

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

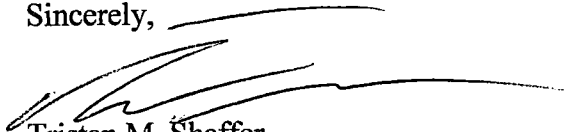
S.C. SUPREME COURT

Re: Bobby Parnell v. State 2014-CP-21-1589

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. 2014-CP-21-1589

RECEIVED

FEB 09 2017

S.C. SUPREME COURT

Bobby Lee Parnell # 287367,

Petitioner,

v.

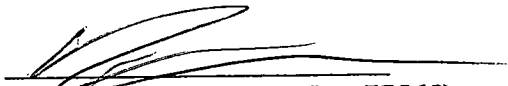
The State of South Carolina,

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


Tristan M. Shaffer (SC Bar 77565)
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Attorney for Petitioner

Other Counsel of Record:
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P.O. Box 11549
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Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM FLORENCE COUNTY
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Craig Brown, Circuit Court Judge

Case No. 2014-CP-21-1589

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S.C. SUPREME COURT

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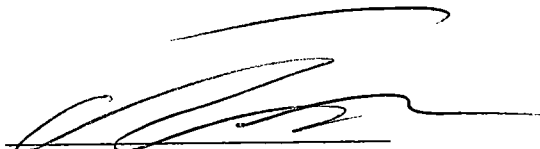
The State of South Carolina,

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


Tristan M. Shaffer (SC Bar 77565)
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Attorney for Petitioner

Other Counsel of Record:
Lindsey McCallister
South Carolina Attorney General's Office
P.O. Box 11549
Columbia, South Carolina 29211
Attorney for Respondent

FILED

CASE NO. CP-2014-CP-21-1589

Bobby Lee Parnell 2017 JAN -3 AM 9:51 State of South Carolina

PLAINTIFF(S) _____ DEFENDANT(S) _____
 CCCP & GS

Submitted by:	FLORENCE COUNTY, SC	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
		or <input type="checkbox"/> 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 :

CERTIFIED A TRUE COPY
 Clerk of Court, P. & G.S.
 FLORENCE COUNTY, S.C.
 [Signature]

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 _____

For Clerk of Court Office Use Only

This judgment was entered on the 30 day of Dec, 2016 and a copy mailed first class or placed in the appropriate attorney's box on this 3 day of Jan, 2017 to attorneys of record or to parties (when appearing pro se) as follows:

Iristan M. Shaffer
225 Columbia Avenue
Chapel Hill NC 27516
ATTORNEY(S) FOR THE PLAINTIFF(S)

Lindsay A. McCallister
P. O. Box 11549
Columbia SC 29111-1549
ATTORNEY(S) FOR THE DEFENDANT(S)
Debris P. O'Hara
CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

Area with horizontal lines for additional information.

CERTIFIED: A TRUE COPY

Cristie Paul Sherrin

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

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT

Bobby Lee Parnell, #287367,)

2014-CP-21-1589

Applicant,)

ORDER OF DISMISSAL

v.)

State of South Carolina,)

Respondent.)

FILED
2016 DEC 30 PM 3:05
CORR REEL-SHEMIN
OCCP & OS
FLORENCE COUNTY S.C.

This matter comes before the Court by way of an Application for Post-Conviction Relief filed June 12, 2014. Respondent made its Return on November 10, 2014. An evidentiary hearing into the matter was convened on November 7, 2016 at the Florence County Courthouse. Tristan Shaffer, Esquire, represented Applicant. Lindsey A. McCallister, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

At the hearing, Applicant testified on his own behalf. Emily M. Crayton, 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 the orders of commitment from the Florence County Clerk of Court. Applicant was indicted at the December 2013 term of the Florence County Grand Jury for strong arm robbery and assault and

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battery first degree (2012-GS-21-1525), as well as kidnapping and assault and battery of a high and aggravated nature (ABHAN) (2013-CP-21-1526). Applicant was represented by Emily Crayton, Esquire, on both sets of charges.

On April 17, 2014, Applicant pled guilty. The Honorable Michael G. Nettles sentenced Applicant to twelve years imprisonment for ABHAN and 289 days imprisonment for assault and battery first degree. The other charges were dismissed. Applicant did not appeal his guilty pleas or sentences.

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

1. Ineffective assistance of counsel.
 - a. Counsel failed to investigate Applicant's mental health and competency to enter a plea.
 - b. Counsel failed to convey a plea offer of 0-10 years for assault and battery first degree.

During the presentation of his case, Applicant stated that he was not proceeding with any claims regarding his mental health or competency. Thus, the only ground for relief prosecuted by Applicant at the evidentiary hearing was ineffective assistance of counsel for failing to convey a plea offer of zero to ten years on the assault and battery first degree charge.

II. SUMMARY OF TESTIMONY

Counsel's Testimony

Counsel testified that she represented Applicant on two different sets of charges, one set was for ABHAN and kidnapping, and the other was for assault and battery first degree and strong arm robbery. Counsel stated that she was not the original attorney, but she took over representation in

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2013. Counsel stated that she met with Applicant multiple times the week of his guilty plea. Counsel stated that she did not remember if Applicant was ever given the sentencing sheet, but she did recall meeting with him in the courthouse immediately prior to the plea. Counsel stated that the State's original offer was for Applicant to plead straight up to strong arm robbery and ABHAN. She testified that the State's offer was later changed to a plea to ABHAN and assault and battery first degree, which would have reduced the maximum sentence by five years. Counsel stated that no offer of zero to ten years was ever given to her and that there was nothing in the file to reflect such an offer. Counsel stated there was a note in the file indicating that all charges except the assault and battery first degree and ABHAN would be dismissed. Counsel further testified that during the time she represented Applicant, there were no plea offers for a shorter sentence than the one he received. Counsel testified that she went over the 85% rule and the strikes rule with Applicant, and they discussed his previous record, and the fact that these were violent, no parole offenses. Counsel testified that Applicant always indicated to her that he wanted to plead guilty and that the State had solid evidence against Applicant, including independent eyewitnesses to each event.

Applicant's Testimony

Applicant testified that he did not meet Counsel until the day before the guilty plea. Applicant stated that Counsel did explain that the State had offered to drop the kidnapping and strong arm robbery charges. However, Applicant stated that he believed the plea offer was zero to ten years on the two remaining counts. Applicant testified that he rejected two previous offers of ten years because he wanted to go home. Applicant agreed that Counsel did discuss his criminal history with him prior to the plea, and he admitted that the factual basis for the charges was correct.

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However, Applicant testified that he would not have pleaded guilty if he had known that the charges were classified as "violent" and "most serious." On cross examination, Applicant admitted that the judge reviewed the possible sentences he was facing, as well as the fact that he would be required to serve the sentences "day for day" due to the classification of the crimes. However, Applicant stated that he thought the judge's statements regarding the 85% rule were a "formality" and that he thought he was pleading to a nonviolent crime. Applicant also admitted that he told the plea judge that he had discussed these issues with Counsel, that he was satisfied with her, and that he was pleading guilty freely and voluntarily.

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 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).

Applicable Law

Applicant alleges that he received ineffective assistance of counsel for failure to convey a favorable plea offer. 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.

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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. 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).

Findings of Fact

This Court finds the 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 conferred with the Applicant on several occasions, during which Counsel discussed the pending charges, the State's burden of proof and her assessment of the evidence, and the range of sentences that Applicant could receive. Counsel credibly testified that there was never a formal plea offer for any sentence less than that received by Applicant.

The record reflects that Applicant's plea was entered freely, voluntarily, knowingly, and intelligently. The plea judge also explained the charges to Applicant, including the maximum penalties on each. The judge informed him how the classification of the charges would affect his custody status and that he should expect to serve his sentence "day for day." The plea judge also went through each of 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.

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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 he had no complaints against her. This Court finds that even if there was confusion prior to the plea, Applicant understood the terms of the plea and the possible sentences at the time the plea was entered.

Accordingly, this Court finds the Applicant has failed to prove the either prong of the Strickland test. Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in her representation of the Applicant or any evidence that Applicant was prejudiced by Counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance.

This Court also finds that 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))).

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

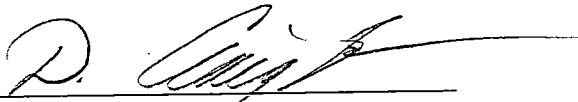
The Court notes Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. *See* Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCR, 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.

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IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant is 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

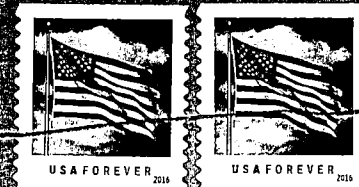
Florence, South Carolina

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FILED

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A. Shaffer



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