

The Supreme Court of South Carolina

Edward J. Bowen, Petitioner,

v.

State of South Carolina, Respondent.

The Honorable G. Edward Welmaker
Pickens County
Trial Court Case No. 2010-CP-39-01761

ORDER

For good cause shown, the request for an extension until May 11, 2012 to serve and file the Petition for Writ of Certiorari and Appendix is granted. Pursuant to this Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause and must be signed by the appropriate attorneys.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY



Clerk

Columbia, South Carolina

April 12, 2012

cc: Appellate Defender Breen R. Stevens
Assistant Attorney General Karen Ratigan

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Pickens County

G. Edward Welmaker, Circuit Court Judge

RECEIVED

APR 11 2012

S.C. Supreme Court

EDWARD BOWEN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

MOTION FOR AN EXTENSION OF TIME
IN WHICH TO FILE THE PETITION FOR WRIT OF
CERTIORARI AND APPENDIX

(2)

Counsel for Edward Bowen respectfully requests an extension of thirty (30) days in which to file the petition for writ of certiorari and appendix in this case. This motion is made pursuant to the Order of the South Carolina Supreme Court dated March 18, 2009. This is a second request for an extension. In support of this request, counsel shows:

1. The petition for writ of certiorari and appendix is due to be served and filed with the Court today.
2. Counsel for Mr. Bowen respectfully submits that extraordinary circumstances exist which warrant the granting of an additional extension of time. Given the number of extensions previously granted and the order in which counsel attempts to manage his caseload, counsel hopes that no further extension requests will be required.

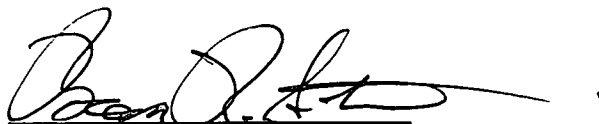
3. Counsel is preparing to file the initial brief of appellant and designation of matter in the case of State v. Brandon Simmons in the Court of Appeals and is preparing for an oral argument in the case of State v. Edward Twyman in the Court of Appeals for tomorrow, April 12, 2012. On April 9, 2012, counsel filed the petition for writ of certiorari and appendix in the case of Dana Merritt v. State in this Court. On April 6, 2012, counsel filed the initial brief of appellant and designation of matter in the case of State v. Joseph Cobb in the Court of Appeals. On April 4, 2012, counsel filed the petition for writ of certiorari and appendix in the case of Timothy Hester v. State in this Court. On March 26, 2012, counsel filed the initial brief of appellant and designation of matter in the case of State v. Samuel Dingle in the Court of Appeal. On March 23, 2012, counsel filed the initial brief of appellant and designation of matter in the case of State v. Brandon Rogers in the Court of Appeals. On March 19, 2012, counsel filed the initial brief of appellant and designation of matter in the case of State v. Bernaldino Ocasio in the Court of Appeals. On March 16, 2012, counsel filed the initial brief of appellant and designation of matter in the case of State v. Christopher Watson in the Court of Appeals. On March 12, 2012, counsel filed the petition for writ of certiorari and appendix in the case of Claude Jones v. State in this Court. On March 5, 2012, counsel filed the initial brief of appellant and designation of matter in the case of State v. Allen Capers and the brief of petitioner in the case of State v. Jason Black in this Court.

4. Counsel makes this request in good faith and not for purpose of delay. Counsel intends to continue to work on the cases with more than three extensions first so that the caseload will hopefully become more manageable in the near future, and less extensions will need to be requested.

5. Counsel for the Attorney General's office has been informed of this request.

WHEREFORE, the undersigned counsel would respectfully request a thirty day extension, in which to file the petition for writ of certiorari and appendix in this case based upon the above exigent circumstances. Counsel requests that time limits for filing the petition be held in abeyance pending a ruling on this motion.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Breen R. Stevens", with a long horizontal flourish extending to the right. The signature is positioned above a horizontal line.

Breen R. Stevens
Appellate Defender

Attorney for Petitioner

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Pickens County
G. Edward Welmaker, Circuit Court Judge

EDWARD BOWEN,

PETITIONER,


v.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

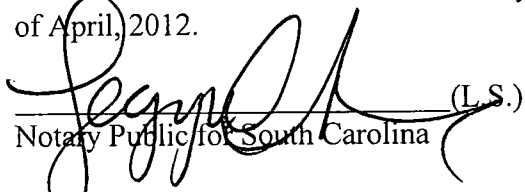
I certify that a true copy of the motion for an extension of time in which to file the petition for writ of certiorari and appendix in the above case has been served upon Karen Ratigan, Esquire, this 11th day of April, 2012.



Breen R. Stevens
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 11th day
of April, 2012.



(L.S.)
Notary Public for South Carolina

My Commission Expires: December 4, 2017.



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

March 12, 2012

RECEIVED

MAR 19 2012

S.C. Supreme Court

The Honorable Daniel E. Shearouse
Clerk of Court, S.C. Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

C

Re: Edward Bowen v. The State

Dear Mr. Shearouse:

The petition for writ of certiorari and appendix in this case are due to be served and filed with the Court today. However, because of my heavy workload at this time, I am requesting an extension for 30 days, in which to serve and file the petition.

By copy of this letter, I am informing Karen Ratigan, of the Attorney General's Office, of my request.

Sincerely,

Breen R. Stevens
Appellate Defender

BRS/pds

cc: Karen Ratigan, Esquire



SCCID

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Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

January 12, 2012

RECEIVED

JAN 12 2012

The Honorable Daniel E. Shearouse
Clerk, S.C. Supreme Court
Post Office Box 11330
Columbia, SC 29211

S.C. Supreme Court

Dear Mr. Shearouse:

The following case falls under the 60 day rule for appeals, and the date we received the transcript is listed to the side.

Edward J. Bowen v. State of South Carolina

1/12/2012

I would appreciate you beginning our time limits from the above date, and if you need additional information, or have any questions please contact me.

Thank you for your assistance in this matter.

Sincerely,

Loriene French
Legal Services Coordinator



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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Columbia, South Carolina 29211-1589
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Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

RECEIVED

November 7, 2011

NOV 7 2011

S.C. Supreme Court

Ms. April P. Herron
Circuit Court Reporter
P O Box 17675
Greenville, SC 29606

Dear Ms. Herron:

Please provide us with the following transcript:

Edward J. Bowen v. State of South Carolina Case #: 10-CP-39-01761.

County: Pickens Date of Trial: May 12, 2011

Presiding Judge: G. Edward Welmaker

To ensure prompt payment, please sign and complete the enclosed CID FORM 3500 and include the original criminal case number (Indictment number) where the space is provided.

Please number the lines on the paper from 1-25, and include any and all recorded motions, pre and post-trial. Additionally, please transcribe the jury selection, and the State and defense counsel's opening and closing arguments.

If you are aware of any co-defendants or if the Attorney General's Office has already requested a transcript, please let us know.

Sincerely,


Lorie French
Legal Services Coordinator

cc: S.C. Supreme Court
Attorney General's Office

Tommy A. Thomas

ATTORNEY AND COUNSELOR AT LAW

TELEPHONE:
(803) 732-5507
(803) 732-5508

HARRINGTON BUILDING
7588 WOODROW STREET
IRMO, SOUTH CAROLINA 29063

PLEASE REPLY TO:
PO Box 88
IRMO, SC 29063

FACSIMILE:
(803) 781-4226

INMATE LINE
(803) 732-6342

RECEIVED

OCT 11 2011

S.C. SUPREME COURT

October 7, 2011

The South Carolina Supreme Court
Attention: Janet Johnson
P.O. Box 11330
Columbia, SC 29211

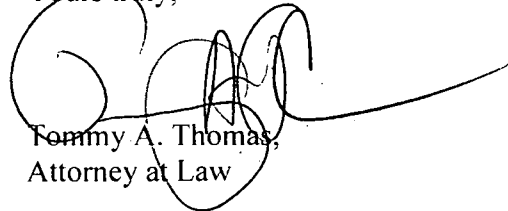
RE: Edward Bowen v. State
Docket No.:

Dear Jantet:

I was retained to represent Mr. Bowen at his Post Conviction Relief Action. This matter was denied and I file a Notice of Appeal on his behalf. I submitted Mr. Bowen's Affidavit of Indigency to the Office of Appellate Defense, and they turned down Mr. Bowen's request for representation. It is my understanding that their decision was based on some misinformation and I am in the process of having Mr. Bowen's indigency status revisited. I would respectfully request a thirty (30) day extension of time to request the transcript in this matter.

Thank you. Should you have any questions, or need any additional information, please do not hesitate to contact me.

Yours truly,


Tommy A. Thomas,
Attorney at Law

TAT/jem

October 7, 2011

The South Carolina Supreme Court
Attention: Janet Johnson
P.O. Box 11330
Columbia, SC 29211

RE: Edward Bowen v. State
Docket No.:

Dear Jantet:

I was retained to represent Mr. Bowen at his Post Conviction Relief Action. This matter was denied and I file a Notice of Appeal on his behalf. I submitted Mr. Bowen's Affidavit of Indigency to the Office of Appellate Defense, and they turned down Mr. Bowen's request for representation. It is my understanding that their decision was based on some misinformation and I am in the process of having Mr. Bowen's indigency status revisited. I would respectfully request a thirty (30) day extension of time to request the transcript in this matter.

Thank you. Should you have any questions, or need any additional information, please do not hesitate to contact me.

Yours truly,

Tommy A. Thomas,
Attorney at Law

TAT/jem

Tommy A. Thomas

ATTORNEY AND COUNSELOR AT LAW

TELEPHONE:
(803) 732-5507
(803) 732-5508

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September 1, 2011

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

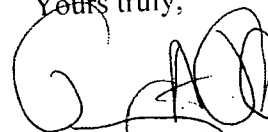
RE: Edward Bowen v. State
Docket No.: 2010-CP-39-1761

Dear Sir or Madam:

Enclosed please find an original and a copy of a Notice of Appeal and Certificate of Service in the above matter.

Kindly return a clocked copy to me in the enclosed envelope. Thank you. Should you have any questions, or need any additional information, please do not hesitate to contact me.

Yours truly,



Tommy A. Thomas,
Attorney at Law

TAT/jem
cc: Karen Ratigan, Esq.
Edward Bowen
Appellate Defense

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SEP 06 2011

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM PICKENS COUNTY
Court of Common Pleas
Post Conviction Relief

G. Edward Welmaker, Circuit Court Judge

Case No.: 2010-CP-39-1761

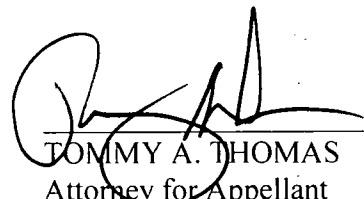
Edward J. Bowen #290274,..... Appellant,

vs.

State of South Carolina,Respondent.

NOTICE OF APPEAL

Edward J. Bowen #290274 appeals the order of the Honorable G. Edward Welmaker dated July 8, 2011 and filed on August 17, 2011. Appellant received written notice of entry of this order on August 22, 2011.


TOMMY A. THOMAS
Attorney for Appellant
P.O. Box 88
Irmo, SC 29063
(803) 732-5507

Other Counsel of Record:

Karen C. Ratigan, Esq.
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211
Attorney for Respondent

Irmo, South Carolina
September 1, 2011

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SEP 06 2011

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM PICKENS COUNTY
Court of Common Pleas
Post Conviction Relief

G. Edward Welmaker, Circuit Court Judge

Case No.: 2010-CP-39-1761

Edward J. Bowen #290274,..... Appellant,

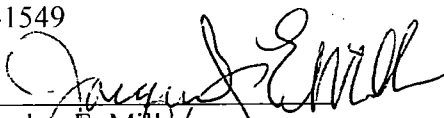
vs.

State of South Carolina,Respondent.

CERTIFICATE OF SERVICE

I, Jacquelyn E. Miller, secretary to Tommy A. Thomas, Attorney for the Appellant, hereby certify that I placed in the United States Mail, a copy of an Notice of Appeal, with postage prepaid and the return address clearly shown on said envelope to the Attorney General's Office, at:

Karen C. Ratigan, Esq.
Attorney General's Office
P.O. Box 11549
Columbia, SC 29211-1549



Jacquelyn E. Miller
Secretary to Tommy A. Thomas
Attorney for Applicant
P.O. Box 88
Irmo, SC 29063
(803) 732-5507

September 1, 2011

STATE OF SOUTH CAROLINA)
)
 COUNTY OF PICKENS)
)
 Edward J. Bowen,)
 S.C.D.C. No. 290274,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2010-CP-39-1761

CLERK OF COURT
 PICKENS COUNTY
 SOUTH CAROLINA
 2011 AUG 17 P 3:31

ORDER OF DISMISSAL

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed October 6, 2010. The Respondent made its return and motion to dismiss on December 22, 2010. An evidentiary hearing into the matter was convened on May 12, 2011 at the Greenville County Courthouse. The Applicant was present at the hearing and represented by Tommy A. Thomas, 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, Daniel J. Farnsworth, Esquire. The Court had before it the transcript of the guilty plea hearing, the records of the Pickens County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the Respondent's return.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Pickens County Clerk of Court. The Applicant was

indicted at the July 2005 term of the Pickens County Grand Jury for three (3) counts of possession of marijuana (2005-GS-39-1375, -1378, -1619), trafficking methamphetamine (2005-GS-39-1376), assault and battery (2005-GS-39-1377), possession of untaxed liquor (2005-GS-39-1379), possession of schedule IV controlled substance (2005-GS-39-1380), possession of schedule II narcotic (2005-GS-39-1381), and possession with intent to distribute (PWID) cocaine (2005-GS-39-1618). He was represented by Daniel J. Farnsworth, Esquire.

Guilty Plea

On October 23, 2006, the Applicant pled guilty. The Honorable Edward W. Miller sentenced the Applicant to concurrent terms of one (1) year for each count of possession of marijuana, second offense, six (6) years for trafficking methamphetamine, second offense, time-served for assault and battery, six (6) months for possession of untaxed liquor, six (6) years for possession of schedule II narcotic, second offense, and six (6) years for PWID cocaine, second offense. Judge Miller levied a consecutive sentence of five (5) years suspended with three (3) years probation for possession of schedule IV controlled substance, second offense. The Applicant did not appeal.

First PCR Application

The Applicant filed a PCR application on October 12, 2007 (2007-CP-39-1518). The Applicant raised the following issues:

1. Ineffective assistance of counsel:
 - a. Failed to investigate the State's unlawful use of a prior conviction.
 - b. Failed to challenge the State's unlawful seizure of personal property.

A hearing was held on February 23, 2009 at the Pickens County Courthouse. Perry H. Gravely, Esquire represented the Applicant. At the hearing, the Applicant stated he wanted to



withdraw all of his PCR issues except for one. The Applicant wanted the Court to order SCDC to interpret his sentence for trafficking methamphetamine (2005-GS-39-1376) as non-violent. The Honorable John C. Few agreed and issued an order filed April 15, 2009. The order stated: (1) SCDC must interpret the trafficking methamphetamine sentence as non-violent and (2) that all other issues were voluntarily withdrawn by the Applicant. The Applicant did not appeal.

State's Motion to Dismiss

On February 24, 2011, the parties appeared before the Honorable Robin B. Stilwell in order for the State to argue its motion to dismiss the PCR application as successive and untimely. Tommy A. Thomas, Esquire represented the Applicant. The Applicant argued he withdrew his first PCR application because he believed the April 15, 2009 order would re-classify him as non-violent within SCDC but that – while SCDC complied with that order and updated their records – he was still classified as violent pursuant to SCDC's internal classification system. In an oral ruling on the date of the hearing, Judge Stilwell: (1) found the Applicant's agreement to withdraw his first PCR application was predicated on incorrect advice, (2) denied the State's motion to dismiss, and (3) ordered the Applicant's issues be addressed in an evidentiary hearing.

ALLEGATIONS

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

1. Ineffective assistance of counsel.
2. Involuntary guilty plea.
3. Newly-discovered evidence.

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/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).

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).

The Applicant stated the charges in his case stemmed from three (3) separate incidents. The Applicant stated he had several meetings with plea counsel and that they discussed the charges and the State's evidence. The Applicant stated he told plea counsel that the search and seizure at his home (related to the November 2004 charges) was unlawful because he was not there and his roommate allowed police to enter. The Applicant stated he told plea counsel the drugs in the truck (related to the March 2005 charges) were not his. The Applicant stated the indictments were insufficient. The Applicant stated plea counsel coerced him into entering a guilty plea because counsel said he could receive a life sentence. The Applicant stated he wanted to accept the State's original five (5) year plea offer but that it was withdrawn before he could do so (because he was in a drug treatment program at the time). The Applicant stated he wanted plea counsel to present a character witness to explain why he was at her house (when he was arrested on the June 2005 charges). The Applicant stated the solicitor made false statements about his prior convictions during the plea hearing. The Applicant stated his trafficking charge should not have been a second offense because he had no prior trafficking convictions. The Applicant stated his sentence for possession of schedule IV controlled substance, second offense was improper. The Applicant stated that, while plea counsel did not advise him of such, he believed he would be parole eligible.

Plea counsel testified he filed discovery motions on the various charges and discussed both the State's evidence and the Applicant's version of events with the Applicant. Plea counsel

testified he and the Applicant had numerous meetings about his case and that he was sure they discussed the search and seizure at the Applicant's house. Plea counsel testified the Applicant told him about the arrest in the truck and that he told the Applicant that saying the drugs were not his would not be an effective argument. Plea counsel testified he did not tell the Applicant that he would receive a life sentence if he did not plead guilty. Plea counsel testified he did not believe he was the first attorney on this case and that he did not recall a five (5) year offer from the State. Plea counsel testified the first plea offer he recalled was for a twenty-five (25) year sentence but that it was not accepted. Plea counsel testified the Applicant pled guilty without a sentence recommendation. Plea counsel testified he was aware of the character witness but that he did not believe it would benefit their case if she testified. Plea counsel testified that, based on the Applicant's prior convictions, the drug charges were properly enhanced to second offenses. Plea counsel testified he likely advised the Applicant that he would not be eligible for parole.

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds the Applicant's testimony is not credible, while also finding plea counsel's testimony is credible. This Court further finds plea counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his representation.

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.21; pp.25). 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.19-22).

This Court finds the Applicant failed to meet his burden of proving plea counsel did not

properly review the case and discuss it with him. Plea counsel testified he filed discovery motions, reviewed that evidence with the Applicant, and discussed the case with him numerous times. The Applicant also testified they had several meetings about his various charges. While the Applicant stated he believed his indictments were insufficient, this Court notes he failed to articulate the perceived deficiencies in those indictments. Regardless, this Court finds the indictments were proper. See State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). This Court finds that, in discussing the March 2005 charges, plea counsel and the Applicant discussed the Applicant's argument that the drugs were not his. This Court finds plea counsel properly informed the Applicant that, absent supporting evidence, this was not a valid defense. This Court finds that, in discussing the November 2004 charges, plea counsel and the Applicant would have discussed potential search and seizure issues. During the plea hearing, however, the Applicant confirmed the accuracy of the solicitor's recitation of the facts (and the lawfulness of the search and seizure). (Plea transcript, pp.23-25). Further, it is clear from the transcript that the Applicant entered a knowing and voluntary guilty plea without threats, coercion, or promises. (Plea transcript, pp.19-20; p.22).

This Court finds the Applicant failed to meet his burden of proving plea counsel should have attempted to reinstate the original plea offer. The Applicant stated the original solicitor in this case made a plea offer for five (5) years but that the offer was withdrawn after the case was assigned to a different solicitor. The Applicant stated he was in a drug treatment program at the time so he could not immediately accept this offer, but that he later told plea counsel he wanted to accept it. This Court notes plea counsel did not recall this five (5) year offer. This Court notes the Applicant received an active six (6) year sentence when he pled guilty to a multitude of

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serious charges. Given the circumstances and disputed question of whether there was a five (5) year offer, in no way can plea counsel's performance be deemed ineffective when he secured his client such a favorable outcome. Regardless, this Court does not find credible the Applicant's assertion that plea counsel told him he would receive a life sentence if he did not plead guilty. As noted supra, it is clear from a review of the guilty plea transcript that the Applicant was advised he was pleading guilty without a recommendation and had not been coerced into entering his plea.

This Court finds the Applicant failed to meet his burden of proving he was prejudiced by plea counsel's failure to object to the sentence for possession of schedule IV controlled substance, second offense (2005-GS-39-1380). This Court notes this sentence was suspended with probation and was not the "lead" sentence for which the Applicant received incarceration. This Court concludes, therefore, that the Applicant has suffered no prejudice from plea counsel's failure to object to the sentence.

This Court finds the Applicant failed to meet his burden of proving he was misadvised about parole eligibility. This Court notes that the classification of a crime as violent or non-violent is a collateral consequence of sentencing and a guilty plea is not rendered involuntary due to counsel's failure to inform a defendant of the consequences of a violent crime conviction. See Smith v. State, 329 S.C. 280, 494 S.E.2d 626 (1997). This Court notes plea counsel's testimony that he would have advised the Applicant that his trafficking conviction would be a violent crime. This Court finds the Applicant knew he was pleading guilty to a violent crime and concludes the Applicant's guilty plea was free and voluntary. Regardless, this Court notes parole eligibility is a collateral consequence of sentencing of which a defendant need not be specifically

advised before entering a guilty plea. Randall v. State, 356 S.C. 639, 641, 591 S.E.2d 608, 609 (2004).

This Court finds the Applicant failed to meet his burden of proving plea counsel should have presented the testimony of a character witness. As this alleged witness did not testify at the evidentiary hearing, any discussion regarding what she would have testified about at trial is purely speculative. See, e.g., Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (the South Carolina Supreme Court “has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness’ failure to testify at trial.”) (emphasis in original).

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 evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

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.

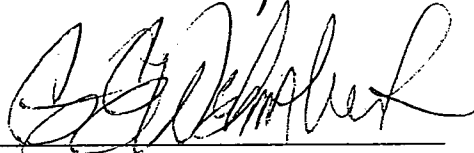
This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

A handwritten signature in black ink, appearing to be "C. J. H. 10", is written over the page number.

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 8th day of July, 2011.



G. Edward Welmaker
Resident Judge
Thirteenth Judicial Circuit

Pickens, South Carolina.

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