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June 30, 2016

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JUL ~~15~~ 2016

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

S.C. SUPREME COURT 

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

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JUL 15 2016

APPEAL FROM SPARTANBURG COUNTY
Circuit Court

S.C. SUPREME COURT

The Honorable R. Keith Kelly, Circuit Court Judge

Case No. 2015-CP-42-1447

Charles E. Moore, #244412

Appellant,

v.

State of South Carolina

Respondent.

Notice of Appeal

Charles E. Moore appeals the order of the Honorable R. Keith Kelly dated May 9, 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
In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Circuit Court

The Honorable R. Keith Kelly, Circuit Court Judge

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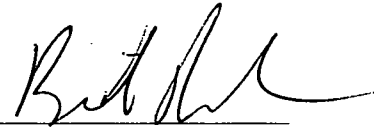
Proof of Service

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
Columbia, SC 29211

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JUL 26 2016

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
 Charles E. Moore, #244412,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE SEVENTH JUDICIAL CIRCUIT

Case No. 2015-CP-42-1447

ORDER OF DISMISSAL

2016 MAY -9 AM 9:11
 M. HEDE BUCKNEY
 CLERK OF COURT
 SPARTANBURG COUNTY

This matter is before the Court by way of an application for post-conviction relief ("PCR") filed April 9, 2015. Respondent made its Return on December 18, 2015, requesting an evidentiary hearing be held. An evidentiary hearing into the matter was convened at the Spartanburg County Courthouse before the undersigned on March 22, 2016. 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 James A. Cheek, Esquire. This Court also had before it the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the plea transcript, and the pleadings.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Spartanburg County. Applicant was indicted at the December 2013 term of Spartanburg County Grand Jury for resisting arrest (2013-GS-42-5607), and shoplifting, third or subsequent (2013-GS-42-5608). Applicant was subsequently indicted in June 2014 for five counts of shoplifting, third or subsequent offense (2014-GS-42-

1203, -2654, -2655, -2656, and -2657). Applicant waived presentment to the grand jury on attempt to furnish contraband to a prisoner (2014-GS-42-3946). James Cheek, Esquire ("Counsel"), represented Applicant. On August 27, 2014, Applicant pleaded guilty as indicted before the Honorable Roger L. Couch. Judge Couch sentenced Applicant to imprisonment for concurrent terms of ten years on each count of shoplifting and a consecutive term of three years imprisonment for attempt to furnish contraband to a prisoner. Judge Couch also sentenced Applicant to a concurrent term of one year for the resisting arrest charge. Applicant did not appeal his plea or sentence.

Allegations

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

1. Ineffective Assistance Counsel, in that:
 - a. "Counsel force[d] me to plea[d] to this sentence, and I was mis[led] by my counsel."
 - b. [Counsel] sa[id] if I didn't plea[d] that he would take [me] to trial."

II. SUMMARY OF TESTIMONY PRESENTED

Applicant testified that he was initially represented by Mary Frances Dassell, Esquire, but that Counsel represented him at the guilty plea. Applicant testified that he wished to retain another attorney, Michael Brown, Esquire, to represent him, but admitted that he did not inform the plea judge of this because he did not think the judge would believe him. Applicant testified that Dassell reviewed discovery with him for fifteen to twenty minutes and they reviewed the surveillance video from T.J. Maxx. Applicant testified he met with Counsel twice before the plea, and that Dassell was present in the meetings. Applicant testified he wanted to plead in front of a "travelling" judge. Applicant testified that Counsel spoke "against" him at the plea hearing and misadvised the plea judge about his criminal history.

Counsel testified that Applicant backed out of his initial plea. Counsel testified he had no idea what Applicant was talking about concerning trying to plead in front of a travelling judge. Counsel testified he always advises his clients that their criminal records may be used against them at trial. Counsel testified he met with Applicant about three times, that they went over all discovery together except for a surveillance video. However, Counsel stated that the video was not the only evidence against him, but rather, Applicant had been caught with stolen items on his person, and he had made statements to loss prevention officers. Counsel testified he did not know why Dassell did not handle Applicant's plea, but that Applicant expressed no concern over Counsel representing him at the plea. Counsel further stated that Applicant asked him to handle the plea. Counsel testified that he took the lead in providing Applicant's criminal history because typically the solicitors provide the history year by year and the plea judge will add them up. Since Applicant had 12 prior shoplifting and 22 other property crimes on his record, Counsel thought it would work in Applicant's favor to provide them the way he did. Counsel testified that the plea judge also wants to know the most amount of time an individual has served in the Department of Corrections, so he took a mitigating stance and informed the plea judge that Applicant had previously served four years on a prior shoplifting charge from 2012. Counsel testified he reviewed all of Applicant's constitutional rights with him more than once and each time explained he would be waiving them by pleading guilty. Counsel testified he felt there was a substantial likelihood that Applicant would be convicted if he went to trial, and that it was Applicant's decision to plead guilty.

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).

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). 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).

The applicant must first 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). 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).

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds Applicant has failed to meet his burden of proving either deficiency or prejudice. This Court finds that Applicant's attorneys 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). Counsel relayed the correct statement of law to Applicant in advising him on entering a plea versus going to trial. This Court finds that Counsel adequately conferred with Applicant in preparation for his plea. During these conferences with Applicant, Counsel discussed the charges, the State's evidence, the potential penalties, Applicant's constitutional rights, Applicant's version of the facts, and possible defenses or lack thereof. The Court further finds the plea transcript dispositive in that Applicant agreed with the facts presented by the assistant solicitor at the plea hearing, did not request additional time to speak with his attorney, and did not inform the plea judge that he wished to relieve his attorneys and retain another attorney. Applicant testified that he had an opportunity to speak with the plea judge during the plea but did not advise him that he believed his prior record as stated was incorrect. Additionally, Applicant was not entitled to select which judge he would plead in front of. Therefore, this Court finds that Applicant has failed to show that Counsel's performance fell below an objective standard of reasonableness. This Court further finds that Applicant has failed to show that but for any alleged deficiency, he would have not have pleaded guilty but would have insisted on going to trial. Accordingly, this allegation is denied and dismissed.

B. Involuntary Guilty Plea

Applicant alleges he was coerced to plead guilty and that therefore his plea was involuntary. This Court finds Applicant's guilty plea was entered freely and voluntarily. To find

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a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709, 23 L.Ed.2d 274 (1969). Defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 97 S. Ct. 1621, 52 L.Ed.2d 136 (1977)). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. United States, 519 F.2d 347 (4th Cir.1975).

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)).

This Court finds that the record fully supports the knowing and voluntary nature of Applicant's guilty plea. Applicant has presented no reason why he should be allowed to depart from the truth of his statements made at the plea hearing. At his plea, Applicant intended to plead

guilty, did not wish to proceed with a trial, and was removed from the trial docket that week. Applicant testified, and the record reflects, that he did not advise the plea judge that he felt threatened, coerced, or forced to plead guilty. Counsel informed Applicant of his constitutional rights, and Applicant waived these rights, including the right to a jury trial, right to remain silent, and right to confront witnesses. Applicant has failed to show that Counsel's performance was deficient or that any alleged deficient performance prejudiced him. 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, his application 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), SCRPC, 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.

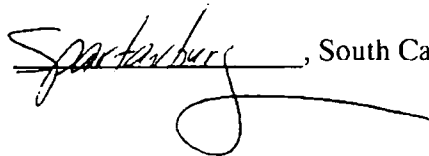
IT IS THEREFORE ORDERED:

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 9th day of May, 2016.



R. KEITH KELLY
Presiding Judge
Seventh Judicial Circuit

Spartanburg, South Carolina


CLERK OF THE
SPARTANBURG COURT
2016 MAY -9 AM 9:11
M. HOPE BLACKLEY

Brandt Rucker
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522 North Church Street
Greenville, South Carolina 29601



The Honorable Daniel E. Shearouse
Supreme Court of South Carolina
P.O. Box 11330
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