

IN THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
APPEAL FROM LEXINGTON COUNTY
COURT OF COMMON PLEAS

RECEIVED
FEB -2 2016
SC SUPREME COURT

D. CRAIG BROWN, CIRCUIT COURT JUDGE

2012-CP-32-4132

Oblin Banegas-Maldonado,.....Petitioner.

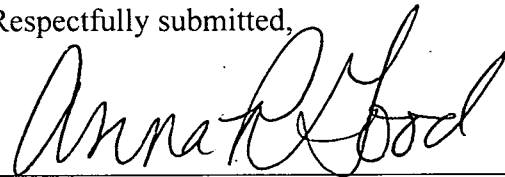
vs

The State of South Carolina,.....Respondent.

NOTICE OF APPEAL

Oblin Banegas-Maldonado appeals the Honorable D. Craig Brown's January 15, 2016 Order of Dismissal. Undersigned counsel received notice of entry of the order on January 27, 2016. A copy of the order on appeal is attached to this notice.

Respectfully submitted,



Anna R. Good
Law Office of Anna Good, LLC
PO Box 7284
Columbia, South Carolina 29202
Telephone: (803) 661-6758
Fax: (803) 403-8752

Attorney for the Petitioner.

February 2, 2016.

OTHER COUNSEL OF RECORD:
Patrick Schmeckpepper, Esquire
South Carolina Attorney General's Office
Post Office Box 11549
Columbia, SC 29211-1549

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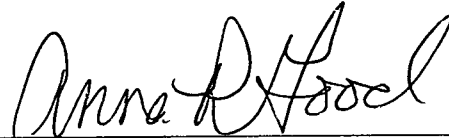
vs

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PROOF OF SERVICE

I, Anna Good, certify that I have today served the within notice of appeal upon the Respondent by depositing a copy of it in the United States Mail, postage prepaid, addressed to the attorney of record, Patrick Schmeckpepper, P.O. Box 11549, Columbia, South Carolina 29211-1549. I further certify that all parties required by Rule to be served have been served this 2^d day of February 2016.

Respectfully submitted,



Anna R. Good, Esquire
Law Office of Anna Good, LLC
PO Box 7284
Columbia, South Carolina 29202

ORIGINAL

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON) FOR THE ELEVENTH JUDICIAL CIRCUIT

Oblin Banegas-Maldonado,
S.C.D.C. No. 343494,

C.A. No. 2012-CP-32-4132

Applicant,

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed October 12, 2012. Respondent made its Return on or about December 17, 2013. An evidentiary hearing into the matter was convened on December 8, 2015, at the Lexington County Courthouse. Applicant was present and was represented by Anna Good, Esquire. Respondent was represented by Patrick Schmeckpeper, Esquire, of the South Carolina Attorney General's Office.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's trial counsel, Elizabeth Fullwood, Esquire, also testified. This Court had before it a copy of Record on Appeal from Applicant's direct appeal,¹ the records of the Lexington County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, appellate records, and the pleadings. The Court finds as follows:

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. Applicant was indicted at the April 2009 term of the Lexington County Grand Jury for burglary, 1st degree (2009-GS-32-

¹ Applicant's trial transcript was included in the Record on Appeal.

0821); and murder (2009-GS-32-0820). He was represented by Elizabeth Fullwood, Esquire. From November 1-4, 2010, Applicant proceeded to trial by jury before the Honorable Clifton Newman, after which he was convicted of the lesser included offense of voluntary manslaughter, and as indicted for burglary, 1st degree. Judge Newman sentenced him to confinement for consecutive terms of twenty-five (25) years for voluntary manslaughter, and fifteen (15) years for burglary.

A timely Notice of Appeal was filed and perfected on Applicant's behalf pursuant to Anders v. California.² The South Carolina Court of Appeals affirmed Applicant's convictions and sentences on June 1, 2012. State v. Oblin Banegas-Maldonado, No. 2012-UP-373 (S.C. Ct. App. filed May 15, 2013). The Remittitur was issued on June 20, 2012.

Allegations

In his application for post-conviction relief, Applicant alleged that he was being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel:
 - a. Counsel labored under conflicting interests;
2. Ineffective assistance of appellate counsel:
 - a. Counsel did not properly raise claims that were preserved for Appellate review.

Applicant was subsequently appointed attorney Anna Good as counsel, who filed an amended application on October 1, 2012, raising the following issues:

1. Ineffective assistance of counsel:
 - a. Counsel failed to properly investigate the matter;³
 - b. Counsel failed to properly communicate with applicant, specifically as to not utilizing a translator to speak with him;
 - c. Counsel failed to properly obtain a translator for Applicant at trial;
 - d. Counsel failed to inform Applicant of a plea offer;
 - e. Counsel failed to properly object to improper closing arguments; and
 - f. Applicant was unfairly sentenced based upon the judge's feelings and not on the jury's verdict, and trial counsel failed to object to the sentence.

² Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967).

³ Applicant withdrew his failure to investigate claim at the hearing through counsel.

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 reviewed the Clerk of Court records regarding the subject convictions, appellate records, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the transcripts and documents from the prior proceedings, the post-conviction relief transcript, and the legal arguments of counsel. Pursuant to S.C. Code Ann. §17-27-80 (2015), this Court makes the following findings of fact based upon all of the probative evidence presented.

Ineffective Assistance of Counsel

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). 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, (1984); Butler, 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, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. 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.

Failure to Properly Communicate with Applicant through Translator

This allegation is directly refuted by the record, as well as Applicant's own testimony. Specifically, both counsel and Applicant testified at the evidentiary hearing there was always an interpreter present when they met, and there was never any difficulty communicating with one another. Because there is no factual basis for this allegation, it is denied and dismissed.

Failure to Obtain Translator for Applicant at trial

This allegation is also directly refuted by the record and by Applicant's testimony. The record reflects there were two interpreters present throughout the entire trial, one of whom was translating for Applicant. (Tr. p. 10-11). The trial court specifically addressed the qualifications of each interpreter, and qualified them to translate during the course of Applicant's trial. Id. Applicant testified that he did not have trouble understanding the interpreter speaking to him. In addition, counsel's credible testimony reflects that she insisted on interpreters from the specific organization used because she knew the quality of their work. As a result, this Court finds Applicant has failed to meet his burden to show counsel ineffective in failing to obtain a translator for trial. This allegation is therefore denied and dismissed.

Failure to Inform Applicant of Plea Offer

This Court further finds Applicant's allegation that counsel failed to convey a plea offer is directly refuted by his own testimony. Applicant testified that he remembered the plea offer being conveyed to him, and that the deal was either between fifteen and thirty or between twenty and thirty years imprisonment. Counsel corroborated this testimony, saying that she discussed the plea offer with Applicant through an interpreter. Counsel explained that Applicant did not take the offer because he felt he acted in self-defense, and because he did not like the large number of years. This is consistent with Applicant's testimony, that when he was offered the deal he told counsel he wanted fifteen years. While it is true that an attorney's failure to convey a plea offer can provide the basis for a claim of ineffective assistance of counsel,⁴ Applicant has failed to present any evidence that such a failure occurred in his case. This allegation is therefore denied and dismissed.

Failure to Object to Improper Closing Arguments

Applicant's allegation that counsel was ineffective for failing to object to the State's closing argument in which the Solicitor stated he knew the Applicant lied is similarly without merit. Applicant has failed to show any legal basis for mounting a sustainable objection. The State's closing arguments must be confined to evidence in the record and the reasonable inferences that may be drawn from the evidence. State v. Copeland, 321 S.C. 318, 324, 468 S.E.2d 620, 624 (1996); see also State v. Caldwell, 300 S.C. 494, 388 S.E.2d 816 (1990) (“[A] solicitor has a right to state his version of the testimony and to comment on the weight to be given such testimony.”). In the present case, the Solicitor stated that he “[knew] somebody who was lying in the courtroom, and that was [the Applicant].” (Tr. p. 455, l. 13-15). This comment was not inappropriate in light of Applicant's trial testimony, on cross-examination, in which he

⁴ See Davie v. State, 381 S.C. 601, 675 S.E.2d 416 (2009).

admitted to lying about whether or not he had gone into the bathroom at the victim's house during the attack. (T. Tr., p. 397, l. 1-4). Accordingly, Applicant has failed to meet his burden to show counsel ineffective in failing to object to the Solicitor's closing arguments. As a result, this allegation is denied and dismissed.

Failure to Object to Unfair Sentence

Applicant alleges counsel was ineffective in failing to object to his sentence. Applicant seemed particularly concerned with the trial judge's comment that the jury was "gracious" in their verdict of voluntary manslaughter rather than murder. This Court finds such comments were not improper. While it is true that it is inappropriate for judge to comment on the facts,⁵ these comments were post-verdict. As a result, there was no possibility that these statements would have impacted the jury's deliberations.

Further, Applicant has not presented this Court with any meritorious objection counsel could have made. A trial judge generally has wide discretion in determining what sentence to impose. State v. Franklin, 267 S.C. 240, 246 226 S.E.2d 896, 898 (1976). It is also true that before making that determination, a judge may appropriately conduct an inquiry broad in scope, largely unlimited either as to the kind of information he may consider or the source from which it may come. Id. As the sentences were within the lawful range,⁶ and there is no indication that the trial judge abused his discretion in running the sentences consecutively to one another,⁷ this Court finds Applicant has failed to meet his burden to prove counsel was ineffective in failing to make an objection. This allegation is therefore denied and dismissed.

⁵ See Sosebee v. Leeke, 293 S.C. 531, 362 S.E.2d 22 (1987) ("A trial judge must refrain from any comment which tends to indicate his opinion as to the weight or sufficiency of the evidence, the credibility of witnesses, the guilt of an accused, or any fact in controversy." (emphasis added));

⁶ Reviewing courts have no jurisdiction to review a sentence, provided it is within the limits provided by statute for the discretion of the trial court, and is not the result of prejudice, oppression or corrupt motive. Franklin, 267 S.C. at 246, 226 S.E.2d at 898.

⁷ Whether multiple sentences should run consecutively or concurrently is a matter left to the sound discretion of the trial judge. State v. Barton, 325 S.C. 522, 531, 481 S.E.2d 439, 444 (Ct. App. 1997).

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.

FILED
2016 JAN 22 11:00
BETTER A COURT
CLERK OF COURT
LEXINGTON, SC

CONCLUSION

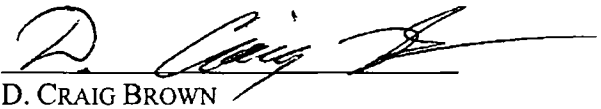
Based on the foregoing, this Court finds that the Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of intent to appeal within thirty (30) days from receipt of this Order to secure the appropriate appellate review. See Rule 203, SCACR. Rule 71.1(g), SCRCPP; Bray v. State, 336 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant’s counsel to file and serve notice of appeal. The Applicant’s attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely filed.

IT IS THEREFORE ORDERED

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of Respondent

AND IT IS SO ORDERED this 15 day of Jan., 2016.



D. CRAIG BROWN
Presiding Judge
Eleventh Judicial Circuit

Florence, South Carolina

FILED
2016 JAN 22 A 11:00
CLERK OF COURT
LEXINGTON, SC

FORM 4

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

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2012CP3204132

Oblin Noel Banegas
 Maldonado #343494

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: Plaintiff Defendant
 Self-Represented Litigant

DISPOSITION TYPE (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. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; 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; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge

Judge Code

Date
 1/26/2016

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on **January 26, 2016**, to attorneys of record or to parties (when appearing pro se) as follows:

Anna Rawl Good PO Box 7284 Columbia, SC 29202

Patrick Lowell Schmeckpeper PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg/kpk

Court Reporter

Beth A. Carrigg - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

