THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM YORK COUNTY
Court of Common Pleas

J. DURHAM COLE, Circuit Court Judge

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SEP 28 2016
S.C. SUPREME COURT

Civil Action Number: 2014-CP-46-2430

BRANDON GOLDEN
#310102,

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

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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-46-02430

Brandon Golden,

Petitioner,

v.

State of South Carolina, Respondent.

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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:

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	OF THE SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK)	
)	2014-CP-46-2430
Brandon Golden,)	
S.C.D.C. No. 310102,)	
)	
Applicant,)	
)	**ORDER OF DISMISSAL**
v.)	
)	
State of South Carolina,)	
)	
Respondent.)	
)	

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed July 28, 2014. Respondent made its Return on or about October 23, 2014. An evidentiary hearing into the matter was convened on January 21, 2015, at the Moss Justice Center in York, South Carolina. Applicant was present at the hearing and represented by Michael Hemlepp, Jr., Esquire. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office represented Respondent. At the hearing, Applicant testified on his own behalf. Ashley Anderson, 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 2013 term of the York County Grand Jury for Possession of Schedule II Narcotic (2013-GS-46-3318). Applicant was also indicted at the December 2013 term of the York County Grand Jury for Possession with Intent to Distribute Marijuana (PWID) (2013-GS-46-4457).

Ashley Anderson, Esquire, represented him. On February 26, 2014, Applicant pled guilty before the Honorable Paul M. Burch and was sentenced to imprisonment for six (6) years for PWID Marijuana, 3rd offense and six (6) months, concurrent, for Possession of Schedule II drug (Oxycodone), 1st offense. Applicant did not appeal his convictions or sentences.

Allegations

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

1. "First PWID is over ten years old."
2. "What they claim as second offense was traffic court ticket I paid"
    a. "Under State law you have to have twenty-eight grams of marijuana to be charged with PWID. That was a four gram traffic ticket."
3. "This charge was only 10 grams"
    a. "Under State law you have to have twenty-eight grams of marijuana to be charge with PWID. This charge was 10 grams."
4. "They told me they could use my phone against me"
    a. "My cell phone was never suppose (sic) to be brought up because it was not a narcotic investigation"
5. "Ineffective Counseling"
    a. "Ineffective Counseling"
6. "Violation of Fourth Amendment"
    a. "Illegal search of my room two times"
7. "I was using marijuana"
    a. "Me smoking marijuana did not fall under category of PWID"
8. "Lawyer told me maybe 1 year for third simple possession if we won or maybe 5 non-violent if we lost."
    a. "Day of trial told me that had phone and 5 year plea as off table. Had to sign 5 to 20 plea or go to trial and get 10 to 15."
9. "Didn't get time to prepare for new evidence in which was brought up on the day of trial. Was suppose (sic) to get 30 days to prepare."

II. SUMMARY OF EVIDENCE PRESENTED AT PCR HEARING

Applicant's Testimony

Applicant testified that he spoke with his attorney about his charges after his arrest. He testified that he was charged with third offenses and spoke with Counsel about his prior offenses. He testified that he had three other simple possession charges including a second offense charge in 2013. He testified that Counsel advised him to plead guilty, but that there was no discussion about whether he was pleading to a second or third offense. Applicant testified that Counsel told him that his charge had already been ruled to be a third offense.

Applicant testified that he paid fines in two of his prior marijuana charges and did not have an attorney for a simple possession on a traffic ticket.

Counsel Ashley Anderson's Testimony

Counsel testified that there was some discrepancy involving the enhancement provisions for marijuana charges and the State would use S.C. Code § 44-53-470 to make Applicant's marijuana charge a third offense. She testified that the solicitor's office told her that Applicant's priors were eligible to be used and they would indict his current charge up to a third offense. She testified that she explained all of this to Applicant. Counsel further testified that she negotiated for a five year plea offer and the State would not negotiate the charges down.

Counsel testified that she raised the issue of whether Applicant's marijuana charge should be a second or third offense to the plea judge at a status conference. She testified that the plea offer was still on the table at that point and the plea judge informed her that he would rely on S.C. Code § 44-53-470 and determine that a third offense was the proper charge because of Applicant's 2003 PWID marijuana charge and 2012 possession of marijuana charge. Counsel testified that she advised Applicant about the plea judge's position on the charges.

Counsel testified that Applicant elected to go to trial and his defense would be that this was only simple possession. She testified that investigating officers brought Applicant's cell phone that showed many drug texts sent from him. She testified that this caused Applicant to change his posture to a guilty plea. Counsel further testified that Applicant's offer was to plead straight up to a third offense or go to trial. She testified that the State negotiated an offer for Applicant to plead to PWID third offense for five years and then PWID second offense. She testified that Applicant rejected the plea offer and that no plea offer existed at the time of the plea.

Counsel also testified that she did not make a motion on the record regarding Applicant's charge being a second offense because she had already received the plea judge's interpretation and the solicitor was not willing to do pretrial motions.

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.

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.

Ineffective Assistance of Counsel

Applicant alleges Counsel was ineffective in failing to investigate and for providing erroneous advice prior to Applicant's guilty plea. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. See Al-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (1999) (citing Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993)). 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 also finds that Applicant has failed to show that Counsel's investigation was deficient and has also failed to show what any further investigation would have revealed. To establish counsel was inadequately prepared for trial, an applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel been more fully prepared. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998); 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). This Court finds that Applicant has failed to meet his burden of showing Counsel was ineffective regarding his investigation and has also failed to show how the result of the trial would have been different had he pursued further investigation.

Additionally, this Court finds that Applicant has failed to meet his burden of proving that Counsel provided erroneous advice that induced Applicant to plead guilty. Counsel properly advised Applicant of the elements of the crime, reviewed discovery with Applicant, and relayed the plea negotiations that allowed Applicant to plead guilty. Applicant has failed to show that he otherwise would have elected to go to trial and has not shown any error in Counsel's assistance that led him to plead guilty instead. Therefore he cannot prove any prejudice. Applicant made the decision to accept the State's offer to plead guilty. Accordingly, this allegation is denied and dismissed with prejudice.

Involuntary 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). 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, 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 Counsel's testimony regarding his preparation and advice concerning the case. 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.

Plea Court's Lack of Jurisdiction

Applicant alleges that the plea court did not have jurisdiction to hear his guilty plea because there was no waiver hearing from Family Court. This Court finds this allegation is wholly without merit. The transfer of jurisdiction from Family Court to General Sessions Court in cases where juveniles are charged with crimes is governed by S.C. Code § 63-19-1210 (1976). The applicable code section in this case is § 63-19-20, which states:

> When used in this chapter and unless otherwise defined or the specific context indicates otherwise:
> (1) "Child" or "juvenile" means a person less than seventeen years of age. "Child" or "juvenile" does not mean a person sixteen years of age or older who is charged with a Class A, B, C, or D felony as defined in Section 16-1-20 or a felony which provides for a maximum term of imprisonment of fifteen years or more. However, a person sixteen years of age who is charged with a Class A, B, C, or D felony as defined in Section 16-1-20 or a felony which provides for a maximum term of imprisonment of fifteen years or more may be remanded to the family court for disposition of the charge at the discretion of the solicitor. An additional or accompanying charge associated with the charges contained in this item must be heard by the court with jurisdiction over the offenses contained in this item.

This Court finds this allegation is without merit since pursuant to § 63-19-20, the Applicant's case was not governed by the transfer of jurisdiction provisions in § 63-19-1210. Applicant was sixteen at the time of the events and charged with Murder, Attempted Murder, and Armed Robbery, which put his charges within the jurisdiction of the Circuit Court unless the solicitor chose to remand it to the Family Court. This Court finds Applicant has presented no evidence to support this allegation and finds it without merit. This Court also finds that Applicant's charges were properly under the jurisdiction of the Court of General Sessions.

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), 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:

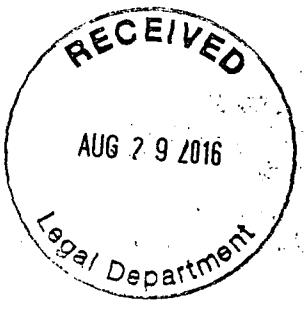
1. The application for Post-Conviction Relief is denied and dismissed with prejudice; and

2. Applicant 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

York, South Carolina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