Rembert C. Dennis Building
1000 Assembly St.
Columbia, SC 29201

South Carolina Commission
On Indigent Defense
P. O. Box 11589
Columbia, SC 29211

Dated this 10 day of November, 2015



Courtney Clyburn Pope
Appellant's PCR Attorney
Post Office Drawer Q
Aiken, SC 29802
803-644-1110

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM EDGEFIELD COUNTY
Court of Common Pleas

RECEIVED
NOV 12 2015
S.C. SUPREME COURT

Honorable R. Lawton McIntosh, Circuit Court Judge

Case No.2013-CP-19-376

Julius L. Rogers, #247422.....Petitioner,

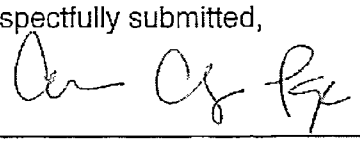
v.

State of South Carolina, ...Respondent.

NOTICE OF APPEAL

The State of South Carolina appeals the Honorable R. Lawton McIntosh's April 23, 2015, order denying post-conviction relief to the Respondent. Undersigned counsel received notice of entry of the order on October 15, 2015. A copy of the order on appeal is attached to this notice.

Respectfully submitted,



Courtney Clyburn Pope
319 Hampton Avenue
Aiken, SC 29801
Attorney for the Applicant

November 10, 2015

Other counsel of record:
Walt Whitmire
Rembert C. Dennis Building
1000 Assembly St.
Columbia, SC 29201

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM EDGEFIELD COUNTY
Court of Common Pleas

Honorable R. Lawton McIntosh, Circuit Court Judge

RECEIVED
NOV 12 2015
S.C. SUPREME COURT

Case No.2013-CP-19-376

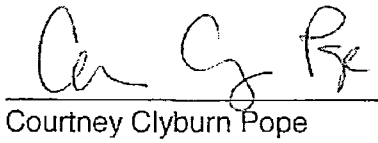
Julius L. Rogers, #247422.....Petitioner,

v.

State of South Carolina, ...Respondent.

PROOF OF SERVICE

I, Courtney Clyburn Pope, certify that I have today served the within notice of appeal upon the Respondent by depositing a copy of it in the United States Mail, postage prepaid, addressed to the attorney of record, Walt Whitmire, 1000 Assembly Street, Columbia, SC 29201. I further certify that all parties required by Rule to be served have been served this 10th day of November, 2015.



Courtney Clyburn Pope
319 Hampton Avenue
Aiken, SC 29801

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF EDGEFIELD	ELEVENTH JUDICIAL CIRCUIT
Julius L. Rogers, S.C.D.C. No. 247422	**C.A. No. 2013-CP-19-376**
Applicant,	
v.	**ORDER OF DISMISSAL** **(with prejudice)**
State of South Carolina,	
Respondent.	

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on December 6, 2013. Respondent made its return on March 14, 2014. An evidentiary hearing into the matter was convened on April 23, 2015 at the Lexington County Courthouse. Applicant was present at the hearing and was represented by Courtney Pope, 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 Clerk of Court for Edgefield County. Applicant was indicted for burglary, first-degree (2013-GS-19-496). He was represented by Michael W. Chesser, Esq. Applicant entered a guilty plea to the lesser-included offense of burglary, second-degree. The Honorable R. Lawton McIntosh accepted Applicant's plea and imposed a term of fourteen (14) years imprisonment. Applicant did not appeal his guilty plea or sentence.

At the PCR hearing, Applicant alleged that he is being held in custody unlawfully for the following reasons:

(a) Ineffective assistance of counsel for failing to investigate the circumstances surrounding Applicant's confession to law enforcement;

(b) Ineffective assistance of counsel for failing to investigate the victim's statement to show discrepancies in the State's case;

(c) Ineffective assistance of counsel for failing to advise Applicant on the consequences of entering the guilty plea.

SUMMARY OF TESTIMONY

At the PCR hearing, Applicant testified to his impressions of counsel and to his concerns on the competency of representation that he received. Applicant testified that he met counsel on the day of his plea hearing. Applicant testified that Investigator Ireland was present and involved with his case on the day of his plea. Applicant testified that Investigator Ireland had previously tricked him into confessing in lieu of a false promise of probation sentence. Applicant testified to an elaborate conspiracy that apparently occurred at his plea hearing. Applicant testified that counsel failed to properly advice him of his constitutional waivers prior to the plea.

Counsel testified to his course of conduct during the representation. Counsel has practiced criminal law for over twenty-five years. Counsel stated that he was substituted on Applicant's case the week of his guilty plea. He explained that Edgefield County typically holds a single General Sessions, non-jury, term every three months. Prior counsel, the current Judge Seigler, approached counsel and requested that he take over the representation because of a conflict. Counsel was adamant that the current Judge Seigler would not have asked him to take over the case at the late hour if Applicant had been in a vulnerable posture. As counsel noted, the State made a favorable plea offer despite Applicant's substantial record. Counsel obtained the current Judge Seigler's file and reviewed it prior to the plea. After his review of the State's discovery disclosures, among other things, counsel developed the opinion that the State possessed overwhelming evidence of Applicant's guilt. Counsel testified to his general practice is advising clients on the constitutional waivers, benefits, and detriments of entering a guilty plea in lieu of proceeding to trial. Counsel noted that Applicant did not waiver on his desire to accept

the State's plea offer. Despite the late substitution, counsel was adamant that had ample time to provide Applicant sound legal representation.

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 and exhibits 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's allegations were solely supported by his dubious and fanciful storytelling. In comparison to Applicant's incredible testimony, counsel offered convincing testimony in line with his reputation as a battle tested defense attorney in the local bar.

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), SCRCP; 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 denies Applicant's motion to have PCR counsel relieved. Despite Applicant's unfounded consternation, PCR counsel had previously successfully moved to continue a merits hearing in order to have the time to fully prepare Applicant's case. In light of PCR counsel's representations, this Court denies Applicant's motion.

B.

This Court finds Applicant's allegation: (a) Ineffective assistance of counsel for failing to investigate the circumstances surrounding Applicant's confession to law enforcement to be entirely without merit.

"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)

In light of counsel's dispositive testimony that he fully reviewed the current Judge Seigler's file and found no cause for concern, this Court finds Applicant's testimony on this matter to be not credible. Because Applicant failed to produce any competent evidence to corroborate his incredible testimony, this Court readily denies and dismisses this allegation with prejudice. See Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (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 the result").

Similarly, this Court finds Applicant's allegation: (b) Ineffective assistance of counsel for failing to investigate the victim's statement to show discrepancies in the State's case was without merit. This Court finds that any minor discrepancy in the victim's accounting of inventory did nothing to negate the overwhelming evidence of guilt against Applicant concerning the home invasion. See Franklin v. Catoe, 346 S.C. 563, 570 n. 3, 552 S.E.2d 718, 722 n. 3 (2001) (finding overwhelming evidence of guilt negated any claim that counsel's deficient performance could have reasonably affected the result of defendant's trial). Therefore, this allegation is readily denied and dismissed with prejudice.

C.

Last, this Court finds Applicant's allegation: (c) Ineffective assistance of counsel for failing to advise Applicant on the consequences of entering the guilty plea to be fatally conclusory and without merit.

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, 242, 89 S.Ct. 1709, 23 L.Ed.2d 274 *(1969)*; Roddy v. State, 339 S.C. 29, 33–34, 528 S.E.2d 418, 421 (2000). "A defendant's knowing and voluntary waiver of the constitutional rights which accompany a guilty plea may be accomplished by colloquy between the Court and the defendant, between the Court and defendant's counsel, or both." Pittman v. State, 337 S.C. 597, 600, 524 S.E.2d 623, 625 (1999). An applicant may attack the voluntary, knowing, and intelligent character of a guilty plea entered on the advice of counsel by demonstrating that counsel's representation was below an objective standard of reasonableness. Porter v. State, 368 S.C. 378, 383–84, 629 S.E.2d 353, 356 (2006).

This Court finds the allegation is facially defective. 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). *Applicant failed* to make a prima facie case of how counsel's performance was either deficient or prejudicial here. Regardless, Judge McIntosh's thorough plea colloquy in conjunction to counsel's credible testimony concerning his general practices in advising clients on pleading guilty, inter alia, cured any prospect of error on this matter. See Bennett v. State, 371 S.C. 198, 205 n. 6, 638 S.E.2d 673, 676 n. 6 (2006) (reversing grant of PCR and stating that "even where counsel offers misinformation, this deficiency can be cured where the trial court properly informs the defendant

about the sentencing range"). Further, this Court notes that Applicant was an experienced accused and went into the plea hearing with eyes wide open. Therefore, this allegation is readily 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.

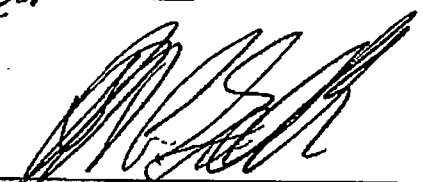
This Court notes that that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right 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.

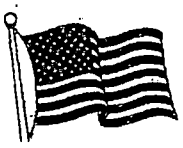
AND IT IS SO ORDERED this 6 day of October, 2015.



~~HONORABLE~~ BROOKS P. GOLDSMITH
Presiding Judge
Eleventh Judicial Circuit

_____, South Carolina

COHEN POPE & PRICE, LLC
P. O. BOX Q
AIKEN SC 29802



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