

FOWLER
Law Firm

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Steven W. Fowler
Licensed in NC & SC

Wilmington 910-509-7160
Myrtle Beach 843-663-0006
www.myfowlerlaw.com

February 17, 2017

Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

RECEIVED

FEB 24 2017

RE: Gibson v. State of SC 2015-CP-26-530
Vanderhorst v. State of SC 2015-CP-22-0787
Bell v. State of SC 2015-CP-26-5512
Johnson v. State of SC 2014-CP-22-1128

S.C. SUPREME COURT

Dear Sir or Madam:

Enclosed for filing are Notices of Appeal for the above four (4) cases.

FOWLER LAW FIRM

Patti

Patricia F. Clapper
Advanced Certified Paralegal
NC Certified Paralegal

cc: Ms. Valerie Garcia Giovanoli
Horry County Clerk of Court
Georgetown County Clerk of Court

THE STATE OF SOUTH CAROLINA

In the Supreme Court

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FEB 24 2017

S.C. SUPREME COURT

APPEAL FROM HORRY COUNTY

Court of Common Pleas

The Honorable Brooks P. Goldsmith, Circuit Court Judge

Case No. 2015-CP-26-5512


Marcus Allen Bell #310927, Petitioner,

v.

State of South Carolina, Respondent.

NOTICE OF APPEAL

The Petitioner appeal the Honorable Brooks P. Goldsmith's Order dated December 5, 2016, denying post conviction relief to the Petitioner. The Order was received by the undersigned counsel on February 4, 2017 . A copy of the Order on appeal is attached to this notice.



Steven W. Fowler
Fowler Law Firm
1293 Professional Drive, Suite D
Myrtle Beach SC 29577
843-663-0006

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FEB 24 2017

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA

In the Supreme Court

APPEAL FROM HORRY COUNTY

Court of Common Pleas

The Honorable Brooks P. Goldsmith, Circuit Court Judge

Case No. 2015-CP-26-5512

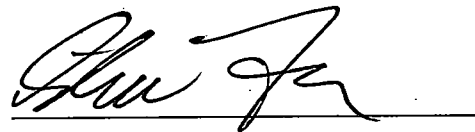
Marcus Allen Bell #310927, Petitioner,

v.

State of South Carolina, Respondent.

PROOF OF SERVICE

I, Steven A. Fowler, appointed attorney for Petitioner, certify that I have today served within Notice of Appeal upon the Respondent by depositing a copy of it in the United States Mail, postage prepaid, addressed to the Assistant Attorney General, PO Box 11549, Columbia, SC 29211 I further certify that all parties required by Rule to be served have been served this 17th day of February, 2017.



Steven A. Fowler
Fowler Law Firm
1293 Professional Drive, Suite D
Myrtle Beach SC 29577
843-663-0006

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

Marcus Allen Bell, #310927,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

2015-CP-26-5512

ORDER OF DISMISSAL

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This matter comes before the Court by way of an application for post-conviction relief (PCR) filed July 21, 2015. Respondent made its return on February 4, 2016. An evidentiary hearing into the matter was convened on November 14, 2016, at the Horry County Courthouse. Applicant was present at the hearing and represented by Steven W. Fowler, Esquire. Valerie Garcia Giovanoli, Esquire, of the South Carolina Office of the Attorney General represented Respondent.

Applicant testified on his own behalf at the PCR hearing. Also testifying was Applicant's trial counsel, Christopher D. Helms, Esquire. The Court had before it the trial transcript, the records of the Horry County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the PCR application, Respondent's return, and Applicant's exhibits from the PCR hearing.

PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Horry County Clerk of Court. Applicant was indicted at the September 2014 term of the Horry County Grand Jury for unlawful possession of firearm by person convicted of a violent offense (2014-GS-26-03626) and trafficking in illegal drugs (2014-GS-26-

03627). He was represented by Christopher D. Helms, Esquire.

On March 24, 2015, Applicant pled guilty as indicted. The Honorable Michael G. Nettles sentenced Applicant to five (5) years of imprisonment for unlawful possession of firearm by person convicted of a violent offense and a negotiated sentence of thirteen (13) years imprisonment for trafficking heroin, to be served concurrently. Applicant did not appeal his plea, conviction, or sentence.

ALLEGATIONS

In his application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance Counsel
 - a. "Counsel failed to review and investigate my case which violates 6th and 14th amendments."

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 their 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).

Summary of Testimony

Applicant testified to the following: Applicant first learned that Christopher Helms had been appointed to him when he was arrested and detained on January 8, 2015. Helms had been appointed on an earlier charge that occurred on June 4, 2014. Applicant had nineteen (19)

pending criminal charges at that time. He was incarcerated for seventy-six (76) days and met with Helms four (4) times. Helms conveyed the Solicitor's offer of thirteen (13) years imprisonment in exchange for his guilty plea, but Applicant insisted on going to trial. Helms told Applicant that trial was not an option. Applicant believed and relied on Helms because he believed Helms was representing Applicant's best interests.

Applicant was in the Home Incarceration Program (HIP) since his arrest on June 4, 2014, but had moved a number of times. He was advised by his previous attorney, John L. Breeden, Jr., Esquire, that he would need to update his address with the Clerk of Court. Applicant called the Clerk to update his address, but hung up after being put on hold without updating his address. Applicant never received any communication from Helms until he was arrested on January 8, 2015 when he met Helms in person. Applicant did not receive discovery until March 30, 2015 (six days after pleading guilty), despite having requested it from Helms. He did not meet much with Helms while incarcerated, but sent his mother to Public Defender's Office to ask Helms to contact Applicant.

Applicant's description of Helms's review of his case was "poor." Helms received the discovery on August 15, 2014, and Applicant pled guilty on March 24, 2015, so Applicant believed he had plenty of time to thoroughly investigate and failed to do so. The discovery contained a chain of custody document that was missing a signature which Helms never brought to Applicant's attention. The investigator on the case wrote June 6 on his investigative report when the incident actually occurred on June 4, which Helms never brought to Applicant's attention. The investigative report contained a false statement given by a witness, Applicant's wife, which Helms never brought to Applicant's attention. Law enforcement added drugs to the

charge for which Applicant pled guilty, which Helms never brought to Applicant's attention. Nine (9) charges were dropped against Applicant on March 23, 2015, but Helms led Applicant to believe those charges were still pending and a part of the plea bargain when Applicant pled on March 24, 2015. Had Applicant known all of these things, he would have gone to trial. After his plea hearing, Applicant requested his file and received additional discovery November 4, 2015. After Applicant's independent review of his own discovery, he now says he would have gone to trial. Applicant testified truthfully at his plea hearing and in response to the plea Judge's questions. In response to the question of whether he was satisfied with his counsel, Applicant answered yes. Applicant was satisfied with counsel until he reviewed his own discovery.

The Respondent's witness, Christopher Helms, testified as follows: Helms has been practicing law for five (5) years and all of them criminal law. He was appointed to Applicant's case sometime before June of 2014. Helms sent a letter of representation and a copy of his motion for discovery and Rule 5/Brady material. In the letter, he advised Applicant that his office would schedule a conference when they received the discovery. This letter was never returned to Helms' office. Conferences with Applicant had been scheduled on March 27, 2014, and November 20, 2014. Notices of said conferences were mailed to the address Applicant had provided. Applicant failed to attend both conferences. After Applicant got arrested again on January 8, 2015, his HIP was revoked and he was detained in jail. Helms first met with Applicant at Applicant's bond hearing on January 9, 2015. Helms represented Applicant jointly with attorney John Breeden. Applicant's January 9 hearing was continued until January 21 because Breeden was not present. During Helms first meeting with Applicant, they discussed applicant's ties to the community and whether he posed a danger to the community in order to



represent Applicant to be released on bond. There was no substantive discussion about the case at this meeting. Judge Brown refused to grant Applicant bond because Applicant had been arrested three times while out on bond. At the bond hearing, Helms moved to be relieved and Applicant's other attorney, Breeden, be appointed to all the charges in an effort to avoid any potential confusion, so that the Solicitor could deal with one attorney and in the best interests of the Applicant. The Judge denied Helms' motion.

On January 22, 2015, Helms spoke with Applicant's mother on the phone. She inquired about the result of the bond hearing and the details of the case. Helms informed her of the attorney-client privilege and his office's policy of not discussing cases with family members. Helms's next meeting with Applicant was February 11, 2015 at the detention center. Applicant's main concern at that time was his wife (girlfriend at the time). She had also been arrested and he did not want her to go to prison. Applicant's wife was also represented by the Public Defender. Applicant wanted anything under thirteen (13) years imprisonment. Applicant knew that thirteen (13) years was the Solicitor's offer from his retained counsel, with whom he met the prior day. Applicant never discussed a desire to go to trial.

Applicant was facing one hundred thirty three (133) years on all pending charges, of which there were twenty (20). Helms described his review of the evidence against Applicant as high in quantity and quality. Applicant was arrested while selling heroin to an undercover agent from his home. Helms never noticed a discrepancy in the investigative report or in the amount of drugs charged. There were twenty (20) pending charges and of the drug charges, they varied in weight. Helms never noticed a missing signature from a chain of custody document in the discovery.

The decision to plead guilty was solely Applicant's. Helms advised Applicant of all of his Constitutional rights. Helms reviewed all of the discovery, including the chain of custody, with Applicant and Applicant never raised any concerns to him. Helms did advise Applicant that any issues would have to be raised at a trial and Applicant never wanted a trial.

The first copy of discovery was sent to Applicant by Helms paralegal and went to the address on Applicant's public defender application. Helms met with the Solicitor and Breedon on February 10, 2015. Helms met with Solicitor again on February 20, 2015, when the Solicitor agreed to drop other eighteen (18) charges and consider dropping wife's charges. Helms only permitted Applicant to plead to charges upon which Helms represented him, and not Breedon. Applicant requested discovery on the day he pled guilty. Helms sent him another copy.

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). "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 v. Washington, 466 U.S. 668, 104 S. Ct. 2052). 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).

This Court finds the Applicant failed to meet his burden of proving trial counsel failed to review and investigate Applicant’s case. Helms testified that he reviewed all of the evidence against the Applicant and reviewed it with Applicant. Helms also testified that his office mailed to Applicant a copy of his discovery prior to his guilty plea and another after his guilty plea. This Court notes trial counsel is an experienced criminal defense attorney. It was Helms’ testimony that the evidence against Applicant was of high quantity and quality. Applicant had twenty (20) pending charges, so any alleged discrepancies or errors in investigative reports,

chain of custody, or drug amounts charged in one case, would not likely have changed Applicant's decision to plead guilty to any one of the other charges in exchange for the Solicitor's offer to dismiss the remainder. This Court finds Helms' testimony is more credible on this point. Regardless, this Court finds the testimony at the PCR hearing would likely not have changed the decision of the Applicant to plead guilty.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that trial counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that trial counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by trial counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

Involuntary Guilty Plea

Although not an enumerated claim in Applicant's PCR application, Applicant's testimony posed a claim that his guilty plea was not made voluntarily. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant 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, 23 L.Ed.2d 274 (1969). Defendant's knowing and voluntary waiver of statutory or constitutional rights 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." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310

S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing 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. Crawford v. United States, 519 F.2d 347 (4th Cir.1975).

This Court finds that Applicant failed to meet his burden of proving that his guilty plea was entered involuntarily. Trial counsel is a trial practitioner who has five years of experience in the trial of serious offenses. Counsel conferred with the Applicant in which counsel discussed the pending charges, what the State was required to prove, Applicant's constitutional rights, Applicant's concerns and desires. 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 and that no one had threatened him or promised him anything to plead guilty. This Court finds that Applicant understood the terms of the Solicitor's offer and of the negotiated sentence, and thus had a full understanding of the ramifications of pleading guilty.

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 the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they



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Fowler Law Firm
1293 Professional Drive, Suite D
Myrtle Beach NC 29577

Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211