

THE

GIESE

LAW FIRM, LLC

RECEIVED

August 1, 2016

AUG 03 2016

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

S.C. SUPREME COURT

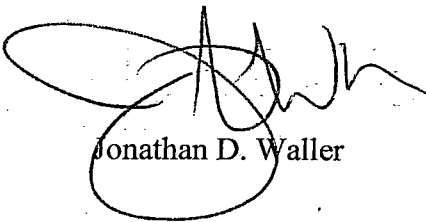
Re: Thomas Vanhooose, Sr. vs. State of South Carolina
C/A No: 2013-CP-21-3023

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. Vanhooose 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. Croom Hunter, South Carolina Office of Attorney General

Enclosures

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM FLORENCE COUNTY
Jocelyn Newman, Circuit Court Judge

2013-CP-21-3023

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AUG 03 2016

S.C. SUPREME COURT

Thomas Vanhooose, Sr., #292642,

Appellant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Thomas Vanhooose, Sr., #292642, appeals the Order of Dismissal denying his Application for Post-Conviction Relief filed July 22, 2016 issued by the Honorable Jocelyn Newman, Presiding Judge, Twelfth Judicial Circuit.



Jonathan D. Waller

Giuse Law Firm
SC Bar No.: 76290
1315 Blanding Street
Columbia, SC 29201
803-708-6767 (phone)
803-708-6769 (fax)
jonathanwallerlaw@gmail.com
ATTORNEY FOR PETITIONER

This 1 day of August, 2016.

Other Counsel of Record:
J. Croom Hunter, Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3319

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM FLORENCE COUNTY
Jocelyn Newman, Circuit Court Judge

RECEIVED

2013-CP-21-3023

AUG 03 2016

S.C. SUPREME COURT

Thomas Vanhoose, Sr., #292642,

Appellant,

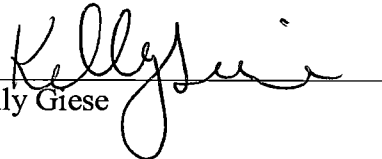
v.

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. Croom Hunter, Assistant Attorney General, by mailing in an envelope properly addressed with postage prepaid on this 1st day of August 2016, to his office located at P.O. Box 11549, Columbia, SC 29211.


Kelly Giese

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE
IN THE COURT OF COMMON PLEAS

FILED

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP2103023

Thomas Vanhose Sr	2016 JUL 25 PM 3: 55	South Carolina State Of
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PLAINTIFF(S)	DEFENDANT(S)
Submitted by: <u>CONNIE REEL-SHEARIN CCCP & GS FLORENCE COUNTY, SC</u>	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**
 - Rule 12(b), SCRPC;
 - Rule 41(a), SCRPC (Vol. Nonsuit);
 - Rule 43(k), SCRPC (Settled);
 - Other: _____
- ACTION STRICKEN (CHECK REASON):**
 - Rule 40(j) SCRPC;
 - Bankruptcy;
 - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 - Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 - Affirmed;
 - Reversed;
 - Remanded;
 - Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge

Judge Code

7/25/2016

Date

For Clerk of Court Office Use Only

This judgment was entered on July 25, 2016, and a copy mailed first class or placed in the appropriate attorney's box on July 26, 2016, to attorneys of record or to parties (when appearing pro se) as follows:

RECEIVED
JUL 26 2016
CLERK OF COURT
FLORENCE COUNTY, SC
CONNIE REEL-SHEARIN
CCCP & GS

Jonathan D Waller 1315 Blanding Street Columbia, SC
29201

John Croom Colvin Hunter PO Box 607 Lancaster, SC
29721

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Connie Reel-Shearin

Court Reporter

Connie Reel-Shearin - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

Thomas Vanhose, Sr., #292642,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT

Case No. 2013-CP-21-3023

ORDER OF DISMISSAL

2016 JUL 22 PM 3:00
DONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, S.C.

FILED

This matter comes before this Court by way of a post-conviction relief (PCR) application filed on November 18, 2013. Respondent made its return on April 23, 2014. An evidentiary hearing into the matter was convened on June 1, 2016, at the Florence County Courthouse. Applicant was present at the hearing and was represented by Jonathan D. Waller, Esquire. Respondent was represented by Assistant Attorney General J. Croom Hunter of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. The Florence County Grand Jury indicted Applicant in July 2012 for First Degree Criminal Sexual Conduct with a Minor, two counts of Lewd Act on a Minor, and Second Degree Criminal Sexual Conduct with a Minor (2012-GS-21-991). Michael Bell, Esquire represented Applicant. On September 6, 2013 Applicant entered a negotiated plea pursuant North Carolina v. Alford, 400 U.S. 25 (1970) to two counts of Lewd Act on a Minor. The Honorable D. Craig Brown sentenced Applicant to concurrent terms of ten (10) years for each count. Applicant did not appeal his plea or sentence.

CERTIFIED TRUE COPY

FILED
FLORENCE COUNTY, S.C.

ALLEGATIONS

At the post-conviction relief hearing, Applicant argued his confinement is unlawful based upon the following grounds:

1. Ineffective assistance of counsel.
 - a. Plea counsel did not go over discovery materials with Applicant and adequately prepare for the possibility of a trial.
2. Involuntary guilty plea.

At the evidentiary hearing, Applicant testified on his own behalf. This Court also heard testimony from plea counsel, Michael Bell, Esquire. This Court also had before it a copy of the plea transcript, the Florence County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, and the return.

INEFFECTIVE ASSISTANCE OF COUNSEL

In a post-conviction relief action, the 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, the 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. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea



counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. 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." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that 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, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

This Court finds Applicant failed to demonstrate that Counsel's performance was deficient in any way. This Court further finds that Applicant presented no evidence to show any prejudice resulting from Counsel's representation. Additionally, this Court finds Counsel's testimony credible and Applicant's testimony not credible.

1. Failure to Prepare

Applicant alleges Counsel did not thoroughly prepare his case for trial, nor did Counsel review the evidence with Applicant. The Court finds this allegation is without merit. At the PCR hearing, Counsel testified he has been practicing law since 1977, with the majority of his work devoted to criminal defense. Counsel testified he filed the appropriate Rule 5 and Brady motions, received discovery materials from the State, and went over the evidence with Applicant. Counsel testified he went over the elements of the charges Applicant was facing with the Applicant, as well as the possible penalties he was facing. Additionally, Counsel testified he went over the constitutional rights Applicant was waiving prior to his guilty plea. Counsel testified that it was Applicant's decision to plead guilty. Although Counsel could not recall with specificity how



many times he met with Applicant, he testified he met with Applicant on multiple occasions. Counsel testified he explained how a negotiated Alford plea worked, and that Applicant understood.

The main issue of contention at the PCR hearing was that Counsel should have used letters written by the victims (his daughters) to the Applicant to impeach them at trial. However, the testimony before this Court, as well as the testimony before the plea judge, indicates Applicant was well aware that he waived his right to challenge the evidence against him by pleading guilty. Counsel testified that his strategy at trial would have been to argue that no criminal sexual conduct had occurred due to a lack of trauma and use discrepancies in the victims' statements to beat the lewd act charges. Counsel testified he met with the victims, who told him they were not molested, but then they told the solicitor's office they were molested. Applicant testified that Counsel told him he would be unable to cross-examine the victims because they were minors; however, Counsel testified he never told Applicant he could not cross-examine the victims. He merely explained to the Applicant that cross-examining minor victims is a very delicate process, and if they started to cry on the stand, it would be very bad for Applicant's defense. Counsel testified that while one of the victims vacillated with her story, the other victim never wavered in her allegation that Applicant had molested her. Additionally, Counsel also testified the solicitor's office approached him with additional allegations from other victims, on which they indicated they were considering indicting Applicant if he chose to proceed to trial. Counsel testified that he went over all of these factors and possible strategies with Applicant, and that after weighing his options, Applicant decided to plead guilty.

This Court finds Counsel's performance was well within the range required under Strickland and its progeny. Counsel's testimony indicated he was well informed regarding the



facts of Applicant's case and knowledgeable with respect to the relevant legal issues. Because this Court finds Counsel thoroughly investigated and prepared Applicant's case, it finds Applicant has failed to meet his obligations under Strickland, and the allegation is without merit.

INVOLUNTARY GUILTY PLEA

The voluntariness of a guilty plea is determined in light of the entire record before the court. Hyman v. State, 397 S.C. 35, 44, 723 S.E.2d 375, 379 (2012) (citing Roddy v. State, 339 S.C. 29, 528 S.E.2d 418 (2000)). "To knowingly and voluntarily enter a plea of guilty, all that is required is that a defendant have a full understanding of the consequences of his plea and of the charges against him." Simpson v. State, 317 S.C. 506, 508, 455 S.E.2d 175, 176 (1995) (citing Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991)). Furthermore, a defendant must only be informed of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers. Roddy, 339 S.C. at 33, 528 S.E.2d at 421 (citing Boykin v. Alabama, 395 U.S. 238 (1969)). "When attempting to determine the voluntary and intelligent nature of a plea, the plea colloquy ordinarily serves as confirmation that a criminal defendant is waiving the right to raise certain constitutional claims by pleading guilty." Hyman, 397 S.C. at 44, 723 S.E.2d at 379 (citing Rivers v. Strickland, 264 S.C. 121, 213 S.E.2d 97, 98 (1975)). However, the plea judge need not provide an "enumeration of specific rights waived ... where the record otherwise reveals affirmative awareness of the consequences of a guilty plea." State v. Lambert, 266 S.C. 574, 579, 225 S.E.2d 340, 342 (1976) (citing Stinson v. Turner, 473 F.2d 913 (10th Cir. 1973)). 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)). Admissions "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)). Pleading guilty to avoid a possibly greater sentence, without more, does not render a guilty plea involuntary. Brady v. United States, 397 U.S. 742, 90 S.Ct. 1463, 25 L.Ed. 2d 747 (1970); Wicker v. State, 310 S.C. 8, 12, 425 S.E.2d 25, 27 (1992).

The record before this Court clearly shows that Applicant was fully informed of the consequences of entering his guilty plea. The record shows Applicant’s plea was not coerced, and it was Applicant’s decision to plead guilty. Additionally, this Court finds Applicant’s testimony not credible. Applicant was advised that by pleading guilty he gave up his right to challenge the evidence the State had against him, as well as his right to put up any affirmative defenses. Applicant has failed to present any compelling reasons why he should be allowed to depart from his valid plea of guilty. Accordingly, this Court finds Applicant’s plea was knowingly, intelligently, and voluntarily entered.

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 Applicant failed to present sufficient evidence regarding such allegations. Accordingly, this Court finds Applicant has abandoned any such allegations.

CONCLUSION

Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Plea counsel rendered effective assistance in regard to the claims raised by Applicant. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.



This 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), SCRCR, 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:

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 13th day of July, 2016

Joelyn Newman
THE HONORABLE JOCELYN NEWMAN
Presiding Judge
Twelfth Judicial Circuit

2016 JUL 22 PM 3:03
CONNIE REEL
CCP &
FLORANCE CO.

FILED

Columbia, South Carolina

CERTIFIED TELE COPY
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CLERK
FLC

THE

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