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April 5, 2017

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

Re: James Junior Little 255863

Dear Clerk Shearouse:

Please find the enclosed Notice of Appeal, Proof of Service, and Order of Dismissal in the above Horry 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 Garcia Giovanoli.Esq; James Junior Little 255863.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM Horry COUNTY
Court of Common Pleas
Honorable Michael G. Nettles, Circuit Judge

Case No.: 2015-CP-26-07570

James Junior Little 255863.....PETITIONER

V.

State of South Carolina.....RESPONDENT

NOTICE OF APPEAL

The Petitioner James Little appeals the Honorable Michael G. Nettles March 1, 2017, Order of Dismissal. Undersigned counsel received notice of entry of the order on April 3, 2017. A copy of the order on appeal is attached hereto.



James K Falk
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PO Box 1058
Charleston, SC 29402

April 5, 2017

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

THE STATE OF SOUTH CAROLINA
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APPEAL FROM Horry COUNTY
Court of Common Pleas
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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 Garcia 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 April 5, 2017.



James K Falk
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STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
)
)
James Junior Little, #255863,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

2015-CP-26-7570

ORDER OF DISMISSAL

2017 MAR -6 PM 1:57
Horry County Court

This matter comes before the Court by way of an application for Post-Conviction Relief (PCR) filed October 20, 2015. Respondent made its Return on February 22, 2016. An evidentiary hearing into the matter was convened on February 7, 2017 at the Horry County Courthouse. James K. Falk, Esquire, represented Applicant. Shelby Winters, student at the Charleston School of Law and J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

At the hearing, Applicant testified on his own behalf. William Edward Chrisco, Esquire, also testified. This Court had before it a copy of the records of the Horry County Clerk of Court, records from the South Carolina Department of Corrections, the PCR application, Respondent's Return and the plea transcript.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. The Horry County Grand Jury indicted

Applicant at the February 2014 term of General Sessions for leaving the scene of an accident involving death (2014-GS-26-00436). William Edward Chrisco, Esquire, represented Applicant.

Applicant pled guilty as indicted pursuant to North Carolina vs. Alford, 400 U.S. 25, 91 S. Ct. 160 (1970), without a negotiated sentence. On November 12, 2014, the Honorable Larry B. Hyman, Jr. sentenced Applicant to confinement for a period ten (10) years.

A notice of appeal was filed at the South Carolina Court of Appeals on November 17, 2014. The Court of Appeals affirmed Applicant's conviction and sentence on December 22, 2014 for failure to provide a sufficient guilty plea explanation, as required by Rule 203(d)(1)(B)(iv) of the South Carolina Appellate Court Rules. State v. James Little, Op. No. 2014-002439 (S.C. Ct. App. filed). Applicant submitted an explanation on or about January 2, 2015, which the Court considered as a motion for reconsideration, and subsequently denied on February 19, 2015. The Remittitur was sent on March 31, 2015.

In his original Application for post-conviction relief filed on October 20, 2015, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
 - a. "Counsel did not explain elements of crime to defendant."
2. "Involuntary Guilty Plea"
 - a. "No investigation, Counsel allowed defendant to plea to a crime he did not commit."
3. "No Autopsy"
 - a. "Questionable cause of death."

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

SUMMARY OF TESTIMONY

At the evidentiary hearing, Applicant testified that Counsel was appointed to him as a Public Defender. Applicant stated that he asked Counsel for a bond reduction but was not aware if Counsel filed for one. Applicant testified that he did not have a preliminary hearing and spent seventeen (17) months in jail. Applicant stated he was bonded out for \$250,000 dollars.

Applicant testified that he and Counsel met three (3) times in jail discussing a guilty plea. Applicant testified that he saw the victim in the roadway, but he does not admit to hitting the victim. Further, Applicant did not admit to causing the accident and therefore was not going to plead guilty. Thereafter, Applicant testified that Counsel did not come to see him and so he filed a complaint with the Office of Disciplinary Counsel (ODC). Applicant also claimed Counsel was argumentative and that Counsel stated that he would see Applicant in court.

Applicant testified Counsel explained the elements of leaving the scene of an accident involving death and what that offense meant. Applicant then testified that Counsel properly explained his plea pursuant to Alford and that Applicant understood the consequences of that plea. Applicant stated he went along with Counsel's advice and understood that his plea was an open plea, but thought he would receive a sentence of time served. Applicant claims that Counsel had conversations with the victim's family discussing restitution in the amount of \$10,000 to \$20,000 dollars and credit for Applicant's time served. Applicant testified that he understood that he was pleading guilty pursuant to Alford and that it was a good deal, however, Applicant claims he thought he was only getting time served.

On cross-examination, Applicant admitted he was under oath to tell the whole truth and nothing but the truth just as he was at his guilty plea pursuant to Alford. Applicant admitted that he understood the offense of leaving the scene of an accident involving death and its elements. He also

testified he understood the effect of pleading guilty and its consequences of entering into his guilty plea pursuant to Alford. At the guilty plea, Applicant agreed to the facts as the State presented them under Alford. Applicant testified under oath at his guilty plea that he understood his constitutional rights. However, Applicant testified at the PCR hearing that he did not understand his constitutional rights. During his guilty plea, Applicant testified that there were no promises made to get him to plead guilty and that no one threatened or coerced him to plead guilty. However, Applicant testified at the PCR hearing that he was threatened to plead guilty. Also, at Applicant's guilty plea he admitted that he pled freely and voluntarily. At the PCR hearing, Applicant testified that his guilty plea was not pled freely and voluntarily. During his guilty plea, Applicant admitted that he was fully satisfied with Counsel and did not need any more time with Counsel prior to pleading guilty. Conversely, during the PCR hearing, Applicant testified that he was not satisfied with Counsel's representation. Applicant claimed that he did not see himself as the cause of the accident. Lastly, Applicant admitted that he has killed someone before in a motor vehicle incident.

On re-direct examination, Applicant testified that he did not get a copy of victim's autopsy. Applicant stated that he discovered that the victim's family withdrew care in the Rule 5 materials in which the victim passed away within forty-eight (48) hours after the accident. Therefore, Applicant stated that Counsel should have investigated how the victim died. Applicant further testified that he was surprised by the Solicitor's comments and recommendation during his sentencing, because he thought he was getting only time served.

Counsel Chrisco testified that he is the 15th Judicial Circuit Chief Public Defender. He was appointed to represent Applicant. Counsel testified that he saw Applicant frequently and had as many as twelve (12) meetings with Applicant in jail. Counsel stated that his first conversation with

Applicant was a meet and greet. Counsel's second conversation with Applicant was about discovery and Applicant's version of the facts. Counsel stated that his third conversation with Applicant consisted of the holes in the State's case and what evidence would be presented and used against Applicant.

Counsel testified that he has never encountered a "no contact" case in a hit and run accident. However, pursuant to the statute, the events just have to start in motion. Counsel stated that there were three witnesses who claimed that in order for the victim to avoid Applicant, the victim had to swerve and as a result, the victim hit the curb. Counsel testified that it is a common practice of his to ask his clients what they think is in their best interest, a trial or a plea. Counsel stated that he was aware the victim's family had removed life support. Counsel also testified that he requested the autopsy report but never received it.

Counsel testified that Applicant went to court to be arraigned and was told the maximum penalty for leaving the scene of an accident involving death is imprisonment no more than twenty-five (25) years and a fine no more than twenty-five thousand dollars. Counsel testified that he never mentioned a time served sentence to Applicant, but that Counsel did advise Applicant of the twenty-five (25) year maximum penalty and that the plea was in fact a straight up plea.

Counsel testified that Applicant never wanted a trial and that Counsel sufficiently explained to Applicant that he could plea under Alford. Counsel also stated that the Solicitor's Office dropped the charge of great bodily injury when the victim passed away. Lastly, Counsel testified that it was ultimately Applicant's choice to plea or pursue a trial. Counsel claimed that he would have had time to prepare for trial had that been Applicant's decision.

On cross-examination, Counsel testified that it was Applicant's decision to plead under Alford. Counsel testified that there was no coercion upon Applicant to plead guilty. Counsel also testified that he felt he prepared adequately and sufficiently for Applicant's case. Finally, Counsel testified that he would have continued to prepare for trial if Applicant wanted to proceed.

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 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 advised Applicant of all of the charges and the sentences the charges carried. 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.

This Court finds Counsel's testimony with regard to advising Applicant of his potential exposure to twenty-five year' imprisonment, while in contradiction to Applicant's testimony, to be credible on this issue and Applicant's testimony not credible.

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.

Involuntary Guilty Plea

Applicant alleges that his plea was involuntary. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant 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 (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). An applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel’s representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for trial’s errors, the defendant would not have pled guilty, but would have insisted on going to trial. See 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).

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. See

Bovkin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969). In Bovkin the United States Supreme Court held that before a court can accept a guilty plea, a criminal defendant must be advised of the constitutional rights he is waiving. *Id.* at 243, 89 S.Ct. at 1712. Specifically, the accused must be aware of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers. *Id.* Moreover, a criminal defendant entering a guilty plea "must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citation omitted). A criminal 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." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000).

This Court finds that Applicant's plea was entered into freely, voluntarily and knowingly. This Court further finds that Applicant was given plenty of contact with Counsel and he was fully aware of his rights. 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 the Applicant's decision to plead guilty.

Accordingly, this Court finds the Applicant has not met the burden of proof to illustrate that his plea was made involuntary. Therefore, these allegations are denied and dismissed with prejudice.

CONCLUSION

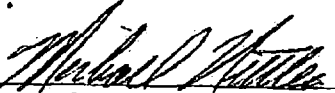
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice. This 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 the 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), SCRCR, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the 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

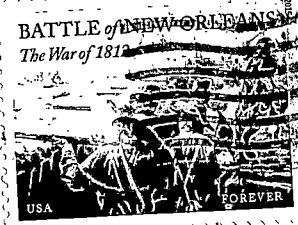
Fifteenth Judicial Circuit

Florence, South Carolina

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