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JUN 24 2016
SC SUPREME COURT

June 22, 2016

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

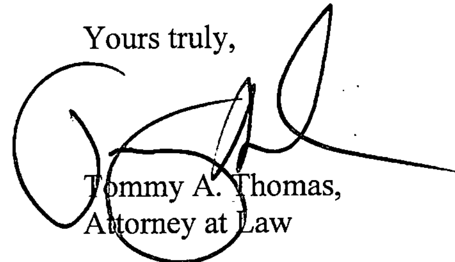
RE: Eric Antonia Spratt #257899 v. State
Case No.: 2014-CP-46-00952002282

Dear Mr. Shearouse:

Enclosed please find for filing an original and a copy of a Notice of Appeal and Certificate of Service.

Please return a clocked copy to me in the enclosed envelope. Thank you.

Yours truly,



Tommy A. Thomas,
Attorney at Law

TAT/jem
cc: J. Rutledge Johnson, Esq.
Eric Antonia Spratt #257899

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED
JUN 24 2016
SC SUPREME COURT

APPEAL FROM YORK COUNTY
Court of Common Pleas
Post-Conviction Relief
Alison Renee Lee - Presiding Judge

Case No.: 2014-CP-46-00952

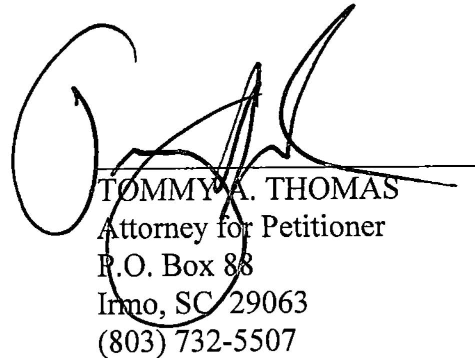
Eric Antonia Spratt #257899 ....Petitioner,

vs.

State of South Carolina ....Respondent.

NOTICE OF APPEAL

Eric Antonia Spratt #257899 appeals the Order of Dismissal of the Honorable Alison Renee Lee signed on April 27, 2016. A Motion to Alter or Amend the Judgement was timely file and an Order denying the Motion was signed by the Honorable Alison Renee Lee on May 24, 2016, filed on May 31, 2016 and served on Counsel for Applicant on June 2, 2016.



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Other Counsel of Record:
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Attorney for Respondent

Irmo, South Carolina
June 22, 2016

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED
JUN 24 2016
SC SUPREME COURT

APPEAL FROM YORK COUNTY
Court of Common Pleas
Post-Conviction Relief
Alison Renee Lee - Presiding Judge

Case No.: 2014-CP-46-00952

Eric Antonia Spratt #257899 ....Petitioner,

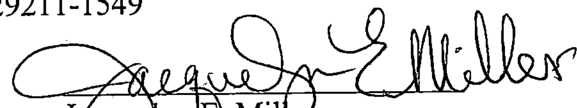
vs.

State of South Carolina ....Respondent.

CERTIFICATE OF SERVICE

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

J. Rutledge Johnson, Esq.
Attorney General's Office
P.O. Box 11549
Columbia, SC 29211-1549



Jacquelyn E. Miller
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Irmo, SC
June 22, 2016

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF YORK) SIXTEENTH JUDICIAL CIRCUIT

Eric Antonia Spratt, #257899,) Case No. 2014-CP-46-00952

Applicant,

v.

State of South Carolina,

Respondent.

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2016 APR 27 PM 1:52
DAVID HAMILTON
C.C.C.P. & GS
YORK COUNTY, SC

ORDER OF DISMISSAL

This matter comes before the Court by way of an Application for Post-Conviction Relief filed March 27, 2014. The State of South Carolina ("Respondent") made its Return on June 24, 2014. A hearing was convened on November 20, 2014, at the Moss Justice Center in York, SC. Applicant was present at the hearing and was represented by counsel, Tommy A. Thomas, Esquire ("Thomas"). Respondent was represented by Assistant Attorney General J. Rutledge Johnson, Esquire.

At the hearing, Applicant testified on his own behalf. Melissa Inzerillo, Esquire, also testified. This Court had before it a copy of the records of the York County Clerk of Court, records from the South Carolina Department of Corrections, the trial transcripts from the hearing on June 6 and 7, 2011, and the transcript of the May 25, 2007, hearing.

PROCEDURAL BACKGROUND

Applicant was indicted by the York County Grand Jury in 1998 for possession of crack cocaine (Indictment No. 98-GS-46-2715). He pled guilty to the charge as indicted on September 22, 1998, before Judge John C. Hayes, III, and was sentenced to five years' incarceration and a $5,000 fine suspended upon three years of probation. Applicant was not represented by an attorney during the plea. Subsequently, on April 26, 1999, Applicant waived presentment to the grand jury and pled guilty to possession with intent to distribute crack cocaine before Judge Thomas W. Cooper, Jr., on Indictment No. 99-GS-46-1028. He was sentenced to four years imprisonment. At the same time, Applicant's probation on the possession of crack cocaine conviction was revoked for six months, and he was incarcerated; probation was to continue upon his release. Applicant was represented by counsel from the Public Defender's office during the plea and the probation revocation hearing.

In 2006, Applicant was indicted by the May 2006 term of the York County Grand Jury for

Trafficking in ice, crank or crack cocaine (Indictment No. 2006-GS-46-1625) and Possession of Marijuana, 2[d] offense (Indictment No. 2006-GS-46-1626). Melissa Inzerillo, Esquire, represented Applicant at trial. On June 6, 2006, Applicant proceeded to a jury trial *in absentia* pursuant to which he was found guilty of both charges. Judge J. Derham Cole issued a sealed sentence. On May 25, 2007, Applicant appeared before Judge Clifton B. Newman for the unsealing of the sentence. Judge Newman sentenced Applicant to confinement for thirty (30) years for Trafficking Crack Cocaine and one (1) year, concurrent, for Possession of Marijuana. Applicant immediately moved for a reconsideration of the sentence on the basis that the conviction should not be treated as a third offense. Judge Newman granted the motion and reduced the Applicant's sentence to ten (10) years, finding the convictions to be a second offense rather than a third offense.

The State filed a notice of appeal on June 4, 2007. The South Carolina Court of Appeals reversed Judge Newman and remanded the case for additional proceedings with respect to the issue of waiver of counsel during Applicant's 1998 guilty plea. State v. Spratt, 383 S.C. 212, 678 S.E.2d 266 (Ct. App. 2009). Applicant then filed a Petition for Writ of Certiorari in the South Carolina Supreme Court, which was granted. Following submission of briefs and oral argument by the parties, the South Carolina Supreme Court issued an order denying the Petition for Writ of Certiorari as improvidently granted. State v. Spratt, 2011 WL 11748261, at *1 (Jan. 31, 2011).

On June 6-7, 2011, Applicant appeared before Judge Lee S. Alford for a hearing consistent with the remand from the South Carolina Court of Appeals. Judge Alford determined Applicant failed to meet his burden of showing that he was not advised of, and did not waive, the right to counsel at his 1998 guilty plea. Judge Alford used the 1998 conviction to enhance Applicant's trafficking conviction from a second offense to a third offense and sentenced Applicant to twenty-five (25) years with credit for time served.

Applicant appealed Judge Alford's decision and sentence. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Spratt, 2013 WL 8508095, at *1 (Ct. App. May 8, 2013). The Remittitur was issued on June 4, 2013. Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court's orders of commitment.

At the PCR hearing, Applicant set forth three grounds for his PCR application. Applicant argues that his trial counsel, Melissa Inzerillo ("Inzerillo"): (1) was ineffective in her argument of

waiver before Judge Alford; (2) failed to object to the testimony of Assistant Solicitor Eli Springs and Judge Alford's opinion; and (3) failed to obtain a transcript of the 1998 plea before Judge Hayes.

SUMMARY OF TESTIMONY PRESENTED AT THE PCR HEARING

Applicant testified he was sentenced to confinement for 25 years for Trafficking in Crack Cocaine, 3rd offense. He stated he has prior drug convictions from 1998 and 1999. Applicant also testified that he served a six-month sentence in 1998 as a result of a probation violation. Applicant claimed in 1998, he did not have a right to counsel because he was not sentenced to imprisonment. Applicant testified Alabama v. Shelton, 535 U.S. 654 (2002), extended the right to counsel to a person who received probation and that this rule was applied retroactively under Talley v. State, 371 S.C. 535, 640 S.E.2d 878 (2007). Applicant then claimed Inzerillo was ineffective for not arguing that he did not have a right to counsel until Alabama v. Shelton was issued in 2002, and that because he did not possess this right, he could not waive it. Applicant testified Inzerillo failed to properly argue this issue because the right to counsel did not apply to him. Applicant also testified Judge Hayes, the presiding judge on the 1998 guilty plea, could not be presumed to have properly warned Applicant about his right to counsel if Judge Hayes was, at that time, not required to do so pursuant to 1998 case law. Applicant further claimed the right to self-representation under Faretta v. California, 422 U.S. 806 (1975), did not apply to him in 1998 because he did not have a right to counsel. Moreover, Applicant testified that Judge Alford, the presiding judge over Applicant's sentencing hearing in 2011, could not have applied a presumption of regularity because Applicant did not possess the right to counsel in 1998.

On cross-examination, Applicant admitted he knew that Gideon v. Wainwright, 372 U.S. 335 (1963), which requires states to provide counsel to defendants who cannot afford to pay for a private attorney, applied to all criminal cases, including Applicant's case. He then admitted he knew Faretta was published in 1975. Lastly, Applicant admitted that Judge Alford, during the sentencing hearing, found his testimony not credible concerning whether Judge Hayes warned him against the dangers of self-representation.

Inzerillo testified concerning the procedural history of Applicant's 2006 case. Inzerillo stated she filed motions in limine and arguments were heard concerning whether the 2006 case should be a second or third offense. Inzerillo testified she did not object to Assistant Solicitor Eli Springs' testimony because she did not believe it "held much water." Inzerillo also testified she did not object

AW #3

to Judge Alford's comments regarding his experience with Judge Hayes' plea colloquy. Inzerillo stated her understanding of Alabama v. Shelton was that all defendants have a right to counsel. Inzerillo testified that the "actual imprisonment" prong came into play in Applicant's case through a probation revocation. Inzerillo stated she disagreed with Applicant's assertion that he did not have a right to counsel in 1998 because Faretta was required in 1998 and she advised Applicant of the same. Inzerillo testified that, in 1998, the right to counsel existed through the 6th and 14th Amendments as well as Gideon. Inzerillo then stated Alabama v. Shelton did not suddenly give defendants the right to counsel and that Talley v. State specified when the "actual imprisonment" prong of an uncounseled guilty plea can be used to enhance a later conviction.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court had the opportunity to observe the witnesses on the witness stand and heard their testimony. The Court also has read the trial transcripts and records provided. 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).

"In a PCR proceeding, the applicant bears the burden of establishing that he or she is entitled to relief." Lomax v. State, 379 S.C. 93, 100, 665 S.E.2d 164, 167 (2008). "A convicted defendant's claim that counsel's assistance was so defective as to require reversal of a conviction . . . has two components." Strickland v. Washington, 466 U.S. 668, 687 (1984). "To satisfy the first prong, a defendant must show counsel's performance fell below an objective standard of reasonableness." Walker v. State, 407 S.C. 400, 405, 756 S.E.2d 144, 146 (2014) (internal quotation marks omitted). Under the second prong, "an applicant must show that there is a reasonable probability that but for counsel's deficient performance, the result of the proceeding would have been different." Id. (internal quotation marks omitted). "There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case." Morris v. State, 371 S.C. 278, 282, 639 S.E.2d 53, 55 (2006). "The two-part test adopted in Strickland also applies to challenges to guilty pleas based on ineffective assistance of counsel." Holden v. State, 393 S.C. 565, 572, 713 S.E.2d 611, 615 (2011) (internal quotation marks omitted). To prove prejudice in the context of a guilty plea, an applicant must show that but for counsel's errors, there is a reasonable probability the applicant "would not have pled guilty and would have insisted on going to trial." See Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

ad #4

Applicant argues that Inzerillo was ineffective in her argument before Judge Alford for not arguing that the presumption of regularity was not applicable in this matter. Applicant argues Inzerillo should have objected to Judge Alford's finding that Judge Hayes, as the plea judge, routinely advised *pro se* defendants of their right to counsel. This argument is premised on Applicant's contention that the law in place at the time of his guilty plea did not require appointment of counsel where a defendant would be sentenced to probation. See Talley v. State, 371 S.C. 535, 543, 640 S.E.2d 878, 881-82 (2007) ("Precedent prior to Shelton established that a defendant was entitled to the constitutional right to counsel when the defendant received a sentence 'that end[s] up in the actual deprivation of a person's liberty.' However, the Shelton decision required counsel to be appointed when an indigent defendant received a sentence that 'may end up in the actual deprivation of a person's liberty.'") (internal citations omitted). Applicant states that Inzerillo's argument was defective because she failed to argue that because Applicant had no constitutional right to counsel at the time of the plea, Judge Hayes would not be required to advise him of such a right or inform him of the dangers of self-representation.

Applicant's argument misapprehends Judge Alford's findings. Judge Alford made an affirmative finding that the plea judge did advise Applicant of the right to counsel and required Applicant to waive the right prior to accepting the plea. Judge Alford's finding was not based on a normal presumption of regularity that such was required. Instead, it was based on testimony from an assistant solicitor about the plea judge's practices during the time period in question, as well as, Judge Alford's own personal knowledge of the plea judge's practices based upon his review of Judge Hayes' plea colloquies.

The assistant solicitor testified that in 1998, Judge Hayes, in all guilty pleas, advised *pro-se* defendants of the right to have an attorney and also advised them of the dangers of self-representation under Faretta. Judge Alford found that Applicant's testimony that he was never advised of the right to counsel at the underlying plea was not credible. This Court agrees that the testimony of Applicant was not credible on this issue. The fact the law at the time may not have required such a warning is irrelevant to a finding that such a warning was, nonetheless, routinely given. Although Applicant argues Inzerillo should have raised the fact that the law regarding the right to counsel changed after the underlying plea, he failed to articulate how such an argument would have overcome the assistant solicitor's testimony and Judge Alford's personal observations of

the plea judge's interaction with *pro se* defendants. Therefore, Applicant's argument that Inzerillo failed to properly argue to Judge Alford that the plea judge would not have advised Applicant of the right to counsel must fail. Further, Applicant's assertion that he did not possess the right to counsel and therefore, could not waive a right he did not have is erroneous. While appointed counsel may not have been required under the law at that time, there was no prohibition to appointing counsel for a defendant who could not afford one and desired to have the benefits of attorney representation. This Court agrees with Inzerillo's testimony that under the 6th and 14th Amendments and Gideon, Applicant possessed the right to counsel in 1998. Because Applicant presented no credible evidence that Judge Alford's findings would have been different had Inzerillo argued differently on his behalf, Applicant has failed to meet his burden of proving Inzerillo was ineffective.

As discussed, in part above, Inzerillo was not ineffective in failing to object to the testimony of Assistant Solicitor Springs and failing to further challenge Judge Alford's comments relating to his own personal experience regarding Judge Hayes' practice. At the PCR hearing, Inzerillo testified that she did not believe Springs' testimony "held much water". Springs' testimony provided evidence on the issue of regularity and the advice of rights provided to *pro-se* defendants during 1998 by Judge Hayes. Additionally, Inzerillo did not object to Judge Alford's comments because she believed it formulated his reasoning for the decision which would be available for appellate review. Judge Alford's comments certainly form part of his reasoning and enabled him to determine if Springs' testimony was credible. It was not unreasonable that Inzerillo would want the record to contain that testimony of Springs and the reasoning of Judge Alford for appellate review. Applicant failed to meet his burden of showing why Inzerillo's actions were ineffective.

Finally, Applicant argues that Inzerillo was ineffective for failing to obtain a transcript of the 1998 plea before Judge Hayes. Specifically, he asserts that Counsel should have requested that the record be reconstructed in light of the fact that no transcript was available. During the hearing before Judge Alford, Inzerillo said she made the following attempts to obtain a transcript from the 1998 plea: (a) she reviewed all of the documents in the York County Clerk of Court's office to locate a transcript; (b) she contacted the court reporter assigned at the time to try to obtain a transcript; and (c) she contacted court administration to verify that the court reporter's retention-period of only five years for her tapes and records was appropriate. Further, at the hearing before Judge Alford it was revealed that the Assistant Solicitor who prosecuted the 1998 charge of PWID crack cocaine had

moved and was not available to testify. An attempt to reconstruct the record would not have provided any more information than what was before Judge Newman or Judge Alford. Applicant has not provided any evidence of what Inzerillo should have done to obtain a transcript or reconstruct the record of the proceeding. Applicant, thus, failed to prove Inzerillo provided ineffective assistance of counsel.

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.

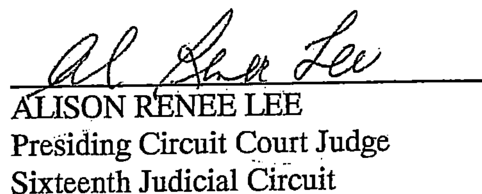
This Court hereby notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant 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 Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your 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. Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED.



ALISON RENEE LEE
Presiding Circuit Court Judge
Sixteenth Judicial Circuit

Columbia, South Carolina
April 22, 2016

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Eric Antonia Spratt, #257899,

Applicant,

vs.

State of South Carolina,

Respondent.

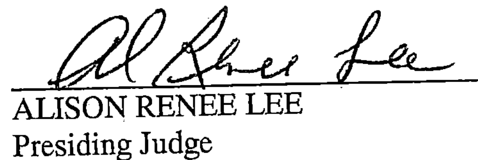
CASE NO. 2014-CP-46-00952

ORDER

This matter comes before the Court on Applicant's Motion to Alter or Amend Judgment pursuant to Rule 59(e), SCRCP. This matter came before the Court on November 20, 2014, for a hearing on an Application for Post-Conviction Relief ("PCR Application") filed by Applicant on March 27, 2014. On April 22, 2016, the Court denied and dismissed Applicant's PCR Application with prejudice. Applicant filed this motion on May 16, 2016.

After careful consideration of the motion made, memoranda submitted, and the record in this case, this Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or facts not appropriately considered. Accordingly, this Court hereby **DENIES** Applicant's Motion to Alter or Amend Judgment. Pursuant to Rule 59(f), the Court is of the opinion that oral argument is not necessary.

AND IT IS SO ORDERED.



ALISON RENEE LEE
Presiding Judge

Columbia, South Carolina
May 24, 2016

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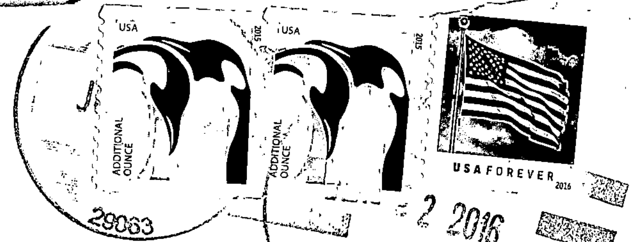

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