

FALK LAW FIRM, LLC.

James K. Falk

(843) 606-6007

(843) 972-9005 Fax

Admitted to practice: KY(1984) S.C. (2010) jfalklaw@gmail.com

March 15, 2017

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

RECEIVED

MAR 20 2017

S.C. SUPREME COURT

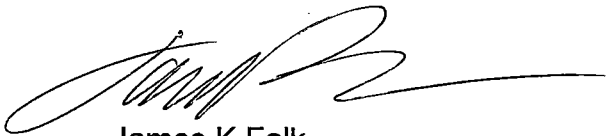
Re: Willie J Edwards, 2015-CP-22-00431

Dear Clerk Shearouse:

Please find the enclosed Notice of Appeal, Proof of Service, and Order of Dismissal in the above Georgetown County PCR action. Please return a clocked copy of the Notice of Appeal and Proof of Service in the enclosed SASE.

Should you have any additional questions please do not hesitate to contact my office.

With best regards, I am,



James K Falk

Thank you for your assistance.

Cc: Valerie Giovanoli, Esq.; Willie J Edwards 274377.

THE STATE OF SOUTH CAROLINA

In The Supreme Court

RECEIVED

MAR 20 2017

APPEAL FROM GEORGETOWN COUNTY

Court of Common Pleas

S.C. SUPREME COURT

Honorable Michael G. Nettles, Circuit Judge

Case No.: 2015-CP-22-00431

Willie J Edwards 274377.....PETITIONER

V.

State of South Carolina.....RESPONDENT

NOTICE OF APPEAL

The Petitioner Willie J Edwards appeals the Honorable Michael G. Nettles March 1, 2017, Order of Dismissal. Undersigned counsel received notice of entry of the order on March 14, 2017. A copy of the order on appeal is attached hereto.



James K Falk
Falk Law Firm
PO Box 1058
Charleston, SC 29402

March 15, 2017

Valerie Giovanoli, Esq.
Office of S.C. Attorney General
PO Box 11549
Columbia, SC 29211-1549

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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MAR 20 2017

APPEAL FROM GEORGETOWN COUNTY S.C. SUPREME COURT

Court of Common Pleas

Honorable Michael G Nettles, Circuit Judge

Case No.: 2015-CP-22-00431

Willie J Edwards 274377.....PETITIONER

V.

State of South Carolina.....RESPONDENT

PROOF OF SERVICE

I, James Falk, certify that I have today served the within notice of appeal upon the Respondent by depositing a copy of it in the U.S. Mail, postage prepaid, addressed to its attorney of record, Valerie Giovanoli Esq, Office of the S.C. Attorney General, PO Box 11549, Columbia, SC 29211-1549. I further certify that all parties required by Rule to be served have been served this March 15, 2017.



James K Falk
Falk Law Firm
PO Box 1058
Charleston, SC 29402

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS)
FIFTEENTH JUDICIAL CIRCUIT)

Willie J. Edwards, Jr. #274377,)

2015-CP-22-00431)

Applicant,)

ORDER OF DISMISSAL)

v.)

State of South Carolina,)

Respondent.)

FILED
GEORGETOWN COUNTY, S.C.
2017 MAR -9 AM 10:00
ALMA Y WHITE
CLERK OF COURT

This matter comes before the Court by way of an application for Post-Conviction Relief (PCR) filed April 23, 2015. Respondent made its Return on February 2, 2016. An evidentiary hearing into the matter was convened on February 10, 2017 at the Horry County Courthouse. James K. Falk, Esquire represented Applicant. Samuel L. Martin, III, of the Charleston School of Law under the supervision of J. Rutledge Johnson and Valerie Garcia Giovanoli, Esquires, of the South Carolina Attorney General's Office, represented Respondent.

At the hearing, Applicant testified on his own behalf. Charles Barr, Esquire, and Dean Mureddu, Esquire, also testified. This Court had before it a copy of the records of the Georgetown County Clerk of Court, records from the South Carolina Department of Corrections, the PCR application, Respondent's Return and the guilty plea transcript.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Georgetown County Clerk of Court. Applicant was indicted at the March 2104 term of the Georgetown County Grand Jury for kidnapping (2013-GS-22-304)

and resisting arrest (2013-GS-22-302). Applicant was represented by Dean Mureddu, Esquire. Additionally, Applicant was indicted at the April 2013 term of the Georgetown County Grand Jury for trafficking in heroin (2013-GS-22-0364). Charles D. Barr, Esquire represented Applicant on the drug charge.

On July 29, 2014, Applicant pled guilty to trafficking in heroin and on July 31, 2014, Applicant pled guilty to kidnapping and resisting arrest. The Honorable Stephen H. John sentenced Applicant to confinement for a period twenty five (25) years for trafficking in heroin, twenty five (25) years for kidnapping and one (1) year for resisting arrest. All sentences are to be served concurrently. Applicant did not appeal his convictions or sentences.

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

1. "Ineffective Assistance of Counsel"
 - a. "Obtaining [a] false indictment"
 - b. "Lack of due diligence"

At the hearing, the Applicant proceeded on his claims of ineffective assistance of plea counsel.

SUMMARY OF TESTIMONY

At the evidentiary hearing, Applicant testified that he and Counsel met before the guilty plea. Applicant stated Counsel reviewed the trafficking of heroin charge and kidnapping evidence with him, including sentencing. Applicant further stated that he advised that because of his prior convictions and the two pending, separate trials that he could face life imprisonment without the opportunity of parole. Applicant admitted that he chose the plea agreement because he was facing the possibility of life without parole (LWOP).

Additionally, Applicant claimed Counsel was ineffective for not mounting a defense in the kidnapping charge, because Applicant stated he was owed the money involved in that case and no robbery took place. Applicant stated he had a meritorious claim in that case and did not believe he would have faced LWOP.

On cross-examination, Applicant admitted he pled guilty to avoid facing the possibility of life without parole for murder. He also admitted that he waived his constitutional rights to a jury trial. He admitted there were no promises other than the negotiations and that there were no threats to get him to plead guilty. He admitted that the facts as recited in both cases were accurate depictions of what happened and that he pled of his own free will. He further admitted he was satisfied with Counsel's representation.

Counselor Barr testified that he was retained by Applicant for the trafficking of heroin charge. He testified that he met with Applicant on quite a few occasions and discussed the ongoing case. Counsel then testified that he conducted a suppression motion prior to the plea, but the court did not rule in Applicant's favor. He testified that he recommended Applicant take the global plea offer for both cases to avoid LWOP.

On cross-examination, Counsel testified that several other charges were dropped in exchange for the plea agreement. Counsel also testified that the Assistant Solicitor would not seek LWOP in exchange for Applicant's guilty plea. He testified that he sent a letter to defendant in regard to Rule 5 discovery. This letter was admitted into evidence.

Counsel Mureddu testified that he was appointed to represent Applicant in his kidnapping, armed robbery, and resisting arrest. He reviewed discovery with Applicant. He testified that the still frame photos and allegations did not look good for Applicant. The

evidence against Applicant was strong. Counsel Mureddu testified that the use of the weapon is based on the victim's perspective. He testified that his discussion of Rule 5 discovery was complete, but he did not recall any requests made by Applicant.

Applicant was recalled as a witness and testified he did not receive his Rule 5 discovery in either case.

On re-cross examination, Applicant admitted that he has a prior conviction of forgery which is a crime of dishonesty.

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).

Ineffective Assistance of Counsel

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) (citing Rule 71.1(e), SCRPC). 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 upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, *citing* Strickland. 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. With respect to guilty plea counsel, the 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, 106 S.Ct. 366 (1985).

This Court finds Applicant's testimony regarding Counsel Barr's ineffectiveness is not credible while also finding Counsel Barr's testimony is credible.

This Court also finds the Counsel provided effective assistance of counsel in this case. Counsel advised Applicant of all of the charges and the sentences the charges carried. Counsel also thoroughly investigated the case as evidenced by his pre-trial motion to suppress. Upon the denial of Counsel Barr's motion to suppress, Counsel negotiated with the State in Applicant's best interest for a favorable deal. Applicant also testified he pled guilty because he did not want to risk a trial and face life without parole. Applicant admitted nobody threatened him to plead

guilty, and there were no promises other than the negotiations to entice him to plead guilty. This Court finds Applicant made the decision to plead guilty on his own accord with the help of learned counsel. Additionally, this Court finds Applicant made this decision freely and voluntarily without any threats or promises from anyone else. Furthermore, this Court finds that it was ultimately Applicant's decision to plead guilty.

This Court finds Applicant's testimony regarding Counselor Mureddu's ineffectiveness is not credible while also finding Counsel Mureddu's testimony is credible.

This Court also finds Counsel provided effective assistance of counsel in this case. Counsel advised Applicant of all of the charges and the sentences the charges carried. Applicant also testified he pled guilty because he did not want to risk a trial and face life without parole. Applicant knew that by pleading guilty to kidnapping and resisting arrest that the time he received would run concurrent to the trafficking in heroin charge, to which he had already pled guilty and been sentenced. Counsel reviewed the evidence with Applicant and was aware of the strength of the State's case. Applicant admitted nobody threatened him to plead guilty, and there were no promises other than the negotiations to entice him to plead guilty. This Court finds Applicant made the decision to plead guilty on his own accord with the help of learned counsel. Additionally, this Court finds Applicant made this decision freely and voluntarily without any threats or promises from anyone else. Furthermore, this Court finds that it was ultimately Applicant's decision to plead guilty.

This Court also finds Counsel Barr effectively represented Applicant with respect to the motion to suppress the drugs found on Applicant. Not only does this Court find Counsel acted more than reasonably under the circumstances, but also that Applicant can prove no resulting

prejudice from either Counsels' representation and the favorable, global plea deal deriving from it. Thus, this allegation is denied and dismissed with prejudice.

This court finds that Applicant's argument involving Rule 5 discovery requests have no merit. Both Counsels reviewed all of the Rule 5 discovery and evidence with Applicant. Their testimony to this is credible. Furthermore, Counsel Barr's letter sent to Applicant with the Rule 5 discovery contradicts Applicant's claim that he never received his Rule 5 discovery. This Court finds the letter to be compelling proof that Applicant, in fact, did receive it. This Court finds the Applicant has failed to meet his burden of proving Counsel's performance was deficient or that he was prejudiced thereby.

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. This Court concludes Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. Therefore, these allegations are denied and dismissed with prejudice.

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. Therefore, this application for post-conviction relief must be denied and dismissed

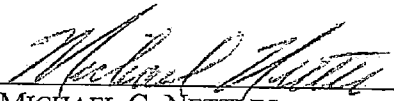
with prejudice. This Court also finds as to all other allegations that Applicant failed to present evidence of such claims and thus, this Court deems them abandoned.

This Court notifies Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel 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 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

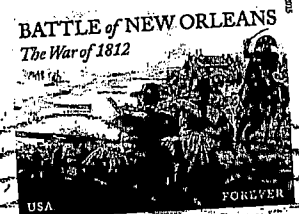
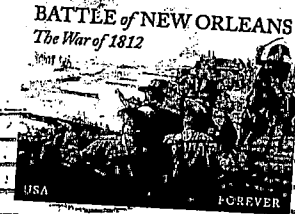
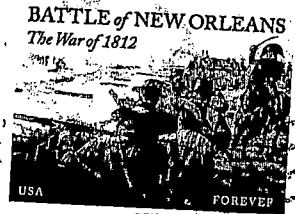
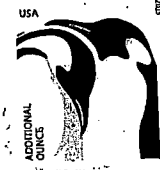
IT IS THEREFORE ORDERED THAT:

1. The application for Post-Conviction Relief is denied and dismissed with prejudice;
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 1 day of March, 2017.

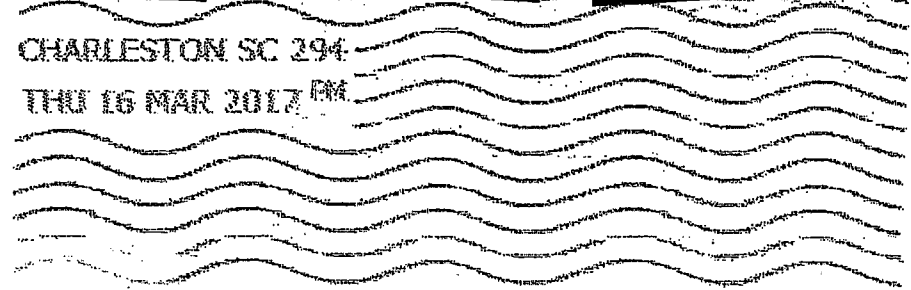

MICHAEL G. NETTLES
Presiding Judge
Fifteenth Judicial Circuit


_____, South Carolina



CHARLESTON SC 294

THU 16 MAR 2017 PM



WALK LAW FIRM

P.O. Box 1058

Charleston, SC 29402

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