

THE

GIESE

LAW FIRM, LLC

December 2, 2015

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

Re: Dyzshon R. Boykins vs. State of South Carolina
C/A No: 2014-CP-38-0798

RECEIVED

DEC - 7 2015

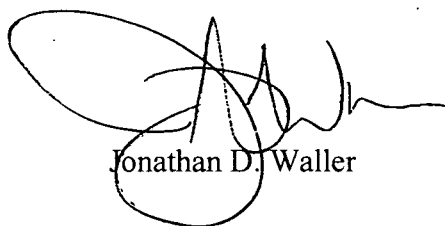
S.C. Supreme Court

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. Boykins 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

2014-CP-38-0798

Dyzshon R. Boykins, #354347,

Appellant,

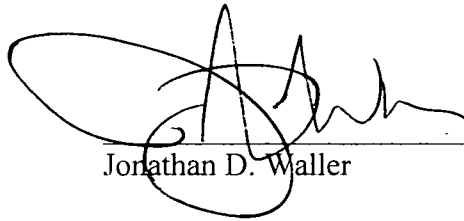
v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Dyzshon R. Boykins, #354347, appeals the Order of Dismissal denying his Application for Post-Conviction Relief filed August 26, 2015 and served on counsel by letter dated November 5, 2015, issued by the Honorable Maité Murphy, Presiding Judge, First Judicial Circuit.



Jonathan D. Waller

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ATTORNEY FOR PETITIONER

This 2 day of December, 2015.

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S.C. Supreme Court

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

2014-CP-38-0798

Dyzshon R. Boykins, #354347,

Appellant,

v.

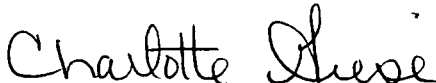
STATE OF SOUTH CAROLINA,

Respondent.

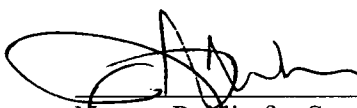
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S.C. Supreme Court

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 2 day of December 2015.


Charlotte Giese

SWORN TO BEFORE me this 2 day
of December, 2015.


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

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

Dyzshon R. Boykins, #354347,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

2014-CP-38-0798

ORDER OF DISMISSAL

FILED FOR RECORD
WINNIE B. CLARK
CLERK OF COURT
ORANGEBURG, SC

2015 AUG 26 1 A 12: 02

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed June 30, 2014. Respondent made a Return and Partial Motion to Dismiss on February 23, 2015, requesting that the action be dismissed as filed outside the statute of limitations. Jonathan D. Waller, Esquire was appointed by the Orangeburg County Clerk of Court. A hearing was held on May 22, 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, Mark Wise, 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 incarcerated with the South Carolina Department of Corrections pursuant to the Orangeburg County Clerk of Court's orders of commitment. The Orangeburg County Grand Jury indicted the Applicant at the November 2011 term of General Sessions for Armed Robbery

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ORANGEBURG COUNTY, SC

(2011-GS-38-1722) and Possession of a Weapon During the Commission of a Violent Crime (2011-GS-38-1723). Mark Wise, Esquire represented the Applicant on these charges.

On February 11, 2013, pursuant to negotiations, Applicant waived presentment to the grand jury and pleaded guilty to Entering a Bank With Intent to Steal (2011-GS-38-1722). The Honorable Eugene C. Griffith accepted the parties' negotiations and sentenced Applicant to seven (7) years' imprisonment. The Possession of a Weapon During the Commission of a Violent Crime charge was *nolle prossed*. Applicant did not appeal his plea or sentences.

In this action, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel in failing to advise of a right to appeal the guilty plea; and
2. Involuntary guilty plea in that Applicant believed he had a viable alibi defense.

III. APPLICABLE LAW

In a post-conviction relief action, Applicant bears the burden of proving the allegations in the 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, 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).

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ORANGEBURG COUNTY, SC

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, 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 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 convictions, the guilty plea transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, 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.

State's Motion to Dismiss

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ORANGEBURG COUNTY, SC

The State asked this Court to dismiss all issues except whether he is entitled to a review of his direct appeal issues pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974) because the application was filed outside of the statute of limitations. Applicant pleaded guilty on February 11, 2013, and filed the application on June 20, 2014. This Court, first, heard testimony regarding the issue of whether Applicant's case should be dismissed as filed outside the statute of limitations and whether he was entitled to a belated direct appeal of his guilty plea. This Court denied the State's motion to dismiss at the hearing.

Dyzshon Boykin's Testimony

Applicant testified he did not have access to a law library while incarcerated at Kirkland Correctional Institution. He testified he was in lockdown for twenty-three (23) hours a day and that his meals were served in his cell. He testified he was not allowed to have anything in his cell during this time. He testified he did not have an application for post-conviction relief but did have pen and paper. He explained that he was then transferred to Ridgeland Correctional Institution in Jasper County. He testified, while at Ridgeland, he again did not have access to an application for post-conviction relief and that he was on lockdown for months at a time where he was unable to leave his room. He testified there was construction going on at the institution and that he did not have access to an application. He explained that the prison was not on lockdown during his entire stay and that he could go to the law library for around three (3) months but that he was not aware of PCR at the time. He testified a gun was found in the yard and that the prison was put on lockdown for two (2) months around the time the statute of limitations would run.

Applicant conceded he has not had any competency issues and has not received any treatment for competency issues. He testified he did not file anything with the court within one

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(1) year of his guilty plea. Applicant further testified he was not aware he could appeal from his guilty plea. He testified Counsel did not discuss a right to appeal with him.

Counsel Mark Wise's Testimony

Counsel testified that he did not believe he advised Applicant of the right to appeal his plea of guilty. He testified that Applicant pleaded to a negotiated sentence and that he did not see any grounds for an appeal. He testified he did not believe he was under a duty to advise that Applicant could file a PCR application.

Discussion

This Court denied the State's motion for partial dismissal and allowed him to proceed to a full evidentiary hearing. This Court found that Applicant was not barred by the statute of limitations and that the time limits should be tolled due to Applicant's circumstances of incarceration.

Further, Applicant has alleged that he is entitled to a belated review of direct appeal issues pursuant to White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974). Counsel has a constitutionally-imposed duty to consult with a defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal, or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores-Ortega, 528 U.S. 470, 120 S. Ct. 1029 (2000). There was no evidence or testimony presented that Applicant requested Counsel file an appeal on Applicant's behalf or that there was a reason for Counsel to believe that Applicant wanted to appeal the conviction or sentence. This Court finds there is no merit to an appeal, notably because no objections were made. Therefore, this claim is denied and dismissed

This Court will now address the allegation raised at the full evidentiary hearing.

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Involuntary and Unintelligent Guilty Plea

Dyzshon Boykins's Testimony

Applicant testified he was arrested ~~in Georgia~~^{MA} on August 8, 2011 and that Mark Wise was appointed to represent him. He testified he was advised of the potential penalties relating to the charges and that Counsel reviewed some of what the State would need to prove in order for Applicant to be convicted. He testified he provided Counsel with an alibi defense in that he was in Georgia at the time of the incident. Applicant testified he attempted to contact witnesses and build his own defense.

Applicant explained that he decided to plead guilty because he got tired. He testified Counsel advised him that the chances of winning at trial were not strong.

Counsel Mark Wise's Testimony

Counsel testified he advised Applicant of the charges against him and the penalties that those charges carried. He reviewed the plea negotiations he had with the prosecuting solicitor and testified that Applicant agreed to the negotiated deal that he ultimately entered into. As to the alibi defense, he testified he spoke to Applicant's father, mother, and other people who lived in Georgia. He testified that the alibi did not come together, that it was not concrete, and that he was unable to nail it down. He testified that he investigated the alibi and encouraged Applicant to give him information on people that could testify to support the defense. He testified that if they were to go to trial, they would do the best they could with the alibi defense. Counsel testified he believed Applicant changed his mind and decided to plead guilty because he was extended an acceptable offer.

Discussion

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Applicant alleges he did not plead guilty knowingly and voluntarily because he believed he had a viable alibi defense. 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 potential alibi defense. This Court finds Applicant's testimony not credible. The record reflects Applicant admitted his guilt to the plea court. This Court finds that Applicant presented *no* evidence that he was coerced or forced to plead guilty. This Court finds Applicant's intent to plead guilty was

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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 alibi defense issue in that the alibi was not solid and was not likely to be successful at trial. Applicant knew he was pleading guilty and thereby waiving any challenges to the evidence. This Court notes Applicant pled guilty to a negotiated plea offer. 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

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.

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. 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

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of post-conviction relief. Rule 71.1(g), SCRCF, 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 18 day of Aug, 2015.

J. Gray, South Carolina

Maité Murphy
MAITÉ MURPHY
Presiding Judge

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CLERK OF COURT
ORANGEBURG COUNTY

