

STATE OF SOUTH CAROLINA )  
COUNTY OF BERKELEY )

IN THE COURT OF COMMON PLEAS )  
NINTH JUDICIAL CIRCUIT )

Rodney Ladson, #262438, )

2012-CP-08-0637 )

Applicant, )

ORDER )

v. )

State of South Carolina, )

Respondent. )  
\_\_\_\_\_ )

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CLERK OF COURT  
BERKELEY COUNTY, S.C.

This matter comes before the Court upon Applicant's Motion Pursuant to Rule 59(a) & (e), SCRCP (Motion) of the Order dismissing his Post-Conviction Relief (PCR) claim, filed by and through counsel on or about May 10, 2016. After fully considering said Motion, the Court finds no need for oral argument in this matter, and the Motion to Alter/Amend Judgment is denied for the reasons discussed below.

In his Motion, Applicant sets forth six bases for this Court to reconsider its Order dismissing Applicant's claims. In summary, the Motion asserts that the Order fails to address: (1) "the Interrogatories that were obtained by Court ordered discovery"; (2) the Response to Conditional Order of Dismissal; (3) "each individual claim of ineffective assistance of counsel and does not address the State's failure to call trial [sic] counsel as a witness"; (4) "Applicant's amended allegation, testimony and evidence offered regarding counsel's failure to address Applicant's mental health and prescription medication with Applicant and the court prior to the entry of Applicant's guilty plea"; (5) "Applicant's testimony that he would not have accepted the guilty plea and would have proceeded to trial but for counsel's ineffective assistance"; and (6)

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DATE *9/11/16* *DW*

“fails to consider that Applicant’s case is distinguishable from Jamison v. State . . . since Applicant has claimed ineffective assistance of counsel and involuntary guilty plea.”

**I. Failure to address Response to Conditional Discharge.**

The Court notes that this matter was decided on the ground that the Applicant had failed to file his Application for PCR prior to the expiration of the statute of limitations. (Order pp. 5–6). All other allegations made by the Applicant were addressed as alternative findings. (Order p.6). While the Order does not address Applicant’s Response to Conditional Order of Dismissal (Response) by name, the content of this filing as well as Applicant’s corresponding testimony at the PCR hearing are considered and discussed in the Order. (Order pp.5–6). Despite Applicant’s Response and testimony, the Court found that although Applicant suffered various medical and other issues (such as difficulty obtaining his file from his attorney when he contacted him nearly five years after his guilty plea) since being incarcerated, Applicant admitted he was never deemed mentally incompetent or hospitalized for mental health issues. (Order pp. 5-6) The Applicant did not present an excuse for the twelve year delay in filing his PCR application.

**II. Interrogatories.**

Applicant argues that the Court has failed to address the Interrogatories that were obtained during discovery and were part of the Record. First, the Court considered all information that was made a part of the Record. While not mentioned by name in the Order, all the information contained in the Interrogatory responses<sup>1</sup> was discussed as “the documents received from the Berkeley County Sheriff’s office . . . and SLED” under “Newly discovered

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<sup>1</sup> It is noted that SLED’s response to the Interrogatories was an objection and statement that all information they had was already provided to PCR counsel and that they had no ballistics analysis, no trajectory analysis, and possessed no DNA evidence. Berkeley County Sheriff’s response can be summarized by stating that they disposed of any evidence at some point after the guilty plea, all that they had retained as a Charter Arms Undercover .38 Special, and they attached the case file to their responses.

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evidence" and addressed in the discussion of Robert Tressel and Peter Skidmore's testimony under "Ineffective Assistance of Counsel" (Order pp. 6-7; 9-10). The Court found that these items did not meet the definition of newly discovered evidence.

**III. Claims for ineffective assistance of counsel and State's failure to call plea counsel as a witness.**

**a. Plea counsel did not testify.**

Applicant argues in his Motion that the Court should reconsider its Order because it did not address the "State's failure to call trial [sic] counsel as witness [sic] to rebut the testimony and evidence" presented by the Applicant (Order pp. 7-8). It is noted that "[c]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Burke v. State, 286 S.C. 441, 442, 354 S.E.2d 813, 814 (1985) (citing Brickland v. Washington, 465 U.S. 688, 690 (1984)). As set forth in the Order, the burden of proof is on the applicant in a PCR to prove each element of his case by a preponderance of the evidence. The State's decision to call or not call a witness at an evidentiary hearing does not change this burden.

**b. Ineffective assistance of counsel claims**

Second, Applicant made various claims of ineffective assistance of counsel. The Court realizes that not all claims discussed during the evidentiary hearing were fully addressed in the Order and takes this opportunity to supplement the findings in its Order.

In the attachments to Applicant's original PCR Application, Applicant stated the following reasons for his claim of ineffective assistance of counsel:

- "[plea counsel] did not investigate [Applicant's] case"
- "[plea] counsel did not challenge the indictment at trial"

- “[plea] counsel failed to tell judge that [Applicant] was under the influence of drugs during my trial and pled [sic]”;
- “[plea] counsel was ineffective for not explaining that he could appeal the judge’s sentence and conviction”; and
- “[plea] counsel should have gotten the applicant a mental evaluation”.

On or about December 2, 2015, Applicant, through counsel, filed an Amendment to Application for Post Conviction Relief (Amendment). Here, the Applicant clarified and added to his claims of ineffective assistance of counsel. The Amendment claims ineffective assistance of counsel for:

- plea counsel’s “failure to provide and review the Berkeley County Agencies’ and SLED files with Applicant prior to entry of guilty plea . . . to inform Applicant and/or the court that testing had not been completed on evidentiary items sent to SLED”;

“failure to conduct a reasonable investigation”;

“failure to address Applicant’s mental health and prescription medication with Applicant and the court prior to the entry of Applicant’s guilty plea”; and

“Pursuant to United States v. Cronin, 466 U.S. 648, 104 S.Ct. 2039 (1984) and Nance v. Ozmont, 367 S.C. 547, 626 S.E.2d 878 (2006), Applicant alleges that counsel rendered ineffective assistance in violation of the Sixth Amendment”.

Applicant also moved to amend the pleading to conform to the evidence and testimony presented. During the evidentiary hearing on January 23, 2016, the issues raised by Applicant concerning the indictment and failure to advise Applicant of his right to appeal were never addressed and therefore deemed abandoned.

While the Court addressed plea counsel’s alleged failure to properly investigate evidence and claims under Cronin and Nance in the Order, the Court will further address Applicant’s claims that (1) plea counsel did not review discovery with him and failed to inform Applicant and the court that testing of evidence had not been completed; and (2) plea counsel failed to address Applicant’s mental health with Applicant and court prior to the guilty plea. Any other

allegations of ineffective assistance of counsel were deemed abandoned by Applicant's failure to present testimony and evidence related to the claims during the evidentiary hearing.

1. *Plea counsel failed to review discovery with Applicant and inform Applicant and the court that testing had not been completed.*

Applicant testified that he met with plea counsel three or four times between March 1999 and his guilty plea in November 1999, yet he states that they never went over the nearly five hundred pages of discovery he has now received in this case, never discussed potential witnesses, and never discussed defenses. Applicant states in cross examination that he never even saw any of the 500 pages of discovery before 2013. However, earlier, Applicant's testimony concerning voluntary statements of witnesses was that he had seen at least some parts of these statements prior to his guilty plea. The Court notes that during the guilty plea the court asked plea counsel if he had investigated the case and shared the results with Applicant. (Plea Tr. p. 6). Plea counsel responded that he had. (Plea Tr. p. 6). Later in the plea, plea counsel is addressing the court and states that he and Applicant "had many conversations together about the case, about what was involved and about the consequences." (Plea Tr. p. 16).

When discussing how he was prejudice by counsel allegedly failing to review any discovery with him prior to his guilty, Applicant states that he would have wanted certain test performed or evidence investigated, that things "jumped off the page" in reports due to his experience and training as a former law enforcement officer.<sup>2</sup> Later in his testimony, Applicant states that he didn't even know of the existence of the types of reports and information contained in the approximately five hundred pages of information before the Court because his main duties as a law enforcement officer were traffic enforcement, even though he admitted on cross

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<sup>2</sup> Applicant testified he spent five years with the South Carolina Highway Patrol, three years as a traffic officer with the Mount Pleasant Police Department, and one year with the City of Charleston Police Department as a traffic officer.

examination that he had investigated crime scenes and completed reports that were turned over to the solicitor's office. He further admitted on cross examination that he knew that if investigation needed to be done that it usually went to SLED.

The Court finds that Applicant's testimony is inconsistent and contradictory at times with regard to what information he received and its effect on his decision to plead guilty or go to trial. The Court finds that Applicant has not shown by a preponderance of the evidence that plea counsel failed to render reasonably effective assistance, that Applicant was prejudiced by plea counsel's performance, or that but for plea counsel's errors he would have not pled guilty and demanded a trial.

2. *Plea counsel failed to address Applicant's mental health with him and the court prior to entry of guilty plea.*

This claim will be discussed *infra* in Section IV as it was raised as a separate issue in Applicant's Motion.

#### **IV. Failure of plea counsel to address mental health and prescriptions with the plea judge.**

Applicant testified that plea counsel should have known that he was on various medications for mental health issues and was depending on plea counsel to inform the court of this. Applicant further testified that he recalls being on these medications in the time leading up to his guilty plea while he was in the Berkeley County jail. When asked by PCR counsel why he didn't tell the judge that he was on mental health medications when asked during the plea, Applicant responded that the court didn't ask if he was on medication, the court asked if he was on drugs so he responded that he was not. Applicant went on to say that he depended on plea counsel to provide any information that the court needed. However, during the plea, the court asked Applicant if he was "under the influence of anything affecting [his] ability to make a decision of

this nature” and Applicant responded that he was not. (Plea Tr. p. 5). The court went further and asked if he had consumed or ingested any drugs or alcohol in the last 24 hours and if Applicant had ever been treated for any emotional problems or mental illness. (Plea Tr. p. 5). Applicant responded in the negative to both questions from the court. (Plea Tr. p. 5). Later in the plea, the court notes that “[Applicant] fully understands his rights, is not under the influence of anything affecting his ability to make a decision of this nature. . . . [the court finds] nothing about this demeanor that suggests to the Court that he is functioning or under the undue pressure or anything effecting him at all. He has responded to my questions correctly in every sense, body language and words...” (Plea Tr. pp.14–15).

The court finds that the Applicant has not met his burden in this matter. A defendant cannot rely on plea counsel to provide information to the court when the court directly asks the defendant about things he has consumed and treatment he has received. In addition, the court noted Applicant’s demeanor during the plea and did not find anything unusual or abnormal about his behavior in deciding to accept Applicant’s plea. The Court finds that any oversight on the part of plea counsel was negated by the questioning of the court during Applicant’s guilty plea. Therefore, the Court finds that Applicant has not met his burden of proving ineffective assistance of counsel on this issue.

**V. Applicant’s statements that he would not have accepted the plea but for ineffective assistance of counsel.**

Applicant has cited various case law stating that an applicant’s uncontradicted testimony that applicant would not have pled guilty but for plea counsel’s advice is sufficient to prove applicant would not have pled guilty and to establish actual prejudice. (Mot. Recons. 3–4).

The Court feels that, again, the credibility of the Applicant is an issue that must be



weighed in considering if the Applicant's statement alone, that he would have gone to trial instead of accepting the negotiated plea offer, is enough to meet the Applicant's burden. The Applicant gave various contradictory testimony during the hearing and in his Application. In addition, during the guilty plea, plea counsel states that this was always going to be a guilty plea, that the Applicant did not want to put his children and family through a trial. (Plea Tr. 15-16). This was echoed again by the Applicant during the PCR hearing when he was asked why he decided to take the negotiated plea offer. Based on this, the Court does not believe that the Applicant has met his burden and does not support an amendment to the previous Order.

**VI. Distinctions between the present case and Jamison v. State.**

In Jamison v. State, 765 S.E.2d 123, 130 (S.C. Sup Ct 2014), the Supreme Court set forth the standard for vacating a guilty plea in connection with a PCR applications:

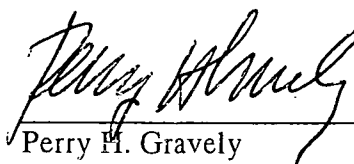
*Guided by the language of section 17-27-20(A)(4) of the PCR Act, we hold that, when a PCR applicant seeks relief on the basis of newly discovered evidence following a guilty plea, relief is appropriate only where the applicant presents evidence showing that (1) the newly discovered evidence was discovered after the entry of the plea and, in the exercise of reasonable diligence, could not have been discovered prior to the entry of the plea; and (2) the newly discovered evidence is of such a weight and quality that, under the facts and circumstances of that particular case, the "interest of justice" requires the applicant's guilty plea to be vacated. In other words, a PCR applicant may successfully disavow his or her guilty plea only where the interests of justice outweigh the waiver and solemn admission of guilt encompassed in a plea of guilty and the compelling interests in maintaining the finality of guilty-plea convictions. In so holding, we caution that it will be the rare case indeed where the interests of justice will require that a knowing and voluntary guilty plea be vacated through post-conviction relief on the basis of newly discovered evidence, for an unconditional guilty-plea involving an admission of guilt and a waiver of trial and all defenses will generally preclude any subsequent challenge to factual guilt.*

This Court finds that the Applicant did not meet this very narrow exception to vacating his guilty plea. The "newly discovered evidence" was not some alibi witness, but the testimony was along the lines that this evidence should have been reviewed and additional investigation performed. This does not rise to the level of exculpatory evidence or the possibility that it may

have changes the outcome. It is mere speculation that the Defendant would have done some additional investigation if he had reviewed this information which is quite different than the scenario in Jamison. Therefore, the Court does not find that this exception is a basis for granting the relief requested.

## VII. Conclusion

For the reasons set forth above, the Applicant's Motion for Reconsideration is denied.

  
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Perry H. Gravelly  
Presiding Judge

September 7<sup>th</sup>, 2016

Prokono, South Carolina