

The Law Office of Tristan M. Shaffer

Litigation • Injury Law • Criminal Defense

February 7, 2017

Daniel E. Shearouse
The Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

RECEIVED

FEB 09 2017

S.C. SUPREME COURT

Re: Eric S. Williams v. State 2013-CP-21-2108

Dear Mr. Shearouse,

Please find the enclosed Notice of Appeal, Certificate of Service, and Order of Dismissal in the above referenced case.

Sincerely,



Tristan M. Shaffer

CC:
Lindsey McCallister
Florence County Clerk of Court

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

Craig Brown, Circuit Court Judge

Case No. 2013-CP-21-2108

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FEB 09 2017

S.C. SUPREME COURT

Eric S. Williams #355055,

Petitioner,

v.


The State of South Carolina,

Respondent.

NOTICE OF APPEAL

Petitioner appeals the order dismissing his post-conviction relief action filed on December 30, 2016. This order was received by Petitioner on January 9, 2017.

February 7, 2017


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Other Counsel of Record:
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Attorney for Respondent

THE STATE OF SOUTH CAROLINA
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APPEAL FROM FLORENCE COUNTY
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Case No. 2013-CP-21-2108

Eric S. Williams #355055,

Petitioner,

v.


The State of South Carolina,

Respondent.

PROOF OF SERVICE

I certify that on the date below I served the Notice of Appeal on The State of South Carolina by mailing a copy to the Attorney General's Office at P.O. Box 11549, SC 29211.

February 7, 2017



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S.C. SUPREME COURT

Eric S. Williams

State of South Carolina

2017 JAN -3 AM 9:57

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	CCCP & GS FLORENCE COUNTY, SC	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant
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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 :

CERTIFIED: A TRUE COPY
 Carrie Paul Spear
 CLERK OF COURT C.P. & G.S.
 FLORENCE COUNTY, S.C.

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

CERTIFIED: A TRUE COPY

Cornie Reel Shearin

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

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT

Eric S. Williams, #355055,)

2108
2013-CP-21-~~3549~~

Applicant,)

ORDER OF DISMISSAL

v.)

State of South Carolina,)

Respondent.)

FILED
2016 DEC 30 PM 3:01
CORNIE REEL-SHEARIN
CLERK OF COURT
FLORENCE COUNTY, SC

This matter comes before the Court by way of an Application for Post-Conviction Relief filed August 12, 2013. Respondent made its Return on April 29, 2014. An evidentiary hearing into the matter was convened on November 7, 2016 at the Florence County Courthouse. Tristan Shaffer, Esquire, represented Applicant. Jessica E. Kinard, Esquire of the South Carolina Attorney General's Office, represented Respondent.

At the hearing, Applicant testified on his own behalf. Michael S. Bell, Esquire, also testified. This Court had before it a copy of the records of the Florence County Clerk of Court, records from the South Carolina Department of Corrections, the application, the State's 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 Florence County Clerk of Court. In July 2011, the Florence County Grand Jury indicted Applicant for armed robbery (2011-GS-21-1212). Michael S. Bell, Esquire, represented Applicant. On March 8, 2012, the State served Applicant and counsel with a notice of

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intent to seek a sentence of life without parole based on Applicant's prior convictions for armed robbery, attempted armed robbery, and assault and battery of a high and aggravated nature. On July 30, 2012, Applicant pled guilty as indicted. The Honorable Thomas A. Russo sentenced Applicant to confinement for a period of twenty years. Applicant did not appeal his guilty plea or sentence.

In his Application, Applicant alleged that he is being held in custody unlawfully for the following reasons:

1. "ineffective counsel"
 - a. "False leadings from attorney to accept plea/overwhelming caseload"
2. "Prosecutor misconduct"
 - a. "violation of disclosure evidence, (Brady v. Maryland) withheld evidence"
3. "Due-Process violation"

II. 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 at the post-conviction relief 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 facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

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, the 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

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(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. Washington, 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,

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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).

Applicant additionally alleges prosecutorial misconduct in the form of a Brady violation. Brady v. Maryland, 373 U.S. 83 (1963). Brady requires the State to disclose evidence in its possession favorable to the accused and material to guilt or punishment. Clark v. State, 315 S.C.385, 388, 434 S.E.2d 266, 268 (1993). A Brady claim is based upon the requirement of due process. Such a claim is complete if the accused can demonstrate (1) the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment. Gibson v. State, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999). Impeachment or exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. Clark, 315 S.C. at 388, 434 S.E.2d at 268 (citing U.S. v. Bagley, 473 U.S. 667 (1985)).

A. Ineffective Assistance of Counsel

At the evidentiary hearing, Applicant called Counsel to the stand, and Counsel began by testifying to the underlying facts that led to these charges. Counsel testified that the victim of the

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crime had identified the co-defendant, but the victim was never presented a lineup that included Applicant. Counsel also stated that Applicant's only defense was that he had an alibi and was in Lancaster at the time of the crime. Counsel stated that the State had numerous witnesses who put Applicant in Florence on the day of the crime, as well as a witness who said he heard Applicant and co-defendant discussing the crime. Further, Counsel stated the witnesses who could put Applicant in Lancaster could only do so for part of the day, leaving open the possibility that Applicant was in Florence when the crime was committed. Counsel testified that Applicant had two witnesses present in court that day and several more that he hoped would come, but it was against his policy to force defense witnesses to come to court, as they tended not to cooperate when they didn't want to be there.

Counsel stated that he engaged in negotiations with the Solicitor's office prior to trial, and an initial plea offer was presented of twenty-five years. This was rejected by Applicant, who also later rejected an offer of ten years, despite Counsel's advice to accept that offer. Counsel also testified that he discussed a plea pursuant to North Carolina v. Alford, 400 U.S. 25 (1970), with Applicant. Counsel stated that he supported Applicant's decision to go to trial when the offer was twenty-five years because the State did not have any physical evidence, only the testimony of co-defendants and other witnesses that he felt were impeachable.¹ However, Counsel testified that the victim's identification changed the case because he felt the victim was unimpeachable and highly credible; the victim had no criminal history, had never made any prior conflicting statement regarding

¹ Although Counsel testified that he supported Applicant's decision to go to trial before the identification was made, he stated that he would not have supported a decision to continue with the trial after the identification was made.

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Applicant, and was very sympathetic. Counsel testified that he attempted to get the solicitor to revive the ten-year offer, stating that they would never have gone that far into trial if the identification had been made earlier. The solicitor agreed not to seek life without parole in order for Applicant to plead "straight up" to armed robbery.² Ultimately, Counsel expressed his belief that the Applicant made a fully informed and reasonable decision to plead and understands his frustration with the sentence.

Applicant testified that several people saw him in Lancaster on the date of the incident, including some that Counsel mentioned during his testimony. He stated that Counsel did ask early on for names of potential witnesses, and he was hoping that those people would be present on the day that trial started. Applicant admitted that some defense witnesses were present on the first day of the trial, but he stated that some essential ones were not. Applicant stated that he felt alone, and he felt that all of his conversations with Counsel were short. He testified that he felt that Counsel showed no effort and did not believe that he was innocent, particularly because Counsel advised him to take the ten year plea offer made by the State prior to trial.

Regarding the ten-year plea offer, Applicant stated that he did not accept it because he did not commit the crime. He did recall speaking about an Alford plea in chambers on the day of the plea, and he stated that he eventually pleaded guilty because he felt it was his only option. Applicant stated that he did not understand that an Alford plea functioned as a guilty plea. Lastly, Applicant

² Counsel testified the judge stated he would not have accepted the ten-year plea offer even if the State had presented it.

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agreed that he testified at his plea that he understood what was happening and that he was satisfied with his attorney, but he stated that was “just going through the motions” of the plea.

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))).

The record reflects that Applicant's plea was entered freely, voluntarily, knowingly, and intelligently. The plea judge explained the charge to Applicant, including the maximum penalty, and informed Applicant he could be sentenced to up to thirty years. The plea judge also went through Applicant's constitutional rights and questioned Applicant as to whether he understood those rights and wished to give them up to plead guilty. Applicant agreed that he did. Applicant admitted he was guilty of these offenses and agreed with the facts presented by the State at the plea. Applicant told the plea court that he was satisfied with his attorney and that Counsel had done everything that Applicant had asked of him. This Court finds that Applicant understood the terms of the plea and the possible sentence.

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This Court finds Applicant's testimony regarding Counsel's ineffectiveness is not credible, while also finding Counsel's testimony is credible. This Court finds Counsel provided effective assistance in this case. Counsel is a trial practitioner who has extensive experience in the trial of criminal offenses. Counsel conferred with Applicant on multiple occasions, during which Counsel discussed the pending charges, the elements of the charges, Applicant's constitutional rights, Applicant's version of the facts, and possible defenses. Furthermore, this Court finds credible Counsel's testimony that his strategy in this case changed suddenly upon learning of the victim's identification of Applicant for the first time on the day that the trial was set to begin. See Stokes v. State, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992) ("Where, as here, counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel." (citing Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992))).

Accordingly, this Court finds Applicant has failed to prove the first prong of the Strickland test – 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 in his representation of Applicant. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. Applicant stated that he refused a ten-year plea offer prior to trial against Counsel's advice because he was innocent of the charges. Furthermore, the record reflects that the plea judge stated to Counsel and Applicant that he would not have accepted a ten-year sentence even if the State had presented it. This Court concludes Applicant has not met his burden of proving counsel failed to render reasonably effective assistance.

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For these reasons this Court finds Applicant has failed to satisfy his burden of proving ineffective assistance. Accordingly, this allegation is denied and dismissed.

B. Prosecutorial Misconduct

Applicant testified that he asked Counsel for the name of the eyewitness during trial preparation because he wanted a definitive answer as to whether the eyewitness saw him there, but Counsel did not provide the name. On cross-examination, Applicant testified that Counsel told him he could not talk to the State's witnesses, which is why the eyewitness was not contacted. He further stated that he remembered Counsel advising him that it was not a good idea to force potential defense witnesses to testify. Applicant testified that he reviewed discovery with Counsel and was of the impression that the victim identified him months before the trial. He further testified that he only read the statements provided to law enforcement and did not view the videos of the statements as Counsel stated.

Counsel testified that the first time he was made aware of any eyewitness identification of Applicant was when the solicitor informed the court at the close of pre-trial motions that the victim had identified Applicant as the perpetrator after seeing him in the courtroom that morning. Counsel stated that he would have made a motion to keep the identification out under Neil v. Biggers, 409 U.S. 188 (1972), if the trial had continued, but Applicant decided to plead once they learned of the identification. Counsel also testified that he received full production of documents pursuant to his Rule 5 request, and he shared all of this information with the Applicant, including viewing videotaped statements with him at the jail.

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This Court finds that Applicant has failed to prove any prosecutorial misconduct or a Brady violation. Applicant testified that it was his own attorney who did not give him the name of the eyewitness who identified him, not the Solicitor or anyone else acting on behalf of the State. Additionally, Counsel credibly testified that he received a full disclosure of documents from the State pursuant to his Rule 5 request and that he reviewed the file thoroughly with Applicant.

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.

III. CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Counsel was not deficient in any manner, nor was Applicant prejudiced by counsel's representation. Additionally, Applicant presented no evidence that the State withheld any information which would support finding a Brady violation had occurred. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice. This Court also finds, as to all other allegations, that Applicant failed to present evidence of such claims and thus, this Court deems them abandoned.

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),

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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:

1. That the Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED.



THE HONORABLE D. CRAIG BROWN
Presiding Circuit Court Judge
Twelfth Judicial Circuit

12-21, 2016

Florence, South Carolina

2016 DEC 30 PM 3:04
CONNIE FEEEL-SHEANIN
COPP & GS
FLORENCE COUNTY, SC

FILED

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M. Shaffer



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