

THE

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LAW FIRM, LLC

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NOV 16 2015

S.C. SUPREME COURT

November 13, 2015

Daniel E. Shearouse
Clerk of Court
Supreme Court of South Carolina
Post Office Box 11330
Columbia, SC 29211

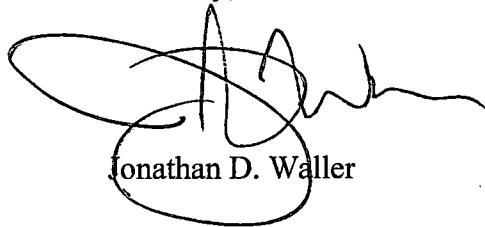
Re: Yorel Williams vs. State of South Carolina
C/A No: 2013-CP-38-00960

Dear Mr. Shearouse:

Please find enclosed one (1) original and one (1) copy each of Applicant's Notice of Appeal and Certificate of Service in the above referenced case. I would appreciate you filing the original and returning the clocked copies in the enclosed envelope.

I was appointed to represent Mr. Williams in this matter and am also enclosing a copy of the Order of Dismissal. If you have any questions, please do not hesitate to ask. My telephone number is 803-708-6767.

Sincerely,



Jonathan D. Waller

Cc: J. Clayton Mitchell, South Carolina Office of Attorney General

Enclosures

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ORANGEBURG COUNTY
Maité Murphy, Circuit Court Judge

2013-CP-38-00960

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NOV 16 2015

S.C. SUPREME COURT

Yorel Williams, #352376,

Appellant,

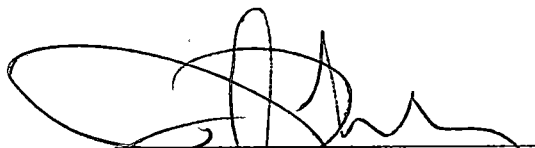
v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Yorel Williams, #352376, appeals the Order of Dismissal denying his Application for Post-Conviction Relief filed October 1, 2015, and served on Counsel by letter dated October 29, 2015, issued by the Honorable Maité Murphy, Presiding Judge, First Judicial Circuit.


Jonathan D. Waller

The Giese Law Firm, LLC
SC Bar No.: 76290
1315 Blanding Street
Columbia, SC 29201
803-708-6767 (phone)
803-708-6769 (fax)
jwaller@thegieselawfirm.com
ATTORNEY FOR PETITIONER

This 13 day of November, 2015.

Other Counsel of Record:
J. Clayton Mitchell, Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3319

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ORANGEBURG COUNTY
Maité Murphy, Circuit Court Judge

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NOV 16 2015

2013-CP-38-00960

S.C. SUPREME COURT

Yorel Williams, #352376,

Appellant,

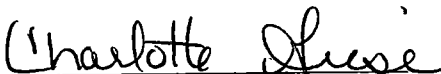
v.

STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the Appellant's Notice of Appeal in the above-entitled case has been served upon opposing counsel, J. Clayton Mitchell, Assistant Attorney General, by mailing in an envelope properly addressed with postage prepaid on this 13 day of November 2015.


Charlotte Giese

SWORN TO BEFORE me this 13 day
of November, 2015.


Notary Public for South Carolina
My Commission Expires: 3/25/2023

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

Yorel Williams, #352376,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

2013-CP-38-0960

ORDER OF DISMISSAL

FILED FOR RECORD
WINNIFEA B. CLARK
2015 OCT - 1 A 11:32
CLERK OF COURT
ORANGEBURG, SC

This matter comes before the Court pursuant to an application for post-conviction (PCR) filed August 22, 2013. Respondent made its Return on March 7, 2014, requesting an evidentiary hearing be convened. Johnathan D. Waller, Esquire, was appointed by the Orangeburg County Clerk of Court.

South Carolina Court Administration informed Respondent by written letter dated February 14, 2014, that a transcript of Applicant's guilty plea hearing could not be produced.

An evidentiary hearing was held on May 20, 2015, at the Dorchester County Courthouse. Applicant was present and represented by Counsel Waller. J. Clayton Mitchell, Esquire, of the South Carolina Attorney General's Office represented Respondent. At the PCR hearing, Applicant testified on his own behalf. Also testifying was Applicant's plea counsel, Gerald J. Davis, Esquire. This Court had before it the Orangeburg County Clerk of Court records, Applicant's South Carolina Department of Corrections records, the PCR application, the Return, and the guilty plea transcript.

I. PROCEDURAL HISTORY

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

ATTEST: TRUE COPY
Winnifea B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

during the January 2012 term of the Orangeburg County Grand Jury for Murder (2011-GS-38-0339). Applicant was represented by Gerald Davis, Esquire. On September 13, 2012, Applicant appeared before the Honorable Edgar W. Dickson, where he pled guilty to the lesser included offense of voluntary manslaughter. Judge Dickson sentenced Applicant to twenty-five (25) years' imprisonment. No direct appeal was taken.

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

1. Involuntary guilty plea.
2. Ineffective assistance of counsel in failing to meet with Applicant an adequate number of times.

II. SUMMARY AND EVIDENCE PRESENTED AT THE PCR HEARING

Applicant's Testimony

At the PCR hearing, Applicant testified Counsel Davis was retained by his family to represent him on the charges he currently challenges. Applicant explained Counsel had represented him before on other charges. He noted he was originally charged with murder but pled guilty to voluntary manslaughter. He testified there was a lot of negotiating from Counsel's end and that he didn't feel like it was going well. He contested his guilt and stated that the only evidence against him was an eyewitness and posting from Facebook. When asked about his statement to law enforcement, which the State categorized as a confession, Applicant responded that the statement was forced. He explained that the incriminating statements posted to Facebook were just song lyrics. Applicant took issue with the amount of time Counsel spent with him. He did not feel it was adequate or that Counsel was prepared. He alleged that his guilty plea was not made knowingly and voluntarily.

Applicant testified he recalled where Judge Dickson asks him a number of questions. He did not recall the specifics of all the questions, but believed he was asked whether he was guilty

Counsel Gerald J. Davis's Testimony

Counsel testified that he was retained by Applicant's family to represent him. He noted that he has known and represented Applicant on a number of other charges. He noted he was successful in getting the prior charges dismissed. He testified he reviewed the charges of murder and voluntary manslaughter with Applicant. Counsel testified that it is his practice to prepare a plea sheet where he will review in detail the charges and rights the client would waive by pleading guilty. He noted that he believed he and Applicant reviewed this sheet thoroughly before he pled guilty. He also testified these are the same questions that a plea judge would ask a defendant.

Counsel testified he has represented a number of clients who have appeared before Judge Dickson and pled guilty. He explained that he is familiar with Judge Dickson's normal plea colloquy. Counsel did not recall the exact questions Judge Dickson asked Applicant, but agreed that in his experience it was any judge's normal practice to review with a defendant: indictment(s), potential sentences, whether the defendant was promised or threatened to plead guilty, whether the defendant had taken any medication, drugs, or alcohol in the previous 24 hours, a defendant's numerous constitutional rights, the State's recitation of facts, and any mitigation offered by the defendant. Counsel testified he did not believe there were any problems with the plea but noted that if there was he would have objected or made a motion to withdraw the plea, especially if he thought it was being involuntarily entered. He noted that was not the case here and that Applicant understood the rights he was waiving by pleading guilty. He also

testified he did not believe Judge Dickson would allow a guilty plea to go forward if any issues arose.

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

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 conviction, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, Applicant's appellate records, 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.

Plea Transcript

This Court finds that although a transcript of the guilty plea proceeding was not available for review, it is not necessary to its determinations and ruling. See Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008) (In determining guilty plea issues in a PCR proceeding, it is proper to consider the plea transcript *as well* as evidence at the PCR hearing.) (emphasis added). A presumption of regularity attaches to proceedings in the Court of General Sessions. Pringle v. State, 287 S.C. 409, 411, 339 S.E.2d 127, 128 (1986) (citing State v. Britt, 235 S.C. 395, 111 S.E.2d 669 (1959); State v. Jones, 211 S.C. 319, 45 S.E.2d 29 (1947); State v. Waring, 109 S.C. 52, 95 S.E. 143 (1918)). It is incumbent upon one who challenges a proceeding to prove his

claims. See Tate v. State, 345 S.C. 577, 549 S.E.2d 601 (2001). This Court finds the record was adequately reconstructed at the PCR hearing for the purposes of this Court's decision. It is important to note that Applicant pled guilty before Judge Dickson, the resident Orangeburg circuit court judge, with whom Counsel has appeared before numerous times. Counsel is familiar with the structure of Judge Dickson's normal plea proceedings and testified that there is no reason to think Applicant's plea deviated from those practices. Applicant's testimony supports this finding. Applicant was asked a number of questions at the plea hearing including whether he wished to waive his constitutional rights, and whether he agreed with the solicitor's recitations of the facts. Therefore, this Court finds that the plea transcript is not necessary to its ruling and that the record was adequately reconstructed.

Involuntary Guilty Plea

Applicant argues he did not plead guilty knowingly and voluntarily because he believes his confession could have been challenged. This Court finds otherwise and concludes that Applicant's guilty 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 he did not plead guilty knowingly and voluntarily. This Court finds this contention without merit. This Court finds the record reflects Applicant was advised of the waiver of his constitutional rights by the plea court. This Court finds very credible Counsel's testimony regarding his preparation and advice concerning the case and the substance of those conversations. This Court finds Applicant's testimony not credible. This Court finds that Applicant presented *no* credible evidence that he pled guilty involuntarily. This Court finds Applicant's intent to plead guilty was made clear to the plea judge. Applicant was fully informed of the nature and consequences of his plea by his attorney and was advised further by the plea court. This Court finds Counsel's testimony credible and persuasive on the issue. Applicant knew he was pleading guilty, but explained that he felt forced because Counsel advised him he was likely to be convicted if he chose to go to trial. This Court finds the plea judge correctly found Applicant's plea was freely, voluntary, and intelligently made. This allegation is denied and dismissed with prejudice.

Ineffective Assistance of Counsel

As to Applicant's contention that Counsel did not meet with him enough and was therefore not prepared, this Court finds the allegation without merit. The constitutional right to effective counsel does not include a specified number of face-to-face meetings between client and attorney. Moody v. Polk, 408 F.3d 141, 148 (4th Cir. 2005) ("As to Moody's claim that his counsel did not meet with him frequently enough, there is no established 'minimum number of

meetings between counsel and client prior to trial necessary to prepare an attorney to provide effective assistance of counsel.” (citing United States v. Olson, 846 F.2d 1103 (7th Cir. 1988))). Simply put, “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). This Court finds Counsel adequately prepared Applicant’s case. The evidence against Applicant was substantial. It is noteworthy that Counsel was successful in getting the murder charge dropped to voluntary manslaughter, significantly limiting Applicant’s exposure. Counsel was not ineffective in any regard concerning his preparation of Applicant’s case.

Furthermore, Applicant presented no evidence as to what further information counsel would have gathered had he met with Applicant more often. See Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998) (“[Applicant] failed to present any evidence of what counsel could have discovered or what other defenses respondent would have requested counsel pursue had counsel more fully prepared for the trial.”). Applicant has failed to prove prejudice.

All Other Allegations

As to any and all allegations that were raised in the application 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.

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 counsel’s performance was unreasonable under prevailing professional norms or that the outcome of his plea would have been different had counsel performed differently. 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), SCRCR, 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 shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 24 day of Sept, 2015.

St. Mary, South Carolina

Maité Murphy
MAITÉ MURPHY
Presiding Judge