

R. MILLS ARIAIL, JR.
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January 5, 2016

RECEIVED

JAN 11 2016

Via US Mail

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

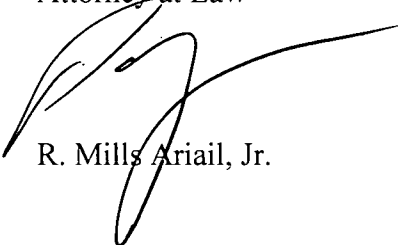
S.C. SUPREME COURT

Re: Notice of Intent to Appeal from Patrick Chase Massey vs. State of South Carolina C.A. No.: 2014-CP-23-4304

Dear Mr. Shearouse:

I was Court Appointed in the above referenced matter, and I expect that appellate defense will handle the appeal and petition for certiorari. On behalf of my client, enclosed for filing please find the Notice of Appeal and proof of service. I've enclosed a copy of the Honorable's Order of Dismissal to be challenged on appeal. By copy of this letter, I am also serving my client, counsel for the State of South Carolina, the South Carolina Commission of Indigent Defense - Appellate Defense Division and the Greenville County Clerk's Office. Thank you for your assistance in this matter and if you have any questions, please feel free to contact me.

Sincerely,
LAW OFFICE OF R. MILLS ARIAIL, JR.
Attorney at Law


R. Mills Ariail, Jr.

RMAjr/dl
Enclosures (as stated)

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

RECEIVED

JAN 11 2016

S.C. SUPREME COURT

Perry H. Gravely, Circuit Court Judge

Case No. 2014-CP-23-4304

Patrick Chase Massey..... Appellant,

v.

State of South Carolina Respondent.

NOTICE OF APPEAL

Appellant appeals the Honorable Perry H. Gravely's Order of Dismissal dismissing Appellant's application for post-conviction relief. On November 24, 2015, the Honorable Perry H. Gravely signed an order dismissing Appellant's application for post-conviction relief with prejudice. Appellant, through counsel, received written notice of entry of this order on December 18, 2015. A copy of the Honorable Perry H. Gravely's Order of Dismissal is attached.



R. Mills Arjail, Jr.
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Facsimile (864) 232-9392
Attorney for Patrick Chase Massey

Greenville, South Carolina
January 5, 2016

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

JAN 11 2016

S.C. SUPREME COURT

Perry H. Gravely, Circuit Court Judge

Case No.2014-CP-23-4304

Patrick Chase Massey..... Appellant,

v.

State of South Carolina Respondent.

CERTIFICATE OF SERVICE

I, Denise Tanner LaBeck, paralegal to R. Mills Ariail, Jr., do hereby certify that on this January 5, 2016, I served upon the below named Respondents copies of the **NOTICE OF APPEAL** by depositing copies of the same via U.S. Mail, postage prepaid, Registered Mail in an envelope addressed as set forth herein below:

Karen C. Ratigan, Esq.
Assistant Attorney General
PO Box 11549
Columbia, SC 29211
Attorney for the State of South Carolina

Greenville County Clerk's Office
Greenville County Courthouse
305 East North Street
Greenville, SC 29601

Patrick Chase Massey SCDC# 358341
Broad River Correctional Institution
4460 Broad River Road
Columbia, South Carolina 29210

SC Commission of Indigent Defense
Division of Appellate Defense
PO Box 11433
Columbia, SC 29211-1433


Denise Tanner LaBeck

January 5, 2016

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NO. ~~2014CP2304304~~

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
DEC 9 AM 11 08

Patrick Massey vs. South Carolina State Of

CHECK ONE:

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**
SCRC P (Vol. Nonsuit); Rule 43(k), SCRC P (Settled); Rule 12(b), SCRC P; Rule 41(a);
 Other: _____
- ACTION STRICKEN (CHECK REASON):**
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Rule 40(j) SCRC P; Bankruptcy;
 Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded;
 Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; Statement of Judgment by the Court:
Dated at Greenville, South Carolina, this .

Court Reporter:

PRESIDING JUDGE - Perry H Gravely

This judgment was entered on the , and a copy mailed first class this , to attorneys of record or to parties (when appearing pro se) as follows:

R. Mills Ariail Jr. 11 North Irvine Street, Suite 11
Greenville, SC 29601

Karen Christine Ratigan PO Box 11549 Columbia,
SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court
- Clerk of Court

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

Patrick Chase Massey,)

S.C.D.C. No. 358341,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
C.A. No. 2014-CP-23-4304

ORDER OF DISMISSAL

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL D. WICKENSIMER
2015 DEC 9 AM 11 38

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed August 4, 2014. The Respondent made its return and partial motion to dismiss on November 22, 2014. An evidentiary hearing was held on October 21, 2015 at the Greenville County Courthouse. The Applicant was present and represented by R. Mills Ariail, Jr., Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

At the start of the hearing, the Respondent moved to dismiss all claims the Applicant wished to raise related to his May 21, 2012 guilty plea to possession of amphetamine (2012-GS-23-0194). This Court granted the motion, as the Applicant filed his PCR application more than one year after his guilty plea hearing. See S.C. Code Ann. § 17-27-45(a) (2003).

As described supra, the Applicant proceeded solely upon claims related to his January 6, 2014 guilty plea. The Applicant testified on his own behalf. Also testifying were Kimberly Massey and the Applicant's plea counsel, Sarah M. Henry, Esquire. The Court had before it the guilty plea transcript, the Greenville County Clerk of Court records, the South Carolina Department of Corrections records, the PCR application, and the return.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted at the May 2013 term of the Greenville County Grand Jury for attempted first-degree burglary (2012-GS-23-7409), two counts of breaking and entering a motor vehicle (2012-GS-23-7410, -7415), two counts of first-degree burglary (2012-GS-23-7417, -7418), and malicious damage to personal property (2012-GS-23-7420). He was represented by Sarah M. Henry, Esquire.

On January 6, 2014, the Applicant pled guilty. The Honorable Robin B. Stilwell sentenced the Applicant to concurrent terms of 15 years for attempted first-degree burglary, 5 years for each count of breaking and entering a motor vehicle, 15 years for each count of first-degree burglary, and 5 years for malicious damage to personal property. The Applicant did not appeal.

ALLEGATIONS

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

1. Ineffective assistance of counsel:
 - a. "[D]elay investigating Applicant mental efficacy, when there was a clear indication of mental health problem. She failed to conduct an adequate investigation."
2. Involuntary guilty plea "due to mental illness and misunderstanding of counsel advice."

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 relevant 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

The 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).

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)).

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The Applicant stated he discussed his charges, evidence, and medical records with plea counsel. The Applicant stated he "was blacked out" during these crimes and wanted a psychiatric evaluation. The Applicant stated plea counsel said an evaluation was unnecessary. The Applicant admitted he and plea counsel discussed that he drank alcohol while taking his medication (he stated he was taking a variety of psychiatric medication at the time) and that plea counsel told him neither voluntary intoxication nor insanity were defenses in his case. The Applicant stated he told plea counsel he did not understand their conversations. The Applicant stated he was unhappy with plea counsel but did not tell the plea judge because he did not understand the law. The Applicant stated he believed he was pleading guilty to a 15-month sentence because plea counsel told him he was pleading to 15 and he assumed that meant months. The Applicant admitted he had two prior convictions and a subsequent probation revocation and did not have competency evaluations before any of these court appearances.

Kimberly Massey, the Applicant's mother, stated the Applicant had mental health counseling since he was 14 years old. Mrs. Massey stated she had several conversations with plea counsel and they discussed the Applicant's mental status. Mrs. Massey stated plea counsel said there was no defense because the Applicant was drinking alcohol while taking his medications. Mrs. Massey stated plea counsel told them the recommendation was for 15 years and that counsel had said the Applicant was facing a sentence of 15 years to life imprisonment if he went to trial.

Plea counsel testified she was appointed in August 2012 and represented the Applicant on 24 charges (and that those he did not plead guilty to were not proessed). Plea counsel testified her notes reflected she had a least a dozen conversations with the Applicant – in jail, in person, or through video conference. Plea counsel testified they discussed the State's evidence, the

charges, and the sentencing ranges. Plea counsel confirmed the Applicant said he blacked out during the crimes. Plea counsel testified there were no viable defenses in this case and that, while she explained to the Applicant that voluntary intoxication was not a defense, he did not like this. Plea counsel testified she obtained his medical records. Plea counsel testified his most recent records indicated the Applicant was depressed and anxious and that he self-diagnosed as having post-traumatic stress disorder). Plea counsel testified she also noted the hospital records from the day of the Applicant's arrest indicated the Applicant self-diagnosed as having bipolar depression. Plea counsel testified the Applicant did not need an evaluation. Plea counsel testified she has her clients read, sign, and date their plea offer and that the Applicant signed and dated his offer two inches below the recommendation for 15 years. Plea counsel testified the Applicant knew the recommendation was for 15 years and that he was facing a mandatory minimum sentence of 15 years. Plea counsel testified she had no difficulty communicating with the Applicant and that he appeared to understand their discussions and the plea proceedings. Plea counsel testified the Applicant was engaged during the guilty plea hearing and she saw no "red flags."

A.

Initially, this Court notes the Applicant admitted to the plea judge that he was guilty. (Plea transcript, p.7). The Applicant also told the plea judge that he understood the trial rights he was waiving in pleading guilty, was satisfied with counsel, and had not been coerced in any way. (Plea transcript, pp.3-4; pp.7-8). This Court finds there is no evidence in the guilty plea transcript to support the Applicant's assertion that he was did not understand the guilty plea hearing. Rather, the Applicant told the plea judge he understood the questions that had been asked and answered. (Plea transcript, p.7). This Court finds the plea transcript has refuted this

allegation. See Stalk v. State, 375 S.C. 289, 300, 652 S.E.2d 402, 407 (Ct. App. 2007); see also Rayford v. State, 314 S.C. 46, 48-49, 443 S.E.2d 805, 806 (1994) (where transcript of guilty plea proceeding refuted applicant's claim that he did not understand the terms of a plea bargain, grant of PCR was inappropriate notwithstanding applicant's claim lawyer misadvised him). This Court further finds the Applicant entered a knowing and voluntary guilty plea. See Boykin v. Alabama, 395 U.S. at 243-44, 89 S. Ct. at 1712.

B.

This Court finds the Applicant failed to meet his burden of proving plea counsel did not properly review and discuss his case. Plea counsel testified they reviewed the State's evidence, the charges, the sentencing ranges, and the Applicant's medical records. Plea counsel testified there was no viable defense in this case. Plea counsel testified she explained to the Applicant that voluntary intoxication was not a defense to these charges. This Court finds plea counsel's testimony is credible. This Court finds plea counsel thoroughly reviewed the case with the Applicant and explained the facts of his case did not lend themselves to a defense. This Court finds the Applicant has failed to demonstrate what else plea counsel should have done to review and prepare his case. See Davis v. State, 326 S.C. 283, 486 S.E.2d 747 (1997) (denying relief where applicant failed to present witnesses or specific testimony establishing he would have had a defense with additional time to prepare for trial); 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).

C.

This Court finds the Applicant failed to meet his burden of proving plea counsel should have had him undergo a competency evaluation. Plea counsel testified she received and

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reviewed the Applicant's medical records. Plea counsel testified she did not believe an evaluation was necessary. Plea counsel testified she saw no red flags in her interactions with the Applicant and that he appeared to understand both their discussions and the plea hearing. This Court finds plea counsel's testimony is credible. This Court notes the Applicant admitted he did not receive evaluations before his 2007 and 2011 convictions or before the probation revocation hearing held one month after he pled guilty in this case. This Court notes that, while the Applicant argues he should have been evaluated because he "blacked out" and could not recall committing the crimes, it is clear this was the result of his own conduct. A review of both the plea transcript and plea counsel's testimony indicates the Applicant was taking certain prescription medication, had been advised not to drink alcohol while taking this medication, and proceeded to become intoxicated and commit these crimes. (Plea transcript, p.11; p.14). A competency evaluation would likely have been of little use in this scenario. Regardless, as the Applicant failed to present either a competency evaluation or expert testimony at the PCR hearing, this Court cannot speculate on the outcome that such may have had upon his case. See, e.g., Lorenzen v. State, 376 S.C. 521, 530, 657 S.E.2d 771, 777 (2008) (finding that, as the applicant failed to present any expert testimony at the PCR hearing, "it is merely speculative that these allegedly favorable expert witnesses would have aided in his defense"); Dempsey v. State, 363 S.C. 365, 370, 610 S.E.2d 812, 815 (2005) (finding that, as the applicant failed to have an expert testify at the evidentiary hearing, "any finding of prejudice is merely speculative").

D.

This Court finds the Applicant failed to meet his burden of proving plea counsel misadvised him about the plea recommendation. While the Applicant stated he believed he was pleading guilty in exchange for a recommendation of 15 months imprisonment, this Court does

not find his testimony is credible. Mrs. Massey testified there was a 15-year recommendation. Plea counsel testified it was a 15-year recommendation, the Applicant knew this, and the Applicant signed the plea offer conveying this recommendation. This Court also notes the Applicant did not object at the plea hearing either when the judge advised the minimum sentence for first-degree burglary was 15 years or when the State noted the recommendation was 15 years. (Plea transcript, p.5; p.12). This Court finds the Applicant clearly knew he was pleading guilty in exchange for a 15-year recommendation. This Court finds that, even assuming arguendo that plea counsel misadvised the Applicant about the recommendation, any error was cured by the plea colloquy. See Holden v. State, 393 S.C. 565, 575, 713 S.E.2d 611, 616 (2011); Burnett v. State, 352 S.C. 589, 593-94, 576 S.E.2d 144, 246 (2003).

E.

Accordingly, this Court finds the 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. The Applicant failed to present specific and compelling evidence that plea 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 plea counsel's performance.

This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. This Court also concludes the 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.

Defective Indictments

This Court finds the Applicant's argument that the Grand Jury was not scheduled to

convene when his indictments were signed is without merit. While terms of court are technically prescribed by statute, this Court notes general sessions matters may be transacted during common pleas terms of court and vice versa. See S.C. Code Ann. §§ 14-5-410, -420 (Supp. 2003). In addition, a grand jury may meet at any time ordered by a circuit judge. See S.C. Code Ann. §§ 14-5-910 to -940 (allowing for terms of court not provided for by law); see also Order No. 2011-02-04-01 (S.C. Sup. Ct. Order dated Feb. 4, 2011) (authorizing chief judge for administrative purposes to “determine the dates for the convening of the grand jury in the various counties within the judicial circuit”). Accordingly, a grand jury is not unlawfully impaneled simply because it does not meet during a term of court as provided for in sections 14-5-620 to -820. See State v. Jeffcoat, 26 S.C. 114, 1 S.E. 440, 441 (1887) (“[M]erely changing the time for holding the court did not make the grand jury illegal.”).

Furthermore, 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)). Absent evidence to the contrary, the court must presume that a properly returned indictment is valid. State v. James, 321 S.C. 75, 472 S.E.2d 38, 40 (Ct. App. 1996) (citations omitted). The Applicant’s indictments are valid on their face because they state all the necessary elements of the crimes, the date of the offenses, and the name of the accused. Id. at 75, 472 S.E.2d at 40. Likewise, the indictments are stamped “True Billed” and signed by the foreman. Pringle, 287 S.C. at 410, 339 S.E.2d at 128. Thus, the Applicant has failed to meet his burden of proving his indictments were defective or unlawfully obtained.

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

CONCLUSION

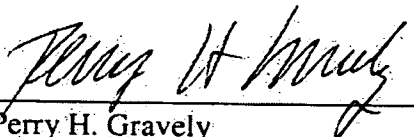
Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner and the Applicant was not prejudiced by counsel's representation. Furthermore, the 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 the 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 the Applicant be remanded to the custody of the Respondent.

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


Perry H. Gravely
Presiding Judge
Thirteenth Judicial Circuit


South Carolina.

[REDACTED]
R. MILLS ARIAIL, JR.

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GREENVILLE, SC 29601

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