

THE

GIESE

LAW FIRM, LLC

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JUL 11 2016

SC SUPREME COURT

July 6, 2016

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

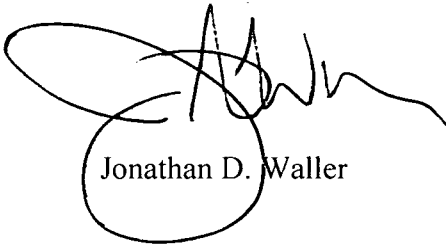
Re: Steven Irick vs. State of South Carolina
C/A No: 2014-CP-38-00746

Dear Mr. Shearouse:

Please find enclosed one (1) original and one (1) copy each of Applicant's Notice of Appeal and Certificate of Service in the above referenced case. I would appreciate you filing the original and returning the clocked copies in the enclosed envelope.

I was appointed to represent Mr. Irick in this matter and am also enclosing a copy of the Order of Dismissal. If you have any questions, please do not hesitate to ask. My telephone number is 803-708-6767.

Sincerely,



Jonathan D. Waller

Cc: J. Clayton Mitchell, South Carolina Office of Attorney General

Enclosures

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ORANGEBURG COUNTY
Maité Murphy, Circuit Court Judge

2014-CP-38-00746

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JUL 11 2016

SC SUPREME COURT

Steven Irick, #157469,

Appellant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Steven Irick, #157469, appeals the Order of Dismissal denying his Application for Post-Conviction Relief, issued by the Honorable Maité Murphy, Presiding Judge, First Judicial Circuit, and served on counsel by letter dated June 8, 2016.



Jonathan D. Waller
Giese Law Firm
SC Bar No.: 76290
1315 Blanding Street
Columbia, SC 29201
803-708-6767 (phone)
803-708-6769 (fax)
jwaller@thegieselawfirm.com
ATTORNEY FOR PETITIONER

This 7 day of July, 2016.

Other Counsel of Record:
J. Clayton Mitchell, Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3319

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ORANGEBURG COUNTY
Maité Murphy, Circuit Court Judge

2014-CP-38-00746

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SO SUPREME COURT

Steven Irick, #157469,

Appellant,

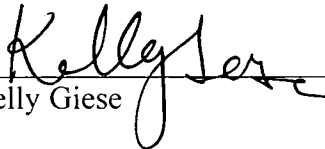
v.

STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the Appellant's Notice of Appeal in the above-entitled case has been served upon opposing counsel, J. Clayton Mitchell, Assistant Attorney General, by mailing in an envelope properly addressed with postage prepaid on this 7th day of July 2016, to his office located at P.O. Box 11549, Columbia, SC 29211.



Kelly Giese

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

Steven Irick, # 157469,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

0746
2014-CP-38-00906-

TRUE COPY

ORDER OF DISMISSAL

W. B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SOUTH CAROLINA

FILED FOR RECORD

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed June 16, 2014. Respondent made its Return on September 24, 2014, requesting an evidentiary hearing be convened. Jonathan D. Waller, Esquire, was appointed by the Orangeburg County Clerk's Office to represent Applicant. An evidentiary hearing was held on February 23, 2016, at the Dorchester County Courthouse. Applicant was present and represented by Counsel Waller. J. Clayton Mitchell, Esquire, of the South Carolina Attorney General's Office represented Respondent.

At the PCR hearing, Applicant testified on his own behalf. Also testifying was Applicant's plea counsel, Clarissa W. Joyner, Esquire. This Court had before it the Orangeburg County Clerk of Court records, Applicant's South Carolina Department of Corrections records, the PCR application, the Return, and the guilty plea transcript.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Orangeburg County Clerk of Court. Applicant was indicted during the May 2013 and February 2014 terms of the Orangeburg County Grand Jury for Distribution of Cocaine Base, 1st Offense in three separate indictments (2013-GS-38-0641, -0643

and 2014-GS-38-0220). Applicant was represented by Counsel Joyner. On March 17, 2014, Applicant appeared before the Honorable Frank R. Addy and pleaded guilty as indicted. The State recommended a sentence of five (5) years' ^{MM}imprisonment which Judge Addy accepted. Applicant did not appeal his plea or sentence.

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

1. Involuntary and unintelligent guilty plea in that Counsel failed to review the evidence in the case.
2. Ineffective assistance of Counsel in:
 - a. Failing to have Applicant evaluated; and
 - b. Failing to investigate the facts of case.

III. APPLICABLE LAW

In a post-conviction relief action, Applicant bears the burden of proving the allegations in the 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, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

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. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove counsel's performance was

deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced 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. With respect to guilty plea counsel, the Applicant must show there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the guilty plea transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

As a matter of general impression, this Court finds Applicant's testimony and assertions to be not credible. In contrast, this Court finds counsel's testimony to be credible and persuasive on all matters. These credibility findings have been applied to the Court's findings and conclusions set forth below.

Involuntary and Unintelligent Guilty Plea

Applicant alleges he did not plead guilty knowingly and voluntarily. Specifically, Applicant argues that Counsel failed to review with him the State's evidence which included the

audio and video of the controlled drug buys. This Court finds Applicant's guilty plea was ~~entered~~^{MM} freely and voluntarily entered. To find 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).

Applicant claims he did not plead guilty voluntarily because Counsel did not review with him the evidence the State planned to present if the case were to go to trial. This Court finds this contention meritless. This Court finds the record reflects Applicant was fully advised of the State's evidence. The plea court's thorough colloquy with Applicant demonstrates that he understood the charges, penalties, and his waiver of rights. Applicant testified that Counsel did not review the audio and video recordings with him. This Court finds Applicant's testimony not credible. Applicant presented no credible evidence as to why he should be able to depart from his statements at the plea hearing. This Court finds very credible Counsel's testimony regarding her

preparation and advice concerning the case, specifically that she reviewed the evidence in all three incidents with Applicant and discussed with him that he was likely to be convicted. The record further reflects Applicant fully admitted his guilt to the plea court. Therefore, this Court finds the plea judge correctly found Applicant's plea was freely, ^{voluntarily} ~~voluntary~~, and intelligently made.

Ineffective Assistance of Counsel

Applicant also alleges Counsel was ineffective in failing to investigate his competency and whether he had a defense as to identity if he proceeded to trial.

Competency

This Court finds Applicant failed to meet his burden to prove that counsel's performance was either deficient or ineffective for failing to investigate Applicant's competency. "Criminal 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." Edwards v. State, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011) (internal citations omitted). In light of Counsel's credible testimony that Applicant never told her he had any mental health issues, Applicant has produced no reliable testimony that would diminish his culpability on the charges. Notably, this allegation rests entirely on speculation because no records were produced at the hearing. See Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998) ("failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result.").

Misidentify Defense

Finally, Applicant argues that his brother was responsible for selling the drugs and not him and that he could have claimed he was misidentified. This allegation is an inappropriate challenge to the sufficiency of the evidence. Simmons, 264 S.C. at 423, 215 S.E.2d at 885 (“[T]he Uniform Post-conviction Procedure Act ‘shall not be construed to permit collateral attack on the ground that the evidence was insufficient to support a conviction.’” (citing Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973))). “A guilty plea constitutes a waiver of nonjurisdictional defects and claims of violations of constitutional rights.” Jamison v. State, 410 S.C. 456, 467, 765 S.E.2d 123, 129 (2014) (citing State v. Rice, 401 S.C. 330, 331-32, 737 S.E.2d 485, 485-86 (2013); Hyman v. State, 397 S.C. 35, 44, 723 S.E.2d 375, 379 (2012)).

Even considering this allegation on the merits, Counsel’s credible testimony that the audio and video were pristine is persuasive on the issue. Counsel also testified that a jury would likely believe that it was Applicant on the video. She further testified that Applicant was facing charges that covered three separate incidents. She noted that she believed they could only assert the misidentification on the third incident and not on the first two sets of charges. Further, Applicant has failed to show that he would have proceeded to trial but for this alleged misadvice. It is clear Applicant was advised that misidentify could be a defense at trial, but that it was unlikely to be successful. Applicant has failed to meet his burden.

All Other Allegations

As to any and all allegations that were raised in the application and not specifically addressed in this order, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

V. CONCLUSION

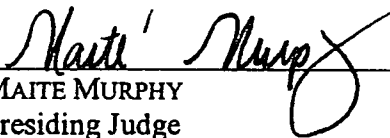
Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Applicant failed to demonstrate ^{Counsel's MA} ~~counsel's~~ performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt 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, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. 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 Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 23 day of May, 2016.


MAITE MURPHY
Presiding Judge

St. George, South Carolina

THE

GIBSB

LAW FIRM, LLC

1315 Blanding Street
Columbia, SC 29201

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

