

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Ronald Earl Brown,
S.C.D.C. No. 361682,

C.A. No.: 2015-CP-23-5744

Applicant,

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vs.

SC Court of Appeals ORDER

State of South Carolina,

Respondent.

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Applicant filed this post-conviction relief application on September 18, 2015. The matter came to be heard on October 24, 2016. The Applicant was represented by Richard Warder, Esq. The State was represented by Patrick Schmeckpeper, Esq.

The applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant at the November 2013 term of General Sessions for First-Degree Assault and Battery by Mob (2013-GS-23-10617). Christopher T. Posey, Esquire represented the Applicant.

On October 7, 2014 the Applicant pled guilty as indicted. The Honorable Edward W. Miller sentenced the Applicant to 45 years imprisonment. The Applicant did not appeal.

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

1. Ineffective assistance of counsel.
 - a. Trial attorney did not subpoena witness and was not prepared to defend him.
2. Involuntary guilty plea.
 - a. Plea was a result of the threat of a life sentence.

RICHARD WARDER

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However, at his hearing, Applicant confined his argument to entry of his plea was with his understanding he would receive a 30 year sentence.

The applicant's assertion is that his guilty plea was involuntary. I find this assertion to be without merit as further addressed below. 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)). "A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of a plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but 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); *Bennett v. State*, 371 S.C. 198, 204, 638 S.E.2d 673, 675 (2006).

To find a guilty plea is voluntary and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. *See Boykin v. Alabama*, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969). In *Boykin*, the United States Supreme Court held that before a court can accept a guilty plea, a criminal defendant must be advised of the constitutional rights he is waiving. *Id* at 243, 89 S. Ct. at 1712. Specifically, the accused must be aware of the privilege against self-incrimination, the right to jury trial, and the right to confront one's accusers. *Id*. Moreover, a criminal defendant entering a guilty plea "must be aware of the nature and crucial elements of the offense, the maximum and

any mandatory minimum penalty, and the nature of the constitutional rights being waived.” *Pittman v. State*, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citation omitted). A criminal defendant’s knowing and voluntary waiver of statutory or constitutional rights in a guilty plea “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).

When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. *Anderson v. State*, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000).

Applicant’s mother, Frances Harrison, and his sister, Lillian Smith, testified that applicant understood he was going to receive a 30 year sentence. Ms. Harrison went further and testified that the reason he pled guilty was because he understood he would receive a 30 year sentence. As to the latter testimony, Applicant’s mother is not competent to testify as to Applicant’s mental state or mental awareness leading up to his plea. Neither Ms. Harrison nor Ms. Smith’s testimony is of any value as to the applicant’s assertion as to his plea being involuntary. Additionally, as seen below, the record clearly reflects Applicant freely, voluntarily, knowingly, and intelligently entered his plea knowing he could be sentenced to a prison term of 30 years to life.

Applicant testified that he was represented by Chris Posey and met with counsel four times for approximately 45 minutes each visit. Applicant further testified trial counsel recommended that he plead guilty and told Applicant that he would receive a life sentence if he were found guilty at a trial. Finally, applicant testified that trial counsel did not indicate he had talked with the prosecuting solicitor. This latter point holds no value as seen below.

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Trial counsel testified that the Applicant understood he was facing a possible sentence of 30 years to life. Trial counsel told Applicant that he did not think Applicant would receive a life sentence at a plea. Trial counsel also testified that Applicant was offered a 30 year sentence in exchange for his cooperation against his co-defendants. Trial counsel testified that Applicant backed out of his deal and did not cooperate. While this was being orchestrated, Applicant and trial counsel met with the solicitor.

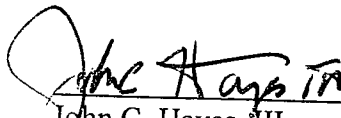
The record reflects Applicant was told he could be sentenced to 30 years to life at the time he entered his plea and that he understood (Plea Transcript at page 3, line 21 through page 4, line 6.)

Applicant has failed to prove by a preponderance of the evidence that his plea of October 7, 2014 was involuntarily entered. Therefore, his Application for Post-Conviction Relief is denied and dismissed with prejudice.

This Court hereby advises Applicant that he must file and serve a Petition for Writ of Certiorari within thirty (30) days of the service of this Order to secure appellate review. See Rules 203 and 243, South Carolina Appellate Court Rules (SCACR). The Applicant's attention is directed to Rule 243, SCACR, for the procedures following the filing and service of the Petition.

IT IS SO ORDERED.

October 25th, 2016
Greenville, South Carolina



John C. Hayes, III
Presiding Judge Hd

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NO: 2015CP2305744

Ronald Earl Brown vs. South Carolina State Of

CHECK ONE:

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRCP; Rule 41(a),
SCRCP (Vol. Nonsuit); Rule 43(k), SCRCP (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRCP; Bankruptcy:
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded;
 Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; Statement of Judgment by the Court:
Dated at Greenville, South Carolina, this .

Court Reporter:

PRESIDING JUDGE - John C Hayes, III

This judgment was entered on the , and a copy mailed first class this , to attorneys of record or to parties (when appearing pro se) as follows:

Richard Harold Warder PO Box 26133
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ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court
- Clerk of Court