IN THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM LEXINGTON COUNTY

COURT OF COMMON PLEAS

PERRY H. GRAVELY, CIRCUIT COURT JUDGE

2014-CP-32-4383

William David Boone,.....Petitioner.

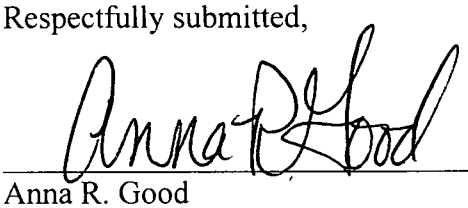
vs

The State of South Carolina,.....Respondent.

NOTICE OF APPEAL

William David Boone appeals the Honorable Perry H. Gravely's July 21, 2016 Order of Dismissal. Undersigned counsel received notice of entry of the order on August 18, 2016. A copy of the order on appeal is attached to this notice.

Respectfully submitted,



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Attorney for the Petitioner.

August 23, 2016.

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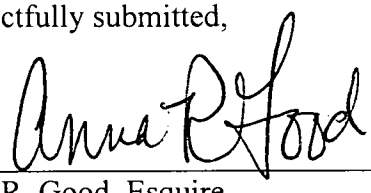
PROOF OF SERVICE

I, Anna Good, certify that I have today served the within notice of appeal upon the Respondent by depositing a copy of it in the United States Mail, postage prepaid, addressed to the attorney of record, Johanna Valenzuela, P.O. Box 11549, Columbia, South Carolina 29211-1549. I further certify that all parties required by Rule to be served have been served this 23rd day of August 2016.

Respectfully submitted,



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BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	FOR THE ELEVENTH JUDICIAL CIRCUIT
William David Boone, S.C.D.C. No. 270459, Applicant, v. State of South Carolina, Respondent.	C.A. No. 2014-CP-32-4383 **ORDER OF DISMISSAL**

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed December 2, 2014. Respondent made its return on or about March 17, 2015. An evidentiary hearing was held on April 21, 2016, at the Lexington County Courthouse. Applicant was present and represented by Anna Good, Esquire. Senior Assistant Deputy Attorney General Johanna C. Valenzuela represented Respondent.

Applicant and his plea counsel, Elizabeth Fullwood, Esquire, testified at the hearing. The Court had before it Applicant's guilty plea transcript, the Lexington County Clerk of Court records, the South Carolina Department of Corrections records, the PCR application, and the Return.

PROCEDURAL HISTORY

Applicant is presently confined in the Department of Corrections pursuant to orders from the Lexington County Clerk of Court. Applicant was indicted by the April 2014 Lexington County Grand Jury for criminal domestic violence, third-offense (2014-GS-32-0893). He was represented by Elizabeth A. Fullwood, Esq. On May 8, 2014, Applicant entered a guilty plea, as

indicted and without negotiations or recommendations, before the Honorable William P. Keesley. Judge Keesley accepted his plea and sentenced Applicant to a term of five (5) years imprisonment. Applicant's plea additional resulted in Judge Keesley revoking Applicant's probationary sentence on his 2011 conviction[1] for criminal domestic violence of a high and aggregated nature (CDVAHN) in full. The sentences were to be served consecutively.

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 and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing SCRCP 71.1(e)).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 688, 692, 104 S. Ct. 2052, 2065, 2067 (1984) ("[T]he defendant must show that counsel's representation fell below an objective

[1] Applicant was serving a ten (10) year split sentence suspended upon four (4) years active service and five (5) years probation for his CDVHAN conviction (2011-GS-32-3514).

standard of reasonableness [and] . . . any deficiencies in counsel's performance must be prejudicial to the defense in order to constitute ineffective assistance under the Constitution."); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006) ("PCR applicant must prove: (1) that counsel failed to render reasonably effective assistance under prevailing professional norms; and (2) that the deficient performance prejudiced the applicant's case."). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58–59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (internal citations omitted).

In determining guilty plea issues, the PCR court should consider the guilty plea transcript as well as evidence at the PCR hearing. Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984). This Court will now address each allegation of ineffective assistance of counsel:

Applicant alleged his plea counsel failed to present mitigating evidence at his plea hearing, claims he did not understand his probation revocation hearing would be done at the plea hearing or that the plea offer was a recommendation and that the sentence from his plea could be run consecutively to his probation violation. Applicant testified that he met with counsel one time before his plea hearing. He said he was offered two years and could expect to do one year and that he accepted that offer. Applicant alleged he was never told by counsel that he was facing a probation violation. Applicant admitted he had been served with the probation warrant; however, Applicant asserts that if he had known the probation revocation would be done with the plea, he would not have pleaded guilty. Applicant also claimed he was on "mind-altering"

medication during his plea.

Plea counsel testified she was originally appointed to Applicant to handle the probation violation. She explained she met with Applicant once for about forty-five minutes prior to his plea and provided him with his discovery. Plea counsel explained concurrent and consecutive sentencing to Applicant and that he was facing a probation violation. Applicant indicated to plea counsel that he was aware of the probation violation and that the probation and current charge involved the same victim. Plea counsel explained Applicant knew the plea would automatically be a probation violation and that it would happen at the same time and at the same proceeding. Applicant never indicated to plea counsel that he was interested in a trial and instead stated he wanted to plead guilty. Finally, plea counsel stated she had no trouble communicating with Applicant, did discuss medical issues with him, and had no indication of a need for a competency evaluation. Plea counsel also noted that the probation agent was present in the courtroom for Applicant's guilty plea.

Initially, this Court notes Applicant's guilty plea transcript begins with the probation agent notifying the Court that Applicant is on probation and presenting the warrant that had already been served on Applicant. (Plea Tr. p. 3, lines 10-11.) Thereafter, Applicant confirmed, while under oath, that he did wish to enter a guilty plea (Plea Tr., p. 8, l. 24 – p. 9, line 4), that there was no promise of any type of reward or benefit to him if he pleaded guilty (Plea Tr., p. 9, lines 13-15), and that no one had forced him in any way to plead against his will (Plea Tr., p. 9). Applicant also confirmed he was satisfied with his attorney and in fact stated she was "a good lawyer." (Plea Tr. p. 9.) When asked if there was anything he wanted counsel to do that she had not done, he answered "huh-huh. She's good." (Plea Tr., p. 9, lines 16-22). Applicant was also

asked if he was on medication and he answered that he was but that it helped him think clearly and that he was clearheaded that day of the plea, (Plea Tr. p. 4, line 9 – p. 5, line 4.)

After reviewing the transcript and hearing the testimony, this Court finds Applicant failed to meet his burden of proving plea counsel was ineffective or that he suffered any prejudice. This Court finds Applicant was properly notified of the probation violation, that the violation would be heard with the plea, and that he was facing the possibility of consecutive sentences.

No evidence of mitigation was presented at the hearing, and the Court treats that allegation as abandoned. Alternatively, without evidence of the mitigating evidence Applicant alleges should have been presented at the hearing, Applicant has not and cannot prove prejudice. To the extent Applicant alleges his medication prevented him from entering a knowing and voluntary plea of guilty, this Court finds Applicant failed to offer any evidence that he did not have "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding" and offered no evidence of "whether he [lacked] . . . a rational, as well as a factual, understanding of the proceedings against him." McLaughlin, 352 S.C at 481, 575 S.E.2d at 843 (citing State v. Kelly, 331 S.C. 132, 502 S.E.2d 99 (1998)).

This Court finds Applicant has failed to meet his burden of establishing plea counsel was ineffective or that the ineffectiveness caused him prejudice.

All Other Allegations

As to any additional 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 Applicant has abandoned any such allegations.

CONCLUSION

Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations before or during his guilty plea, revocation hearing, and sentencing proceedings. Counsel was not deficient in any manner, and Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and

2. That Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 21st day of July, 2016.

Perry H. Gravely
Presiding Judge
Eleventh Judicial Circuit

Pickens, South Carolina.

FILED
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BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC