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RECEIVED

February 25, 2016

FEB 29 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: RENE MIGUEL RODRIGUEZ v. State

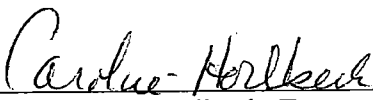
Dear Mr. Shearouse:

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 Perry H. Gravley

CA No. 2014-CP-23-5981

RECEIVED

FEB 29 2016

S.C. SUPREME COURT

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2016 FEB 25 PM 3 35

RENE MIGUEL RODRIGUEZ,

APPELLANT,

vs.

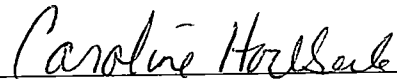
STATE OF SOUTH CAROLINA

RESPONDENT.

NOTICE OF APPEAL

Appellant RENE MIGUEL RODRIGUEZ, appeals from the Order of the Honorable Perry H. Gravley, Circuit Court Judge clocked January 21, 2016, and received by Appellant's counsel on January 25, 2016.

Respectfully submitted,



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

Date: February 25, 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

RECEIVED

Rene Miguel Rodriguez)
)
Appellant,)

C.A. No. 2014-CP-23-5981 FEB 29 2016

S.C. SUPREME COURT

-vs-

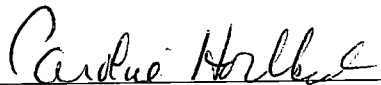
CERTIFICATE OF SERVICE

State of South Carolina,)
)
Respondent.)

This is to certify that I am an employee in the law office of Caroline M. Horlbeck, attorneys for Appellant, and that I have this day caused to be served upon the person(s) named below Appellant'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
P.O. Box 11433
Columbia, SC 29211

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



Caroline M. Horlbeck

Greenville, South Carolina

Feb. 25, 2016

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 René Miguel Rodriguez,)
 S.C.D.C. No. 357840,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2014-CP-23-5981

FILED-CLERK OF COURT
 GREENVILLE CO. S.C.
 PAUL B. WICKENSIMER
 2016 JAN 21 PM 4 11

ORDER OF DISMISSAL
ENTERED COMPUTER

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed November 3, 2014. The Respondent made its return on March 31, 2015. An evidentiary hearing was held on December 18, 2015 at the Greenville County Courthouse. The Applicant was present and represented by Caroline Horlbeck, Esquire. 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, Richard H. Warder, 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 September 2011 term of the Greenville County Grand Jury for trafficking cocaine, 400 or more grams (2011-GS-23-5259). He was represented by Richard H. Warder, Esquire.

On November 12, 2013, the State called the case to trial, a jury was selected, and three

witnesses testified. On November 13, 2013, however, the Applicant chose to plead guilty to trafficking cocaine, 28 or more grams. The Honorable Letitia H. Verdin sentenced the Applicant to 18 years imprisonment. 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. "My lawyer convinced me to reject a plea deal to 12 years b/c my co-defendant, who had already pled 'could not testify against me.'"

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).

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.

DHV

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 and plea counsel reviewed the evidence in his case, what the State would have to prove at trial, and potential witnesses. The Applicant stated he did not think his co-defendant (who pled guilty before trial) would testify against him. The Applicant stated plea counsel said his co-defendant had no reason to testify against him. The Applicant stated he discussed a 12-year plea offer with plea counsel and decided to reject it after his co-defendant said he would not testify against him. The Applicant stated he learned his co-defendant would testify once the jury was chosen and that plea counsel said he would ask for a cap of 18 years if he pled guilty. The Applicant stated he wanted to plead guilty to 15 years, not 18 years.

Plea counsel testified he reviewed the discovery materials with the Applicant. Plea counsel testified he spoke to the co-defendant's attorney and that the Applicant spoke to the co-defendant while they were in jail. Plea counsel testified he did not tell the Applicant that the co-defendant would not testify at trial. Plea counsel confirmed they discussed a 12-year plea offer but that the Applicant rejected it because the co-defendant assured him that he would not testify against him at trial. Plea counsel testified he told the Applicant the advantages and disadvantages of the plea offer (and that the co-defendant could change his mind) but it was the Applicant's decision to reject the offer. Plea counsel testified the Applicant decided to plead guilty during the trial because the co-defendant's testimony was harmful. Plea counsel testified

Handwritten signature or initials, possibly "D.W.", in black ink.

he did not recall the Applicant stating he wanted a 15-year offer and noted that this plea was entered without a recommendation.

This Court finds the Applicant failed to meet his burden of proving plea counsel misadvised him about the plea offer. Plea counsel testified they explained the risks and advantages of the 12-year plea offer and discussed that the co-defendant could change his mind and testify for the State at trial. Plea counsel testified the Applicant made the decision to reject this offer. This Court finds plea counsel's testimony is credible. This Court finds plea counsel properly advised the Applicant about the plea offer and that they discussed its advantages and disadvantages. This Court finds the Applicant – based upon representations from the co-defendant – chose to reject this plea offer even though plea counsel advised the co-defendant could change his mind. The plea judge advised the Applicant that he was pleading guilty to a charge with a sentence range of 7-25 years and that he faced a 25-30 year sentence if he continued with the trial and was convicted. (Plea transcript, p.84). The Applicant stated he understood. (Plea transcript, p.84). The Applicant 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.85-87). While the Applicant may have wanted a 15-year sentence in exchange for his guilty plea, there was no sentence recommendation and he was aware of the sentence range for his charge. See Holden v. State, 713 S.E.2d 611, 617, 393 S.C. 565, 575-76 (2011) (citation omitted) (“Wishful thinking regarding sentencing does not equal a misapprehension concerning the possible range of sentences, especially where one acknowledges on the record that one knows the range of sentences and that no promises have been made.”). This Court finds the Applicant was properly advised of the plea offer, rejected it, and subsequently decided to enter a guilty plea. The Applicant has not demonstrated either any error

by plea counsel or any prejudice suffered as a result.

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 (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 14th day of June, 2016.



Perry H. Gravely
Presiding Judge
Thirteenth Judicial Circuit

Jewell, South Carolina.

CAROLINE M. HORLBECK

Attorney At Law

101 WHITSETT ST.
GREENVILLE, SOUTH CAROLINA 29601



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