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June 30, 2016

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

RE: Stapleton, McDaniels, Moore Notices of Appeal

Dear Mr. Shearouse:

Please find enclosed the Notices of Appeal for Brian Stapleton, Kevin McDaniels, and Charles Moore, as well as the proofs of service and copies of the orders to be appealed.

Please do not hesitate to contact me if you have questions or concerns.

Sincerely,

Brandt Rucker, Esq.

ENCLOSURE

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Circuit Court

The Honorable Larry B. Hyman, Circuit Court Judge

Case No. 2014-CP-42-1893

Brian S. Stapleton, #308556

Appellant,

v.

State of South Carolina Respondent.

Notice of Appeal

Brian Stapleton appeals the order of the Honorable Larry B. Hyman dated March 14, 2016. Appellant received written notice of entry of this order on June 21, 2016.

June 21, 2016

Sincerely,

s/

Brandt Rucker
522 North Church Street
Greenville, South Carolina 29601
(864) 271-9925
Attorney for Appellant

Other Counsel of Record:

Alicia Olive, Esq.
S.C. Attorney General's Office
PO Box 11549
Columbia, SC 29211

THE STATE OF SOUTH CAROLINA
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APPEAL FROM SPARTANBURG COUNTY
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Appellant,

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Proof of Service

I certify that I have served the Notice of Appeal on the State of South Carolina by depositing it in the United States Mail, postage prepaid, on June 21, 2016, addressed to its attorney of record, on Alicia Olive, P.O. Box 11549, Columbia, S.C. 29211.

June 21, 2016

Sincerely,

s/

Brandt Rucker
522 North Church Street
Greenville, South Carolina 29601
(864) 271-9925
Attorney for Appellant

Other Counsel of Record:

Alicia Olive, Esq.
S.C. Attorney General's Office
PO Box 11549
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STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG	)	IN THE COURT OF COMMON PLEAS IN THE SEVENTH JUDICIAL CIRCUIT
Brian S. Stapleton, #308556, Applicant, v. State of South Carolina, Respondent.	)	Case No.: 2014-CP-42-1893 **ORDER OF DISMISSAL**

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed May 12, 2014. Respondent filed its Return on November 18, 2014, requesting that an evidentiary hearing be held. An evidentiary hearing into the matter was convened at the Spartanburg County Courthouse before the undersigned on November 9, 2015. Applicant was present at the hearing and was represented by J. Brandt Rucker, Esquire. Alicia A. Olive, Esquire, represented Respondent.

At the evidentiary hearing, Applicant testified on his own behalf. The State presented testimony from J. Roger Poole, Esquire. This Court also had before it the records of the Spartanburg County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the plea transcript, Applicant's appellate records, and the pleadings.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. Applicant was indicted at the March 2011 term of the Spartanburg County Grand Jury for criminal sexual conduct with a minor, first degree (2011-GS-42-1934). Applicant was represented by J. Roger Poole, Esquire

("Counsel"). On June 20, 2013, Applicant waived presentment to the Grand Jury and pleaded guilty pursuant to North Carolina v. Alford, 400 U.S. 25 (1970), to the charge of criminal sexual conduct, first degree. The Honorable J. Derham Cole sentenced Applicant to confinement for a period of twenty-five years.

A timely notice of appeal was filed on the Applicant's behalf. The South Carolina Court of Appeals dismissed the Applicant's appeal by order filed September 5, 2013. The Remittitur was returned on September 24, 2013.

Allegations

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

1. Ineffective assistance of counsel, in that;
   a. "Trial counsel was ineffective for failing to do an adequate investigation."
2. Involuntary Guilty Plea.

II. SUMMARY OF TESTIMONY PRESENTED

Applicant testified the sentencing range for criminal sexual conduct ("CSC") first degree was up to thirty years and that he was originally charged with CSC with a minor, first degree, which carried twenty-five years to life imprisonment. Applicant testified that Counsel went over discovery with him. Applicant testified that he discussed with Counsel his version of the facts, including any potential defenses. Applicant testified Counsel discussed plea offers with him. Applicant testified he turned down an offer of twenty years from the State.

Applicant testified that he knows he was facing twenty-five years to life if he had been convicted of CSC with a minor, first degree, but that he wanted to go to trial. Applicant said that DNA evidence would have shown the incident did not happen and that the only evidence was "he said she said." However, Applicant did not produce any items that the State failed to test for DNA. Applicant testified that Counsel said the victim would testify if he went to trial and

advised him to plead guilty. Applicant testified it was his decision to plead guilty based on Counsel's advice.

Counsel testified he shared and reviewed all discovery materials with Applicant, including the forensic interview tape and the victim's statement. Counsel testified the victim was Applicant's ten-year-old cousin. Counsel testified the State's version of events was that Applicant had sex with the victim, the victim told her stepfather, and the stepfather went after Applicant with a baseball bat. Applicant was later found in the woods near the victim's house with only his pants on. Applicant's shirt, shoes, and socks were found in the victim's bedroom. Counsel testified that there was semen found from a swab done on the victim's rectum, but that the DNA was of insufficient quality to connect it to Applicant.[1]

Counsel testified Applicant was initially offered a twenty-year plea deal, but that he rejected that offer. Counsel testified that the State then offered to allow Applicant to plead guilty to CSC first degree, which carried zero to thirty years imprisonment as opposed to CSC with a minor first degree, which carried twenty-five years to life imprisonment. Counsel testified he did not tell Applicant an exact sentence and that it was Applicant's decision to plead guilty.

On cross-examination, Counsel agreed that there was some indication that the victim might have been exposed to pornography as well as other sexual activities in the home. Counsel agreed that Applicant said he had been drinking and taking valium. Counsel testified he did not look at others as being a possible perpetrator. Counsel testified he discussed this discovery with Applicant and that he went over it in phases as he received it. Counsel testified he thought Applicant would be convicted based on the State's evidence, including victim's video interview.

[1] The full account of the facts supporting Applicant's plea is found in pages 14-19 of the guilty plea transcript.

III. 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, and closely pass upon their credibility. This Court has weighed 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).

As a matter of general impression, this Court finds Counsel's testimony to be more credible than Applicant's testimony.

A. Ineffective Assistance of Counsel

In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, 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. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). The applicant "must first demonstrate that counsel was deficient and then must also show the deficiency resulted in prejudice." Walker v. State, 407 S.C. 400, 404-05, 756 S.E.2d 144, 146 (2014). "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).

First, the applicant must show that counsel's performance "fell below an objective standard of reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, he would not have [pleaded] guilty, but would have insisted on going to trial." Thompson v. State, 340 S.C. 112, 116, 531 S.E.2d 294, 297 (2000).

This Court finds that Counsel has extensive experience in criminal law. Counsel conferred with Applicant on numerous occasions. During conferences with Applicant, Counsel discussed the pending charges, 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. The record reflects that Applicant's plea was entered freely, voluntarily, knowingly, and intelligently. Applicant told the plea court that no one had threatened him or promised him anything, including a particular sentence, to plead guilty. This Court finds that Applicant understood the terms of the plea.

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds Applicant has failed to meet his burden of proof. This Court finds that Applicant's attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation

that is expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977). See also Strickland, 466 U.S. at 688 ("The proper measure of attorney performance remains simply reasonableness under prevailing professional norms.").

This Court finds that Counsel was not ineffective for failing to adequately investigate. Applicant has produced no evidence, through testimony or otherwise, that Counsel failed to adequately investigate the case. "[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." Walker v. State, 397 S.C. 226, 235, 723 S.E.2d 610, 615 (Ct. App. 2012). Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result. Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). "In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." Wiggins v. Smith, 539 U.S. 510, 521-22 (2003).

Here, the victim, a ten-year-old girl, was assaulted in her home in her bedroom in the middle of the night, and directly thereafter she ran into her parents' bedroom and told her stepfather that Applicant assaulted her. (Tr. p. 15, lines 17-20). The victim was hysterical. (Tr. p. 15). At the same time, her stepfather saw Applicant pass by his bedroom door. (Tr. p. 15). The stepfather then picked up a baseball bat and went to confront Applicant who had lay down and pretended to be asleep. (Tr. p. 15-16). Applicant was in the home because the victim's mother had invited him and his young son to stay at their house after attending a cookout there that

night. (Tr. p. 15). Applicant's jacket, shoes, and socks were found in the victim's bedroom. (Tr. p. 16). Additionally, the victim was taken to the hospital where a rape exam was performed. (Tr. p. 16). The examination revealed that she had significant bruising to the vaginal area as well as an abrasion. (Tr. p. 16). As previously stated, semen was found on the rectal swab but ultimately was insufficient to develop a DNA profile. (Tr. p. 17).

Applicant failed to show that an additional investigation should have been done or what that investigation would have uncovered. There is no dispute that Applicant was an overnight guest in the home that night. There is no dispute that a DNA profile could not be developed from the semen sample. However, the victim identified Applicant as the perpetrator immediately after the assault, her stepfather saw him walk down the hall as she was telling him what happened, Applicant's clothing was found in the bedroom, and he was found in the woods near the house not long after the incident. Notwithstanding the fact that a DNA profile could not be developed from the semen sample, the evidence against Applicant was substantial. This Court notes Applicant was facing a charge of CSC with a minor, first degree, which carried up to life in prison. Counsel testified he felt Applicant would have been convicted if he had been tried for CSC with a minor first degree based on the State's evidence and on the victim's interview. As part of Applicant's plea arrangement, the State allowed him to plead guilty to CSC first degree, a charge that carried less severe sentencing range and consequences.

This Court finds that Applicant's allegation that Counsel failed to investigate is without merit and Applicant has failed to satisfy his burden of proving the first prong of the Strickland test—that Counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions while representing the Applicant. This Court further finds counsel

adequately conferred with the Applicant, conducted a proper investigation, and provided thorough representation. Furthermore, Applicant has failed to show that there is any evidence that was not shared with the defense. Counsel shared complete discovery with Applicant. Therefore, this Court finds Applicant failed to show that Counsel rendered deficient performance.

This Court likewise finds that Applicant failed to show there is a reasonable probability that but for Counsel's alleged deficient performance, he would not have pleaded guilty but would have insisted on going to trial. Applicant's allegations of ineffective assistance of counsel are without merit and are denied and dismissed.

B. Involuntary Guilty Plea

In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citing Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993); Hyman v. State, 278 S.C. 501, 299 S.E.2d 330 (1983); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993)). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citing Hill v. Lockhart, 474 U.S. 52; Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000); Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000); Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994)). 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 professional

norms." Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (citing Strickland, 466 U.S. 668)). 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. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

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 post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)).

An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. at 56. Furthermore, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant. Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Statements "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." Id. at 137-38, 654 S.E.2d at 874 (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)).

This Court finds that the record fully supports the knowing and voluntary nature of Applicant's guilty plea. Applicant has presented no evidence or valid reasons why he should be allowed to depart from his statements made at the guilty plea hearing.

This Court found above that Applicant failed to show either that Counsel rendered deficient performance or that he was prejudiced by any alleged deficient performance. Accordingly, this Court hereby denies and dismisses Applicant's allegation that his guilty plea was involuntary.

C. 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.

IV. CONCLUSION

Based on 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 8 day of March, 2016.

LARRY B. HYMAN, JR.
Presiding Judge
Seventh Judicial Circuit

Cowpens, South Carolina

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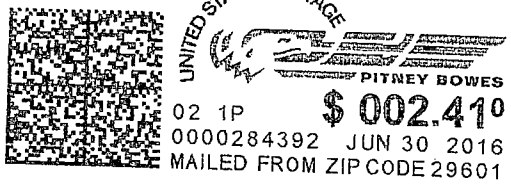

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