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RECEIVED
JAN 15 2016
SS SUPREME COURT

January 11, 2016

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

Re.: Heyward Truesdale v. State of South Carolina
2014-CP-29-1639

Dear Clerk of Court:

Please find enclosed the original and one copy of both Appellant's Notice of Appeal and Proof of Service. Please file the originals and mail stamped copies back to me in the also enclosed self-addressed stamped envelope. I have also enclosed a copy of the Order being appealed and provided Appellate Defense with copies of all of this information as well. Thank you and please feel free to contact me with any additional questions or concerns.

Sincerely Yours,

Nathan Sheldon
The Law Office of Nathan J. Sheldon

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

R. Knox McMahon, Circuit Court Judge

Case No. 2014-CP-29-1639

State of South Carolina, Respondent,

v.

Heyward Truesdale, #313568, Appellant.

NOTICE OF APPEAL

Heyward R. Truesdale appeals the order of the Honorable R. Knox McMahon dated December 10, 2015. Appellant received written notice of entry of this order on January 4, 2016.

January 11, 2016



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Other Counsel of Record:
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THE STATE OF SOUTH CAROLINA
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Respondent,

v.

Heyward Truesdale, #313568,

Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on J. Croom Hunter with the Attorney General's Office by depositing a copy of it in the United States Mail, postage prepaid, on January 11, 2016 mailed to Post Office Box 11549, Columbia, South Carolina 29211-1549.

January 11, 2016



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RECEIVED
JAN 15 2016
SC SUPREME COURT

STATE OF SOUTH CAROLINA)
COUNTY OF LANCASTER)

IN THE COURT OF COMMON PLEAS)
FOR THE SIXTH JUDICIAL CIRCUIT)

Heyward R. Truesdale, #313568,)

Case No. 2014-CP-29-1639)

Applicant,)

v.)

ORDER OF DISMISSAL)

State of South Carolina,)

Respondent.)

RECEIVED
CLERK OF COURT
JUL 17 2015
LANCASTER COUNTY
SOUTH CAROLINA

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on December 10, 2014. Respondent made its return on July 7, 2015. An evidentiary hearing into the matter was convened on August 13, 2015, at the Fairfield County Courthouse. Applicant was present at the hearing and was represented by Nathan Sheldon, Esquire. Respondent was represented by Assistant Attorney General J. Croom Hunter of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Lancaster County Clerk of Court's orders of commitment. The Applicant was indicted at the December 2011 term of the Lancaster County Grand Jury for murder (2011-GS-29-1425), armed robbery (2011-GS-29-1426), and possession or display of a firearm or knife during commission of a violent crime (2011-GS-29-1427). William Frick, Esquire, represented him.

Applicant proceeded to a jury trial pursuant to which he was found guilty as indicted. On May 16, 2013, the Honorable J. Ernest Kinard, Jr., sentenced the Applicant to concurrent terms



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of five years imprisonment for weapon possession and thirty years imprisonment for armed robbery and murder.

A notice of appeal was filed on Applicant's behalf and an appeal was perfected by Wanda H. Carer, Esquire. The South Carolina Court of Appeals affirmed the Applicant's conviction. State v. Truesdale, 2014-UP-1372 (filed November 5, 2014). The Remittitur was issued on November 21, 2014.

ALLEGATIONS

At the post-conviction relief hearing, Applicant proceeded to argue his confinement is unlawful based upon the following grounds:

1. Ineffective assistance of counsel.
 - a. Failure to object to a conflict of interest with the presiding judge.
 - b. Failure to request a competency evaluation.
 - c. Due Process violations.

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. William P. Frick, Esquire (Counsel) also testified. This Court also had before it a copy of the trial transcript, the Lancaster County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, the appellate records, and the return.

During the evidentiary hearing, Applicant testified that he was represented at trial by William P. Frick (Counsel). Applicant testified he is serving 30 years after being convicted of murder. Applicant testified that he was denied bond and Counsel met with him once or twice in the Lancaster County jail. Applicant testified he sent many letters to Counsel, but Counsel only answered a few. Applicant testified that the solicitor offered him a 20 year plea to armed robbery but Counsel told him not to plead guilty because he could beat the charge. Applicant testified his



codefendant pled guilty to voluntary manslaughter. Applicant testified he did not have any witnesses to testify at his trial. Applicant testified he wanted Judge Kinard to recuse himself from the trial because of Judge Kinard's relationship with the victim's family. However, at the PCR hearing, Applicant admitted that he did not tell Counsel he wanted the trial judge to recuse himself. Applicant claimed Counsel did not go over his right to testify; however, Applicant testified he did not tell Counsel he wanted to testify at his trial. Applicant testified that Counsel never discussed accomplice liability with him. Applicant testified he would not have gone to trial had Counsel explained the hand of one, hand of all. Applicant did not deny that he was present when the victim was shot.

Applicant called Counsel to testify at PCR hearing. Counsel testified the trial lasted 4 days. Counsel testified there were a number of witnesses he intended to call; however, the solicitor called those witnesses during his case in chief. Counsel testified he could not recall the specific reasoning for admitting certain pictures into evidence, which caused him to lose the last argument. However, Counsel did testify that he does not like to lose the last argument, so he had a valid reason for doing what he did at the time. Counsel testified that prior to the trial, Judge Kinard indicated that he would consider recusing himself if the Applicant asked him to do so, based on his knowledge of some members of the victim's family. Counsel testified that Applicant asked him to use his best judgment in deciding whether or not to ask the judge to recuse himself. Counsel testified he believed Judge Kinard was the best judge to try murder cases in front of, so his recusal would likely result in Applicant going to trial before a judge who was known to give harsher sentences and make less favorable rulings. Counsel testified he believed the judge tried the case in a fair and just manner. Counsel testified he believed Applicant had a chance to win at trial because this was a close case. Counsel noted that Applicant was present at



the scene and standing next to the shooter when the victim was killed, but he thought there was a chance of successfully arguing Applicant was merely present. Counsel testified there was no forensic evidence linking Applicant to the murder weapon. However, Counsel testified that he and Applicant had multiple conversations regarding the hand of one, hand of all, so Applicant was well aware of the potential consequences of going to trial. Counsel further testified that Applicant's codefendants testified at trial that it was Applicant's idea to rob and kill the victim. Counsel testified that he cross-examined Applicant's codefendants regarding any potential deals and the sentences they were facing. Counsel testified he believed he did a thorough job of making the jury aware that Applicant's codefendants were likely receiving assistance for their testimony. With regard to his cross-examination of Douglas Lewis, counsel testified he thought that the State's presentation on direct showed that Lewis had just as much reason to rob the victim as Applicant did. Counsel testified that he made objections when he thought they were necessary, but in his experience it was not beneficial to argue with Judge Kinard once he decided to rule. Counsel testified he made a directed verdict motion at the close of the State's case, and he made the appropriate post-trial motions. Counsel testified that he met with Applicant well more than twice. Counsel testified that he explained to Applicant that the solicitor would proceed to trial under a theory of accomplice liability. Counsel reiterated that he explained to Applicant that accomplice liability could mean that Applicant was involved in the planning, execution, or aftermath of the crime. Counsel testified that he had no question Applicant was involved in some way in the victim's murder because of the evidence produced by the State. Counsel testified that he believed the outcome of the trial hinged on the credibility of Applicant's codefendants. Counsel testified that the solicitor did offer Applicant a 20 year plea deal, but Applicant rejected the offer. Counsel testified the offer was dated August 13, 2012, and Applicant sent Counsel a



letter on August 28, 2012, in which he expressed his unwillingness to take the deal. Counsel testified the solicitor likely still would have accepted Applicant's plea up until the trial began. Counsel testified that he felt no reason existed to hire an investigator in this case because his strategy from the beginning was to argue mere presence, which he explained to Applicant. Counsel testified he discussed with Applicant his right to testify, but that Applicant did not feel it was necessary for him to take the stand. Counsel testified Applicant made the decision, and that it was not Counsel's decision to make. Counsel testified that although the trial transcript does not reflect the trial judge advised Applicant of his right to testify, Counsel did go over those rights with Applicant. Counsel testified it was clear to him that Applicant had no intention of taking the stand at any point. Counsel testified that in his professional judgment there was no reason for Applicant to testify, and that the trial judge's comments at Applicant's sentencing regarding his decision not to testify were irrelevant. Furthermore, Counsel noted that in a previous, unrelated murder he tried before Judge Kinard, Counsel succeeded in convincing the jury to acquit his client when that client did not testify at trial.

On cross-examination by Respondent, Counsel testified he has been practicing for 14 years. Counsel testified that he has prosecuted and defended over a half dozen murder trials. Counsel testified he filed Rule 5 and Brady motions, and that he went over discovery with Applicant. Counsel testified he did his best to explain anything that Applicant had a question about, and it did not appear that Applicant had any trouble understanding him. Counsel testified he saw no reason to have Applicant evaluated for any type of mental condition or defect. Counsel testified he could not recall the exact number of times he met with Applicant prior to trial, but he felt he met enough to be prepared for trial. Counsel testified he tried to get Applicant a ten year plea offer, but the only offer ever extended by the solicitor was for twenty years.

A handwritten signature in black ink, appearing to be the initials 'AK' or similar, located at the bottom right of the page.

Counsel testified that initially his strategy at trial was to argue Applicant's mere presence at the scene; however, as the trial progressed counsel adjusted his strategy to attempt to raise some suspicion in the jury's mind that Douglas Lewis may have been involved, based on his testimony at trial. Counsel reiterated his belief that if Applicant was going to go to trial on the murder charge, it was best to do so in front of Judge Kinard, regardless of his familiarity with some members of the victim's family. Counsel testified that he explained to Applicant that if he was convicted at trial he would face a minimum of 30 years in prison, and that Applicant still wished to proceed, rather than to accept the solicitor's plea offer. Finally, Counsel reiterated that his strategy in cross-examining Applicant's codefendants was to discredit their testimony by making the jury aware that they were likely receiving favorable plea offers based on their testimony.

INEFFECTIVE ASSISTANCE OF COUNSEL

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his 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, 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, 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. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea

counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 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, 88 L.Ed. 2d 203 (1985).

This Court finds Applicant failed to demonstrate that Counsel's performance was deficient in any way. This Court further finds that Applicant presented no evidence to show any prejudice resulting from Counsel's representation. This Court finds that Counsel met with Applicant an adequate number of times prior to the guilty plea. This Court further finds Counsel obtained discovery from the solicitor and went over it with Applicant. This Court further finds that Counsel thoroughly investigated and prepared Applicant's case. This Court finds Counsel was prepared to present testimony from numerous witnesses, but they were called during the State's case in chief, and Counsel did a satisfactory job cross-examining them.

This Court finds that Applicant waived his allegation that counsel was ineffective for failing to have his mental competency evaluated because Applicant did not present any testimony regarding this allegation at the PCR hearing. However, this Court finds Counsel's testimony credible where he indicated he did not believe there was any need to have Applicant evaluated. See Jeter v. State, 308 S.C. 230, 417 S.E.2d 594 (1992) (counsel may reasonably rely on his own perceptions in deciding if a client is competent to stand trial).



With regard to Applicant's claim that Counsel was ineffective for failing to ask the trial judge to recuse himself, this Court finds Applicant has presented no evidence that a conflict of interest existed, or that the trial judge acted inappropriately or unfairly at any point during Applicant's trial. Additionally, this Court notes that Applicant's testimony reflects he never asked Counsel to move for the trial judge's recusal. This Court notes that Applicant's testimony that he believes the outcome would have been different had the trial judge recused himself is merely speculative.

Despite Applicant's testimony to the contrary, which this Court finds not credible, this Court finds Counsel fully explained the consequences Applicant faced if he was convicted at trial, and that Counsel fully explained accomplice liability to Applicant prior to trial. Furthermore, this Court finds it difficult to believe Applicant's testimony where he claimed Counsel told him not to plead guilty; rather to proceed to trial. This Court finds such testimony not credible. Counsel's testimony clearly reflects that he presented the plea offer to Applicant, and that Applicant wholeheartedly rejected the offer and chose to proceed to trial on his own accord. Additionally, based upon the testimony of Counsel, this court finds Applicant was fully informed of his right to testify, and that he made an informed decision not to take the stand.

This Court finds that Counsel pursued a valid trial strategy in attempting to discredit Applicant's codefendants, as well as attempting to raise some question of whether or not Douglas Lewis was involved in the victim's shooting. This Court notes that just because Counsel's strategy was unsuccessful, it does not mean the strategy was not valid, or that Counsel was ineffective. Strickland requires that trial counsel be given leeway to make reasonable strategic decisions. Where counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel. See Roseboro v. State, 308 S.C.



546, 419 S.E.2d 778 (1992).

This Court notes that Applicant was fully aware of the evidence against him, and the State's intention to convict him based on a theory of accomplice liability; however, Applicant made a fully informed decision to roll the dice and proceed to trial. This Court finds Counsel's representation of Applicant and handling of the case were well within the standards required for effective representation, and Applicant's obvious regret that he did not accept the State's plea offer is not sufficient to warrant success on his PCR application.

Accordingly, this Court finds Applicant did not demonstrate any deficiencies in Counsel's representation. This Court finds that because Counsel's representation was well within the range of competence required in criminal cases, Applicant has further failed to make any showing that but for Counsel's alleged deficiencies, the result of Applicant's case would have been any different. Furthermore, this Court finds that even if counsel's performance was shown to be deficient, which Applicant has failed to do, the overwhelming evidence of Applicant's guilt precludes a finding of any prejudice. See Mincey v. State, 314 S.C. 355, 444 S.E.2d 510 (1994).

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 sufficient evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

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.


Plea counsel rendered effective assistance in regard to the claims raised by Applicant. 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 of post-conviction relief. Rule 71.1(g), SCRCP, 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:

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 this 10 day of DEC, 2015.



R. KNOX MCMAHON
Presiding Judge
Sixth Judicial Circuit


_____, South Carolina