

THE

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LAW FIRM, LLC

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JAN 20 2017

S.C. SUPREME COURT

January 17, 2017

Daniel E. Shearouse
Clerk of Court
Supreme Court of South Carolina
Post Office Box 11330
Columbia, SC 29211


Re: Donshay Searles vs. State of South Carolina
C/A No: 2012-CP-21-2586

Dear Mr. Shearouse:

Please find enclosed one (1) original and one (1) copy each of Applicant's Notice of Appeal and Certificate of Service in the above referenced case. I would appreciate you filing the original and returning the clocked copies in the enclosed envelope.

I was appointed to represent Mr. Searles in this matter and am also enclosing a copy of the Order of Dismissal. If you have any questions, please do not hesitate to ask. My telephone number is 803-708-6767.

Sincerely,



Jonathan D. Waller

Cc: Lindsey McCallister, South Carolina Office of Attorney General

Enclosures

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM FLORENCE COUNTY
D. Craig Brown, Circuit Court Judge

2012-CP-21-2586

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JAN 20 2017

S.C. SUPREME COURT

Donshay Searles, #348058,

Appellant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Donshay Searles, #348058, appeals the Order of Dismissal denying his Application for Post-Conviction Relief filed December 30, 2016, issued by the Honorable D. Craig Brown, Presiding Judge, Twelfth Judicial Circuit.



Jonathan D. Waller

Giese Law Firm
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ATTORNEY FOR PETITIONER

This 17 day of January, 2017.

Other Counsel of Record:

Lindsey McAllister, Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3319

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM FLORENCE COUNTY
D. Craig Brown, Circuit Court Judge

2012-CP-21-2586

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JAN 20 2017

S.C. SUPREME COURT

Donshay Searles, #348058,

Appellant,

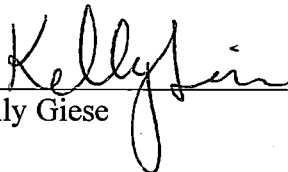
v.

STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the Appellant's Notice of Appeal in the above-entitled case has been served upon opposing counsel, Lindsey McAllister, Assistant Attorney General, by mailing in an envelope properly addressed with postage prepaid on this 19th day of January 2017, to her office located at P.O. Box 11549, Columbia, SC 29211.



Kelly Giese

Dorshay Searles CERTIFIED: A TRUE COPY State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

CLERK OF COURT C.P. & U.S.
 FLORENCE COUNTY, S.C.

Attorney for: Plaintiff Defendant
 or
 Self-Represented Litigant

DISPOSITION TYPE (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. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; 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 (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.
 Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

Judge Code

Date

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Florence County. Applicant was indicted at the September 2011 term of the Florence County Grand Jury for burglary, grand larceny, and carjacking. Wallace H. Jordan, Esquire, represented the Applicant. On October 5, 2011, Applicant pled guilty to burglary and carjacking. Pursuant to the State's recommendation, the Honorable William H. Seals sentenced the Applicant to confinement for concurrent terms of 15 years for carjacking and 10 years for burglary. Applicant did not appeal the plea or sentence.

Applicant alleges he is being held in custody unlawfully for the following reasons: ineffective assistance of counsel. At the hearing, Applicant waived all grounds for relief except ineffective assistance of counsel. Applicant only challenges the sentence for carjacking in this PCR action.

II. SUMMARY OF TESTIMONY

Applicant's Testimony

Applicant testified that he only met with his attorney one time, on the day of the plea, and Counsel did not go over any of the charges, evidence, or possible sentences with him. Applicant testified that he did meet with an investigator prior to his plea and gave the investigator some possible leads for a defense, but Applicant was told that none of his information was usable. Applicant testified that Counsel promised him that he wouldn't get much time, and Applicant stated that he decided to plead guilty because that was what his mother wanted him to do. On cross examination, Applicant conceded that the judge went over the possible sentences with him and that he told the judge he wished to plead guilty and was indeed guilty. Applicant also admitted that the transcript reflects that he told the judge he was satisfied with his attorney.

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Counsel's Testimony

Counsel testified that he had been practicing law for six years at the time of this plea, with substantial criminal experience. He testified that he met with Applicant several times, as he represented Applicant on multiple indictments. Counsel stated that every time a new charge was added, he would meet with Applicant to discuss the new case. Counsel testified that he discussed the State's evidence with Applicant, and he advised Applicant that there was strong evidence against him, including an identification from a photo lineup. Counsel also testified that he was aware of the information regarding a possible defense given to the investigator by Applicant and Applicant's mother, and it was investigated and ruled out.

Counsel stated that he did not remember Applicant ever wanting to take the case trial, and he worked to get Applicant the best plea bargain he could. Counsel stated that he never told Applicant he would receive a specific sentence, but he would have discussed the range with Applicant. Counsel also testified that he explained to Applicant what it meant to plead "straight up," and they discussed the constitutional rights that Applicant would waive by choosing to plead. Counsel testified that it was solely Applicant's decision to plead guilty, although Counsel did agree and felt it was in Applicant's best interest. Counsel stated the he was surprised by the length of the sentence, given Applicant's young age.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon his or her credibility. This Court has weighed the testimony accordingly. Set forth below are the

relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Applicable Law

Applicant alleges that he received ineffective assistance of counsel. In a post-conviction relief action, the applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (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 (1984); Butler, 286 S.C. at 443, 334 S.E.2d at 814. 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. at 689. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. Id. at 117, 625. First, the applicant must prove that counsel’s performance was deficient. Id. Under this prong, the court measures an attorney’s performance by its “reasonableness under professional norms.” Id. (quoting Strickland v. Washginton, 466 U.S. 668, 688 (1984)). Second, counsel’s 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.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability sufficient to undermine confidence in the

outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243-44 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). 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) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)). When a defendant pleads guilty on the advice of counsel, the plea may only be attacked through a claim of ineffective assistance of counsel. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2002) (citations omitted).

Findings of Fact

This Court finds Applicant's testimony regarding Counsel's ineffectiveness is not credible while also finding Counsel's testimony is credible. This Court also finds Counsel provided effective assistance of counsel in this case. Counsel is a trial practitioner who has extensive experience in the trial of serious offenses. Counsel conferred with Applicant on numerous occasions. During conferences with Applicant, counsel discussed the pending charges, the elements of the charges and what the State was required to prove, Applicant's constitutional rights, Applicant's version of the facts, and possible defenses or lack thereof. The

record reflects that Applicant's plea was entered freely, voluntarily, knowingly, and intelligently. Applicant acknowledged that he was guilty of these offenses. Applicant told the plea court that he was satisfied with his attorney. This Court finds that Applicant understood the terms of the plea bargain and the possible range of sentences that he was facing.

Regarding Applicant's claims of ineffective assistance of counsel, this Court finds Applicant has failed to meet his burden of proof. This Court finds that Applicant's attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, 466 U.S. at 668; Butler, 286 S.C. 441, 334 S.E.2d 813. This Court further finds counsel adequately conferred with Applicant, conducted a proper investigation, and provided thorough representation. This Court finds that counsel's representation did not fall below an objective standard of reasonableness.

Accordingly, this Court finds Applicant has failed to prove the first prong of the Strickland test, specifically that counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present specific and compelling evidence that counsel committed either errors or omissions while representing Applicant. Applicant failed to show that counsel's performance was deficient. Therefore, this Court need not address prejudice. Applicant's complaints concerning counsel's performance are without merit and are denied and 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 evidence regarding such allegations. Accordingly, this Court finds Applicant waived such

allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

IV. CONCLUSION

Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner, nor was Applicant prejudiced by counsel's representation. Therefore, this application for PCR 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.

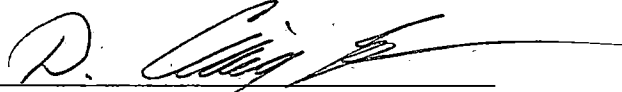
{Signature on following page.}

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IT IS THEREFORE ORDERED:

1. That the Application for post-conviction relief be denied and dismissed with prejudice; and
2. That Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 21 day of Dec., 2016.



THE HONORABLE D. CRAIG BROWN
Presiding Judge
Twelfth Judicial Circuit

Florence, South Carolina.

2016 DEC 30 PM 3:06
CONNIE REEL-SHEANN
Clerk
FLORENCE COUNTY, SC

FILED

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p. 8 of 8

THE

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