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RECEIVED

February 8, 2016

FEB 10 2016

SC Court of Appeals

The Honorable Tanya A. Gee
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

RE: Alejandro Licona Jimenez

Dear Ms. Gee:

Enclosed for filing is a notice of appeal in the above case. Also enclosed are the following:

- (1) Proof Of Service of the notice of appeal on the respondent.
- (2) A copy of the order which is to be challenged on appeal.

February 8, 2016



Scott D. Robinson (S.C. Bar ID #65351)
819 East North Street
Greenville, SC 29601
(864) 271-6940

Other Counsel of Record:
Karen Ratigan, Esquire
South Carolina Attorney General's Office
P.O. Box 11549
Columbia, SC 29211
(803) 734-7042

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge

Case No. 2014-CP-23-5711

RECEIVED

FEB 10 2016

SC Court of Appeals

Alejandro Licona Jimenez
S.C.D.C. No. 358746

Appellant,

v.

State of South Carolina,

Respondent.

NOTICE OF APPEAL

The Appellant appeals the Order of Dismissal filed December 9, 2015. The Appellant received the complete Order of Dismissal on January 14, 2016.

Dated: 2/7/16
2/8/16

Respectfully submitted,



Scott D. Robinson (SC Bar ID# 65351)
819 East North Street
Greenville, SC 29601
(864) 271-6940
ATTORNEY FOR APPELLANT

Other Counsel of Record:
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THE STATE OF SOUTH CAROLINA
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APPEAL FROM GREENVILLE COUNTY
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Alejandro Licona Jimenez
S.C.D.C. No. 358746

Appellant,

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State of South Carolina,

Respondent.

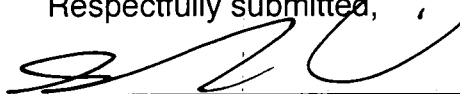
PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Karen Ratigan, Esquire, by depositing a copy of it in the United States Mail, postage prepaid, on ^{2/8/16}~~2/2/16~~, addressed to the attorney of record, Karen Ratigan, South Carolina Attorney General's Office, P.O. Box 11549, Columbia, SC 29211

Dated: ~~2/2/16~~

2/8/16

Respectfully submitted,



Scott D. Robinson (SC Bar ID# 65351)
819 East North Street
Greenville, SC 29601
(864) 271-6940
ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Alejandro Liconá Jimenez,)
 S.C.D.C. No: 358746,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2014-CP-23-5711

ORDER OF DISMISSAL

RECEIVED

FEB 10 2016

SC Court of Appeals

FILED-CLERK OF COURT
 GREENVILLE CO. S.C.
 PAUL B. WICKENSIMMER
 2015 DEC 9 AM 11 37

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed October 15, 2014. The Respondent made its return on February 19, 2015. An evidentiary hearing was held on October 20, 2015 at the Greenville County Courthouse. The Applicant was present and represented by Scott D. Robinson, Esquire.¹ Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's plea counsel, Lawrence W. Crane, 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 July 2013 term of the Greenville County Grand Jury for trafficking cocaine (2013-GS-23-0873). He was represented by Lawrence W. Crane, Esquire.

¹ A Spanish language interpreter was also present.

PLV

On February 6, 2014, the Applicant pled guilty – pursuant to a negotiated sentence – to trafficking cocaine (28-100 grams), second offense. The Honorable Steven H. John sentenced the Applicant to ten years imprisonment. The Applicant did not file an appeal.

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:²

1. Ineffective assistance of counsel.
 - a. “I feel because I am Hispanic and my English is not good, I was not giving a fair trial.”
 - b. “The solicitor told the judge and the court, that it was my 2nd offense, but it was my 1st offense, instead.”

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

The 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).

² On the day of the PCR hearing, PCR counsel filed a pro se amendment prepared by the Applicant. This Court will not consider this amendment, however, as there is no right to hybrid representation. See Jones v. State, 348 S.C. 13, 14, 558 S.E.2d 517, 517 (2002) (counsel cannot serve as a mere conduit for pro se documents in an effort to avoid the prohibition against hybrid representation and the displeasure of his client).

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).

The Applicant stated he had three meetings with plea counsel. The Applicant stated they discussed the case and plea counsel's negotiations with the State. The Applicant stated he did not see the discovery materials. The Applicant stated plea counsel should have investigated his 2008 conviction in Texas. The Applicant stated this 2008 conviction was a misdemeanor and should not have been used to enhance his current charge to a second offense. The Applicant stated he was prejudiced because the charge being treated as a second offense prevented him from getting bond. The Applicant stated plea counsel pressured him to plead guilty. The Applicant stated he went to court that day expecting to plead guilty to a first offense but acknowledged that, during the plea itself, it was noted this was a second offense. The Applicant acknowledged the plea judge advised him of the right to appeal but admitted he did not ask plea counsel to file an appeal.

Plea counsel testified he was retained to represent the Applicant on this charge and filed discovery motions. Plea counsel testified he believed that he received full discovery from the

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

State. Plea counsel testified the Applicant had an ICE hold, so he would not have been able to make bond. Plea counsel testified he had invoices for an interpreter for five meetings. Plea counsel testified he and the Applicant discussed the discovery materials and the sentencing ranges (and that he even drew a diagram to explain the different sentence ranges for different weights of drugs). Plea counsel confirmed the Applicant insisted he did not have a prior offense. Plea counsel testified, however, that the assistant solicitor had demonstrated this would be a second offense. Plea counsel also testified he had received the Applicant's NCIC report. Plea counsel testified, however, that a first or second offense in this case would not have mattered because of the weight of the drugs involved. Plea counsel testified he negotiated a fifteen-year offer for 28-100 grams and the Applicant said "you can do better." Plea counsel testified he negotiated a twelve-year sentence and the Applicant said "you can do better." Plea counsel testified he negotiated a ten-year sentence and the Applicant said "you can do better." Plea counsel testified he explained to the Applicant that he could not and that the only two options were to accept this offer or go to trial. Plea counsel testified he did not put any undue pressure on the Applicant to make a decision. Plea counsel testified they did not discuss an appeal and that, regardless, there were no appellate issues.

Initially, this Court notes the plea judge conducted a thorough plea colloquy with the Applicant. The Applicant admitted to the plea judge both that he was guilty and that the facts recited by the solicitor were true. (Plea transcript, p.6; p.10). 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.5-7). The Applicant acknowledged he understood the judge's questions and had given truthful answers. (Plea transcript, p.10).

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This Court finds the Applicant has failed to meet his burden of proving plea counsel should have investigated his case and ensured he pled guilty to a first offense. Plea counsel testified he was satisfied the Applicant had a prior offense that justified the enhancement of the current charge to a second offense. This Court finds plea counsel's testimony is credible. This Court notes the Applicant has failed to present any evidence to support his contention that his 2008 conviction should not have been used for enhancement purposes. Without such evidence, this Court cannot speculate as to whether further investigation by plea counsel would have resulted in a different outcome in this case. See Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998) (finding the failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result); 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 also finds the Applicant was well aware that he was pleading guilty to a second offense that day, as it was mentioned at the start of the plea hearing. (Plea transcript, p.4).

This Court finds the Applicant has failed to meet his burden of proving plea counsel should have filed a notice of appeal. This Court initially notes plea counsel was not obligated to inform the Applicant of the right to appeal a guilty plea. 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). Regardless, the plea judge advised the Applicant of the right to an appeal and he admitted he did not ask plea counsel to file such. (Plea transcript, p.11).

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This Court finds the Applicant was aware of the right to appeal but chose not to pursue such. See Sheppard v. State, 357 S.C. 646, 651, 594 S.E.2d 462, 465 (2004) (“To waive a direct appeal, a defendant must make a knowing and intelligent decision not to pursue the appeal.”)

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. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

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. 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

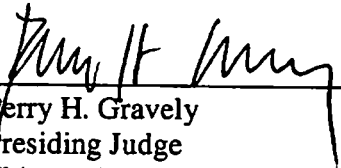
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(30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice 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 23rd day of March, 2015.



Perry H. Gravely
Presiding Judge
Thirteenth Judicial Circuit

Brewer, South Carolina.

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2014CP2305741

FILED-CLERK OF COURT
GREENVILLE CO. SC.
PAUL B. WICKENSIMER
DEC 9 AM 11:37

Alejandro Jimenez 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):
SCRCP (Vol. Nonsuit); Rule 12(b), SCRCP; Rule 41(a),
 Rule 43(k), SCRCP (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):
 Rule 40(j) SCRCP; 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; 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:

Scott David Robinson PO Box 10042 Greenville, SC 29603

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

SCOTT D. ROBINSON LAW FIRM, LLC
P.O. Box 10042
FEDERAL STATION
GREENVILLE, SC 29603

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FEB 10 2016

SC Court of Appeals

The Honorable Tanya A. Gee
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

