

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM YORK COUNTY
Court of Common Pleas

J. DURHAM COLE, Circuit Court Judge

Civil Action Number: 2014-CP-46-1296

RECEIVED

SEP 28 2016

S.C. SUPREME COURT

JOMAR ROBINSON
#281722,

Petitioner,

v.

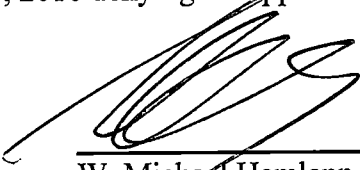
STATE OF SOUTH
CAROLINA,

Respondent.

NOTICE OF APPEAL

The Petitioner above appeals the order of the Honorable J. Durham Cole, dated August 23, 2016, received by me on August 29, 2016 denying his application for Post-Conviction Relief.

September 28, 2016



W. Michael Hemlepp, Jr.
211 Sweet Thorne Road
Irmo, South Carolina 29063
803-718-0956
legal@p-3-solutions.com
Attorney for Appellant

Other Counsel of Record:
Justin James Hunter
OFFICE OF THE ATTORNEY GENERAL
POB 11549
Columbia, South Carolina 29211
803-734-1867

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM YORK COUNTY
Court of Common Pleas

J. Durham Cole., Circuit Court Judge

Civil Action Number: 2014-CP-46-01296

Jomar Robinson # 281722,

Petitioner,

v.

State of South Carolina,

Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal in the above captioned case on the following individuals by depositing a copy of it in the United States Mail, postage prepaid, on September 28, 2016, addressed to:

David Hamilton, Clerk of Court
York County Court of Common Pleas
Post Office Box 649
York, South Carolina 29745

Justin James Hunter, Esq.
Office of the Attorney General
POB 11549
Columbia, South Carolina 29211

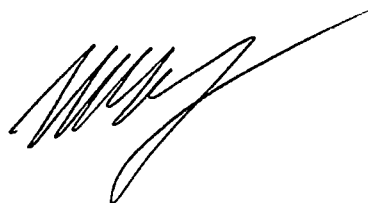
Jomar Robinson #2817222
POB 205
Ridgeville, SC 29472

RECEIVED

SEP 28 2016

S.C. SUPREME COURT

September 28, 2016



W. Michael Hemlepp, Jr.
211 Sweet Thorne
Irmo, South Carolina 29063
803-718-0956
legal@p-3-solutions.com
Attorney for Appellant

STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)
)
 Jomar Robinson,)
 S.C.D.C. No. 281722,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 OF THE SIXTEENTH JUDICIAL CIRCUIT

2014-CP-46-1296

ORDER OF DISMISSAL

FILED-RECEIVED
 2016 AUG 24 AM 8:50
 DAVID JAMIESON
 CLERK OF COURT
 YORK COUNTY, SC

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed April 23, 2014. Respondent made its Return on or about July 22, 2014. An evidentiary hearing into the matter was convened on January 22, 2015, at the Moss Justice Center in York, South Carolina. Applicant was present at the hearing and initially represented by W. Michael Hemlepp, Jr., Esquire. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office represented the Respondent. Applicant testified on his own behalf. Phillip Jamieson, Esquire, also testified. This Court also had before it a copy of the records of the York County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the Return, and the plea transcript.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. Applicant was indicted at the September 2010 term of the York County Grand Jury for Murder (2010-GS-46-3367) and Possession of a Weapon during the Commission of a Violent Crime (2010-GS-46-3367A). Phillip Jamieson, Esquire (hereinafter "Counsel"), represented him. On September 6, 2012,

Applicant pled guilty pursuant to North Carolina v. Alford, 400 U.S. 25 (1970) before the Honorable John C. Hayes, III and was sentenced, pursuant to a negotiated sentence, to confinement for eighteen (18) years for Voluntary Manslaughter, as a lesser included offense of Murder, and five (5) years, concurrent, for the possession charge.

A notice of appeal was filed on Applicant's behalf and an appeal perfected. The South Carolina Court of Appeals dismissed his appeal on March 29, 2013. The Remittitur was issued on April 17, 2013.

Allegations

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

1. Ineffective Assistance of Counsel
2. "Applicant also asserts that due to his lack of understanding the law."

At the PCR hearing, Applicant moved to amend his application to add the allegations of ineffective assistance of counsel due to Counsel's failure to investigate and failure to present an alibi.

II. SUMMARY OF EVIDENCE PRESENTED AT PCR HEARING

Applicant's Testimony

Applicant testified that he was already in SCDC when he was served with the arrest warrants for the murder and weapons charge. He testified that he does not know about the incident and does not know the victim. Applicant testified that another inmate told law enforcement that Applicant told the inmate that Applicant committed the crime. Applicant testified that he was questioned by law enforcement two to three times and during the third time he was asked to take a polygraph but refused.

Applicant testified that he made a confession and was appointed Counsel to represent him one month after the confession. He testified that he admitted to the murder but this confession was not true. He testified that he explained the confession to Counsel and went over potential defenses with him.

Applicant testified that he told Counsel about potential witnesses. He testified that the private investigator had contact information for potential alibi witnesses. He further testified that he told the plea court that he was satisfied with Counsel because he did not know any better.

Counsel Phil Jamieson's Testimony

Counsel testified that he was appointed to this case. He testified that he met with Applicant eighteen to twenty times prior to trial. He testified that he filed for and received all discovery. Counsel testified that he hired a private investigator, who met with Applicant and reviewed the discovery. He testified that the investigator interviewed people at the Department of Corrections about a possible coerced confession and interviewed Applicant's potential witnesses. Counsel testified that he spoke with his investigator and correctional officers. He testified that he did not get a written report from the investigator but took notes about their meetings. He testified that he watched the video of Applicant's confession and that this was the principal evidence that would have been used at trial.

Counsel testified that he investigated Applicant's potential witnesses who included a woman he was living with at the time and the person who loaned him a gun. He testified that Applicant's story was that he was supposed to meet a different woman at the laundromat. He also testified that Applicant admitted to giving false names. Counsel testified that he discussed Applicant's alibi with him but no witness could be located to substantiate his claim. He further

testified that Applicant gave details in his confession that were consistent with the scene of the crime.

Counsel testified that he negotiated with the State for Applicant to plead guilty. He testified that the State's final offer was for Applicant to plead guilty to voluntary manslaughter for eighteen years. He testified that he did not threaten or coerce Applicant to plead guilty nor did he tell Applicant how to answer the plea judge's questions. He testified that it was ultimately Applicant's decision to plea.

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 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.

Ineffective Assistance of Counsel

Applicant alleges Counsel was ineffective. 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 Counsel was ineffective in any way during his representation. Applicant asserted that he told Counsel about potential witnesses and this Court finds Counsel's testimony credible that he investigated the potential witnesses and could not find any witness to corroborate Applicant's alibi. To the extent that Applicant alleges that Counsel was ineffective for failing to properly investigate, this Court finds that Applicant has failed to show what any additional investigation would have been. 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).

Additionally this Court finds that Applicant has failed to prove that he was prejudiced as he has failed to show that he would have proceeded to trial but for Counsel's 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 and the State's negotiation. Applicant has made no indication that he would rather have gone to trial, and as such has failed to show that he was prejudiced by Counsel's actions.

As Applicant has failed to prove both prongs of Strickland this Court finds that his application for post-conviction relief must be dismissed.

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 any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this 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 counsels' 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), SCRPC, 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 will remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

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



J. DERHAM COLE
Presiding Judge
Sixteenth Judicial Circuit


_____, South Carolina