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May 25, 2016

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

RECEIVED

MAY 31 2016

S.C. SUPREME COURT

Re: Jeronica Wilson, 2014-CP-10-03785

Dear Clerk Shearouse:

Please find the enclosed Notice of Appeal, Proof of Service, and Order of Dismissal in the above Horry County PCR action. Please return a clocked copy of the Notice of Appeal and Proof of Service in the enclosed SASE.

Should you have any additional questions please do not hesitate to contact my office.

With best regards, I am,

James K Falk

Thank you for your assistance.

Cc: Rutledge Johnson, Esq.; Jeronica Wilson 211823.

Mailing Address: PO Box 1058, Charleston, S.C. 29402
Location: 38 Broad Street, Suite 350, Charleston, S.C. 29401

THE STATE OF SOUTH CAROLINA

In The Supreme Court

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MAY 31 2016

S.C. SUPREME COURT

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas

Honorable Deadra Jefferson, Circuit Judge

Case No.: 2014-CP-10-3785

Jeronica Wilson 211823..PETITIONER

V.

State of South Carolina..RESPONDENT

NOTICE OF APPEAL

The Petitioner Jeronica Wilson appeals the Honorable Deadra L. Jefferson's April 26, 2016, Order of Dismissal. Undersigned counsel received notice of entry of the order on May 2, 2016. A copy of the order on appeal is attached hereto.

James K Falk
Falk Law Firm
PO Box 1058
Charleston, SC 29402

May 25, 2016

Rutledge Johnson, Esq.
Office of S.C. Attorney General
PO Box 11549
Columbia, SC 29211-1549

THE STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas

Honorable Deadra L. Jefferson, Circuit Judge

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MAY 31 2016
S.C. SUPREME COURT

Case No.: 2014-CP-10-03785

Jeronica Wilson 211823...PETITIONER

V.

State of South Carolina...RESPONDENT

PROOF OF SERVICE

I, James Falk, certify that I have today served the within notice of appeal upon the Respondent by depositing a copy of it in the U.S. Mail, postage prepaid, addressed to its attorney of record, Rutledge Johnson, Esq, Office of the S.C. Attorney General, PO Box 11549, Columbia, SC 29211-1549. I further certify that all parties required by Rule to be served have been served this May 25, 2016.

James K Falk
Falk Law Firm
PO Box 1058
Charleston, SC 29402

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT
Jeronica Wilson, #211823, Applicant, v. State of South Carolina, Respondent.	)	2014-CP-10-3785 **ORDER OF DISMISSAL**

FILED
2016 APR 25 PM 3:57
CLERK OF COURT

Presiding Judge:	Hon. Deadra L. Jefferson
Applicant's Attorney:	James K. Falk, Esquire
Respondent's Attorney:	J. Rutledge Johnson, Esquire
Plea Counsel:	Jason T. King, Esquire
Date of Hearing:	December 15, 2015
Court Reporter:	Ruth Weese

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed June 13, 2014. The Applicant also filed an Amended Application on October 30, 2015. Respondent made its Return on April 15, 2015 and filed on April 17, 2015. An evidentiary hearing into the matter was convened on December 15, 2015 at the Charleston County Courthouse. The Applicant was present at the hearing and represented by James K. Falk, Esquire. J. Rutledge Johnson, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

At the hearing, Applicant testified on his own behalf. Jason King, Esquire also testified. This Court had before it a copy of the records of the Charleston County Clerk of Court, the South Carolina Department of Corrections records, the Applicant's PCR application, the State's Return and the guilty plea transcript.

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ABJ

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted at the May 2012 term of the Charleston County Grand Jury for distribution of cocaine base-third offense[1] (2012-GS-10-2582). The Applicant was represented by Jason King, Esquire, and Victoria Anderson, Esquire.

On February 11, 2014, the Applicant pled guilty. The Honorable R. Markley Dennis, Jr. sentenced the Applicant to a period of confinement of ten (10) years pursuant to a negotiated plea. The Applicant did not appeal his conviction or sentence.

ALLEGATIONS

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

1. Ineffective assistance of counsel.
2. Brady violation.
    a. Evidence tampering.
3. Due process and fairness violation.

At the hearing, the Applicant proceeded on his claims of ineffective assistance of plea counsel.

[1] Distribution of Crack Cocaine is a serious felony and "for a third or subsequent offense or if the offender has been convicted two or more times in the aggregate of any violation of the laws of the United States or of any state, territory, or district relating to narcotic drugs, marijuana, depressant, stimulant, or hallucinogenic drugs, the offender must be

SUMMARY OF TESTIMONY

At the evidentiary hearing, Applicant testified that he had issues with discovery and his Rule 5 materials. Applicant claimed there were not enough documents on the chain of custody of the drugs, and there was no chain of how the drugs got put into evidence. Applicant claimed there was a weight change in the drugs and that he did not receive the chain of custody documents until five (5) months after his plea. Applicant then claimed that law enforcement did not follow the statutes or regulations properly. Applicant also stated he asked Counsel about suppressing the evidence, as, in his opinion, there was no proper analysis performed on the drugs and there was an unfair procedure. Applicant claimed he requested that Counsel file a suppression motion. Applicant also testified that if he had proceeded to trial, he would have been found guilty because Counsel did not file a suppression motion. Applicant testified he accepted the plea because of Counsel's inaction, but would have gone to trial if Counsel was prepared.

Applicant testified he was satisfied with Counsel at the time because he did not have the knowledge about the statutes or regulations until after the plea. He thought Counsel had thoroughly investigated the case. According to Applicant, Counsel did not say why he did not file a suppression motion. Applicant testified he told Counsel to keep investigating.

As to Applicant's Brady claim, he testified that he was given additional documents by counsel eighteen (18) months after the case. Applicant claimed these documents were changed and Counsel did not address these issues at the time. Applicant then claimed he was forced to plead guilty because Counsel was not prepared. Applicant claimed there was a change in drugs from .4 g to

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imprisoned for not less than fifteen [(15)] years nor more than thirty [(30)] years, or fined not more than fifty thousand

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.3 g to .27 g. Applicant claims this was never discussed with him. Applicant further claimed Counsel was always talking about accepting a plea and that Counsel should have filed a suppression motion. Applicant lastly stated he did not have a good relationship with Counsel.

On cross-examination, Applicant admitted that Counsel had represented him successfully in the past, and that this was not his first exposure to the Criminal Justice system. Applicant also admitted he was offered the minimum sentence in this case and rejected that offer. Applicant further admitted that during his guilty plea, he told the plea judge under oath that he wanted to plea, waive his constitutional rights, and that it was his decision to accept the plea offer. Additionally, Applicant testified under oath that he was not under any influence of drugs or alcohol, that there was no other promise to entice him to plead guilty, and that he agreed to the facts as presented by the assistant solicitor. Moreover, Applicant admitted this drug transaction was recorded on audio and video devices. Lastly, Applicant admitted that he answered the plea judge's answers truthfully at his plea.

Jason T. King, plea counsel, testified that Applicant had expressed concerns about the evidence, and that he was "preoccupied" with the chain of custody issue during the entirety of his representation. While Applicant claimed SLED violated their regulations, Counsel explained that SLED was not involved in this case. Counsel testified that he went with the assistant solicitor to the police station to investigate this case and view an electronic evidence log. Applicant wanted to see where the signatures were for the chain of custody and Counsel got a printout of the signatures. Counsel stated he did not research the regulations which Applicant alluded to, because he did not know which regulations they were; once again, SLED was not involved in this case.

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dollars [($50,000.00)], or both." S.C. CODE ANN. § 44–53–375 (2009); S.C. CODE ANN. § 17–25–45(C)(2)(a) (2009).

Counsel also testified that he might have asked for a suppression motion, but he did not have the grounds at the time. Counsel then stated that if there was a problem with the chain of custody, depending on the grounds, it was possible to file a pretrial suppression motion. Counsel also said he may not file a pretrial suppression motion, but when the State attempted to introduce the drugs at trial, he would move to suppress the drugs. Counsel explained that he took no issue with the change in the weight because the weight naturally changed after testing: the field weight at .4 g to the first testing at .3 g and then to the second testing of the drugs at .27 g. The drugs were tested by two (2) different chemists because by the time they were ready for trial, the first chemist did not work at the lab anymore and so the drugs were retested. Counsel stated he was not going to address this pretrial, as he did not want to show his cards to the State. He further testified it is not unusual for the field weight of substances to differ substantially from their lab weight.

On cross-examination, Counsel reiterated that he did not investigate the regulations because this was not a SLED case. Counsel also explained that there was a two (2) year offer, which Applicant rejected, and also an eight (8) year offer, which Applicant likewise rejected. Counsel then stated he took over this case because of his prior professional relationship with Applicant. Counsel then stated the new documentation, of which Applicant complains, was a new printout of the chain of custody. Counsel lastly testified that there were no threats or promises made to entice Applicant to plead guilty and that it was Applicant's decision to plead guilty.

Upon questioning by this Court, Counsel testified that there was a pretrial conference with Judge Dennis concerning the chain of custody of the drugs. In Counsel's professional opinion, he did not think that Judge Dennis would grant a suppression motion in this 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 witnesses presented at the hearing, closely pass upon their credibility and weigh their 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 (2003).

Ineffective Assistance of Counsel

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 (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. See Strickland at 690, 104 S. Ct. at 2066. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. 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. Second, counsel's deficient performance must have

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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 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 (1985).

This Court finds the Applicant's testimony regarding Counsel's ineffectiveness is not credible, while also finding Counsel's testimony is credible.

This Court also finds Counsel provided effective assistance of counsel in this case. Counsel advised Applicant of all of the charges and the sentences the charges carried. Counsel negotiated with the State in Applicant's best interest. Applicant testified he pled because he thought he had no other choice; this Court does not find this credible, as Applicant certainly could have pursued a trial and had Counsel challenge the chain of custody and the weight of the drugs. This Court finds there was a jury available and the Applicant changed his plea from not guilty to guilty. (Tr. 2: 20-25; 3: 1-7). This court further finds the Applicant understood his right to a jury trial, the waiver of this right and the process of trial. (Tr. 9: 21-25; 10: 1-25; 11: 1-15). The charge and range of penalty were explained to the Applicant. (Tr. 3: 11-22; 7: 7-11). This Court finds it was the Defendant's decision to enter into the guilty plea for a negotiated sentence of ten (10) years. (Tr. 3: 23-25; 4: 1-10). The Court explained that the Court could only accept or reject a negotiated plea. (Tr. 4: 11-25-; 5: 1-6). The Court also explained that the charge was a serious offense and would constitute a strike. (Tr. 5: 12-22). This Court finds the Applicant understood it was a non-parolable offense to be served at eighty-five percent and satisfactorily complete a two-year community supervision program. (Tr. 5: 23-25; 6: 1-25; 7:1). This Court also finds Applicant understood the elements of the offense and the

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possible punishment, and it was still his desire to plead guilty. (Tr. 7: 2-11). Furthermore, Applicant desired the Court accept his plea and impose the negotiated sentence. (Tr: 7: 7-11).

This Court finds Applicant was satisfied with his Counsel. (Tr. 7: 12-14). Counsel fully investigated the case and discussed the findings with Applicant. (Tr. 8: 1-20). While there were potentially significant legal issues Counsel was prepared to argue at trial, the Applicant waived those issues in order to go forward with the plea. (Tr. 8:21-25; 9: 1-17). This Court finds the Applicant had fully consulted with Counsel and desired to enter the plea. (Tr. 9: 18-20). This Court finds the Applicant understood his right to a jury trial, and that he was waiving his constitutional rights in order to proceed with the plea. (Tr. 9: 21-25; 10:1-25; 11: 1-15). This Court finds Counsel had negotiated the ten (10) year sentence in the Applicant's best interest. (Tr. 8: 1-25; 9: 1-17).

Applicant admitted there were no promises made other than the negotiations to entice him to plead guilty and he was not under the influence of drugs or alcohol. (Tr. 11: 16–25; 12:1–11). This Court finds Applicant was comfortable with proceeding with the plea, understood the charge against him, and made the decision to plead guilty on his own accord with the help of learned, prepared counsel. (Tr. 3: 1–25; 4:1–25; 5:1–25; 6: 1–25; 7: 1). Additionally, this Court finds Applicant made this decision freely and voluntarily without any threats or promises from anyone else. (Tr. 16: 16–25; 17:1–25). Furthermore, this Court finds that it was ultimately the Applicant's decision to plead guilty and he understood his rights. (Tr. 2: 20–25; 3: 1–7; 12: 16–25). The State presented audio and video of the sale. (Tr. 13: 1-14). The Applicant allocuted to the facts as they were presented by the State. (Tr. 13: 24-25; 14:1). Furthermore this Court finds the Applicant understood his rights, was truthful, and it was the Applicant's decision to plead guilty. (Tr. 14: 8-17).

This Court also finds the guilty plea transcript dispositive of this case, as it is a contemporaneous recording of the proceedings. This Court finds the Applicant knowingly, intelligently and freely waived his rights to challenge the chain of custody and the weight of the evidence. (Tr. 8: 1–25; 9:1–24). This Court further finds Counsel made a strategic decision not to challenge the weight of the drugs pretrial. (Tr. 16: 10–22).

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that 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 Counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. Therefore, these allegations are denied.

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 also finds as to all other allegations that Applicant failed to present evidence of such claims and thus, this Court deems them abandoned.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) 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

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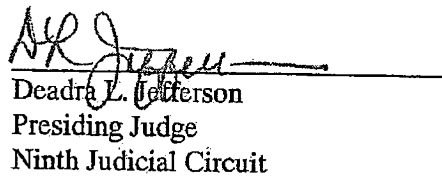
Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant's attention is directed to South 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!



Deadra L. Jefferson
Presiding Judge
Ninth Judicial Circuit

April 26, 2016
Charleston, South Carolina

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

JERONICA WILSON, #211823,

Applicant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

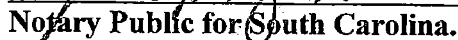
The undersigned hereby certifies that a true copy of the **Order of Dismissal** has been served upon the applicant by mailing one (1) copy in the United States mail, postage prepaid, addressed to:

James K. Falk, Esquire
Falk Law Firm, LLC
PO Box 1058
Charleston, SC 29402-1058

This 29th day of April, 2016.

J. RUTLEDGE JOHNSON
ATTORNEY FOR RESPONDENT

SWORN to before me this 29th day of April, 2016.



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