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December 31, 2015

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

RECEIVED

JAN 04 2016

RE: Jason Latroy James v. State of South Carolina, Case No.: 2014-CP-08-0742 **S.C. SUPREME COURT**

Dear Mr. Shearhouse:

Enclosed for filing is the Notice of Appeal (original and clocked copy) in the above Post Conviction Relief (PCR) case. Also enclosed are the following:

- (1) Proof of service of the Notice of Appeal on the respondent;
- (2) The Order of Dismissal &
- (3) A Request for Representation on Appeal.

The Applicant-Appellant was represented by me as an indigent pursuant to my contract with the South Carolina Commission on Indigent Defense (SCCID) to handle PCR cases. By copy of this letter, I am forwarding a duplicate set of documents to the SCCID.

The Request for Representation on Appeal and the Affidavit in Support thereof are signed by me as attorney for Applicant-Appellant. If you need anything further, do not hesitate to contact me. Thank you for your time and attention to this matter.

Sincerely,

Rodney D. Davis
South Carolina Bar #: 12396
4000 Faber Place Drive, Suite 300
Charleston, SC 29405
(843) 323-4353
Davis@LowcountryLawOffice.com

Enclosures. As stated above.
RDD/mmt

cc: J. Rutledge Johnson, Assistant Attorney General
Kimberly McCall, Appellate Division, SCCID

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Larry B. Hyman, Circuit Court Judge

Case No.: 2014-CP-08-0742

RECEIVED

JAN 04 2016

S.C. SUPREME COURT

Jason Latroy James,

Appellant,

v.

State of South Carolina,

Respondent.

NOTICE OF APPEAL

Jason Latroy James appeals the denial of his Post Conviction Relief application in this case. The Application for relief was denied, following an evidentiary hearing before the Honorable Larry B. Hyman on September 9, 2015. A stamped copy of the Order of Dismissal was received, via email, by the Appellant's counsel on November 30, 2015.

December 10, 2015



Rodney D. Davis
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Attorney for Appellant

Other Counsel of Record:
J. Rutledge Johnson
Assistant Attorney General
Office of the Attorney General, State of South Carolina
PO Box 11549
Columbia, SC 29211-1549
Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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JAN 04 2016

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Larry B. Hyman, Circuit Court Judge

Case No.: 2014-CP-08-0742

Jason Latroy James,

Appellant,

v.

State of South Carolina,

Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the State by mailing a copy of it to the address of record, J. Rutledge Johnson, P.O. Box 11549, Columbia, South Carolina 29211-1549, on December 11, 2015.

December 11, 2015



Michelle Moore Trimble
Paralegal to Rodney D. Davis
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Charleston, SC 29405
(843) 323-4353
Davis@LowcountryLawOffice.com
Attorney for Appellant

Other Counsel of Record:
J. Rutledge Johnson
Assistant Attorney General
Office of the Attorney General
State of South Carolina
P.O. Box 11549
Columbia, SC 29211-1549
Attorney for Respondent

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Jason Latroy James, #357760,

2014-CP-08-0742

Applicant,

ORDER OF DISMISSAL

v.

State of South Carolina,

Respondent.

15 OCT 16 PM 1:43
CLERK OF COURT
BERKELEY COUNTY, S.C.

FILED

This matter comes before the Court by way of an Application for Post-Conviction Relief filed April 8, 2014. Respondent made its Return on April 16, 2015. An evidentiary hearing into the matter was convened on September 9, 2015 at the Charleston County Courthouse. Rodney Davis, 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. Chad Shelton, Esquire also testified. This Court had before it a copy of the records of the Berkeley County Clerk of Court, records from the South Carolina Department of Corrections, the application, the State's Return and the guilty plea transcript.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Berkeley County Clerk of Court. The Applicant was indicted at the May 2013 term of the Berkeley County Grand Jury for assault and battery by mob-second degree (2013-GS-08-0785). The Applicant was represented by Chad Shelton, Esquire.

On November 6, 2013, the Applicant pled guilty. The Honorable Stephanie P. McDonald sentenced the Applicant to confinement for a period of seven years. The Applicant did not appeal his conviction or sentence.

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

1. Ineffective assistance of counsel.
 - a. Counsel did not effectively investigate the matter.
 - b. Counsel did not seek to obtain the very best possible outcome for him.

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

SUMMARY OF TESTIMONY

At the evidentiary hearing, Applicant testified Counsel had represented him on previous charges. This conviction stemmed from an incident inside the Berkeley County jail while Applicant was indicted for other charges. Applicant stated Counsel advised him to accept a guilty plea. Applicant admitted Counsel discussed discovery with him and met with him a few times. Counsel discussed the hand of one, hand of all theory to Applicant and discussed the risks of a trial; that if he were found guilty, he could receive up to 25 years in prison. Applicant claimed Counsel did not discuss potential benefits with him, but simply told him to accept a plea. Applicant testified he wished he had better information and had known about other evidence in his case.

Applicant testified this was a negotiated plea in which Counsel was able to obtain a more beneficial offer for Applicant than the initial offer. Applicant stated he accepted the plea right before November term of court, as he either had to accept it or he would lose the offer. Applicant claimed

he did not think Counsel was prepared and that there were three people arrested for this charge. Applicant testified he did not discuss Victim's identification of co-defendants with Counsel but was accused by Victim by name. Applicant testified Counsel did not discuss with him any lesser included offenses and that he pled guilty on Counsel's advice. Applicant lastly testified he would have proceeded to trial he had known about Victim's identification of the co-defendants.

On cross-examination, Applicant admitted he pled guilty to avoid facing 25 years in prison. Applicant admitted he pled guilty knowing the facts of the case as presented by the solicitor at the plea. Applicant admitted he freely relinquished his right to a trial and to confront his accusers. Applicant further admitted there were no promises made in this case and that he failed to explain to the plea judge that he was unsatisfied with Counsel's performance.

This Court then asked Applicant what other evidence he believed Counsel should have discussed with him, to which Applicant replied a compact disc (CD), but he did not know any of the contents of the CD. Applicant also stated he did not get the impression that Counsel was enthusiastic about his case and was told he would receive the maximum penalty.

Counsel testified he met with Applicant once per week on Applicant's other case and once per month on this case. Counsel stated his advice was to accept the plea offer from the State. Counsel also testified he discussed the risks of a trial with Applicant and gave a copy of the discovery to the Applicant. While Counsel did not specifically recall discussing the potential suppression of Victim's identification of Applicant with him, it would have been his normal practice to do so. The confessions Counsel discussed with Applicant were found in recordings of Applicant's phone calls from jail. These calls proved there was an agreement and premeditation between the co-defendants. If the case went to trial, Counsel testified he would have argued for a lesser charge of

Assault and Battery, 1st degree because the jury might believe not believe Applicant's version of the facts. Counsel also stated he shared photographs with Applicant and that Victim's identification of Applicant consisted of Victim specifically saying that Applicant assaulted him.

On cross-examination, Counsel testified the solicitor in this case lost Applicant's trial on the other charges so he wanted a quick trial in this case. Counsel spoke with the solicitor about lesser charges, but the solicitor would not agree to them. The first offer was ten years so Counsel counter-offered with three and five years, but the solicitor would only agree on a sentence as low as seven years. Applicant accepted this offer. Counsel stated he made no threats or promises to Applicant and that it was Applicant's decision to plead guilty.

This Court asked Counsel whether this was a negotiated plea, which Counsel answered in the affirmative. This Court then asked Counsel if he could go back and change anything about this case would he, to which Counsel responded in the negative.

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, 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).

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 the charge and the sentence the charge carried. Specifically, Counsel testified he discussed that this charge could potential carry 25 years. Counsel testified he discussed the

discovery materials with Applicant, including the jail phone calls and the fact that Victim identified Applicant. Counsel also negotiated with the State in Applicant's best interest. Specifically, Counsel negotiated a plea to 7 years. 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.

This Court finds the Applicant has failed to meet his burden of proving counsel's performance was deficient or that he was prejudiced thereby.

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

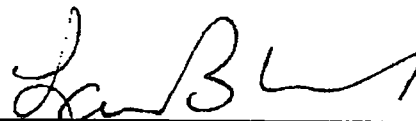
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice. This 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!



Larry B. Hyman
Presiding Circuit Court Judge
Ninth Judicial Circuit

1073, 2015

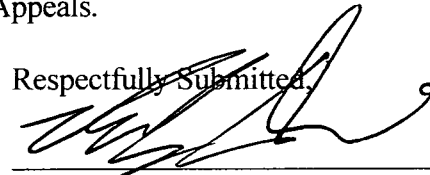
Courts, South Carolina

STATE OF SOUTH CAROLINA)	IN THE SUPREME COURT OF SOUTH CAROLINA
)	Case No.: 2014-CP-08-0742
COUNTY OF BERKELEY)	
)	
JASON LATROY JAMES,)	REQUEST FOR REPRESENTATION ON APPEAL
)	
Applicant.)	
)	
-versus-)	
)	
STATE OF SOUTH CAROLINA,)	
)	
Respondent.)	

On behalf of the request of the above-named Applicant, to be represented by the South Carolina Commission of Indigent Defense, Appellate Division (SCCID), the undersigned attorney would show unto this Honorable Court that:

1. He is the attorney for the Applicant-Appellant in the above captioned case. The Applicant-Appellant was in custody during and taken into custody immediately following the Post Conviction Relief (PCR) hearing and was not available to personally sign this request;
2. The Applicant-Appellant was represented by the undersigned attorney as an indigent, pursuant to a contract with the SCCID;
3. The Applicant-Appellant has been informed that he may request assistance from the SCCID Appellate Division in perfecting his appeal;
4. A timely Notice of Intent to Appeal has been filed on the Applicant-Appellant's behalf;
5. The Applicant-Appellant has been informed that nothing requires SCCID Appellate Division to pursue this appeal unless that office's Chief Attorney is satisfied that there is arguable merit to this appeal and that he cannot afford to hire an attorney.

At this time, the Applicant-Appellant requests the aid of the SCCID Appellate Division in perfecting his appeal to the South Carolina Court of Appeals.

Respectfully Submitted,

 Rodney D. Davis
 South Carolina Bar #: 12396

Charleston, South Carolina
 December 10, 2015.

Lowcountry Law Office

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JAN 04 2016

S.C. SUPREME COURT

Kimberly McCall
South Carolina Commission on Indigent Defense
P.O. Box 11433
Columbia, SC 29211-1433

RE: Jason Latroy James v. State of South Carolina; Case No.: 2014-CP-08-0742

Dear Ms. McCall:

Enclosed is a duplicate set of Appeal documents that I have forwarded to the Clerk of the Supreme Court of South Carolina concerning the above-listed Post Conviction Relief (PCR) case. I was appointed to this PCR pursuant to a contract that I have with your office. I have requested that your office assume the appeal of this case.

Should you need anything further, do not hesitate to contact me. Thank you for your time and attention to this matter.

Sincerely,



Rodney D. Davis
South Carolina Bar #: 12396
4000 Faber Place Drive, Suite 300
Charleston, SC 29405
(843) 323-4353
Davis@LowcountryLawOffice.com

Enclosures. As stated above.
RDD/mmt

cc: J. Rutledge Johnson, Assistant Attorney General
Kimberly McCall, Appellate Division, SCCID

