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August 4, 2016

Via U.S. Mail

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

Re: ***Jason Shane Lawson #290801 vs. State of South Carolina***
C/A No. 2014-CP-30-828
Notice of Appeal

Dear Mr. Shearouse:

Enclosed for filing please find a copy of the corrected Notice of Appeal which is being filed on behalf of the Appellant, Jason Shane Lawson #290801. Also enclosed is a copy of the Proof of Service of Notice of Appeal.

Please file the original and return a clocked-in copy to me in the enclosed self-addressed stamped envelope. By copy of this letter, I am hereby serving the Attorney General with a copy of the same. I have also filed an original with the Clerk of Court in Laurens County. Should you have any questions, please do not hesitate to contact me. Thank you for your assistance.

With Kind Regards, I am

Yours truly,

Laura M. Saunders

Enclosures
LMS/ File 4.800
cc: *Justin Hunter, Assistant Attorney General*
Jason Shane Lawson #290801

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM LAURENS COUNTY
Court of Common Pleas

Brooks P. Goldsmith, Presiding Circuit Judge – Greenwood County

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Post-Conviction Relief C/A Number:
2014-CP-30-0828

State of South Carolina,

Respondent,

v.

Jason Shane Lawson,

Appellant.

NOTICE OF APPEAL

Jason Lawson, #290801 appeals the decision and Order dated June 7, 2016. Appellant received written entry of this Order on July 14, 2016.

August 4, 2016

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RECEIVED
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S.C. SUPREME COURT

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PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the Respondent, State of South Carolina, by depositing a copy of it in the United States Mail, postage prepaid, on August 4, 2016 addressed to its attorney of record, Justin Hunter, Esquire, Assistant Attorney General, PO Box 11549, Columbia, South Carolina 29211.
August 4, 2016.

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	OF THE EIGHTH JUDICIAL CIRCUIT
COUNTY OF LAURENS)	
)	2014-CP-30-0828
Jason Shane Lawson,)	
S.C.D.C. No. 290801,)	
)	
Applicant,)	
)	**ORDER OF DISMISSAL**
v.)	
)	
State of South Carolina,)	
)	
Respondent.)	
)	

LAURENS COUNTY
CLERK OF COURT

2016 JUL 14 A 11: 36

LYNN W. LANCASTER

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed October 16, 2014. Respondent made its Return on or about January 29, 2015. An evidentiary hearing into the matter was convened on June 7, 2016, at the Greenwood County Courthouse in Greenwood, South Carolina. Applicant was present at the hearing and represented by Laura Saunders, Esquire. Justin Hunter, Esquire, of the South Carolina Attorney General's Office represented Respondent. At the hearing, Applicant testified on his own behalf. Applicant's plea counsel, Dan Farnsworth, Esquire, and his initial plea counsel, Elizabeth Wiygul, also testified. This Court had before it a copy of Applicant's records from the Laurens County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the plea transcript, Applicant's PCR Application, and Respondent's Return.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Laurens County Clerk of Court. Applicant was indicted at the March 2012 term of the Laurens County Grand Jury for Attempted Murder (2012-GS-30-0449), Armed Robbery (2012-GS-30-0450), Possession of a Weapon during the Commission of a

Violent Crime (2012-GS-30-0451), and Kidnapping (2012-GS-30-0452). Applicant was initially represented by Elizabeth Wiygul, Esquire, and subsequently represented by Dan Farnsworth, Esquire. On June 5, 2014, Applicant pled guilty to Attempted Murder as indicted, Kidnapping as indicted, Strong Arm Robbery as a lesser included offense of Armed Robbery, and Possession of a Weapon during the Commission of a Violent Crime as indicted. The Honorable Frank R. Addy, Jr. sentenced Applicant, pursuant to a recommendation from the State, to confinement for twenty-three (23) years for Attempted Murder, twenty-three (23) years for Kidnapping, fifteen (15) years for Strong Arm Robbery, and five (5) years for the weapons charge. All sentences were to run concurrently. Applicant did not appeal his conviction or sentence.

PCR Application

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
    a. Counsel failed to interview victim and witnesses
2. Involuntary Guilty plea

II. SUMMARY AND EVIDENCE PRESENTED AT PCR HEARING

Applicant's Testimony

Applicant testified that he was initially represented by Elizabeth Wiygul. He testified that he sent her a letter asking her to get him the best plea deal available. Applicant testified that he was initially presented with a plea offer of twenty years to plead to attempted murder. He testified that this offer was to be held open from February 24, 2012 to May 4, 2012. Applicant testified that he received a letter from Ms. Wiygul on May 21, 2012 informing him that the twenty year plea offer was still on the table. He testified that he never rejected this offer and told her that he wanted to accept the offer but was not sure when this conversation took place.

Applicant testified that when he was represented by Mr. Farnsworth the twenty year plea offer was off the table and a thirty year offer was in effect. He testified that Mr. Farnsworth did not revive the twenty year offer for him. He testified that he saw the discovery with Mr. Farnsworth but never went over his version of the facts with Mr. Farnsworth. He testified that he gave Mr. Farnsworth the name of a favorable witness to investigate, Ronnie Craig, who Applicant stated was friends with the victim. He testified that Mr. Craig would have testified at trial that the victim was not going to see him in Laurens.

Applicant testified that he gave his plea involuntarily because he did not know that the victims would speak. He testified that Mr. Farnsworth told him that he would ask for a fifteen year sentence and nothing would be said on the victims' behalf. Applicant testified that there was no recommendation from the State as to the amount of time but Applicant did not think he would get more than fifteen years.

Counsel Dan Farnsworth's Testimony

Mr. Farnsworth testified that he began representing Applicant in November 2013. He testified that there was initially a twenty year offer from the State but a thirty year offer when he began his representation. He testified that Applicant said he wanted a twenty year offer but did not tell Ms. Wiygul. Mr. Farnsworth testified that he tried to renegotiate the twenty year offer with the State but they would not agree. He testified that the thirty year offer was rejected by Applicant.

Mr. Farnsworth testified that he saw Applicant four to five times in Laurens County and two times in Perry Correctional. Mr. Farnsworth testified that the evidence in the case included a victim's statement, lineup identification, and a codefendant confession. He testified that the facts in this case were overwhelming as to Applicant's guilt. Mr. Farnsworth testified that he met with

the solicitor three to four times prior to the plea. Mr. Farnsworth testified that Applicant never said that he wanted to proceed to trial.

Mr. Farnsworth testified that the only recommendation from the State was to run the sentences concurrently. He also testified that other charges against Applicant were dismissed. Mr. Farnsworth testified that he spoke in chambers with the plea judge and the solicitor and got a feeling that the plea judge would give a fifteen year sentence. He further testified that the plea judge did not give a specific number of years he would give Applicant prior to the plea. He testified that he did not give a guarantee to Applicant and did not have any concerns at the plea hearing. Mr. Farnsworth testified that the plea judge took into account the fact that Applicant took the blame off of his codefendant at the guilty plea. He testified that he believed it was in Applicant's best interest to plead guilty and thought that he would have received consecutive time if he went to trial. Mr. Farnsworth further testified that the victims do not always make statements at plea hearings but it is more common in Laurens County.

Mr. Farnsworth testified that he did investigate Applicant's issue with Ronnie Craig, and believed that he would have been more of a character witness as to the victim's credibility than an alibi witness for Applicant. He testified that even if Mr. Craig did not meet with the victim around the time of the incident, this would not have helped Applicant's case at trial. Mr. Farnsworth further testified that Applicant did not have much of an alibi because his ID was found in the motel room where the incident occurred. He testified that he would have used an alibi if Applicant had one.

Counsel Elizabeth Wiygul's Testimony

Ms. Wiygul testified that she met with Applicant on multiple occasions and discussed the plea offers. She testified that the State's initial offer to plea to attempted murder for twenty years

ran from February 24, 2012 to May 4, 2012. She testified that she sent a letter to Applicant on May 21, 2012 informing him that the twenty year offer still stood. Ms. Wiygul testified that she talked in person, on the phone, and through Applicant's mother to relay the plea offer and Applicant rejected the offer. She testified that this twenty year plea deal did not expire because the May 4, 2012 date was pre-printed on the offer sheet but not absolutely binding. She testified that Applicant revoked the twenty year offer and she relayed this information to the assistant solicitor. Ms. Wiygul further testified that she would have never advised Applicant to reject a plea offer and that the rejection of the twenty year offer was his decision.

Ms. Wiygul testified that on June 10, 2013 she sent Applicant a letter outlining her discussion with the assistant solicitor prosecuting Applicant's case where she asked the assistant solicitor for the best offer available. The letter reflects that the assistant solicitor replied that he would ask for consecutive sentences at trial but that if Applicant pled guilty to attempted murder and armed robbery the other charges would be dropped.

III. APPLICABLE LAW

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their 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. 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, the 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 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. 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 trial 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 both Ms. Wiygul's and Mr. Farnsworth'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.

Ineffective Assistance of Counsel

Applicant alleges that his plea counsel were ineffective for failing to interview the victim and a witness, Mr. Ronnie Craig. An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the applicant 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) (citations omitted). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). 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).

This Court finds that Applicant has failed to show that Mr. Farnsworth and Ms. Wiygul were ineffective in any way during their representation. Applicant asserted that he told Mr. Farnsworth about a potential witness, Mr. Craig. This Court finds Mr. Farnsworth's testimony credible that he investigated the potential witness and that Mr. Craig would not have been an alibi witness but would have only been a character witness as to the victim's credibility. This Court also finds Mr. Farnsworth's testimony credible that Mr. Craig would not have made a difference in the outcome of a trial. To the extent that Applicant alleges that Ms.Wiygul or Mr. Farnsworth were ineffective for failing to properly investigate Applicant's case, this Court finds that Applicant has failed to show what any additional investigation would have revealed. 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); Davis v. State, 326 S.C. 283, 486 S.E.2d 747 (1997) (relief denied where applicant failed to present witnesses or specific testimony establishing applicant would have had a defense with additional time to prepare for trial); Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial).

To the extent that Applicant alleges that a plea offer was not conveyed, this Court finds that this allegation is without merit. This Court finds that Ms. Wiygul relayed the twenty year offer, as evidenced by her letter to Applicant dated May, 21, 2012. This Court also finds her testimony credible that Applicant rejected the twenty year offer.

Furthermore, this Court finds that Applicant has failed to prove that he was prejudiced by either counsels' actions as he has failed to show that he would have proceeded to trial but for either counsels' advice. The plea court accepted Applicant's plea as being made freely, voluntarily, and knowingly after a lengthy colloquy advising Applicant of the rights he was giving up by pleading and explaining the potential sentence. Applicant has made no indication that he would rather have gone to trial but for the alleged errors, and as such has failed to show that he was prejudiced by either counsels' actions.

Involuntarily Guilty Plea

Applicant further argues his plea was not given freely and voluntarily. This Court finds otherwise and concludes that Applicant's plea was entered freely and voluntarily. 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). A 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).

This Court finds, and the record reflects, that Applicant was fully advised that he was pleading guilty and therefore waiving any challenges to the evidence against him. The plea court's thorough colloquy with Applicant demonstrates that he understood the consequences of pleading guilty. 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 both Mr. Farnsworth's testimony regarding his preparation and advice concerning the case. This Court also finds Applicant's allegation that his plea was involuntary because he did not know that the victim impact statements would be presented to be without merit. According to the South Carolina Victims' Bill of Rights, a victim of a crime has the right to be heard at a plea proceeding. S.C. Const. art. I, § 24. This Court finds that the victim's exercise of such this right through an impact statement did not cause Applicant's guilty plea to be made unknowingly, involuntarily, or unintelligently.

The record reflects Applicant fully admitted his guilt to the plea court. "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)). Notably the South Carolina Supreme Court has held "[a] guilty plea represents a break in the chain of events which has preceded it in the criminal process." Id. (citations omitted). "When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea." Id. (citing Rice, 401 S.C. at 332, 737 S.E.2d at 486). After a full review of the record, this Court finds the plea judge correctly found Applicant's plea was freely, voluntary, and intelligently made.

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.

V. CONCLUSION

Based on the foregoing facts, the Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Applicant failed to demonstrate that either counsels' performances were 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 7 day of July, 2016.

BROOKS P. GOLDSMITH
Presiding Judge
Eighth Judicial Circuit

_____, South Carolina

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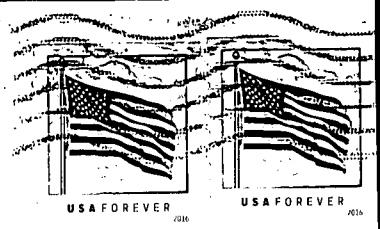

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