

THE STATE OF SOUTH CAROLINA
In the Supreme Court

POST CONVICTION RELIEF APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

John C. Hayes, III, Circuit Court Judge

Appellate Number 2016-CP-23-03669

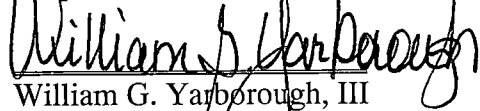
William L. Bright Jr., Petitioner,

v.

The State of South Carolina, Respondent.

**MOTION FOR EXTENSION OF TIME TO FILE
A WRIT OF CERTIORARI AND APPENDIX**

Respectfully Submitted,



William G. Yarborough, III
522 N. Church Street
Greenville, SC 29601
Telephone (864) 331-1612

Counsel of Record:

Patrick L. Schmeckpeper
Assistant Attorney General
PO Box 11549
Columbia, SC 29211-1549

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JAN 31 2017

S.C. SUPREME COURT

MOTION FOR EXTENSION OF TIME

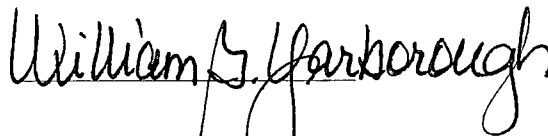
NOW COMES the Petitioner, William Bright, by and through his undersigned counsel, and respectfully moves this Honorable Court for an extension of time to file his Writ of Certiorari and accompanied Appendix.

Petitioner's counsel has requested a copy of the transcript from the Court Reporter and is currently awaiting the delivery. Counsel has also requested numerous other historical documents that are necessary to be filed in the Appendix.

This request would cause no prejudice to the State nor is it in any way meant to disrupt the judicial process. A copy of this Motion has been served upon Mr. Patrick Schmeckpeper by U.S. Mail.

THEREFORE, the Applicant, William Bright, respectfully moves this Honorable Court for an extension of time in which to file.

Respectfully submitted,



William G. Yarborough
Attorney for the Applicant
522 North Church Street
Greenville, SC 29601
(864) 331-1612
SC Bar No.: 10271

Greenville, SC
January 24, 2017

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

JUDGMENT IN A CIVIL CASE

CASE NO: 2016CP2303669

FILED-CLERK OF COURT
GREENVILLE CO., S.C.
PAUL B. WICKENSIMMER
2016 DEC 21 AM 11 20

William L Bright Jr 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), 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; 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:

William G. Yarborough III 522 North Church
Street Greenville, SC 29601

Patrick Lowell Schmeckpeper PO Box 11549
Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

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

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 William L. Bright, Jr.,)
 #366975,)
)
 Applicant,)
)
 vs.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 THIRTEENTH JUDICIAL CIRCUIT

C.A. No.: 2016-CP-23-03669

ORDER

FILED - CLERK OF COURT
 GREENVILLE CO. S.C.
 PAUL B. WICKENSIMMER
 2016 DEC 21 AM 9 20

Applicant filed this application for Post-Conviction Relief June 17, 2016. This matter was heard December 8, 2016. Applicant was represented by William G. Yarborough, III, Esquire. The State was represented by Patrick Schmeckpeper, Esquire.

Applicant is currently 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 April 2015 term for first degree burglary (2014-GS-23-6960) and at the December 2015 term for armed robbery and possession of a weapon during the commission of a violent crime (2014-GS-23-6962). Rodney W. Richey, Esquire, represented Applicant.

On February 8, 2016, Applicant pled guilty to the lesser included offense of second degree burglary and attempted armed robbery. The weapons charge was dismissed. The Honorable Edward W. Miller sentenced Applicant, pursuant to recommendation by the State, to concurrent terms of 10 years.

JC AAY

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

1. "Ineffective Assistance of Counsel"
 - a. "...counsel of plea record coerced him into a plea of guilt by defending the State's case, and thereby took advantage of Applicant's lack of ability to fully comprehend the totality of the consequences of the plea."
 - b. "Counsel failed to adequately investigate the State's case and advise Applicant on the appropriation of the evidence, the charges, and his substantive due process rights: failing to challenge the indictments, and thereby, failed to give adequate legal advise [sic] for Applicant to be fully apprised of the State's case against him for an informed decision."
 - c. "No defense evidence was discussed by defense counsel for assuring a justifiable [sic] choice for Applicant."
 - d. "Plea counsel failed to challenge the sufficiency of evidence."
 - e. "Plea counsel acted as amicus curiae, i.e., friend of the State, friend of the Court."
 - f. "Plea counsel failed to advise on the lawfulness of police interrogation interview..."

At the post-conviction relief hearing, Applicant's argument centered on an alleged 0-3 year plea agreement. Applicant also raised issues concerning trial counsel's preparation for trial and the failure of trial counsel to file an appeal. Any issues not raised during the post-conviction relief hearing are deemed abandoned.

Applicant alleges ineffective assistance of counsel as a ground for relief. In a post-conviction relief action, 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 ineffective assistance of counsel is alleged 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 on as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

JC #2

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Strickland*, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. *See Cherry v. State*, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." *Cherry v. State*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 688, 104 S. Ct. at 2065). 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 trial." *Johnson v. State*, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing *Strickland*, 466 U.S. at 688, 104 S. Ct. at 2052). With respect to guilty plea counsel, Applicant must show that 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, 106 S. Ct. 366, 370 (1985).

Applicant also alleges his plea was involuntarily given. To find a plea is voluntarily 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. *Boykin v. Alabama*, 395 U.S. 238, 89 S. Ct. 1709 (1969); *Dover v. State*, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea

Je. #3

issues, it is proper to consider the guilty plea transcript as well as evidence presented during the PCR hearing. *Harris v. Leeke*, 282 S.C. 131, 318 S.E.2d 360 (1984).

As to the underlying facts, Applicant testified that he was invited into the house that he was accused of burglarizing on the night the alleged burglary took place. Applicant testified that he was invited into the house to "hang out." He also testified that he was under the influence of drugs on the night in questions and that he had a drug problem at the time.

Applicant testified at trial that he was represented by trial counsel for a little over a year and a half while the charges at issue were pending. Applicant stated that he only went over discovery once with trial counsel, at trial counsel's office, prior to trial. Applicant testified that trial counsel told him "it wasn't looking good for him" and that Applicant needed witnesses to testify on his behalf. Applicant further testified that he provided a witness to trial counsel, a Brett Carter, who was supposedly in the house when the alleged burglary took place. Applicant testified that he wanted Mr. Carter to be called as a witness in his trial but that he was not at the courthouse on the day of trial. Applicant stated that he was not aware whether or not Mr. Carter was subpoenaed for trial.

The second time the case was called for trial, Applicant stated that he was ready to go to trial, but felt as though he had not been adequately prepared by trial counsel. Applicant stated that he had not met with trial counsel until he arrived at the courthouse on the date of his trial. Applicant testified that trial counsel was "throwing around big numbers" in the conference room outside the courtroom. Applicant testified that trial counsel said he could "get the case ready in twenty minutes," but that he had received an offer from the Solicitor for a 0-3 year sentence. Applicant's mother testified that she was a witness to trial counsel relaying this offer to Applicant. Applicant's mother testified that she was not given a copy of the plea deal.

Applicant's mother testified about a potential conflict of interest concerning Judge Miller. Applicant's mother testified that the plea judge's son had worked on Applicant's case as a solicitor, and that this fact was not mentioned at the plea hearing. Applicant's mother testified that trial counsel was aware of this potential conflict and, initially, did not want to take Applicant in front of that particular judge. Applicant's mother testified that, in spite of the above, trial counsel had Applicant enter his guilty plea in front of Judge Miller.

Applicant testified that he was under the impression that Judge Miller would accept the 0-3 year plea deal. Applicant further testified that he did not understand what was going on during the guilty plea and that he solely relied on trial counsel to keep him informed during the proceedings. Applicant testified that he was never advised by the judge as to how much time he was facing, and that the judge based his ten year sentence on the sentence received by Applicant's co-defendant. Applicant testified that the ten year sentence seemed to surprise trial counsel, but that trial counsel did not intervene to "stop it" from happening. Applicant also testified that he did not believe he was allowed to stop the judge during the plea himself.

During cross examination, Applicant acknowledged that the plea transcript shows that he was advised of the potential sentences he faced. Applicant further acknowledged that nobody during the guilty plea proceeding mentioned a 0-3 year plea offer to the judge. Applicant testified that he does not remember anything about the plea proceeding after he was told he had received the 10 year sentence.

Trial counsel testified that he was appointed to represent Applicant and that he met with Applicant "plenty of times" prior to trial. Trial counsel testified that Applicant was initially uncooperative and missed several appointments where he and counsel would have discussed Applicant's case. Trial counsel testified that he received discovery on the case, and wished that he

had been more able to go over the discovery with Applicant. Trial counsel testified that when Applicant did come into the office, he made Applicant aware that he needed witnesses to testify on his behalf. Trial counsel further testified that his impression was that Applicant felt as though the case would simply "go away" because those who would testify against him were drug addicts and would not show up to court. Trial counsel testified that he investigated and prepared the case as best he could with an uncooperative client.

Trial counsel testified that he never told Applicant that there was a plea deal available for a 0-3 year sentence. Trial counsel further testified that he cannot recall any action on his part that would give Applicant or his mother the impression that such a deal was available. Trial counsel stated that the standard practice when "pleading off the trial docket" is to plead without a specific recommendation from the state. Trial counsel additionally testified that there was no "plea deal," per se, simply an agreement for a reduced sentence. Trial counsel testified that, had Applicant really had a plea offer for 0-3 years on the table, he would have argued for a probationary sentence. Trial counsel testified that the sentencing sheets for Applicant's plea stated the correct maximum sentences for the charges Applicant was facing.

Applicant and his mother each testified as to trial counsel's failure to file an appeal on Applicant's behalf. Applicant's mother testified that she spoke with trial counsel concerning an appeal in Applicant's case. She testified that trial counsel told her that filing an appeal would not do any good, and that an appeal was never filed. Applicant echoed this argument. Applicant stated that his mother sought other representation for Applicant after this conversation.

Trial counsel testified that he did, in fact, speak the Applicant's mother about the possibility of filing an appeal. Trial counsel further testified that he spoke about the presence, or lack thereof, of appealable issues in Applicant's case. Trial counsel also testified that neither Applicant nor his

JCH/HK

mother directly asked him to file an appeal. Trial counsel testified that, had Applicant or his mother so requested, that an appeal would have been filed.

As to the alleged 0-3 year plea agreement, this Court finds this argument without merit. This Court finds both Applicant and Applicant's mother's testimony not credible for two reasons. First, trial counsel testified that he never relayed such an offer and this Court finds trial counsel's testimony credible. Second, this Court would find it incredible if any attorney were to tell a client facing these charges that the sentence would be in a 0-3 year range. Further, this Court finds it unlikely that a Solicitor's office would offer such a deal to a defendant facing these charges.

Applicant's claim that he was not aware of the sentences he was facing during his guilty plea is without merit. Despite the argument presented by Applicant at the post-conviction relief hearing, the plea record clearly indicates that Applicant was informed of his rights as required by *Boykin* as well as the potential sentences he was facing. (Plea Record p. 4, ll. 4-5; p. 4, ll. 15-16; p. 4, l. 25 though p. 5, l. 10).

Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, [an Applicant's] right to contest the validity of such a plea is usually, but not invariably, foreclosed. *Blackledge v. Allison*, 431 U.S. 63, 97 S. Ct. 1621 (1977). Statements made during guilty plea should be considered conclusive unless an Applicant presents a valid reason as to why he should be allowed to depart from the truth of his statements. *Crawford v. U.S.*, 519 F.2d 347 (4th Cir. 1975) (overruled on other grounds in *U.S. v. Whitely*, 759 F.2d 327 (4th Cir. 1985)).

At the post-conviction relief hearing, Applicant's explained that he was stunned at hearing of his 10 year sentence and that he did not comprehend any of information relayed to him by the court as a result. However, Applicant responded affirmatively when the plea judge asked Applicant

if he understood his rights (Plea Record p. 5, l. 11), if he understood the penalties he was facing (Plea Record p. 4, l. 11; p. 4, l. 20), and if he pled guilty to the charges (Plea Record p. 4, ll. 21-24). Applicant presented no additional evidence at the hearing for this Court to determine why his statements during his guilty plea should not be considered conclusive. As such, this Court must accept Applicant's statements during the guilty plea as conclusive and find that Applicant's guilty plea was entered knowingly, intelligently, and voluntarily.

Additionally, application of the *Strickland* and *Cherry* tests makes it clear that trial counsel's representation of Applicant passes these tests and that Applicant has failed to carry his burden of proof. The greater weight or preponderance of the evidence shows that trial counsel's representation of Applicant was within the range of competence required of counsel in criminal cases. Further, trial counsel's representation of Applicant was within the standard of reasonableness under professional norms.

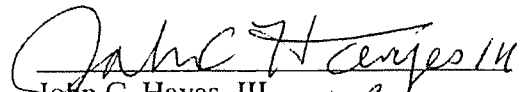
Therefore, Applicant's Application for Post-Conviction Relief is denied and dismissed with prejudice.

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.

J. A. H. S.

December 12th, 2016
Greenville, South Carolina


John C. Hayes, III
Presiding Judge *H.0*

THE STATE OF SOUTH CAROLINA
In the Supreme Court

POST CONVICTION RELIEF APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

John C. Hayes, III, Circuit Court Judge

Appellate Number 2016-CP-23-03669

William L. Bright Jr., Petitioner,

v.

The State of South Carolina, Respondent.

AFFIDAVIT OF SERVICE

I, Traci Trouton-Burr, certify on this date, January 24, 2017 I served a Motion for Extension of Time in this action, dated January 24, 2017 on The Honorable Daniel E. Shearouse, Clerk of Court-Supreme Court and Mr. Patrick L. Schmeckpeper, Assistant Attorney General by mailing it to him at his work address, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

The Honorable Daniel E. Shearouse
Clerk of Court-SC Supreme Court
Post Office Box 11330
Columbia, SC 29211

Patrick L. Schmeckpeper
Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211

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JAN 31 2017

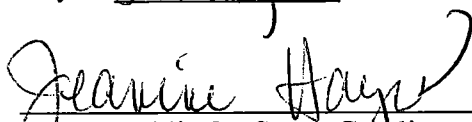
S.C. SUPREME COURT

Respectfully submitted,

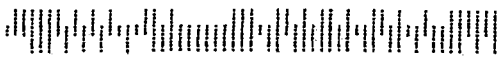


Traci Trouton-Burr
Paralegal to William G. Yarborough, Esquire

SWORN TO before this 24th
Day of January, 2017.



Jeanine Hayes
Notary Public for South Carolina
My Commission expires: 12/30/2023



Office of William G. Yarborough III
North Church Street
envelope, SC 29601



South Carolina Supreme Court
Clerk of Court
Mr. Daniel E. Shearouse
PO Box 11330
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