The Supreme Court of South Carolina

Thomas Jermaine Evans, Petitioner,

v.

State of South Carolina, Respondent.

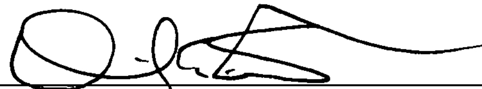
The Honorable Deadra L. Jefferson
Charleston County
Trial Court Case No. 2010-CP-10-10353

ORDER

The request for an extension until May 7, 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.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY 
Clerk

Columbia, South Carolina

April 2, 2012

cc: Appellate Defender Dayne C. Phillips
Assistant Attorney General Matthew J. Friedman

SCCID
SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

ORIGINAL

Division of Appellate Defense
1330 Lady Street, Suite 401
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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

RECEIVED
MAR 30 2012
S.C. Supreme Court

March 30, 2012

C

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

Re: Thomas Jermaine Evans v. State of South Carolina

Dear Mr. Shearouse:

The petition for writ of certiorari and appendix in the above-referenced case are due to be served and filed **on April 6, 2012**. Because of my present workload, I respectfully request a thirty-day extension of this deadline. No prior extensions have been requested in this case.

By copy of this letter to Assistant Attorney General Matthew Friedman, I am informing him of this request.

Thank you for your assistance in this matter.

Sincerely,

Dayne C. Phillips
Assistant Appellate Defender

DCP/fkb

cc: Matthew Friedman, Esquire

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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

February 6, 2012

RECEIVED
FEB 06 2012
S.C. Supreme Court

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

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.

Thomas Jermaine Evans v. State of South Carolina (10353) 2/6/2012

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

January 4, 2012

Ms. Anne Bouley Meyer
Circuit Court Reporter
P O Box 12093
Charleston, SC 29422

Dear Ms. Meyer:

Please provide us with the following transcript:

Thomas Jermaine Evans v. State of South Carolina   Case #: 10-CP-10-10353

County: Charleston   Date of Trial: September 14, 2011

Presiding Judge: Deadra L. Jefferson

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,

Loriene French
Legal Services Coordinator

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

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
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

January 4, 2012

RECEIVED
JAN - 4 2012
S.C. Supreme Court

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

Re: Thomas Jermaine Evans v. State of South Carolina

Dear Mr. Shearouse:

I have had to reorder the transcript in the above-captioned case. The first request was done in a timely manner, but the court reporter has informed us that she did not take the proceedings. I would respectfully request that you start our time schedule for ordering the transcript from today's date.

If you have any questions concerning this matter, please do not hesitate to contact me. Thank you for your assistance in this matter.

Sincerely,

Loriene French
Legal Services Coordinator

cc: Attorney General's Office

SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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

December 1, 2011

RECEIVED
DEC - 1 2011
S.C. Supreme Court

Ms. Vivian Cross
Circuit Court Reporter
PO Box 492
Goose Creek, SC 29445

Dear Ms. Cross:

Please provide us with the following transcript:

Thomas Jermaine Evans v. State of South Carolina Case #: 10-CP-10-10353

County: Charleston Date of Trial: September 14, 2011

Presiding Judge: Deadra L. Jefferson

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,

Loriene French
Legal Services Coordinator

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

Jennifer Munter Stark. Esq.
Attorney At Law
501 Folly Road
Charleston, SC 29412
jmunterstarklaw@gmail.com

Admitted: SC, MD
Inactive: VA, D.C.

843-795-2525 (phone)
843-795-2545 (fax)

RECEIVED
NOV 2 2011
S.C. SUPREME COURT

October 31, 2011

Mr. Daniel Shearouse
Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

Ms. Julie Armstrong
Charleston County Clerk of Court
100 Broad Street
Charleston, SC 29401

RE: Thomas Jermaine Evans v. State of South Carolina
Common Pleas Case Number: 2010-CP-10-10353

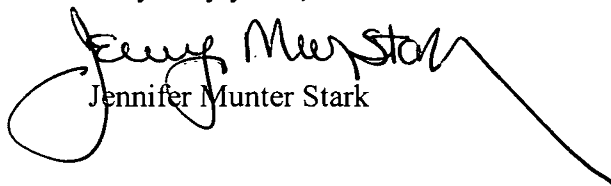
Dear Mr. Shearouse and Ms. Armstrong:

Enclosed for filing please find the original and two (2) copies of the Notice of Appeal in the above referenced matter. Please file the original and return the two (2) filed copies to our office in the envelope provided.

I have enclosed no filing fee, as this client is indigent. If you have any questions or require additional information, please do not hesitate to contact our office.

Thank you for your time and attention to this matter.

Very truly yours,



Jennifer Munter Stark

JS/sbb
enclosures: Notice of Appeal (2)
SASE
cc: Matthew Friedman, Esq. (w/notice of appeal)
Loriene French, SCCID
Thomas Jermaine Evans #328618, Appellant

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Honorable Deidre Jefferson, Presiding

Case No. 2010-CP-10-10353

Thomas Jermaine Evans..Appellant

v.

State of South Carolina.. Respondent

NOTICE OF APPEAL

Thomas Jermaine Evans appeals the Order of Honorable Deidre Jefferson dated October 6, 2011, and filed October 10, 2011. Appellant received written notice of the entry of the said Orders on October 15, 2011.

Jennifer M. Stark
Attorney for Appellant
LAW OFFICE OF JENNIFER MUNTER STARK
501 Folly Rd.
Charleston, S.C. 29412
(843) 795-2525

Other Counsel of Record:
Matthew Friedman, Esq.
Attorney for Respondent
S.C. Attorney General's Office
P.O. Box 11549
Columbia, S.C. 29211
(803) 734-4037

RECEIVED
NOV 2 2011
S.C. SUPREME COURT

Indigent Counsel:
SCCID
Attn: Loriene French
P O Box 11589
Columbia, SC 29211-1589

Appellant:
Thomas Jermaine Evans #328618
Lee Correctional Institute
900 Wisacky Hwy
Bishopville, SC 29010

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON
Court of Common Pleas
Honorable Deidre Jefferson, Presiding

Case No. 2010-CP-10-10353

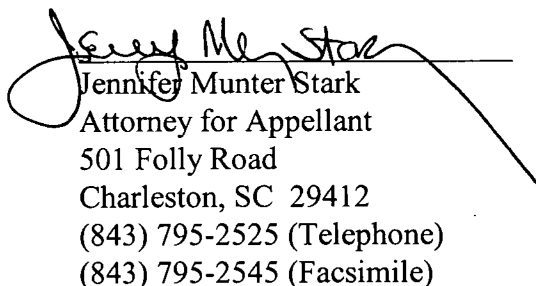
Thomas Jermaine Evans.. Appellant

v.

State of South Carolina...Respondent

PROOF OF SERVICE

I certify that on the 31 day of October, 2011, I have served the Notice of Appeal on State of South Carolina by producing a copy to counsel, Mathew Friedman, Esquire, S.C. Attorney General's Office, P O Box 11549, Columbia, SC 29211 and placing a copy in the United States Mail, postage prepaid, and; The Honorable Deidre Jefferson, Charleston County Judicial Center, 100 Broad St., Charleston, SC 29401.



Jennifer Munter Stark
Attorney for Appellant
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(843) 795-2525 (Telephone)
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Other Counsel of Record:
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S.C. Attorney General's Office
P O Box 11549
Columbia, SC 29211
(803) 734-4037

Indigent Counsel:
SCCID
Attn: Loriene French
P.O. Box 11589
Columbia, SC 29211

Appellant:
Thomas Jermaine Evans #328618
Lee Correctional Institute
900 Wisacky Hwy
Bishopville, SC 29010

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Thomas Jermaine Evans, #328618,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.: 2010-CP-10-10353

ORDER OF DISMISSAL

FILED
2011 OCT 10 PM 3:16
BY
JULIE J. ARMSTRONG
CLERK OF COURT

Presiding Judge:	Deadra L. Jefferson
Applicant's Attorney:	Jennifer M. Stark, Esq.
Respondent's Attorney:	Matthew J. Friedman, Esq.
Plea Counsel:	Donna Taylor, Esq.
Date of Hearing:	September 14, 2011
Court Reporter:	Anne Meyer

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed December 17, 2010 and amended on September 14, 2011. The Respondent filed its Return on June 29, 2011.[1] An evidentiary hearing into the matter was convened on September 14, 2011 at the Charleston County Courthouse. The Applicant was present at the hearing and was represented by Jennifer M. Stark, Esquire. Matthew J. Friedman, Esquire, of the South Carolina Attorney General's Office represented the Respondent.

Applicant and plea counsel, Donna Taylor, Esquire, testified at the PCR hearing. This Court had before it the guilty plea transcript, the records of the Charleston County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the PCR application and amended application, Respondent's Return thereto, and a copy of the Plea Agreement dated April 24, 2008.

[1] Respondent also filed a Motion to Dismiss with its Return on the ground the petition was filed after the one-year statute of limitations expired. After the case was called on September 14, 2011, Respondent withdrew this Motion.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. Applicant was indicted at the June 2007 term of the Charleston County Grand Jury for armed robbery (2007-GS-10-7508). Donna Taylor, Esquire, represented Applicant. On April 24, 2008, Applicant plead guilty as indicted. Pursuant to a negotiated plea agreement, the Honorable John C. Few sentenced him to confinement in the State Department of Corrections for a period of thirty (30) years. Applicant did not appeal his plea or sentence.

ALLEGATIONS

The Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Counsel failed to file an appeal.
2. Ineffective assistance of counsel in that counsel
   a. Allowed Applicant to be tried without an indictment because Applicant never saw it.
   b. Did not attack prosecutor's case fully.
   c. Did not find out the times of the arrest, detention in GA, the time of transport, or warrantless arrest issues.
3. Involuntary guilty plea.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court had the opportunity to review the record in its entirety and hear 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 his or her 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).

The Applicant testified he did not want to plead guilty on his first armed robbery charge.[2]

[2] At the time of this plea, Applicant had a total of approximately sixteen (16) armed robbery charges pending in Charleston, Berkeley, and Dorchester counties. (Tr. 12:24–13:3.)

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DHJ

He testified his family pressured him to take the plea so he would not receive life without parole (LWOP). He asserted it was his understanding he could only get thirty (30) years if he was found guilty at trial. He testified he told counsel that U.S. Marshals arrested him without a warrant. Applicant testified he thought he had an agreement with the detective and he felt coerced to give a statement. Applicant testified his warrants were not signed or delivered to him, and counsel never went through the warrants with him prior to the plea. He also testified he asked counsel to argue as defenses warrantless arrest, faulty indictment, and co-defendant's multiple written statements; however, counsel failed to argue these defenses.

He contended his understanding of the plea agreement was the State would not pursue LWOP, and he did not think he would face any more time if he plead to the subsequent charges. Applicant testified he did not know the State could use his subsequent pending armed robbery charges as strikes. He testified it was his understanding if he was convicted of a future armed robbery after he was released from prison, he could then receive an additional strike; he did not know his current armed robbery charges could be counted toward the two strike law. Applicant also argued he did not understand the principle of consecutive versus concurrent sentences. He testified his goal in entering the guilty plea was to avoid LWOP, but he did not know he could get LWOP if he did not plea to his subsequent armed robbery charges.

He testified counsel brought up the subject of appeal, and he instructed her to file the appeal. Applicant asserted he never told counsel he did not want to appeal.

Plea counsel testified she represented Applicant on a series of armed robberies in three (3) counties. She testified she met with Applicant ten (10) to thirty (30) times over a two (2) year span and fully explained the elements of the charge, range of penalty, and the consequences of a guilty plea. She asserted the solicitor Nathan Williams indicated anyone who did not

cooperate would face LWOP. Counsel recalled Applicant did not want to testify against the co-defendants. She testified they discussed potential defenses, including the theory he did not do it and his statement was false and the theory he was under duress from a co-defendant. She testified the co-defendant's attorney would not let her talk to his client, and she discussed with Applicant the difficulty in proving duress. She further testified Applicant's recorded statement was a major issue in the case.

Counsel testified they came close to a plea agreement several times, but Applicant always wanted a better deal. She testified the best he could hope for was fifteen (15) years with cooperation. There was an offer of ten (10) years at one point, but Applicant backed out. She stated at that point the best he could hope for was to avoid LWOP and accept an offer of thirty (30) years on all charges. She asserted Applicant requested probation, but she advised him that was not going to happen. The trial on the armed robbery started before Applicant decided to plead guilty. Counsel testified that during the trial, Defendant leaned over and asked her if he could have a moment with the judge. Counsel testified Applicant admitted to the judge that he perjured himself during the Jackson v. Denno hearing. She asserted it was Applicant's decision to subsequently plead guilty. Counsel testified she told Applicant she did not think he could go to trial without getting LWOP. She testified the judge allowed Applicant to think about it overnight. She testified she explained the negotiated sentence, and while Applicant was not completely happy about pleading guilty and had some attitude issues during the plea hearing, he understood the consequences of the plea. She testified Applicant got emotional and cried at one point during the plea, but she believes he understood what was going on. She testified the terms of the plea agreement were that if Applicant would plead guilty to one count of armed robbery for thirty (30) years and pleads guilty in the subsequent cases, he would not get LWOP. Counsel

4 of 12

asserted she explained to Applicant before the first plea hearing, and afterwards during discussions about the second plea, that he would have to plead guilty now and on a subsequent plea, and that if he did not plead guilty on the subsequent cases there was no deal. She testified the written plea agreement was made a court's exhibit at the plea hearing.[3] She testified there was no guarantee about concurrent versus consecutive sentences, but she believes he would have received thirty (30) years concurrent on everything if he had plead guilty to the subsequent charges. She further testified she explained the differences between concurrent, consecutive, and life sentences, and she believes Applicant understood.

Counsel testified she does not recall Applicant asking her to file an appeal. She testified she discussed the next steps and what issues Applicant could appeal. She asserted she does not think Applicant would have asked for an appeal, but she would have filed an appeal if asked to do so. Counsel testified she had no reason to believe that Applicant wanted to appeal the first plea. She testified the goal after the first plea was to enter a plea on the second set of charges and avoid LWOP. Counsel testified a conflict arose after this plea and she was relieved as counsel. She testified she did not participate in the second trial.

Ineffective Assistance of Counsel

The Applicant alleges that he received 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, 442, 334 S.E.2d 813, 814 (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

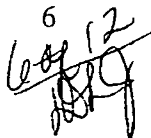
[3] For purposes of this PCR hearing, the written plea agreement, entered into between the State and Applicant on April 24, 2008, was marked as Court's Exhibit No. 1.

cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

Courts use a two-pronged test to evaluate 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 prevailing professional norms." Id. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). 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." Id. at 117–18, 386 S.E.2d at 625. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997). 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 PCR hearing." Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 650 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)). When a defendant pleads guilty on the advice of counsel, the plea may only be attacked through a claim of ineffective assistance of counsel. Roscoe, 345 S.C. at 20, 546 S.E.2d at 419.

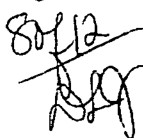
This Court finds Applicant's testimony is not credible while also finding that counsel's testimony is credible. This Court finds counsel is a trial practitioner who has approximately twenty-eight (28) years of experience in the trial of serious offenses. Counsel conferred with the Applicant on numerous occasions. During conferences with the Applicant, counsel discussed the pending charges, discovery, the elements of the charges and what the State was required to prove, Applicant's constitutional rights, Applicant's version of the facts, and possible defenses or lack thereof. (Tr. 3:18–4:7.)

This Court finds the record reflects Applicant's plea was entered freely, voluntarily, knowingly, and intelligently. (Tr. 46:6–11.) The Applicant was informed of his right to a jury trial and the constitutional rights given up by pleading guilty. (Tr. 9:8–23.) The Court also explained that by pleading guilty, Applicant waived his right to ever challenge his statement given to Detective Osborne, and Applicant acknowledged that he understood. (Tr.17:25–18:23.) Applicant acknowledged that he understood the nature of the charges and the possible punishments for armed robbery. (Tr. 8:1–5, 18:24–19:24, 21:15–19.) He told the court he had taken an antibiotic in the last twenty-four (24) hours but it does not interfere with his ability to think clearly or understand what he is doing. (Tr. 6:17–7:15.) He also stated he has never had

nor treated for any type of mental illness. (Tr. 7:16–22.) He told the court no one threatened him or promised him anything to get him to plead guilty. (Tr. 22:2–17, 40:2–23.) He admitted he was, in fact, guilty of this offense. (Tr. 20:12–13, 35:19–22, 51:4–5.) The Court advised Applicant of the terms of the plea agreement, that he could face concurrent or consecutive sentences to be left up to the sentencing judge, and if the co-defendants go to trial, he will be expected to be available to testify truthfully in those cases; Applicant acknowledged he understood. (Tr. 8:6–7, 10:15–17.) Plea counsel informed the court there were a series of plea agreements with minor changes that had been in existence for weeks, and during this time period she met with Applicant to discuss the agreement. (Tr. 15:9–24.) The Court advised Applicant of the two (2) and three (3) strike law, and the Applicant acknowledged he understood.[4] (Tr. 18:24–19:24.) The Court also clearly advised Applicant there was no guarantee on sentencing in subsequent pleas, that he was not in a good situation, and he realistically faced a very strong possibility of receiving consecutive sentences. (Tr. 11:15:19, 13:4–14:13.) Applicant advised the court he understood the terms of the negotiated sentence. (Tr. 41:8–13.) Applicant further advised he was satisfied with his attorney. (Tr. 22:18–23:2, 26:9–18.)

This Court finds it was Applicant's decision to plead guilty with a full understanding of the consequences of the plea. The Court notes the plea court was extraordinarily patient with the Applicant and took care that he was entering the plea voluntarily, often advising Applicant he would resume trial if there was any indication the plea was involuntary. (Tr. 23:5–17, 25:20–24, 28:11–18, 33:19–34:2.) This Court also finds no evidence the alleged pressure placed on Applicant's family to get him plead guilty in any way impaired his ability to enter the plea freely and voluntarily. The court adequately inquired whether anyone threatened any of Applicant's

[4] The Court notes the record does not support the Defendant's interpretation of the 2 and 3 strike law.



family members, and he responded in the negative. (Tr. 42:8–11.)

This Court finds Applicant understood the terms of the written plea agreement. Throughout the plea hearing, Applicant expressed his concern over a possible life or consecutive sentences and asked the plea court about which judge he would go in front of in subsequent pleas. (Tr. 10:3–14, 11:5–11, 13:14–14:13, 17:5–15, 23:21–25, 43:14–44:18.) He was clearly concerned about his pending charges. This Court finds Applicant was aware that he would have to plead guilty to a second set of charges to avoid LWOP as specified in the written plea agreement.

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 Applicant's attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 5, 239 S.E.2d 750, 752 (1977); Strickland, 466 U.S. at 687–88, 104 S. Ct. at 2064–65; Butler, 286 S.C. at 442, 334 S.E.2d at 814. Applicant alleges counsel failed to review the indictment with him. This Court finds the record bears out that counsel discussed the facts of the case with Applicant and advised him of the elements of armed robbery and the range of penalty. This Court further finds counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in her representation. The Court finds there is no viable issue on warrantless search. Applicant gave a statement to an investigator, and because of this, he had no viable defenses.[5] Counsel obtained a favorable plea agreement for Applicant considering the circumstances in this case and the number of additional pending charges. This Court finds that counsel's representation did not fall below an objective standard

[5] Ms. Taylor testified the statement was challenged pursuant to Jackson v. Denno, which proved to be unsuccessful.

of reasonableness.

This Court also finds that Applicant is not entitled to a belated direct appeal. The United States Supreme Court has rejected a bright-line rule that counsel must always file an appeal in a criminal case. Roe v. Flores-Ortega, 528 U.S. 470, 120 S. Ct. 1029 (2000). The Court held that a professionally reasonable attorney should, in most cases, consult with the defendant regarding an appeal. Id. at 479, 120 S. Ct. at 1035.

The South Carolina Supreme Court has adopted the holding, "absent extraordinary circumstances, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea." Weathers v. State, 319 S.C. 59, 61, 459 S.E.2d 838, 839 (1995). In determining whether an attorney should consult with the criminal defendant concerning an appeal, the totality of the circumstances must be considered. Id. at 480, 120 S. Ct. at 1036. In examining the totality of the circumstances, courts should consider: (1) whether a rational defendant would want to appeal (for example, because there are non-frivolous grounds for appeal); or (2) whether this particular defendant reasonably demonstrated to counsel that he was interested in appealing. Id. Where the post-conviction relief judge determines that the applicant did not freely and voluntarily waive his appellate rights, the applicant may petition the South Carolina Supreme Court for review of direct appeal issues pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974). See Rule 243(i), SCACR; Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986).

Trial counsel is not required to file a notice of appeal without specifically being asked to do so. See Roe, 528 U.S. 470, 120 S. Ct. 1029. In the present case, this Court finds counsel's testimony credible that she discussed with Applicant the next steps and what he could appeal, but she does not recall Applicant telling her he wanted to appeal. The Court also finds it credible

that counsel would have filed an appeal if Applicant asked her to do so. Counsel testified she had no reason to believe Applicant wanted to appeal since he received the benefit of a negotiated sentence and a written plea agreement. This Court denies this allegation.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test, specifically 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 her representation of the Applicant. The Applicant failed to show that counsel's performance was deficient. This Court also finds the Applicant has failed to prove the second prong of Strickland, specifically that he was prejudiced by plea counsel's performance. Applicant's complaints concerning counsel's performance are without merit and are 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, 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, nor was the Applicant prejudiced by counsel's representation. Therefore, this application for PCR must be denied and dismissed with prejudice.

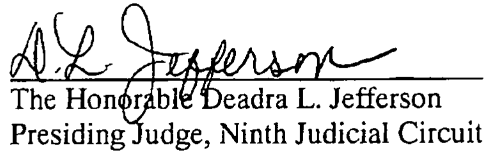
This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of written notice of entry of this Order to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules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

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and

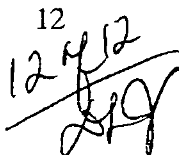
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 6th day of October, 2011.



The Honorable Deadra L. Jefferson
Presiding Judge, Ninth Judicial Circuit

Charleston, South Carolina.



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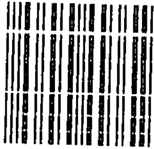

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