

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)

IN THE COURT OF COMMON PLEAS)
FOR THE THIRD JUDICIAL CIRCUIT)

Quentin L. Patrick, #17248-171,)

2015-CP-43-1821)

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DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

Applicant,)

v.)

ORDER OF DISMISSAL

State of South Carolina,)

Respondent.)

RECORDED
2016 APR 21 PM 4:04
DEPUTY CLERK OF COURT
SUMTER COUNTY

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on August 3, 2015. An evidentiary hearing into the matter was convened on March 18, 2016, at the Sumter County Courthouse. Applicant was not present at the hearing and was represented by Timothy Griffith, Esquire. Respondent was represented by Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

The records before this Court indicate Applicant is presently confined in a Federal Correctional Institution. He was indicted at the April 2009 term of the Grand Jury for Sumter County (2009-GS-43-0470) for one count of Murder, one count of Assault and Battery With Intent to Kill, two counts of Assault With Intent to Kill, and one count of Possession With Intent to Distribute Cocaine Base. Applicant was represented by John Clark, Esquire. On October 8, 2013, Applicant pled guilty before the Honorable W. Jeffrey Young. He was sentenced to thirty (30) years imprisonment for Murder, twenty (20) years imprisonment for each count of Assault

and Battery with Intent to Kill, and ten (10) years imprisonment for Assault With Intent to Kill. All sentences were to run concurrently.¹

Applicant filed a Notice of Appeal on October 14, 2013. By Order filed March 6, 2015, the South Carolina Court of Appeals dismissed the appeal pursuant to Rule 203(d)(B)(iv) for failing to provide a sufficient explanation. The Remittitur was issued on April 3, 2015.

Applicant filed his first post-conviction relief application on November 3, 2014. A return and motion to dismiss without prejudice was submitted on January 20, 2015, requesting the application be dismissed without prejudice due to Applicant's pending appeal. The Honorable R. Ferrell Cothran, Jr., dismissed the application without prejudice by order dated February 5, 2015 and filed on February 12, 2015.

ALLEGATIONS

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

1. Ineffective assistance of counsel
 - a. My attorney filed a motion to be remove from my case days before trial but was denied.
 - b. "More focus on funds than representing me."

¹ Applicant's sentences also run concurrently to the federal sentence he is currently serving. His current federal sentence results from the following procedural history:

On December 16, 2008, a federal grand jury returned a one-count indictment charging Applicant with being a felon in possession of firearms and ammunition, in violation of 18 U.S.C. §§ 922(g)(1), 924(a)(2), and 924(e)(2). On January 6, 2009, the Government filed an information notifying Applicant that he was subject to increased penalties under 18 U.S.C. § 924(e), based upon his three prior drug convictions in South Carolina state court for distribution of cocaine. On August 18, 2009, Applicant pleaded guilty in the instant case pursuant to a written plea agreement. On December 14, 2009, a sentencing hearing was held before the Honorable Matthew J. Perry, Jr. Due to Applicant's three prior drug convictions, Judge Perry sentenced Applicant as an "armed career criminal" under the Armed Career Criminal Act, 18 U.S.C. § 924(e) ("ACCA"), which subjected Applicant to a mandatory minimum sentence of 180 months imprisonment. Applicant's guideline range was 188–235 months imprisonment, based on a total offense level of 31 and a criminal history category of VI. Judge Perry sentenced Applicant to a 200-month term of imprisonment, to be followed by five years of supervised release. Judgment was entered on December 21, 2009.

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, the State presented testimony from John Clark, Esquire (hereinafter "Plea Counsel"). This Court also had before it a copy of the Sumter County Clerk of Court records, guilty plea transcript, and the PCR application.

Plea Counsel stated that he was retained to represent Applicant. Plea Counsel stated that Applicant's mother agreed to terms. Plea Counsel stated that Applicant failed to fulfill his obligations according to their agreement and he put in a motion to be relieved. Plea Counsel's stated that he could not recall whether that motion was denied and withdrawn. Plea Counsel stated that his filing to be relieved in no way affected his representation of Applicant. Plea Counsel stated that he filed a direct appeal on Applicant's behalf. Plea Counsel stated that the appeal was ultimately dismissed because there were no meritorious issues.

Plea Counsel stated that they had picked a jury and were preparing to go to trial. Plea Counsel stated Applicant changed his mind and decided to plead guilty after talking with his mother. Plea Counsel stated that they wanted Applicant to have the possibility of getting out of prison before he dies. Plea Counsel stated the State offered a thirty year negotiated plea that was going to run concurrently to Applicant's federal charges. Plea Counsel stated it was Applicant's choice to plead guilty. Plea Counsel stated that he tried to negotiate better offers for Applicant, but the State never presented a better offer. Plea Counsel stated the evidence against Applicant was overwhelming. Plea Counsel stated Applicant confessed to the shooting.

Plea Counsel stated that this was a very heartbreaking and sympathetic case. Plea Counsel stated that he had ample time to talk with Applicant prior to his plea. Plea Counsel stated the Solicitor brought Applicant back to South Carolina a month prior to trial so that they could prepare his case.

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 witness presented at the hearing, closely pass upon his credibility and weigh his testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

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), SCRCP; Butler v. State, 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 guilty Trial 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 (1985).

ALLEGATIONS

1. Ineffective assistance of counsel for filing a motion to be relieved and not representing Applicant to the fullest extent possible.

This Court finds Applicant's allegation that Plea Counsel was ineffective for filing a motion to be relieved and not representing himself to the fullest extent is meritless. This Court finds Plea Counsel's actions fell within the reasonable professional norms. Plea Counsel stated that Applicant failed to abide by their agreement for representation and he filed a motion to be relieved. Plea Counsel could not recall whether that motion was denied or withdrawn. However, Plea Counsel credibly testified that he represented Applicant to the best his abilities and that the filing of a motion to be relieved did not affect his representation. Based on the foregoing, this Court finds Applicant's allegation must be denied and dismissed with prejudice.

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

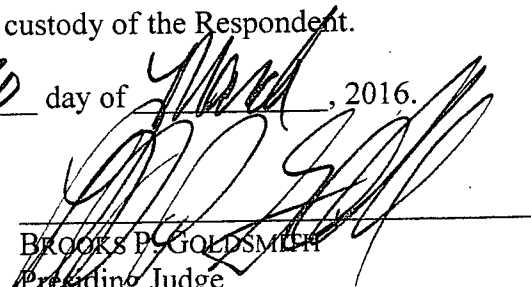
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

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 March, 2016.



 BROOKS P. GOLDSMITH
 Presiding Judge
 Third Judicial Circuit

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