

The South Carolina Court of Appeals

Albert Owen, #178478, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2016-000649

RECEIVED
MAR 30 2016
SC SUPREME COURT

ORDER

This case is transferred to the Supreme Court of South Carolina pursuant to Rule 204(a) of the South Carolina Appellate Court Rules.

FOR THE COURT

BY


CLERK

Columbia, South Carolina

cc:

Aimee Jendrzewski Zmroczek, Esquire
Patrick Lowell Schmeckpeper, Esquire
The Honorable Daniel E. Shearouse

FILED
3/29/16

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

D. Craig Brown, Circuit Court Judge

Case No.: 2014CP321687

RECEIVED

MAR 25 2016

SC Court of Appeals

State of South Carolina,

Respondent,

v.

Albert Owens,

Appellant.

RECEIVED

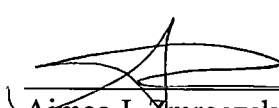
MAR 30 2016

SC SUPREME COURT

NOTICE OF APPEAL

Albert Owens, #178478, appeals the Order of Dismissal denying his Application for Post-Conviction Relief filed January 22, 2016, and received by counsel on January 29, 2016, and the Order Denying Rule 59(E) Motion filed February 26, 2015, and received by counsel on March 3, 2016, issued by the Honorable D. Craig Brown, presiding Judge.

March 23, 2016


Aimee J. Zmroczek, Esq.

P.O. Box 11961

Columbia, South Carolina 29211

Telephone: 803-400-1918

Fax: 803-403-8005

ajzlawfirm@gmail.com

Attorney for Appellant

Other Counsel of Record:
Patrick Schmeckpeper, Esq.
PO Box 11549
Columbia, SC 29211
Counsel for Respondent

9

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

D. Craig Brown, Circuit Court Judge

Case No.: 2014CP321687

State of South Carolina,

Respondent,

v.

Albert Owens,

Appellant.

PROOF OF SERVICE

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MAR 25 2016

SC Court of Appeals

RECEIVED


MAR 30 2016

SC SUPREME COURT

I certify that I have served the Notice of Appeal on Patrick Schmeckpeper by depositing a copy of it in the United States Mail, postage prepaid, on March 23, 2016, addressed to his office at:

PO Box 11549
Columbia, SC 29211

March 23, 2016


Aimee J. Zmroczek, Esq.
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S

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Aimee J. Zmroczek, Attorney
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Christina Metze, paralegal
christina@ajzlawfirm.com

March 23, 2016

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

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MAR 25 2016

SC Court of Appeals

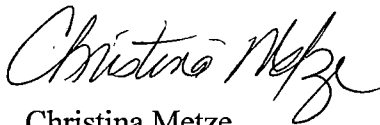
RE: State v. Albert Owens
Lexington County Court of Common Pleas

Dear Madam Clerk:

Enclosed please find an original and two copies of a Notice of Appeal regarding the above referenced matter. Please file stamp the original and return the clocked copies in the self-addressed stamped envelope. Since this is a criminal appeal I understand there is no filing fee.

By copy of this letter a copy of the Notice is being provided to the Lexington County Clerk of Court, Patrick Schmeckpeper of the SC Attorney General's Office and the Office of Appellate Defense.

Sincerely,



Christina Metze
Paralegal

Enclosures

cc: Lexington County Clerk of Court
Patrick Schmeckpeper, SCAG Office
Robert Dudek, Appellate Defense
Albert Owens

RECEIVED

MAR 30 2016

SC SUPREME COURT

FORM 4

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

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2014CP3201687

Albert Shane Owens
 #178478

State of South Carolina

RECEIVED

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: Plaintiff Defendant
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE) **Circuit Court of Appeals**

- 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

2/29/2016

Date

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 **February 29, 2016**, to attorneys of record or to parties (when appearing pro se) as follows:

**Aimee Jendrzewski Zmroczek A.J.Z. Law Firm, LLC PO
Box 11961 Columbia, SC 29211**

ATTORNEY(S) FOR THE PLAINTIFF(S)

**Patrick Lowell Schmeckpeper PO Box 11549 Columbia, SC
29211**

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.

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)
Albert Owens, #178478,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

Case No. 2014-CP-32-1687

RECEIVED
ORDER
MAR 25 2016
SC Court of Appeals ORIGINAL

This matter comes before the Court by way of an Application for Post-Conviction Relief filed May 6, 2014. An evidentiary hearing was convened on December 7, 2015, at the Lexington County Courthouse. The Applicant was present at the hearing and was represented by Aimee Zmroczek, Esquire. The Respondent was represented by Patrick Schmeckpeper, Esquire, of the South Carolina Attorney General's Office. The Court denied relief by an order dated January 15, 2016, and filed January 22, 2016. Applicant subsequently filed a motion asking the Court to reconsider the findings of fact and conclusions of law contained in the order of dismissal. Respondent made its return to the motion, requesting this motion be denied.

[Signature follows]

BETH A. CARROLL
CLERK OF COURT
LEXINGTON, SC

2016 FEB 26 A 11:09

FILED

bkt ✓

Based upon careful reconsideration of the evidence in this case, including Applicant's motion and supporting memorandum, this Court is not persuaded to alter or amend its judgment. This Court further finds oral argument would not aid in the reconsideration of the original judgment. The Order of Dismissal issued by this Court contains the required findings of fact and conclusions of law as required by section 17-27-80 of the South Carolina Code (2014) and Rule 52(a) of the South Carolina Rules of Civil Procedure.

IT IS THEREFORE ORDERED that Applicant's motion be denied and dismissed.

AND IT IS SO ORDERED this 19 day of Feb, 2016.



D. CRAIG BROWN
Presiding Judge
Eleventh Judicial Circuit

Florence, South Carolina

FILED
2016 FEB 26 AM 11:08
BETH A. CARRIGG
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 2014CP3201687

RECEIVED

Albert Shane Owens
 #178478

State of South Carolina

MAR 25 2016

SC Court of Appeals

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.
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 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

1/26/2016

Date

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:

Aimee Jendrzewski Zmroczek A.J.Z. Law Firm, LLC PO
Box 11961 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

Patrick Lowell Schmeckpeper PO Box 11549 Columbia, SC
29211

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.

ORIGINAL

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Albert Owens
S.C.D.C. No. 178478

Applicant,

v.

State of South Carolina,

Respondent.

FILED IN THE COURT OF COMMON PLEAS

2015 JAN 22 A 10 51 ELEVENTH JUDICIAL CIRCUIT

DEBRA A. CHAMBERS
CLERK OF COURT
LEXINGTON, SC

CA No. 2014-CP-32-1687

RECEIVED

MAR 25 2016

SC Court of Appeals

ORDER OF DISMISSAL

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed May 6, 2014. Respondent made its Return on or about June 25, 2015. An evidentiary hearing into the matter was convened on December 7, 2015, at the Lexington County Courthouse. Applicant was present and was represented by Aimee Zmroczek, 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, Erik Drylie, Esquire, also testified. This Court had before it a copy of Applicant's guilty plea transcript, the records of the Lexington County Clerk of Court regarding the subject guilty pleas, Applicant's records from the South Carolina Department of Corrections, 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

June 2013 term of the Lexington County Grand Jury for two counts of Burglary Second Degree (2013-GS-32-1513; -1515). Erik Drylie, Esquire, represented him. On October 31, 2013, Applicant appeared before the Honorable Steven H. John and pled guilty to Burglary Second Degree/ Violent and Burglary Third Degree (Second Offense). Judge John sentenced him to a term of (10) years imprisonment for Burglary Second Degree/ Violent and to a term of (10) years imprisonment for Burglary Third Degree (Second Offense), to be served concurrently. Applicant did not appeal his pleas or sentences.

Allegations

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

1. Involuntary guilty plea:
 - a. Pled by way of coercion and being misled;
2. Ineffective assistance of counsel:
 - a. "Counsel refused to obtain the relevant documentation that shows defendant Owen has a substantial amount of documentation, showing his invariable state of mind through the Lexington Mental Health Facility";
3. Intoxication and temporary insanity.

Summary of Testimony Presented

Applicant testified that he was forty-five (45) years old, and that while he only had a fifth grade education, he obtained his GED at the Department of Corrections in or around 1992. He said he had worked in construction prior to being incarcerated. Applicant testified that he believed counsel was ineffective for failing to go into his mental health issues. Applicant stated he suffered from major depressive disorder and anxiety, and that he has been on ten (10) different medications through Lexington County Mental Health. He said that he was not currently on any medication. Applicant testified he met with counsel only two times, with each meeting lasting twenty minutes. He stated counsel did not go over discovery with him, look at

the crime scene, or obtain his medical records. He further stated counsel did not talk about his drug abuse – specifically “crack and marijuana.” On cross examination, Applicant acknowledged that during his meetings with counsel he discussed the crimes, but stated there were no further discussions. Applicant stated he talked to counsel about drug use and went through his mental health issues. When asked why he did not raise any of the above information or complaints about counsel’s performance when prompted by the plea judge, Applicant responded that counsel had told him “not to say anything.”

Counsel testified that he was appointed shortly after Applicant was arrested, and that he was original charged with three second-degree burglaries, safecracking, and grand larceny. Counsel said he met with Applicant three to four times, and went over his discovery and his background with him at the detention center during those meetings. Counsel testified that Applicant had some mental health issues. However, he stated he never had any concerns about Applicant’s competency to stand trial or plead guilty. Further, counsel testified that in his practice and experience as a criminal defense attorney, he had worked with a number of clients he felt had competency issues. Counsel testified that if he ever had a question regarding competency, he would request an evaluation. He stated there were no such concerns in the present case, and that he did not have any question about Applicant’s mental competency. Counsel testified that Applicant wanted the plea deal, and was happy with the sentence.

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 guilty plea, Applicant’s records from the South Carolina Department of Corrections, the application for

post-conviction relief, the transcripts and documents from the prior proceedings, and 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), SCRPC; 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. With respect to a guilty plea, 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 (1985).

Failure to Investigate

This Court finds Applicant has failed to meet his burden to show counsel's investigation and preparation of his case violated his Sixth Amendment right to effective assistance of counsel. Without a doubt, "[a] criminal defense attorney has a duty to investigate, but this duty is limited to a reasonable investigation. Ard v. Catoe, 372 S.C. 318, 331-32, 642 S.E.2d 590, 597 (2007). Accordingly, the controlling standard for counsel's duty to investigate is *reasonableness*. Edwards v. State, 392 S.C. 449, 457, 710 S.E.2d 60, 64 (2011). So long as a defendant's attorney conducts a reasonable investigation, including interviewing potential witnesses when it is reasonable to do so, his performance will not be deficient. Id. at 457, 710 S.E.2d at 65. Moreover, 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. Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998).

This Court finds Applicant has failed to meet his burden to prove counsel's investigation in this case was deficient. Counsel testified credibly to the effect that he received discovery in this case and reviewed it with Applicant. It is apparent from the record and testimony presented at the evidentiary hearing that Counsel had a firm grasp of the strength of the State's case against Applicant – particularly in light of the potential DNA evidence¹ and Applicant's apparent desire to plead – and strategically focused his efforts on trying to secure a favorable plea deal. This Court finds such a focus was reasonable.

¹ The plea transcript indicates Applicant was identified by a CODIS hit from some of his blood discovered at the crime scene. (Pl. Tr. p. 14).

Moreover, Applicant has failed to show any prejudice resulting from counsel's purported failure to investigate or prepare a defense. In order to show prejudice, Applicant must present some evidence that but for counsel's purported failure to properly investigate he would have refused to plead guilty and instead exercised his right to trial. See, e.g., Porter v. State, 368 S.C. 378, 386, 629 S.E.2d 353, 358 (2006) (no prejudice where Applicant failed to produce evidence at the PCR hearing that further investigation would have led to a different result); Moorehead at 334, 496 S.E.2d at 417 (1998) ("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."). Applicant has failed to produce any such evidence. Accordingly, this Court finds Applicant has failed to meet his burden with regard to this allegation. As a result, it is denied and dismissed.

Failure to Raise Mental Health Issues

This Court further finds Applicant's allegation that counsel was ineffective in failing to raise his mental health issues is without merit, and that Applicant has failed to show he was insane at the time he committed the charged offenses, or incompetent at the time of his plea.

Insanity or Intoxication

For an insanity defense, a defendant must show a reasonable probability that he was either insane at the time the crime was committed or incompetent at the time of the plea. Jeter v. State, 308 S.C. 230, 417 S.E.2d 230 (1992). To prevail on an insanity defense, the accused must be unable to distinguish moral or legal right from wrong and to recognize the particular act charged as morally or legally wrong. Voluntary intoxication, where it has not produced permanent insanity, is never an excuse for a defense to a crime. State v. Hartfield, 300 S.C. 469,

388 S.E.2d 802 (1990). Such insanity must be permanent and destroy the defendant's ability to know right from wrong. Id.

Applicant has not presented any evidence that he was insane at the time of he committed the crimes he is currently challenging. There were no medical records or competency evaluations entered into evidence during the evidentiary hearing. In addition, during his plea hearing Applicant acknowledged that he understood, at the time he was committing the burglaries he was pleading to, that he was committing crimes. (Pl. Tr. p. 17). Accordingly, even if counsel had further pursued a defense of insanity, Applicant has failed to show prejudice where – by his own admission – he was aware that his actions were legally wrong. This allegation is therefore denied and dismissed.

Competency to Plead Guilty

Due process prohibits the conviction of a person who is mentally incompetent. Jeter at 232, 417 S.E.2d at 595 (*citing* Bishop v. United State, 350 U.S. 961, 76 S.Ct. 440, 100 L.Ed 835 (1956)). This right cannot be waived by a guilty plea. Jeter at 232, 417 S.E.2d at 595 (*citing* Pate v. Robinson, 383 U.S. 375, 86 S.Ct. 836, 15 L.Ed.2d 815 (1966)). The test of competency to enter a plea is the same as required to stand trial. State v. Lambert, 266 S.C. 574, 225 S.E.2d 340 (1976). The accused must have sufficient capability to consult with his lawyer with a reasonable degree of rational understanding and have a rational as well as a factual understanding of the proceedings against him. Carnes v. State, 275 S.C. 353, 271 S.E.2d 121 (1980).

In determining whether a competency hearing is warranted, an attorney is permitted to reasonably rely on his own perceptions of their client. See Jeter at 233, 417 S.E.2d at 596; Lee v. State, 396 S.C. 314, 322, 721 S.E.2d 442, 447 (Ct. App. 2011) (finding plea counsel could not be deficient if she had no indication of client's mental state). In the present case, while counsel

acknowledged Applicant had a history of mental illness, he credibly testified that he had no reason to suspect Applicant was not competent to stand trial. Compare Ramirez v. State, 413 S.C. 351, 776 S.E.2d 101 (Ct. App. 2015) (Counsel's performance deficient where was aware of client's substantial mental limitations, including IQ of 31 to 44 and intellectual functioning of a four-to seven-year-old child, and did not seek independent competency evaluation). This Court also finds credible counsel's testimony that he has recommended clients to be evaluated in the past, as well as his statement that he requests evaluations if there is any question of competency. While lawyers are certainly not, by virtue of passing the bar alone, experts in the field of mental health, counsel was no doubt in the best position to make the initial determination on whether to pursue any sort of evaluation. Taking care to avoid the pitfalls of hindsight in post-conviction relief proceedings, this Court finds counsel's decision was reasonable under the circumstances.

Applicant has further failed to meet his burden to show prejudice. To show prejudice arising from failure to request a competency hearing, the applicant bears the burden of proof to show by a preponderance of the evidence he was incompetent at the time of his plea." Jeter at 232, 417 S.E.2d at 596. Applicant presented no such evidence at the PCR evidentiary hearing. Accordingly, this allegation is denied and dismissed.

Involuntary Guilty Plea

This Court also finds Applicant's allegation that his guilty plea was involuntary is without merit. A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of a plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to

trial. Holden v. State, 393 S.C. 565, 572, 713 S.E.2d 611, 615 (2011) (citing Rolen v. State, 3841 S.C. 409, 413, 683 S.E.2d 471, 474 (2009)).

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Roddy v. State, 339 S.C. 29, 33, 528 S.E.2d 418, 421 (2000). A defendant's knowing and voluntary waiver of the constitutional rights which accompany a guilty plea may be accomplished by colloquy between the Court and the defendant, between the Court and defendant's counsel, or both. Holden at 573, 713 S.E.2d at 615 (citing Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 625 (1999)). The longstanding test for determining the validity of a guilty plea is "whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant. Id.

In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Suber v. State, 371 S.C. 554, 558, 640 S.E.2d 84, 886 (2007). Specifically, the voluntariness of a guilty plea is not determined by an examination of a specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the guilty plea, and also from the record of the PCR hearing. Roddy, 339 S.C. at 33, 528 S.E.2d at 420.

Based on the guilty plea transcript as well as evidence at the PCR hearing, this Court finds Applicant has not met his burden to show he was coerced or misled into pleading guilty. This allegation is, in fact, directly refuted by the plea transcript. During his guilty plea proceedings, Applicant stated that no one had promised him anything, or threatened or forced him in any way to get him to plead guilty. (Pl. Tr., p. 7-8). Applicant's explanation, per his testimony at the evidentiary hearing, appears to be simply that his lawyer told him "not to say

anything” regarding coercion to the plea judge. This Court find such an assertion is highly suspect, and in any event not credible. Regardless, such erroneous advice would not have been sufficient justification for Applicant to lie to the plea judge. See, e.g., Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370-71 (1997) (defendant’s claim he understood from counsel that the trial judge’s questions at the guilty plea were only a “polite fiction” held not an invitation to answer untruthfully). Nor would this advice, if given, warrant relief. See Moorehead v. State, 329 S.C. 329, 333, 496 S.E.2d 415, 417 (1998) (Applicant’s explanation that he answered the trial judge affirmatively on counsel’s alleged advice that the questions were meaningless does not support the grant of PCR). Accordingly, this Court finds Applicant has failed to meet his burden to show either deficiency or prejudice with regard to this allegation. It is therefore denied and dismissed.

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.

[Signature follows]

FILED
2016 JAN 22 A 9 51
BETTY A. CARROLL
CLERK OF COURT
LEXINGTON, SC

CONCLUSION

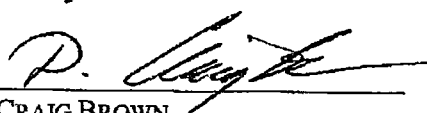
Based on the foregoing, this Court finds that the Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

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), SCRCP; 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 10:50
BETTY A. CAMPBELL
CLERK OF COURT
LEXINGTON, SC