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RECEIVED

JAN 11 2016

January 7, 2016

S.C. SUPREME COURT

Via Regular Mail

Mr. Daniel E. Shearouse
Clerk, The S.C. Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re: FREDERICK ANDERSON v. State

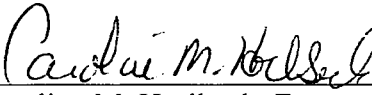
Dear Mr. Shearouse:

Enclosed you will find the original Notice of Appeal in the above matter along with Proof of Service upon the Respondents. The Notice has been filed with the Greenville County Clerk of Court.

These matters are being referred to the Office of Appellate Defense in that we were participating as Court appointed counsel at trial.

Thank you for your attention to this matter.

Yours very truly,


Caroline M. Horlbeck, Esq.

Enclosure

cc: Office of the Attorney General
Office of Appellate Defense

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
THE HONORABLE EDWARD W. MILLER

RECEIVED

JAN 11 2016

S.C. SUPREME COURT

CA No. 2011-CP-23-8447

FREDERICK ANDERSON,

APPELLANT,

vs.

STATE OF SOUTH CAROLINA

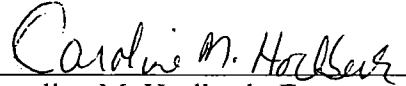
RESPONDENT.

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMMER
2016 JAN. 6, PM 12:11

NOTICE OF APPEAL

Appellant FREDERICK ANDERSON, appeals from the Order of the Honorable Edward W. Miller, Circuit Court Judge clocked December 9, 2014.

Respectfully submitted,


Caroline M. Horlbeck, Esq.
101 Whitsett St
Greenville, SC 29601

Date: January 6, 2016

Other Counsel of Record: Karen Ratigan, Esq.
Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE SUPREME COURT

Frederick Anderson,)
)
)
Appellant,)

C.A. No. 2011-CP-23-8447

-vs-

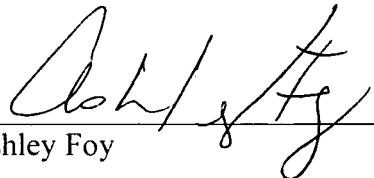
CERTIFICATE OF SERVICE

State of South Carolina,)
)
)
Respondent.)

This is to certify that I am an employee in the law office of Caroline M. Horlbeck, attorneys for Applicant, and that I have this day caused to be served upon the person(s) named below Applicant's Notice of Appeal by placing copies of same in the United States mail, with adequate postage thereon, addressed as follows:

Ms. Lorie French
S.C. Office of Appellate Defense
PO Box 11433
Columbia, SC 29211

Karen Ratigan, Esq.
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211



Ashley Foy

Greenville, South Carolina
1-8-2016, 2016

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

Frederick Van Anderson,)
S.C.D.C. No. 344239,)
Applicant,)

v.)

State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
C.A. No. 2011-CP-23-8447

ORDER OF DISMISSAL

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMMER
2015 DEC 9 AM 11 14

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed December 19, 2011. Respondent made its return on June 5, 2012 and an amended return on April 8, 2015. An evidentiary hearing was held on April 23, 2015 at the Greenville County Courthouse.¹ Applicant was present and represented by Caroline Horlbeck, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented Respondent.

Applicant testified on his own behalf at the PCR hearing. Also testifying were Applicant's plea counsel, John I. Mauldin, Esquire and Frank Eppes, Esquire. The Court had before it the Greenville County Clerk of Court records, the South Carolina Department of Corrections records, the PCR application, and both the return and amended return.

At the conclusion of the PCR hearing, this Court instructed the parties to (1) contact the Grand Jury foreperson and (2) then submit memoranda on the issue of whether the plea judge

¹ This Court also conducted a reconstruction of the guilty plea transcript. Respondent introduced a letter dated June 5, 2014 from Court Administration indicating the transcript was unavailable. (Court's Exhibit 1). The parties who spoke at the reconstruction hearing were: Applicant, both plea attorneys, the prosecuting solicitor (Betty Strom), Applicant's brother (Dwayne Anderson), and Applicant's stepfather (James Drummond). This Court finds the guilty plea was able to be satisfactorily reconstructed.

had jurisdiction to accept Applicant's guilty pleas to these charges. The parties met with the Grand Jury foreperson and an affidavit from that individual was filed with the Clerk of Court on June 30, 2015. This Court has considered this affidavit and the parties' post-trial memoranda (both of which were filed on July 21, 2015).

PROCEDURAL HISTORY

Applicant was indicted at the July 2009 term of the Greenville County Grand Jury for murder (2008-GS-23-5748, count 1), possession of a weapon during the commission of a violent crime (2008-GS-23-5748, count 2), first-degree burglary (2009-GS-23-5749), and discharging a firearm into a dwelling (2009-GS-23-5750). He was represented by John I. Mauldin, Esquire and Frank Eppes, Esquire.

On December 22, 2010, Applicant pled guilty. The Honorable Robin B. Stilwell levied concurrent sentences of life imprisonment for murder, 30 years for first-degree burglary, and 10 years for discharging a firearm into a dwelling. Applicant did not appeal.

ALLEGATIONS

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

1. Ineffective assistance of counsel:
 - a. Failed to inform that Applicant's statements may have been made involuntarily and, if so, would be inadmissible at trial.
 - b. Provided no alternative options but to plead guilty.
 - c. Failed to fully apprise Applicant of the sentencing consequences of his plea.
 - d. Forced Applicant to plead guilty instead of going to trial.
 - e. Failed to show interest in Applicant's case.
 - f. Failed to explain the appeal process or file an appeal.
2. Involuntary guilty plea:
 - a. Not advised of the sentencing consequences of his plea.
3. Perjury and prosecutorial misconduct by "Deputy Solicitor Paul B. Wickensimer" in processing illegal documents (the indictments).

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 and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel/Involuntary Guilty Plea

Applicant alleges his guilty plea was involuntary and that 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).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel’s ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). When there has been a guilty plea, the applicant must prove that counsel’s representation was below the standard of reasonableness and that, but for counsel’s unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citations omitted).

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct.

1709, 1712 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)).

Applicant stated his first attorney was Jim Bannister, then his attorneys were John Mauldin (and later Frank Eppes). Applicant stated he met with John Mauldin and reviewed the photographs in the case, as well as his version of events. Applicant stated he discussed the statements with Mauldin but Mauldin never said these statements would be admissible at trial. Applicant stated he wanted a trial but Mauldin did not. Applicant stated he was served with notice of intent to seek life imprisonment without parole and still wanted a jury trial. Applicant admitted he did not tell the plea judge he wanted a trial. Applicant stated he decided to plead guilty because Mauldin said this was an opportunity and he could receive 30-35 years. Applicant admitted Mauldin did not promise he would receive that sentence. Applicant confirmed the plea judge said life imprisonment was the maximum sentence but stated he did not know he would receive a life sentence. Applicant admitted he told the plea judge no promises had been made in this case but said he was hopeful he would receive a 30-35 year sentence. Applicant stated he spoke to two experts at the jail (one of whom was Dr. Price) but Mauldin did not review the results with him. Applicant stated he did not tell plea counsel after the plea that he wanted to appeal but wanted one now because "this ain't right."

John Mauldin was the lead attorney and confirmed attorney Bannister was involved when the case was non-capital. Mauldin testified he reviewed discovery materials with Applicant, which would have included his verbal statement to arresting officers. Mauldin

testified Applicant never denied involvement in the incidents. Mauldin testified he reviewed Bannister's reports and it appeared that once Bannister could not obtain a plea offer, the notice of intent to seek the death penalty was served. Mauldin testified Applicant was adamant that he wanted a trial, which he told him was unwise. Mauldin testified that, while he was preparing the case for a capital trial to be held in January 2011, he had several meetings with Applicant and his brother, Dwayne. Mauldin testified he strongly encouraged a guilty plea and asked Dwayne to speak to Applicant to make sure he was making correct decisions. Mauldin testified he explained the sentence range for the murder charge and explained the death penalty was an option if the case went to trial. Mauldin testified he never told Applicant the plea judge said he would receive a 30-35 year sentence. Mauldin testified he had Dr. Price and Dr. Schwartz-Watts meet with Applicant at the jail. Mauldin testified Dr. Price's preliminary report was that Applicant was stubborn but there were no competency or mental retardation issues. Mauldin testified Dr. Schwartz-Watts gave him a preliminary opinion in preparation for the mitigation portion of trial (not related to guilty or innocence). Mauldin testified he did not advise Applicant about an appeal.

Frank Eppes became associated with this case after the notice of intent to seek the death penalty was served. Eppes testified they reviewed the State's evidence with Applicant. Eppes testified Applicant often said he wanted a trial. Eppes stated there was overwhelming evidence against Applicant and explained to him the options of a guilty plea and a trial. Eppes testified he did not know why Applicant changed his mind and decided to plead guilty. Eppes testified neither he nor Mauldin told Applicant he would receive a 30-35 year sentence and that they told him the murder charge carried a term of 30 years to life imprisonment. Eppes testified they reviewed Dr. Price's report and was sure they discussed it with Applicant.

This Court finds Applicant failed to meet his burden of proving plea counsel failed to review the case with Applicant and prepare him for the plea hearing. Applicant argues plea counsel did not review all of the discovery materials with him (only the photographs). Applicant argues plea counsel did not discuss whether his statements could be admitted at trial. Applicant also argues plea counsel did not review the experts' reports with him. Mauldin and Eppes both testified they reviewed all of the discovery materials with Applicant. Mauldin specifically testified this would have included verbal statements. Eppes specifically testified they would have discussed Dr. Price's report with Applicant. This Court finds plea counsels' testimony is credible. This Court notes Mauldin and Eppes are experienced and respected criminal defense attorneys who have handled numerous capital cases. This Court finds plea counsel reviewed all of the State's evidence (as well as any reports or conclusions generated by defense experts) with Applicant prior to the guilty plea hearing. This Court finds Applicant was well aware of the evidence against him and how this evidence would have been used at trial. This Court finds Applicant has failed to demonstrate what more plea counsel should have done to review his case prior to the plea hearing and what impact any further review would have had upon his case. See, e.g., Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (holding applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial).

This Court finds Applicant failed to meet his burden of proving plea counsel promised he would receive a lesser sentence if he pled guilty. While Applicant argues Mauldin told him the plea judge would sentence him to a sentence of 30-35 years, this Court finds this is not credible testimony. Eppes testified Applicant was advised the sentencing range for murder was 30 years – life imprisonment. Eppes testified neither he nor Mauldin told Applicant he would receive a

30-35 year sentence, though Mauldin did argue for a sentence in this range at the guilty plea hearing. Mauldin testified he did not tell Applicant the plea judge would sentence him to 30-35 years. Mauldin testified Applicant was advised of the sentence range for murder and that he could receive the death penalty on this charge if it went to trial. This Court finds Eppes and Mauldin are credible. This Court finds Applicant was aware of the sentence ranges on his charges and was also aware he was pleading guilty without a recommendation. Applicant signed all of his sentencing sheets, which have the box "Without Negotiations or Recommendation" clearly marked. See Holden v. State, 713 S.E.2d 611, 617, 393 S.C. 565, 575-76 (2011) (citing Roddy v. State, 339 S.C. 29, 36, 528 S.E.2d 418, 422 (2000)) ("Wishful thinking regarding sentencing does not equal a misapprehension concerning the possible range of sentences.").

This Court finds Applicant failed to meet his burden of proving plea counsel should have filed an appeal. Plea counsel has a constitutionally imposed duty to consult with the defendant about an appeal only when there is reason to think either: (1) that a rational defendant would want to appeal or (2) that this defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores-Ortega, 528 U.S. 470, 480, 120 S. Ct. 1029, 1036 (2000). In order to make this determination, "courts must take into account all the information counsel knew or should have known." Id. (citing Strickland, 466 U.S. at 690, 104 S. Ct. at 2066). Although not determinative, a highly relevant factor will be whether the conviction follows a trial or a guilty plea, both because a guilty plea reduces the scope of potentially appealable issues and because a plea may indicate the defendant seeks an end to judicial proceedings. Id. This Court finds plea counsel were not obligated to advise Applicant about an appeal because he entered a knowing and voluntary guilty plea to these charges. Applicant has failed to demonstrate there were any legal errors made by the plea judge, such that he would have wanted

an appeal. Applicant has also failed to demonstrate he asked counsel about an appeal. Rather, Applicant admitted he never asked plea counsel to file an appeal.

Accordingly, this Court finds Applicant has failed to prove the first prong of the Strickland test – that plea counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present specific and compelling evidence that plea counsel committed either errors or omissions in their representation of Applicant. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by plea counsels' performance.

This Court concludes Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. This Court also concludes Applicant has failed to meet his burden of proving his guilty plea was not knowing and voluntary. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

Indictments

Applicant argued his indictments were improper because they were not signed by the grand jury foreperson. Mauldin testified he would not have noticed this because it is the back side of the indictment. Mauldin testified the case was set for a capital trial the month after Applicant pled guilty, and he had no issues with the indictments.²

This Court finds Applicant failed to meet his burden of proving there were irregularities with the Grand Jury procedure that invalidate his indictments. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174. The Grand Jury foreperson indicated the Grand Jury would vote all of

² As noted supra on pages 1-2, this Court instructed the parties to contact the Grand Jury foreperson and then submit written memoranda. This Court reviewed the affidavit from the foreperson as well as the memoranda. This Court also reviewed the Grand Jury report from July 2009 (Court Exhibit 2) and notes Applicant's indictments are all reported true billed.

the indictments related to one individual at the same time. The foreperson indicated she would set those indictments the Grand Jury voted "true billed" to one side and would later stamp and sign those indictments. The foreperson indicated she had two stamps – one was True Bill and the other was a stamp of her signature. The foreperson did not know why Applicant's indictments were not stamped with the signature stamp.

In Pringle v. State, 287 S.C. 409, 339 S.E.2d 127 (1986), the indictments were stamped "True Bill" but the grand jury foreman's signature was not on them. The Supreme Court found the trial judge had jurisdiction because the regular indictment procedure was followed. Similarly, in this case, the foreperson detailed the usual indictment procedure in her affidavit. The sole deviation appears to be that she stamped Applicant's indictments with the True Bill stamp but not her signature stamp. Applicant cannot demonstrate any other aspect of the regular indictment procedure was not followed in his case. This Court notes "[t]he regularity of grand jury proceedings is presumed absent clear evidence to the contrary; the burden is on the defendant to prove facts upon which a challenge to the legality of the grand jury proceedings is predicated." State v. Batchelor, 377 S.C. 341, 344, 661 S.E.2d 58, 59 (2008). This Court would further note indictments are merely notice documents. See State v. Gentry, 363 S.C. 93, 102, 610 S.E.2d 494, 500 (2005). The indictments in this case were true-billed and clearly sufficient to put Applicant on notice of the charges he was facing. See State v. Tumbleston, 376 S.C. 90, 95-96, 654 S.E.2d 849, 852 (Ct. App. 2007). Plea counsel did not testify they were not given notice of the charges Applicant was facing. To the contrary, Mauldin testified he was preparing the case as a capital trial to be scheduled in January 2011. Applicant failed to meet his burden of proving either that his indictments were defective or that the plea judge did not have jurisdiction to impose sentence upon them.

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, this Court finds Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds Applicant has abandoned any such allegations.

CONCLUSION

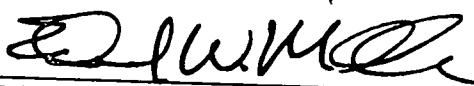
Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel were not deficient in any manner and Applicant was not prejudiced by counsels' representation. Furthermore, Applicant's guilty plea was entered knowingly and voluntarily within the mandates of Boykin. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 8 day of December, 2015.



Edward W. Miller
Presiding Judge
Thirteenth Judicial Circuit

Jewell, South Carolina.

CAROLINE M. HORLBECK

Attorney At Law

101 WHITSETT ST
GREENVILLE, SOUTH CAROLINA 29601



Via Regular Mail

Mr. Daniel E. Shearouse
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