

Johnson, Janet

From: H.P. PRIDE <hpride@bellsouth.net>
Sent: Monday, April 09, 2012 4:45 PM
To: Johnson, Janet
Subject: Re: Fw: William A. Gleaton v. State of South Carolina Docket No. 2009-CP-38-0005

--- On **Mon, 4/9/12**, **H.P. PRIDE** <hpride@bellsouth.net> wrote:

From: H.P. PRIDE <hpride@bellsouth.net>
Subject: Fw: William A. Gleaton v. State of South Carolina Docket No. 2009-CP-38-0005
To: jjohnson@sccourt.org
Date: Monday, April 9, 2012, 4:33 PM

--- On **Mon, 4/9/12**, **H.P. PRIDE** <hpride@bellsouth.net> wrote:

From: H.P. PRIDE <hpride@bellsouth.net>
Subject: William A. Gleaton v. State of South Carolina Docket No. 2009-CP-38-0005
To: jjohns@sccourt.org
Cc: "Mary Williams" <MSWilliams@scag.gov>
Date: Monday, April 9, 2012, 12:34 PM

Dear Ms. Johns

Due to illness, for the past ten (10) days, I have been out of my office. And, the first week of April, I am scheduled to take my son on a college tour and will not return to the office until April 9. Through inadvertence, I missed my deadline. For the reasons stated herein, I respectfully request this case be reinstated and an extension of fifteen (15) days from April 9, 2012 in which to file the *Writ of Certiorari*. Prior to submitting this request, I conferred with Assistant Attorney General Mary Williams; and , she consented to my request.

Your consideration is greatly appreciated

Johnson, Janet

From: H.P. PRIDE <hpride@bellsouth.net>
Sent: Tuesday, March 06, 2012 12:54 PM
To: Johnson, Janet
Cc: RCorney@scag.gov
Subject: Re: William A. Gleaton v. State of South Carolina Docket No. 2009-CP-38-0005

--- On Tue, 3/6/12, H.P. PRIDE <hpride@bellsouth.net> wrote:

1)

From: H.P. PRIDE <hpride@bellsouth.net>
Subject: William A. Gleaton v. State of South Carolina Docket No. 2009-CP-38-0005
To: jjohns@sccourts.org
Cc: RCorney@scag.gov
Date: Tuesday, March 6, 2012, 12:37 PM

Pursuant to Notice of Intent to Appeal, filed February 1, 2012, in the subject matter, Petition for Writ of Certiorari and Appendix were due on March 5, 2012. Due to inadvertence, an extension of thirty-days is hereby requested.

Your consideration is appreciated.

The South Carolina Court of Appeals

William A. Gleaton, #326282,

Appellant,

v.

State of South Carolina,

Respondent.

The Honorable Dianne S. Goodstein
Orangeburg County
Trial Court Case No. 2010-CP-38-0005

RECEIVED

FEB - 8 2012

S.C. Supreme Court

ORDER

The appeal in the above captioned matter is transferred to the South Carolina Supreme Court under the filing provisions of Rule 243 of the South Carolina Appellate Court Rules.

IT IS SO ORDERED.

JOHN CANNON FEW, CHIEF JUDGE
For The Court

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina

cc: Hemphill P. Pride, II, Esq.
Chief Appellate Defender Robert M. Dudek
Assistant Attorney Robert D. Corney
The Honorable Daniel Shearouse

FILED
2/8/12

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas
Diane S. Goodstein, Circuit Court Judge

Docket Nos. 2009-CP-38-0005

RECEIVED
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SC Court of Appeals

WILLIAMA. GLEATON, #326282 Appellant,

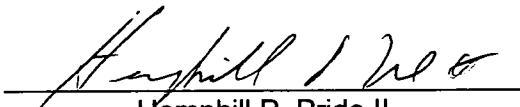
vs.

STATE OF SOUTH CAROLINA Respondent.

NOTICE OF INTENT TO APPEAL

Notice is hereby given that Appellant William A. Gleaton, #326282, by and through his undersigned counsel, hereby appeals to the South Carolina Court of Appeals from the following Orders of the Court of Common Pleas for the First Judicial Circuit which are attached hereto: Order of Dismissal; and, Order Denying Motion to Alter of Amend Judgment, both signed by the Honorable Diane S. Goodstein, dated September 30, 2011 and January 16, 2012 respectively.

**Law Office
of
HEMPHILL P. PRIDE II, LLC**



Hemphill P. Pride II
Post Office Box 4529
Columbia, South Carolina 29240
(803) 256-8015
e-mail hppride@bellsouth.net

ATTORNEY FOR APPELLANT

RECEIVED

FEB - 8 2012

Supreme Court

RECEIVED

FEB - 8 2012

February 1, 2012.

S.C. Supreme Court

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

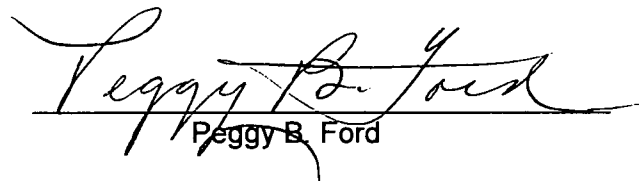
CERTIFICATE OF SERVICE

I, the undersigned employee of the Law Office of Hemphill P. Pride II, LLC, do hereby certify that all counsel and/or parties in this action were served with a copy of the pleading(s) herein below specified by mailing a copy of the same by United States mail, postage prepaid, to the following address(es):

PLEADINGS: Notice of Intent to Appeal Order of Dismissal and Order Denying Motion to Alter or Amend Judgment

PARTIES: Honorable Diane S. Goodstein
Presiding Judge
Court of Common Pleas for the First Judicial Circuit
Post Office Box 234
St. George, South Carolina 29477

Robert D. Comey, Esq.
Assistant Attorney General
OFFICE OF THE STATE ATTORNEY GENERAL
Post Office Box 11549
Columbia, South Carolina 29211


Peggy B. Ford

Columbia, South Carolina

February 1, 2012.

RECEIVED
FEB - 8 2012
S.C. Supreme Court

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

William Gleaton #326282,

Applicant,

v.

State of South Carolina,

Respondent.

2009-CP-38-0005

ORDER OF DISMISSAL

This matter comes before the Court by way of an Application for Post-Conviction Relief filed January 2, 2009. The Respondent made its Return November 2, 2010. An evidentiary hearing into the matter was convened on June 7, 2011, at the Dorchester County Courthouse. The Applicant was present at the hearing and was represented by Hemphill Pride, II, Esquire. The Respondent was represented by Mary S. Williams of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. Also testifying were Scott Palmer, Esquire, ("Counsel"); Cynthia Simpkins, the Applicant's sister; and Mary Gleaton, the Applicant's mother. This Court had before it the records of the Orangeburg County Clerk of Court, the guilty plea transcript, and the Applicant's records from the South Carolina Department of Corrections.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Orangeburg County Clerk of Court. The Applicant was indicted by the Orangeburg County Grand Jury for Possession of a Weapon During

ATTEST: TRUE COPY
Wm. F. ...
CLERK OF COURT
ORANGEBURG COUNTY

the Commission of Certain Crimes (2007-GS-38-0442), Kidnapping (2007-GS-38-0443), Armed Robbery (2007-GS-38-0444), Pointing and Presenting a Firearm (2007-GS-38-0445), Burglary – First Degree (2007-GS-38-0446), Assault and Battery with Intent to Kill (“ABWIK”) (2007-GS-38-1369), and Burglary – First Degree (2007-GS-38-1370). Applicant was also charged in Bamberg County with Burglary –First Degree (2007-GS-05-0148) and ABWIK (2007-G-05-0149). He was represented by Scott Palmer, Esquire. On January 15, 2008, the Applicant pled guilty before the Honorable James C. Williams, Jr., and sentencing was deferred. On January 23, 2008, Applicant was sentenced to an aggregate term of forty (40) years imprisonment. Applicant did not appeal his guilty plea or sentence.

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

1. Involuntary plea.
 - a. “Counsel gave erroneous advice.”
2. Ineffective assistance of counsel.
 - a. “Attached argument.”¹
3. “Sentencing judge should have disqualified himself because of bias, prejudice and conflict of interest.”
 - a. “Grounds to support my allegations are contained in the transcript from the sentencing hearing.”

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 at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings

¹ No argument is attached to the application as received from the Clerk of Court.

of facts and conclusions of law as required pursuant to S.C. Code Ann. 17-27-80.

Ineffective Assistance of Counsel/Involuntary Guilty Plea

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) (citing Rule 71.1(e), SCRCP). 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, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 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, supra. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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, supra). 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. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of

trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland).

With respect to guilty plea counsel, 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, 88 L.Ed. 2d 203 (1985).

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

An Applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for trial counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial, Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993). Given Applicant's burden of proof and the analysis to be applied to this claim, the Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it will be treated as such.

Plea Entered to Dispose of Charges from Orangeburg and Bamberg

Applicant alleges counsel provided ineffective assistance in allowing Applicant to enter a plea to dispose of charges in both Orangeburg and Bamberg counties when

Counsel had only been appointed to represent Applicant on Orangeburg charges.

At the PCR hearing, Counsel testified that although he had been appointed to represent Applicant only on charges arising out of Orangeburg County, he became aware of the additional charges Applicant was facing in Bamberg County "pretty quickly" after undertaking representation of Applicant. Counsel entered into plea negotiations with the State on Applicant's behalf where the State offered to *nolle prosequere* the kidnapping charge in exchange for a plea with a forty (40) year cap sentence. Counsel articulated that although the offer by the state was for a recommended forty (40) year cap, during the plea hearing Judge Williams made it very clear to Applicant that if he took the plea, the Court would impose the full forty (40) year sentence. Counsel stated he was comfortable representing Applicant on the charges from both Orangeburg and Bamberg at the plea because, although he was appointed to represent Applicant only on the Orangeburg charges, he had all relevant incident reports and co-defendant statements from both sets of charges and felt that he was fully informed and prepared to go forward on all charges. Further, Counsel testified that he met with Applicant several times in the jail and several more times at the courthouse where he and Applicant discussed Applicant's Constitutional rights, reviewed potential sentences, reviewed all co-defendant and witness statements, reviewed police lineups and the physical evidence such as the weapons recovered. Counsel testified that he made full preparations for his representation of Applicant prior to the plea hearing, including filing a discovery motion in Orangeburg and reviewing all discovery materials with Applicant and even spoke with several of the co-defendant's attorneys regarding the details and circumstances of the crimes Applicant was charged for,

both in Orangeburg and Bamberg. Counsel then articulated that he didn't believe Applicant had many options outside of pleading guilty and believed that had Applicant proceeded to a trial, "a life sentence was very likely."

Based on the testimony presented at trial, I find that Applicant has failed to prove counsel was ineffective in this regard. Counsel advised Applicant of all relevant issues regarding the charges Applicant was facing and Applicant clearly understood that he was entering a plea to dispose of charges from both Orangeburg and Bamberg counties. Further, Applicant was given sufficient information and advice from competent counsel to make an intelligent and voluntary decision on whether to enter this plea on all charges, which Applicant ultimately made the decision to do. Applicant has further failed to demonstrate what negative consequence he suffered as a result of Counsel's representation. The plea, resolving all cases at once, was clearly beneficial to Applicant. Based on Counsel's credible testimony, he clearly was prepared to represent Applicant on all pending charges, including those out of Bamberg County. Therefore, Applicant has failed to make a showing that the outcome of the proceeding would have been any different had his allegation been true and for that reason has failed to prove prejudice as a result of any alleged deficiency.

Failure to Move for Recusal of Plea Judge

The Applicant also submits that counsel provided ineffective assistance and his pleas were rendered involuntary as a result of counsel's failure to move for Judge Williams to recuse himself from hearing the plea because of his familiarity with the victims. In this regard, I find that Applicant has failed to make the necessary showing of bias on the part of

the trial court to have warranted a reason for counsel to make such a motion. Counsel testified that he ^{had} has a lot of confidence in Judge Williams, and although he was aware that the judge lives in the local area where the crimes occurred, Counsel believed there was no prejudice towards the Applicant based on the judge's statements to the victims' families on the record. Applicant's sentence, in light of the severity of his crimes, does not in itself evidence any particular prejudice. Moreover, the sentence cap was agreed upon prior to the plea, and Applicant understood the sentencing consequences of his plea. At no point in the plea colloquy did Applicant mention his supposed concern over Judge Williams taking the plea, but rather, Applicant told the judge that he wished to plead guilty at that time.

Based on the record and the facts adduced at the PCR hearing, this Court finds Applicant's allegation of ineffective assistance of counsel to be without merit. Counsel reviewed all relevant issues with Applicant including the charges he was facing, the facts giving rise to the charges, the allegations in the indictments, the elements of the offenses, potential sentences he was facing and all relevant evidence against Applicant. Additionally, counsel gave Applicant all the information and advice to make an intelligent and voluntary decision about whether to enter this plea. Based on the foregoing, this Court finds that Applicant's guilty plea was entered knowingly and voluntarily after being fully and adequately advised by competent counsel acting within the range of competence demanded of attorneys in criminal cases.

Therefore, because Applicant has failed to carry his burden of proof in this action, the application for post-conviction relief must be denied and dismissed with prejudice.

Other Allegations

No other allegations were raised at the PCR hearing. Therefore, any additional allegations are deemed waived because no evidence was presented.

CONCLUSION

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

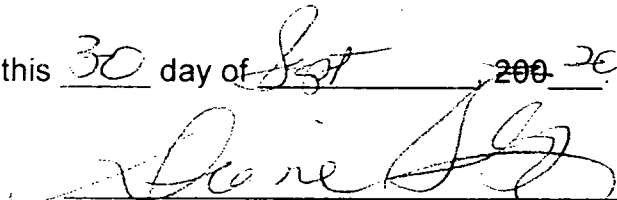
This Court advises Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order to secure the appropriate appellate review. His attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely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

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be DENIED AND DISMISSED WITH PREJUDICE; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 30 day of Sept, 2011

Sennett, South Carolina.


THE HONORABLE DIANE GOODSTEIN
Presiding Judge
First Judicial Circuit

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS)
FOR THE FIRST JUDICIAL CIRCUIT)
CASE No. 2009-CP-38-0005)

William A. Gleaton, #326282)
)
)
Applicant,)

**ORDER DENYING MOTION TO)
ALTER OR AMEND JUDGMENT)**

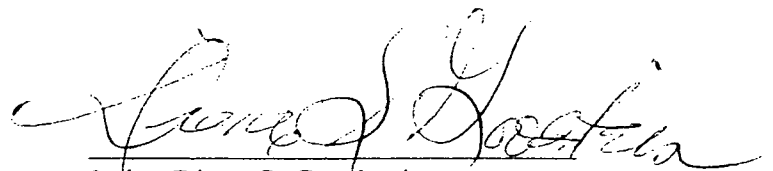
vs.)

State of South Carolina)
)
)
Respondent)

This matter is before the Court by way of the Applicant's Motion to Alter or Amend Judgment brought forth pursuant to South Carolina Rules of Civil Procedure 59(e). Because the Applicant's Motion does not raise any novel issues for the Court's consideration, the Applicant's Motion to Alter or Amend Judgment is denied.

determined pursuant to court authority B)
It is further ~~ordered~~ that this Court has jurisdiction to determine this Post Conviction Relief Application.

AND IT IS SO ORDERED.



Judge Diane S. Goodstein
First Judicial Circuit

January 16, 2012

ATTEST: TRUE COPY

Wingya B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

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