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March 21, 2016

VIA U.S. POSTAL

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MAR 24 2016

S.C. SUPREME COURT

Supreme Court of South Carolina
Post Office Box 11330
Columbia, SC 29211

Re: Devross McCorft Sullivan vs. State of South Carolina
Case No.: 2015-CP-23-2632

Dear Supreme Court Clerk:

I am writing to you regarding the above referenced case. Please find enclosed the Notice of Appeal, Proof of Service, and Order of Dismissal.

If you wish to discuss the foregoing or need additional information please contact me at 864-331-1630.

Thank you.

Sincerely,



Brian P. Johnson

BPJ/lf
cc: Karen Ratigan, Esquire

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
HONORABLE DANIEL D. HALL

Case No.: 2015-CP-23-2632

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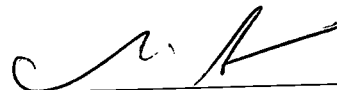
DEVROSS MCCORFT SULLIVAN,)
)
 PETITIONER,)
)
 vs.)
)
 STATE OF SOUTH CAROLINA)
)
 RESPONDENT.)

S.C. SUPREME COURT

NOTICE OF APPEAL

The Petitioner, Devross McCorft Sullivan, hereby appeals the Honorable Daniel D. Hall's March 4, 2016, order denying post-conviction relief to the Petitioner. A copy of the order on appeal is attached to this notice.

Respectfully submitted,



Brian P. Johnson, Esq.
522 North Church Street
Greenville, SC 29601
Attorney for Petitioner
SC Bar: 73996

Date: March 21, 2016
Other counsel of record: Karen Ratigan
P.O. Box 11549/Columbia, SC 29211

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
HONORABLE DANIEL D. HALL

Case No.: 2015-CP-23-2632

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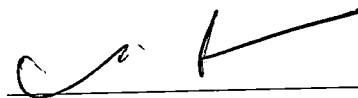
DEVROSS MCCORFT SULLIVAN,)
)
PETITIONER,)
)
vs.)
)
STATE OF SOUTH CAROLINA)
)
RESPONDENT.)

S.C. SUPREME COURT

PROOF OF SERVICE

I, Brian P. Johnson, Esq., certify that I have today served the within notice of appeal upon the Respondent by depositing a copy in the United States Mail, postage prepaid, addressed to the attorney of record, Karen Ratigan, at P.O. Box 11549 Columbia, SC 29211.

Respectfully submitted,



Brian P. Johnson, Esq.
522 North Church Street
Greenville, SC 29601
Attorney for Petitioner
SC BAR: 73996

Greenville, SC
March 21, 2016

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Devross McCorft Sullivan,)
 S.C.D.C. No. 319615,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2015-CP-23-2632

ORDER OF DISMISSAL

ENTERED COMPUTER

FILED-CLERK OF COURT
 GREENVILLE CO. S.C.
 PAUL B. WILKINSON
 2016 MAR 15 PM 3 08

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed April 20, 2015. The Respondent made its return on September 15, 2015. An evidentiary hearing was held on February 16, 2016 at the Greenville County Courthouse. The Applicant was present and represented by Brian P. Johnson, 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, James F. Brehm, 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 Greenville County Grand Jury indicted the Applicant at the January 2014 term of General Sessions for trafficking cocaine (2014-GS-23-0019A), possession with intent to distribute (PWID) a controlled substance (2014-GS-23-0021), trafficking heroin (2014-GS-23-0023, count 1), possession of a weapon

during commission of a violent crime (2014-GS-23-0023, count 2), and PWID cocaine base (2014-GS-23-0024). James F. Brehm, Esquire represented the Applicant.

On May 15, 2014, the Applicant pled guilty.¹ The Honorable Letitia H. Verdin sentenced the Applicant to concurrent terms of 18 years for trafficking cocaine (10-28 grams), second offense, 18 years for PWID controlled substance, third offense, 18 years for trafficking heroin (4 or more grams), 5 years for possession of a weapon during commission of a violent crime, and 18 years for PWID cocaine base, third offense. 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. Failed to file a notice of appeal.
 - b. Advised the Applicant to plead guilty "without placing the State's case against him to 'any meaningful adversarial test.'"
 - c. Failed to move to dismiss the indictment "premised on intentionally tampering with and concealing pertinent video evidence of the confrontation in the Home Depot parking lot, on the night in question."
 - d. Failed to move to dismiss the indictment because the Applicant was indicted for possession of methylene when that substance is not "located anywhere 'plainly understood,' as required by the statute."
 - e. Failed to challenge the sentence.
2. Involuntary guilty plea.

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

¹ On the same date, the Applicant's probation for PWID cocaine (2012-GS-23-2450) was revoked and he was sentenced to 7 years and 9 months incarceration.

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); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citations omitted).

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)).

The Applicant stated plea counsel should have attempted to have the evidence from his vehicle suppressed. The Applicant stated he told plea counsel that there were cameras in the Home Depot parking lot that would support his case. The Applicant admitted there was one tape from Home Depot but that he had asked plea counsel to obtain numerous other tapes. The Applicant stated he wanted an appeal in order to argue there was an illegal search and seizure in his case.

Plea counsel testified he and the Applicant reviewed the charges and sentence ranges, the discovery materials, and the Applicant's version of events. Plea counsel testified he received an "initial batch" of the discovery materials from the State and then he received one Home Depot videotape several months later. Plea counsel testified that, when the Applicant originally approached him about hiring him, he advised the Applicant that time was of the essence regarding obtaining several videotapes from the Home Depot. Plea counsel testified there was a delay in the Applicant hiring him and that, by the time he was retained, neither the State nor the Home Depot had any additional videotapes. Plea counsel testified he discussed the idea of a suppression hearing with the Applicant and that he had told the Applicant he did not believe such would be successful. Plea counsel testified he was successful – after the Applicant was sentenced – in having his house arrest credit applied to his sentence. Plea counsel testified he told the Applicant there was no merit to an appeal.

This Court finds the Applicant has failed to meet his burden of proving his guilty pleas were involuntary. At the plea hearing, the Applicant did not dispute that the facts recited by the solicitor were true. 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.6-10). This Court finds the Applicant was well aware that he was pleading guilty in exchange for a negotiated 18-year sentence. (Plea transcript, p.13). This Court finds there is no evidence in the guilty plea transcript to support the Applicant's assertion that his plea was involuntary; therefore the transcript has refuted this allegation. See Stalk v. State, 375 S.C. 289, 300, 652 S.E.2d 402, 407 (Ct. App. 2007). This Court 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.

This Court finds the Applicant failed to meet his burden of proving plea counsel erred in not moving to suppress the evidence seized from his vehicle. Plea counsel testified that, based upon the videotape and the facts and circumstances surrounding the case (including that the Applicant was on probation at the time of his arrest on these charges), he did not believe a motion to suppress would have been successful. This Court agrees and finds it was a valid strategic decision to instead focus upon plea negotiations with the State. See Roseboro v. State, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995) (finding where trial counsel articulates a valid reason for employing a certain strategy, such conduct should not be deemed ineffective assistance of counsel). Regardless, this Court finds that, given the facts recited by the State at the plea hearing and expanded upon by plea counsel at the PCR hearing, the Applicant cannot prove he was prejudiced by the lack of a suppression motion because such a motion would have been unsuccessful. See Sikes v. State, 323 S.C. 28, 30, 448 S.E.2d 560, 562 (1994) ("When the defendant claims that counsel's failure to articulate a Fourth Amendment claim was ineffective assistance, defendant must show that such claim is meritorious and that the verdict would have been different absent the evidence that should have been excluded.") (citation omitted).

This Court finds the Applicant failed to meet his burden of proving plea counsel erred in

not filing an appeal. As such, this Court finds the Applicant failed to demonstrate he is entitled to a review of direct appeal issues pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974). This Court finds the Applicant did not meet his burden of proof, under Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984), that plea counsel was deficient in this matter. Plea counsel testified he told the Applicant there were no appealable issues from his guilty plea hearing, and the Applicant has failed to demonstrate that any cognizable issues existed that could have resulted in a successful 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. 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.

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

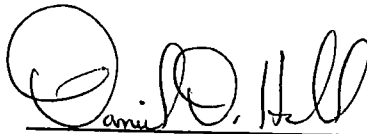
Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner and the Applicant was not prejudiced by counsel's representation. 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 4th day of March, 2016.



Daniel D. Hall
Presiding Judge
Thirteenth Judicial Circuit

Greenville, South Carolina.

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

JUDGMENT IN A CIVIL CASE
CASE NO: 2015CP2302632

Devross Mccroft Sullivan vs. South Carolina State Of

FILED-CLERK COURT
GREENVILLE, S.C.
PAUL B. WICKENSIMER
2016 MAR 15 11:30 AM

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 (Vol. Nonsuit); Rule 12(b), SCRC; Rule 41(a),
 Rule 43(k), SCRC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):**
 Rule 40(j) SCRC; 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 - Daniel D Hall

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:

Brian P. Johnson 522 North Church Street
Greenville, SC 29601

ATTORNEY(S) FOR THE PLAINTIFF(S)

Karen Christine Ratigan PO Box 11549 Columbia,
SC 29211

ATTORNEY(S) FOR THE DEFENDANT(S)

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

Law Office of Brian P. Johnson
522 North Church Street
Greenville, SC 29601

Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

