



THE FAJARDO LAW FIRM, LLC

November 30, 2016

South Carolina Supreme Court
ATTN: Clerk
Post Office Box 11330
Columbia, South Carolina 29211

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DEC -2 2016

S.C. SUPREME COURT

Re: Demetrice Quattlebaum, #359242 v. The State of South Carolina
Case #: 2015-CP-38-297

Dear Mr. Shearouse,

I hope this letter finds you well. Enclosed, please find an original and one (1) copy of the below listed documents in the above referenced matter.

- **Notice of Appeal**
- **Motion to be Relieved as Counsel**

I would appreciate you filing the originals and returning the clocked copies in the provided envelope. Additionally, by copy of this correspondence I am serving the Assistant Attorney General, Attorney Neely, with the same.

If you should have any questions or concerns about this matter, please do not hesitate to contact my office.

With kind regards, I am

Sincerely,

Stephanie R. Fajardo
Attorney at Law
SRF:crs

Enclosures: listed in text

cc: Ruston Neely, Esquire

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Columbia, South Carolina 29201
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ORIGINAL

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Honorable Benjamin H. Culbertson

Case Number: 2015-CP-38-0297

RECEIVED

DEC -2 2016

S.C. SUPREME COURT

Demetrice Quattlebaum, #359242 Petitioner,

v.

State of South Carolina Respondent,

NOTICE OF APPEAL

NOW COMES the Petitioner, who, by and through his undersigned counsel of record listed below, hereby appeals the Honorable Benjamin H. Culbertson's November 7, 2016, Order of Dismissal which denied Petitioner's request for post-conviction relief. Undersigned counsel received notice of entry of the order on November 10, 2016. A copy of the order on appeal is attached to this notice.

Respectfully Submitted,

Stephanie R. Fajardo, Esquire
The Fajardo Law Firm, LLC
Post Office Box 8
Columbia, South Carolina 29202
Phone: (803) 391-8980
Facsimile: (877) 365-5340
PCR Counsel for Petitioner

November 29, 2016

Other counsel of record
Ruston W. Neely
Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211-1549

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

Demetrice Quattlebaum, #359242,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

2015-CP-38-0297

ORDER OF DISMISSAL

FILED FOR RECORD
WINNIFRA B. CLARK
2016 NOV - 7 PM 2:50
CLERK OF COURT
ORANGEBURG, SC

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed March 5, 2015. Respondent made its Return on December 4, 2015, requesting an evidentiary hearing be convened. Stephanie R. Fajardo, Esquire, represented Applicant. An evidentiary hearing was held on May 16, 2016, at the Dorchester County Courthouse. Applicant was present. J. Clayton Mitchell of the South Carolina Attorney General's Office represented Respondent.

At the PCR hearing, Applicant testified on his own behalf. Also testifying was Applicant's plea counsel, Michael R. Culler, Jr., Esquire, and Applicant's mother, Sandra Quattlebaum. This Court had before it the Orangeburg County Clerk of Court records, Applicant's South Carolina Department of Corrections records, the PCR application, the Return, and the guilty plea transcript.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Orangeburg County Clerk of Court. In February 2014, the Orangeburg County Grand Jury indicted Applicant for voluntary manslaughter (2014-GS-38-0358). Michael Culler, Esquire, represented Applicant. On March 13, 2014, Applicant pled

COURT OF COMMON PLEAS
ORANGEBURG COUNTY, SC

guilty to a negotiated sentence. The Honorable Edgar W. Dickson accepted the negotiation and sentenced Applicant to thirty (30) years' imprisonment. Applicant did not appeal his plea or sentence.

In this action, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Involuntary and unintelligent guilty plea; and
2. Ineffective assistance of counsel in failing to recognize a conflict of interest.

III. APPLICABLE LAW

In a post-conviction relief action, Applicant bears the burden of proving the allegations in the 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, 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, 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 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. These credibility findings have been applied to the Court's findings and conclusions set forth below.

Involuntary and Unintelligent Guilty Plea

Applicant alleges he did not plead guilty knowingly and voluntarily. Applicant argues he believed he was charged with murder or accessory before the fact to murder. He also argues Counsel coerced him to plead guilty by advising him he could be subjected to a mandatory life without the possibility of parole sentence. This Court finds Applicant's guilty 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).

Applicant claims he was coerced into pleading guilty because Counsel advised him that he could be subjected to a life without parole sentence. He testified he wanted to go to trial and did not wish to plead guilty. Applicant explained that he believed he was pleading to murder and agreeing to a sentence of twenty-five (25) years. This Court finds these contentions meritless. This Court finds the record reflects Applicant was fully advised that he was pleading guilty to voluntary manslaughter. The plea court's thorough colloquy with Applicant demonstrates that he understood the consequences of pleading guilty. This Court finds Applicant's testimony not credible. Applicant presented no credible evidence as to why he should be able to depart from his statements at the plea hearing. This Court finds Counsel's testimony very credible regarding his

preparation and advice concerning the case. Counsel explained that contrary to his testimony at the PCR hearing, Applicant wanted to plead guilty. Counsel explained that he believed Applicant knew understood the proceedings and proceeded voluntarily. The record further reflects Applicant fully admitted his guilt to the plea court. Applicant also told Judge Dickson that he understood the charges and the consequences of pleading guilty. (Plea Tr. p. 6). Therefore, this Court finds the plea judge correctly found Applicant's plea was freely, voluntary, and intelligently made.

Ineffective Assistance of Counsel - Conflict of Interest

Applicant also alleges Counsel was ineffective in failing to recognize a conflict of interest. Specifically, Applicant alleges Counsel represented a family member of the victim. Applicant testified that before the plea, the victim's family greeted Counsel and spoke to him as if they knew him. Applicant testified Counsel mentioned something to him regarding his relationship with the victim's family, but he did not specifically remember what was said. Applicant's mother testified similarly in that Counsel was greeted by the victim's family at the courthouse the day Applicant pleaded guilty. Counsel explained that he was a public defender in Orangeburg County for eighteen (18) years, serving as the supervising attorney the majority of that time. He testified he had no idea that the victim's family knew him. Counsel was adamant that his representation of Applicant was not affected by any relationship he may have previously had with the victim's family.

"An actual conflict of interest occurs where an attorney owes a duty to a party whose interests are adverse to the defendant's." Staggs v. State, 372 S.C. 549, 551, 643 S.E.2d 690, 692 (2007). This Court has further stated that a conflict of interest occurs when "a defense attorney

places himself in a situation inherently conducive to divided loyalties.” Lomax v. State, 379 S.C. 93, 101, 665 S.E.2d 164, 168 (2008).

Until a defendant shows that his counsel actively represented conflicting interests, he has not established the constitutional predicate for a claim of ineffective assistance of counsel arising from multiple representations. Langford v. State, 310 S.C. 357, 359, 426 S.E.2d 793, 795 (1993) (citing Cuyler v. Sullivan, 446 U.S. 335, 350 (1980); see also Burger v. Kemp, 483 U.S. 776, 783 (1987)). A defendant need not demonstrate prejudice if there is an actual conflict of interest.” Id., 364 S.C. at 153, 612 S.E.2d at 450. The Supreme Court also recognized in both Strickland and Cronic that in certain circumstances “prejudice is presumed” because prejudice “is so likely that case-by-case inquiry . . . is not worth the cost.” Nance v. Ozmint, 367 S.C. 547, 551-52, 626 S.E.2d 878, 880 (2006) (citing Strickland v. Washington, 466 U.S. 668, 692 and U.S. v. Cronic, 466 U.S. 648, 658 (1984)). In Cronic, the Court identified three distinct situations in which a presumption of prejudice is appropriate: 1) when the defendant is completely denied counsel “at a critical stage of his trial,” 2) if there has been a constructive denial of counsel, and 3) “when although counsel is available to assist the accused during trial, the likelihood that any lawyer, even a fully competent one, could provide effective assistance is so small that a presumption of prejudice is appropriate without inquiry into the actual conduct of the trial.” Absent these narrow circumstances of presumed prejudice, defendants must show actual prejudice under Strickland. Id.

Here, the Court finds Counsel was not ineffective for failing to recognize a conflict of interested in representing Applicant. Counsel’s testimony is credible and persuasive on the issue. Applicant has presented no credible evidence to support his claim that there was a conflict of interest in the representation. In Counsel’s capacity as the public defender of Orangeburg

County, he represented hundreds of clients over eighteen years. Counsel had no recollection of his representation of any client related to the victim. Notably, Counsel's representation of Applicant was not affected by any relationship he had with the victim's family. This Court finds Counsel did not have an actual conflict of interest, and, thus, finds no deficiency in his representation. Applicant has also failed to show any resulting prejudice from the alleged conflict. This allegation must be denied and dismissed.

All Other Allegations

As to any and all allegations that were raised in the application and not specifically addressed in this order, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the 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 counsel's 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 shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 27 day of October, 2016.



BENJAMIN H. CULBERTSON
Presiding Judge

Conway, South Carolina

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Honorable Benjamin H. Culbertson

Case Number: 2015-CP-38-0297

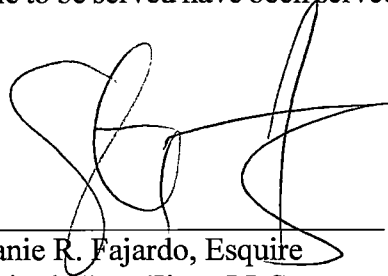
Demetrice Quattlebaum, #359242 Petitioner,

v.

State of South Carolina Respondent,

PROOF OF SERVICE

I, Stephanie R. Fajardo, 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 his attorney of record, Ruston W. Neely, Post Office Box 11549, Columbia, South Carolina 29211-1549. I further certify that all parties required by Rule to be served have been served this 30th day of November, 2016.



Stephanie R. Fajardo, Esquire
The Fajardo Law Firm, LLC
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Facsimile: (877) 365-5340
PCR Counsel for Petitioner

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM ORANGEBURG COUNTY
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Honorable Benjamin H. Culbertson

S.C. SUPREME COURT

Case Number: 2015-CP-38-0297

Demetrice Quattlebaum, #359242 Petitioner,

v.

State of South Carolina Respondent,

MOTION TO BE RELIEVED AS COUNSEL

NOW COMES the movant Stephanie R. Fajardo, attorney of record for Petitioner Demetrice Quattlebaum, who respectfully requests to withdraw as counsel for the Petitioner. Said motion is based on the following:

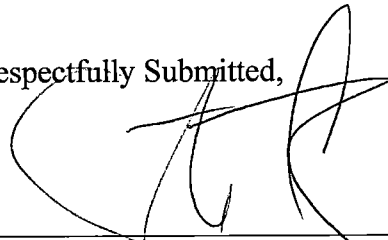
This matter involves the undersigned's representation of the Petitioner in a post-conviction relief matter in Orangeburg County. Petitioner's request for post-conviction relief was denied via an Order of Dismissal signed on October 27, 2016 by the Honorable Benjamin H. Culbertson and filed on November 7, 2016. That Order of Dismissal forms the basis of this appeal. The undersigned has not been retained for an appeal of this Order and the undersigned's initial fee agreement with Petitioner details that should any appeal result from the post-conviction relief action, a separate retainer agreement will need to be executed as the undersigned would consider any appeal a separate matter. Petitioner has been informed of these

facts and understands that he has not retained the undersigned as his attorney on this appeal.

As such, the undersigned respectfully requests to be relieved as counsel for the Petitioner in this matter.

WHEREFORE, the movant, respectfully requests that this Honorable Court issue an Order relieving the undersigned from representation of the Petitioner in connection with this matter at this time.

Respectfully Submitted,



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The Fajardo Law Firm, LLC
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Phone: (803) 391-8980
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November 30, 2016

Other counsel of record
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THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM ORANGEBURG COUNTY
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Honorable Benjamin H. Culbertson

Case Number: 2015-CP-38-0297

Demetrice Quattlebaum, #359242 Petitioner,

v.

State of South Carolina Respondent,

PROOF OF SERVICE

I, Stephanie R. Fajardo, certify that I have today served the within Motion to be Relieved as Counsel upon the Respondent by depositing a copy of it in the United States Mail, postage prepaid, addressed to his attorney of record, Ruston W. Neely, Post Office Box 11549, Columbia, South Carolina 29211-1549. I further certify that all parties required by Rule to be served have been served this 30th day of November, 2016.



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