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S.C. Supreme Court

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Roger E. Henderson, Circuit Court Judge

Case No. 2012-CP-10-7840

Wayne Hollinshead, # 300696,

Appellant,

v.

State of South Carolina,

Respondent.

NOTICE OF APPEAL

Wayne Hollingshead appeals the order of the Honorable Roger E. Henderson dated October 12, 2015, which order was filed on October 22, 2015. Appellant received written notice of entry of this order on October 27, 2015.

November 20, 2015



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Other Counsel of Record:  
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FILED  
2015 NOV 20 PM 1:11  
JULIE L. AMSTERBURG  
CLERK OF COURT  
BY \_\_\_\_\_

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State of South Carolina, Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Notice of Appeal has been served upon the Respondent by mailing one (1) copy in the United States mail, postage prepaid, addressed to:

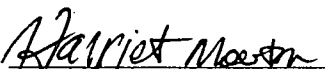
J. Rutledge Johnson  
Asst. Dep. Attorney General  
Rembert C. Dennis Building  
PO Box 11549  
Columbia, South Carolina 29211-1549  
Attorney for Respondent

This 20th day of November, 2015.

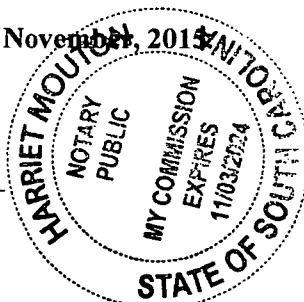


W. O. HANAHAN, III  
ATTORNEY FOR THE APPELLANT

Sworn to before me this 20th day of November, 2015.

  
Notary Public for South Carolina.

My Commission Expires: 11/3/24



CL  
AT  
AG

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )  
  
Wayne Hollingshead, # 300696, )  
  
Applicant, )  
  
v. )  
  
State of South Carolina, )  
  
Respondent. )

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT

2012-CP-10-7840

ORDER OF DISMISSAL

FILED  
2015 OCT 22 AM 11:49  
JULIE J. HARRIS, JUDGE  
CLERK OF COURT

This matter comes before the Court by way of an Application for Post-Conviction Relief filed November 30, 2012. Respondent made its Return on June 28, 2013. An evidentiary hearing into the matter was convened on July 20, 2015 at the Charleston County Courthouse. Bill Hanahan, Esquire represented Applicant. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

At the hearing, Applicant testified on his own behalf. Leon Stavrinakis, Esquire also testified. This Court had before it a copy of the records of the Charleston County Clerk of Court, records from the South Carolina Department of Corrections, the application, the State's Return and the guilty plea transcript.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted at the March 2009 term of the Charleston County Grand Jury for trafficking cocaine- 400 grams or more (09-GS-10-1712). Applicant was represented by Leon Stavrinakis, Esquire.

On November 2, 2011, the Applicant pled guilty as indicted. Applicant was sentenced by the Honorable Deadra L. Jefferson to confinement for a period of twenty (20) years.

A timely Notice of Appeal was filed with the South Carolina Court of Appeals on November 4, 2011. On appeal, the Applicant was represented by Robert Dudek, Esquire, of the South Carolina Office of Appellate Defense. Upon information and belief, the South Carolina Court of Appeals affirmed Applicant's sentence on January 17, 2012, and issued Remittitur on February 3, 2012.

In his original Application for post-conviction relief filed on January 3, 2014, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
  - a. Counsel failed to abide by the Honorable Judge Roger Young's Order for applicant to undergo a Competency Hearing.
  - b. Counsel failed to follow the proper procedures on appealing the Judge's decision in which applicant received 20 years for trafficking cocaine as instructed by the applicant.
  - c. Counsel failed to contest a break in the chain of custody.

At the hearing, the Applicant proceeded on his claims of ineffective assistance of plea counsel.

#### SUMMARY OF TESTIMONY

At the evidentiary hearing, Applicant testified that he wanted a new trial and understood there was no guarantee for a lesser sentence. Applicant testified he met with Counsel 3 times, with each meeting being less than an hour. Applicant testified is not on bond during this case. He stated he reviewed the evidence and received a copy of the Rule 5 materials, which included a search warrant, the affidavit, and the chain of custody documents. Applicant stated he obtained these material 45 days prior to the plea. Applicant testified he was rearrested <sup>in</sup> 2011 for trafficking. Applicant

alleges he did not discuss any strategy with Counsel and wanted to be advised of all available defenses. Applicant claimed the search warrant was inconsistent with respect to the time of arrest. Applicant alleged Counsel was not prepared for trial and did not know the law. Applicant further stated there were issues with the weight amount, the chain of custody, and that there was no Franks<sup>1</sup> hearing.

As for pretrial issues, Applicant stated all the officers claimed they found the drugs. Applicant also stated they were plea offers of 15 and 18 years, which he rejected. Applicant testified that Counsel was required to have him mentally evaluated because he had off and on mental issues. Applicant stated the judge instructed counsel to call and schedule this mental evaluation. Applicant claimed he was not mentally capable of accepting the offer. Applicant also stated the offer was presented again but he could not accept it because the same issues. Applicant stated he did not know why a mental evaluation was not completed. Applicant claimed he took the 20 year plea offer because Counsel advised him that he could have a life after prison instead of facing life without parole. Applicant also stated that prior to the plea, there was a suppression hearing for the evidence and for the statement he gave to law enforcement. Both of these suppression hearings were denied.

Applicant then testified he wanted Counsel to ask for a Franks hearing, and that his mental state was not brought to the judge's attention. Applicant also claimed that the SLED drug report was not contained in his Rule 5 materials. Applicant also stated he thought it was better to plead than risk a trial. Applicant admitted that he did not tell the plea judge about his mental health issues and that

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1 Franks v. Delaware, 438 U.S. 154 (1978)

he was not fully aware of what would happen. Applicant claimed that his hand was forced, in that he either had to plea or face life without parole.

On cross-examination, Applicant admitted that he understood he could either accept the 20 year, negotiated sentence or proceed to trial. Applicant admitted that he did not answer the plea judge's questions truthfully and also admitted to lying under oath at the plea. Applicant further admitted that this is not his first time being involved with the criminal justice system. Applicant admitted that he pled guilty because he is guilty. Applicant also stated that he did not, at any time, stop the plea judge to explain his mental issues or that he did not understand what was going on during the plea. Applicant lastly stated he was willing to risk the life without parole sentence on retrial if successful on PCR.

Counsel testified that he has been practicing law since 1992 and that criminal cases are the majority of his practice. Counsel stated he is handled drug cases before, including trafficking cases. Counsel stated he has represented Applicant before and that he met with Applicant on this case over 10 times. Counsel stated that he filed for discovery and Rule 5, and discussed and reviewed all of the materials with Applicant. Counsel stated that Applicant was arrested a few more times subsequent to these charges and that he discussed all the evidence with Applicant. Counsel then stated that Applicant agreed to cooperate with law enforcement. Additionally, Counsel testified that they discussed the different options and defenses in the case, including challenging the search warrant. Counsel stated the solicitor wanted to know if Applicant would accept a plea or not; and that the plea offer was 20 years. Counsel stated he wanted to try the oldest case first and try to get the drugs suppressed. Counsel stated in the first case, the jury was picked and both the suppression hearings for



the drugs and Applicant's statements were denied. There was a confidential informant case and a search warrant case.

Counsel testified he explained the rulings to Applicant and inquired about whether or not Applicant wanted to plead. Applicant asked counsel to speak with the solicitor and Counsel spoke with the solicitor and talked about pleas; however, the best offer was for 20 years. Counsel stated that applicant understood the plea offer and accepted <sup>ed</sup> this offer. Counsel further stated that he explained that the plea judge's rulings could not be challenged because Applicant decided plea. Counsel stated he was able to get 3 sets of charges reduced down to one plea. Counsel stated they were 3 separate trafficking charges, and that he explained the enhancements for prior drug charges and drug weight. Counsel explained to Applicant that the State could use the prior convictions to enhance Applicant's sentence to life without parole. Counsel tried to get <sup>the the</sup> lowest sentence possible for Applicant. Counsel stated it was Applicant's decision to plead guilty and that there were no threats or promises made to entice Applicant to plead. Counsel stated Applicant understood the plea negotiations.

Counsel explained that Applicant's mother was the first person to mention that Applicant needed a mental evaluation. Counsel then testified he had no concerns about Applicant's competency, based on his interactions with Applicant and his experience as an attorney. Counsel also stated Applicant did not want to be mentally evaluated and that this issue did not come up in subsequent meetings. Counsel testified that he has had clients evaluated in other cases and knows the process by which defendants are evaluated.

On cross-examination, Counsel admitted he was not an expert in mental evaluations and that Judge Young instructed him to call the Medical University of South Carolina to arrange a mental

evaluation. Counsel once again explained that Applicant stated he did not want to be mentally evaluated.

### **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 (2003).

#### **Ineffective Assistance of Counsel**

Applicant alleges he received ineffective assistance of counsel. 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 (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, 385 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).

This Court finds the Applicant's testimony regarding Counsel's ineffectiveness is not credible while also finding Counsel's testimony is credible.

This Court also finds Counsel provided effective assistance of counsel in this case. Counsel advised Applicant of all of the charges and the sentences the charges carried. Counsel negotiated with the State in Applicant's best interest. Applicant also testified he pled guilty because he did not want to risk a trial and face life without parole. Applicant admitted nobody threatened him to plead guilty, and there were no promises other than the negotiations to entice him to plead guilty. Applicant also admitted that he pled guilty because he was guilty in this case. This Court finds Applicant made the decision to plead guilty on his own accord with the help of learned counsel. Additionally, this Court finds Applicant made this decision freely and voluntarily without any threats or promises from anyone else. Furthermore, this Court finds that it was ultimately the Applicant's decision to plead guilty.



Additionally, this Court finds Applicant can prove no prejudice for Counsel's alleged failure to have applicant mentally evaluated. See Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Bassette v. Thompson, 915 F.2d 932 (4th Cir. 1990), cert. denied, 499 U.S. 982 (1991) (Prejudice from trial counsel's failure to interview or call witnesses cannot be shown where the witnesses do not testify at post-conviction relief); see also Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998) (An Applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial). While Applicant claims Counsel failed to have him mentally evaluated, Applicant failed to produce any evidence that he was not competent to stand trial or assist in his own defense at the PCR hearing, and therefore, can prove no resulting prejudice. Thus, this allegation is denied.

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

This Court also finds the Applicant has failed to prove the second prong of Strickland -- that he was prejudiced by Counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. Therefore, these allegations are denied.

#### 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

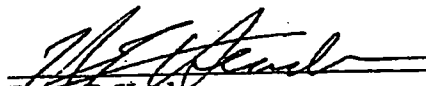
application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice. This Court also finds as to all other allegations that Applicant failed to present evidence of such claims and thus, this Court deems them abandoned.

This Court notifies the 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), SCRCR, provides that if the 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!**

  
Roger E. Henderson  
Presiding Circuit Court Judge  
Ninth Judicial Circuit

October 12 2015  
Chester, South Carolina

WILLIAM O. HANAHAN, III

Attorney at Law

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November 20, 2015

VIA US MAIL

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PO Box 11549  
Columbia, SC 29211-1549

Re: Wayne Hollinshead, #300696 v. St. of SC  
2012-CP-10-7840

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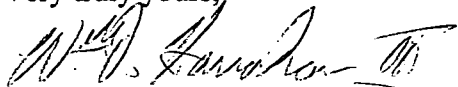
S.C. Supreme Court

Dear Mr. Johnson:

Enclosed for service upon you is the filed Notice of Appeal in the referenced PCR Matter, in which I was appointed PCR Counsel. Please let me know should you have any questions or need anything further from me.

Thank you very much for your assistance in this matter.

Very truly yours,



W. O. Hanahan, III

WOH III/

cc w/ encl: Wayne Hollinshead  
The Hon. Leonidas E. Stavrinakis  
Daniel E. Shearouse Clerk, SC Supreme Court ✓

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