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January 30, 2017

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Honorable Daniel E. Shearhouse
Clerk of Court South Carolina Supreme Court
P. O. Box 11330
Columbia, SC 29211

**RE: Jarrod Jacques, Inmate 310037, v. State of South Carolina
2012-CP-38-1014**

Dear Honorable Shearhouse:

Enclosed for filing is a Notice of Appeal and Proof of Service in the above case. Also enclosed is a copy of Order of Dismissal being appealed. Because this is an appeal from a PCR proceeding, it is my understanding that no fee is required.

Because I was appointed on this case, I am provided a copy of the Notice of Appeal and Order of Dismissal to the Office of Appellant Defense so that they can handle to appeal of this matter.

Sincerely,



C. Bradley Hutto

/vmw
enclosure

cc: Ruston W. Neely, Esquire
Office of Attorney General

Orangeburg County Clerk of Court

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FEB 02 2017

S.C. SUPREME COURT

IN THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Jarrood Jacques v. State of South Carolina
CASE NO. 2012-CP-38-1014


JARROD JACQUES, Inmate No. 310037..... Appellant

v.

STATE OF SOUTH CAROLINA..... Respondent.

NOTICE OF APPEAL

Jarrood Jacques, appeals the Order of the Honorable Diane Goodstein dated January 9, 2017. Appellant received written notice of entry of this Order on January 20, 2017.



C. Bradley Hutto, Esquire
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Post Office Box 1084
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(803) 534-5218
Attorneys for Appellant

Other Counsel of Record:
Ruston W. Neely, Esquire
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FEB 02 2017

S.C. SUPREME COURT

IN THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Honorable Diane Goodstein

CASE NO. 2012-CP-38-1014

JARRED JACQUES, Inmate No. 310037 Appellant

v.

STATE OF SOUTH CAROLINA..... Respondent.

PROOF OF SERVICE OF NOTICE OF APPEAL

I certify that I have served the Notice of Appeal on the Office of the Attorney General by depositing a copy of it in the United States Mail, postage prepaid on January 30, 2017, addressed to this attorney of record Ruston W. Neely, P.O. Box 11549, Columbia, SC 29211.

January 30, 2017



C. Bradley Hutto, Esquire
WILLIAMS & WILLIAMS
P.O. Box 1084
Orangeburg, SC 29116

Attorneys for Appellant

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FEB 02 2017

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA)
 COUNTY OF ORANGEBURG)
)
 Jarrod Jacques, #310037,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 FOR THE FIRST JUDICIAL CIRCUIT

2012-CP-38-1014

RECEIVED
 FEB 02 2017
 S.C. SUPREME COURT

ORDER OF DISMISSAL

This Court convened an evidentiary hearing into the matter on October 25, 2016, at the Dorchester County Courthouse. Applicant was present at the hearing and represented by C. Bradley Hutto, Esquire. Ruston W. Neely, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

ATTEST: TRUE COPY

Applicant's plea counsel, Ash D. Chisholm, Esquire (hereinafter, "plea counsel") was present and testified. Legal arguments were heard based on the plea transcript. This Court had before it a copy of the plea transcript, the records of the Orangeburg County of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, and the pleadings in this matter. This Court finds as follows:

W. B. Clark
 CLERK OF COURT
 ORANGEBURG COUNTY, SOUTH CAROLINA

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 Orangeburg County. Applicant was indicted during the May 2011 term of the Orangeburg County Grand Jury for Murder (2011-GS-38-1075). Applicant was represented by Ash D. Chisholm, Esquire. On September 22, 2011, the Applicant pled guilty before the Honorable Edgar W. Dickson to the lesser included offense of Attempted Murder. Pursuant to plea negotiations between the Applicant and the State, Judge

Dickson sentenced Applicant to confinement for a period of sixteen years. No direct appeal was filed.

II. ALLEGATIONS

Applicant alleged the following grounds in his application:

1. Denial of due process.
2. The reliability of the eyewitness identification.

This Court construes the written PCR application's allegations as being addressed by the following issues presented at the evidentiary hearing:

1. Plea counsel was ineffective for failing to make a motion to sever the trial between codefendants.
2. Guilty plea was involuntary because plea counsel was not prepared to defend Applicant's innocence at trial.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court reviewed the record in its entirety, listened to the testimony given, and heard the arguments presented at the evidentiary hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their 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).

In this post-conviction relief action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of plea counsel as a ground for relief, Applicant must prove plea counsel's "conduct so undermined the proper functioning of the adversarial process" that the plea proceedings "cannot be relied upon as having produced a just result." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The Court uses 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 first prong, the proper measure of performance is whether plea counsel provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The Court strongly presumes plea counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). 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). 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. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 688.

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 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual, a criminal inmate'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, 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. Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976). A defendant

who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the 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, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993).

As an initial matter, this Court finds the record fully supports the knowing and voluntary nature of Applicant's guilty plea. See Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (holding 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."). In addition, Applicant has presented no evidence or valid reasons why he should be allowed to depart from the truth of his statements made at the plea. See Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) ("[Admissions] made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975))). Therefore, this Court dismisses Applicant's application for the reasons set out below:

A. Whether Plea Counsel Was Ineffective for Failing to Make a Motion to Sever the Trial Between Codefendants

At the evidentiary hearing, Applicant asserted plea counsel failed to make a motion to sever the codefendant's trials and because of this he felt compelled to plead guilty. Plea counsel testified if Applicant had elected to proceed to trial he would have made the motion to sever codefendant's trials. Plea counsel testified he told Applicant this. Plea counsel also advised Applicant he did not believe the motion to sever would be successful. This Court finds Applicant's testimony lacks credibility in this regard. This Court finds plea counsel's testimony

credible in this regard.

This Court finds Applicant was aware plea counsel would have made the motion to sever had he proceeded to trial. This Court finds that Applicant has failed to satisfy his burden of proving the alleged deficiency. Applicant also failed to prove the alleged deficiency of plea counsel caused his guilty plea to be unknowing or involuntary. Accordingly, Applicant has failed to satisfy his burden of proving ineffective assistance of counsel with regard to this allegation and it is therefore denied and dismissed.

B. Guilty Plea Was Involuntary Because Plea Counsel Was Not Prepared to Defend Applicant's Innocence at Trial.

At the evidentiary hearing, Applicant claimed he told plea counsel he did not have a firearm in his possession nor did he know his codefendants' had a firearm in their possession. Applicant claimed he felt forced to plead guilty because plea counsel would not argue Applicant did not have a firearm. Plea counsel testified there was a video of the incident, which showed Applicant during the gunfire exchange. Plea counsel testified he was prepared to go to trial and had investigated potential trial witnesses. Plea counsel testified it was unclear whether there was a firearm in Applicant's hand in the video and his primary argument at trial would have been Applicant did not have a firearm. Plea counsel advised Applicant even if the jury believed Applicant did not have a firearm, it was uncertain whether Applicant would get a verdict of not guilty at trial under the legal theory 'the hand of one is the hand of all.' This Court finds Applicant's testimony lacks credibility in this regard. This Court finds plea counsel's testimony credible in this regard.

Applicant admitted the only thing he thought plea counsel didn't do for him was make the motion to sever the trial between codefendants. Applicant admitted that he understood and accepted the plea deal. Applicant admitted he was satisfied with his attorney at the time of the

plea.

There was testimony elicited from Applicant and plea counsel concerning a potential fact witness at trial. The witness originally gave a statement to law enforcement that Applicant had a firearm during the shooting. Plea counsel testified his investigator had spoken to that witness and the witness would potentially recant their statement. Plea counsel testified he did not believe the witness's statement was dispositive on the issue and the case would hinge on the video, in which Applicant was depicted.

This Court finds plea counsel had an articulated trial strategy, had adequately investigated, and was appropriately prepared to defend Applicant at trial. This Court finds that Applicant has failed to satisfy his burden of proving the alleged deficiency. Applicant also failed to prove the alleged deficiency of plea counsel caused his guilty plea to be unknowing or involuntary. Accordingly, Applicant has failed to satisfy his burden of proving ineffective assistance of counsel with regard to this allegation and it is therefore denied and dismissed.

C. 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 has abandoned any such allegations.

IV. CONCLUSION

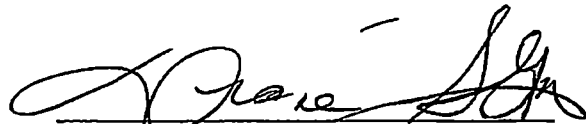
Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes Applicant must file and serve a notice of appeal within thirty (30) days from 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, his post-conviction relief attorney must serve and file a notice of appeal on Applicant's behalf. Applicant and his attorney are 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 must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 9 day of January, ~~2016~~ ²⁰¹⁷



DIANE GOODSTEIN
Presiding Judge
1st Judicial Circuit

St. George, South Carolina

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January 30, 2017

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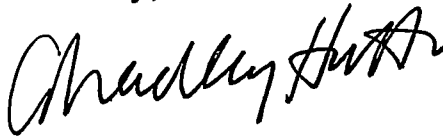
RE: Jarrod Jacques, Inmate 310037, v. State of South Carolina
2012-CP-38-1014

Dear Office of Appellate Defense:

This is an appeal of a PCR proceeding. It is an Orangeburg County case but the hearing was held in Dorchester County before Judge Goodstein. I was appointed to represent Mr. Jacques who is an inmate at SCDC.

Enclosed and served upon you please find a copy of the Notice of Appeal, Proof of Service, and the Order of Dismissal from the PCR hearing in the above matter. If I need to provide you with anything further in order for you to handle this case, please let me know.

Sincerely,



C. Bradley Hutto

/vmw

enclosure

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S.C. SUPREME COURT

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