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April 25, 2017

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

RECEIVED

APR 27 2017

S.C. SUPREME COURT

The Honorable Sharon W. Staggers
Clerk of Court
125 W Main St.
Kingstree, SC 29556

**RE: George J. Williams, #191416, v. State of South Carolina
2015-CP-45-321**

Dear Mr. Shearouse and Ms. Staggers:

Enclosed for filing is a Notice of Appeal in the above-referenced case. Also enclosed are the following:

- (1) Proof of Service of the Notice of Appeal;
- (2) A copy of the Order which is to be challenged on appeal; and
- (3) Prior Order of Appointment of Counsel.

As I was appointed to represent Mr. Williams in his PCR proceeding, I anticipate that the Office of Appellate Defense will represent Mr. Williams in this appeal.

Yours very truly,



Lance S. Boozer

Enclosures

cc: Julie Coleman, AAG
Loriene French, OAD
George J. Williams, #191416

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

APR 27 2017

APPEAL FROM WILLIAMSBURG COUNTY
Court of Common Pleas

S.C. SUPREME COURT

The Honorable Brian Gibbons, Circuit Court Judge

Case No. 2015-CP-45-321

George J. Williams, #191416,Petitioner,

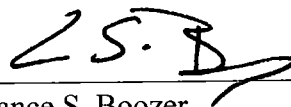
v.

State of South Carolina,.....Respondent.

NOTICE OF APPEAL

The Petitioner appeals the Honorable Brian Gibbons's Order dated February 21, 2017, denying post-conviction relief to the Petitioner and received by undersigned counsel on April 25, 2017. A copy of the Order on appeal is attached to this notice.

Respectfully submitted,



Lance S. Boozer
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Columbia, SC 29201
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April 25, 2017

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APR 27 2017

APPEAL FROM WILLIAMSBURG COUNTY
Court of Common Pleas

S.C. SUPREME COURT

The Honorable Brian Gibbons, Circuit Court Judge

Case No. 2015-CP-45-321


George J. Williams, #191416,Petitioner,

v.

State of South Carolina,.....Respondent.

PROOF OF SERVICE

I, Lance S. Boozer, 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 Assistant Attorney General Julie Coleman, P.O. Box 11549, Columbia, SC 29211. I further certify that all parties required by Rule to be served have been served this 24th day of April, 2017.


Lance S. Boozer
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STATE OF SOUTH CAROLINA)
COUNTY OF WILLIAMSBURG)

George J. Williams, #191416,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

2015-CP-45-321

ORDER OF DISMISSAL

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This matter comes before the Court by way of a post-conviction relief (PCR) application filed on July 2, 2015. Respondent submitted its return on October 28, 2015. An evidentiary hearing was convened on November 7, 2016, at the Sumter County Courthouse. Applicant was present at the hearing and was represented by Lance Boozer, Esquire. Respondent was represented by Assistant Attorney General Julie A. Coleman of the South Carolina Attorney General's Office.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Williamsburg County Clerk of Court. Applicant was true bill indicted at the May 2012 term of the Williamsburg County Grand Jury for two counts of grand larceny, value 10,000 or more (2012-GS-45-0111). Applicant was subsequently indicted at the January 2013 term of the Williamsburg County Grand Jury for criminal sexual conduct with a minor in the first degree and unlawful conduct toward a child (2013-GS-45-0007). Applicant was true bill indicted at the May 2014 term of the Williamsburg County Grand Jury for criminal sexual conduct – third degree (2014-GS-45-0074). Amanda Shuler, Esquire represented Applicant. On January 27, 2015, Applicant pled guilty as indicted before the Honorable George

C. James, Jr. Judge James sentenced Applicant pursuant to a recommendation by the State to a ten year term of imprisonment for grand larceny, twenty-five year term of imprisonment for criminal sexual conduct – first degree, and ten year term of imprisonment for criminal sexual conduct – third degree. Applicant did not appeal his guilty plea or sentence.

II. ALLEGATIONS

In his current application, Applicant alleges that he is being held in custody unlawfully based on the following allegations:

1. Ineffective assistance of counsel
 - a. Failed to investigate possible defenses
 - b. Failed to obtain preliminary hearing transcript.
 - c. Improperly informing Applicant he would receive rehabilitative treatment following his guilty plea.
 - d. Failure to file an appeal
2. Involuntary Guilty Plea

III. APPLICABLE LAW

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (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, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

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. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any 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." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty pleas, 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).

IV. SUMMARY OF RELEVANT TESTIMONY

At the evidentiary hearing, Applicant testified on his own behalf. Respondent presented testimony from Plea Counsel Amanda Shuler. Following the evidentiary hearing, Respondent submitted an affidavit of testimony from Doward K. Harvin, Esquire.

Applicant testified that he was originally represented by Doward K. Harvin, Esquire, on these charges. He stated that Mr. Harvin represented him at the preliminary hearing, but there is no longer a record of this hearing because the transcript no longer exists. Applicant testified that there were three problems with his preliminary hearing: (1) the affidavit used to obtain the arrest warrant was false; (2) there was no report from the hospital of the Victim's injuries; (3) the Victim's godmother's friend's cousin told her about the abuse. He stated that Mr. Harvin argued these issues at the hearing, and the court denied his motions to suppress. Applicant testified that Mr. Harvin represented him for a year and a half but then was relieved due to a conflict of interest. He stated that Plea Counsel took his case about nine months before the plea.

Applicant testified that he bonded out of prison and he met with Plea Counsel about three times total. He stated that he pled guilty on January 27, 2015. He stated that he requested Plea Counsel to get a copy of the transcript from the preliminary hearing in a letter dated March 15, 2015. He stated that she told him that she did not file an appeal and she did not order the transcript. Applicant testified that Plea Counsel failed to investigate the preliminary hearing and the medical reports, which he stated did not add up. He stated that the arrest warrant said that the crime happened in Williamsburg County, but he was not even living there at that time and the Victim lived in North Carolina. Applicant testified that he reviewed the arrest warrant with Plea Counsel before the plea and he explained to her how it could not have been valid.

Applicant testified that they picked a jury for trial. He stated that Plea Counsel told him that he could not be rehabilitated so he might go to the Sexual Violent Predator section of the Department of Corrections. He stated that he wanted to go to a place where he could be rehabilitated, and that's why he pled guilty. Applicant stated that he did not review the discovery with Plea Counsel until after the plea. He testified that he was served notice of a Life Without Parole sentence after he turned down the State's offer of a fifteen year sentence.

Applicant testified that he did not ask Plea Counsel for an appeal. He stated that she was the lawyer, and he didn't think he had to ask her. He testified that he did not ask the judge for the preliminary hearing transcript at the guilty plea because he figured Plea Counsel already had it.

Plea Counsel testified that she represented Applicant on these charges which stemmed from three different cases. She stated that the criminal sexual conduct case arose from several instances of sexual conduct with the minor Victim, who was the daughter of Applicant's girlfriend. She testified that Applicant was living with his girlfriend and her two children when it occurred. She stated that on one occasion, Applicant told the Victim's brother to go take a

shower, and when he came out of the bathroom he saw Applicant on top of his sister. Plea Counsel stated that this was a strong case against Applicant because it is not often that you have eyewitnesses to criminal sexual conduct.

Plea Counsel testified that she never promised Applicant that he would be rehabilitated. She stated that she told him he would be evaluated under Sexual Violent Predator law. She stated that she would have ordered the preliminary hearing transcript if Applicant had asked her to, but she did not recall him asking for it. Plea Counsel stated that the preliminary hearing transcript could have been used at trial for impeachment purposes, but it absolutely would not overcome the volume of the State's evidence. She stated that she was prepared for trial, and she and Applicant had discussed some of the issues that they would have pursued at trial. She testified that Applicant did not ask her to file an appeal.

V. 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 (1985).

As a matter of general impression, this Court finds Applicant's testimony and assertions to be not credible. In contrast, this Court finds Counsel's testimony to be credible and persuasive. These credibility findings have been applied to the Court's findings and conclusions set forth below.

INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant raises an allegation arguing that Plea Counsel was ineffective in her representation surrounding his guilty plea. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. See Al-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (1999) (citing Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993)). This Court finds that the testimony presented at the PCR hearing satisfies neither prong of the Strickland test; Applicant can show neither ineffectiveness nor prejudice, thus these allegations should be denied and dismissed with prejudice.

Applicant's first attorney, Mr. Doward K. Harvin, testified in his affidavit that he represented Applicant at a preliminary hearing in the magistrate court. He testified that he believed that he would have moved to quash the arrest warrants and the motion was denied. Mr. Harvin testified that he would have objected to any inconsistent testimony at the hearing, and his motion was denied. He further testified that, in his legal opinion, Applicant would have been convicted at trial even if the arrest warrants had been quashed and the investigating office had been impeached at trial. He testified that he had no recollection of Applicant asking him to order the transcript from the preliminary hearing. Based on this testimony, this Court finds that Applicant has failed to prove that Mr. Harvin was deficient in any manner or that any deficiency prejudiced him.

Plea Counsel testified that she investigated Applicant's case and was fully prepared for trial because he pled guilty after they picked a jury. She stated that she did not recall Applicant asking her to order the preliminary hearing transcript until months after he pled guilty, and even if she had the transcript to use at trial, it would not have helped overcome the State's strong

evidence. She stated that she never promised Applicant that he would receive rehabilitative treatment. Plea Counsel further testified that Applicant never asked her to appeal his guilty plea.

Based on the testimony presented, this Court finds that Plea Counsel's representation did not fall below the standard of reasonableness under professional norms set out in Strickland. Plea Counsel acted competently in Applicant's best interest throughout the course of her representation and went above and beyond what was required of her. Applicant has failed to prove that Plea Counsel was ineffective in any way. This Court finds that Plea Counsel properly investigated Applicant's case and was not ineffective for failing to file an appeal or order transcripts.

Furthermore, this Court finds that Applicant has not shown that he was prejudiced by Plea Counsel's alleged ineffectiveness because he has not proven that he would have chosen to go to trial rather than plead guilty. Plea Counsel credibly testified that Applicant was never adamant about going to trial and he considered plea offers throughout her representation. Applicant was facing a sentence of Life Without Parole if he were convicted at trial, and the evidence against him was very strong. The likelihood of his conviction was high. Based on these factors, this Court finds that Applicant has failed to meet his burden of proving prejudice to satisfy the second prong of the Strickland test.

Because Applicant has failed to meet his burden in proving that Plea Counsel was ineffective and that her ineffectiveness prejudiced him, these allegations are denied and dismissed with prejudice.

INVOLUNTARY GUILTY PLEA

Applicant argues his plea was not given freely and voluntarily. This Court finds otherwise and concludes that Applicant's plea was entered freely and 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).

Applicant claims his plea was given involuntarily because Plea Counsel misled him as to the rehabilitative treatment he would receive in exchange for his guilty plea. This Court finds that this allegation is untrue. Applicant was never promised or offered rehabilitative treatment in exchange for his guilty plea, and there is no evidence in the record or in the testimony presented to support his reliance on this idea. This Court finds that the record reflects that Applicant was fully advised of the rights he was giving up by pleading guilty. Applicant presented no credible evidence as to why he should be able to depart from his statements at the plea hearing. This Court finds very credible Plea Counsel's testimony that she advised Applicant of all facts and risks of pleading guilty.

The record reflects Applicant fully admitted his guilt to the plea court. "A guilty plea constitutes a waiver of nonjurisdictional defects and claims of violations of constitutional rights." Jamison v. State, 410 S.C. 456, 467, 765 S.E.2d 123, 129 (2014) (citing State v. Rice, 401 S.C. 330, 331-32, 737 S.E.2d 485, 485-86 (2013); Hyman v. State, 397 S.C. 35, 44, 723 S.E.2d 375, 379 (2012)). Notably the South Carolina Supreme Court has held "[a] guilty plea represents a break in the chain of events which has preceded it in the criminal process." Id. (citations omitted). "When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea." Id. (citing Rice, 401 S.C. at 332, 737 S.E.2d at 486). Therefore, this Court finds the plea judge correctly found Applicant's plea was freely, voluntary, and intelligently made. Accordingly, this allegation must be denied and dismissed with prejudice.

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 testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

VI. CONCLUSION

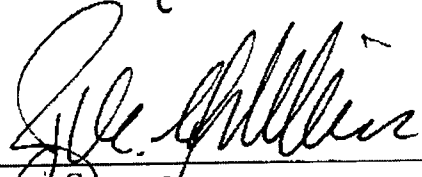
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of appeal within thirty 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 post-conviction relief. Rule 71.1(g), SCRPC, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the 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. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this _____ day of 2/21, 2017.



BRIAN GIBBONS
Presiding Judge
Third Judicial Circuit

 _____, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF WILLIAMBURG)

IN THE COURT OF COMMON PLEAS 10:39
FOR THE THIRD JUDICIAL CIRCUIT

George J. Williams, #191416,)

2015-CP-45-321

Applicant,)

v.)

AFFIDAVIT OF TESTIMONY

State of South Carolina,)

Respondent.)

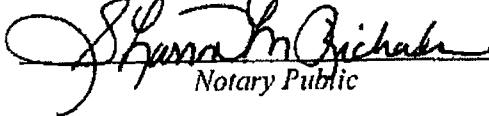
I, the undersigned Doward K. Harvin, do hereby certify and testify to the following:

1. I represented Applicant George J. Williams for a period of time on the criminal charges that are the subject of this action for post-conviction relief. I was relieved as counsel when Applicant was charged with a subsequent crime which created a conflict of interest based on my personal relationship with the victim of the crime. Amanda Shuler, Esquire, was then appointed to represent Applicant.
2. I was present and represented Applicant at a preliminary hearing in the magistrate court prior to his entry of a guilty plea. I have no specific recollection of the events at the hearing because I no longer have access to my case file which included my personal notes and because of the large volume of preliminary hearings I did at the time for various clients.
3. Based on my experience and my typical practices, it is my opinion that, at the preliminary hearing, I would have moved to quash the arrest warrants in this case based on a lack of specificity in the dates of the alleged events in the affidavit used to obtain the warrant. Based on the fact that the case continued forward and the warrants were not quashed, it is my belief that the court denied my motion.
4. If any inconsistent testimony was presented at the preliminary hearing, it is my opinion that I would have objected to it and made the proper motions based upon this testimony. Based on the fact that the testimony was allowed in, it is my opinion that the court denied my motions.
5. It is my legal opinion that, even if the motion to quash the arrest warrant had been granted, it is a high likelihood that Applicant still would have been convicted at trial because the victim would have clarified law enforcement's mistakes on the warrant and they would have corrected the warrants prior to trial.

6. It is my legal opinion that, even if the investigating officer had been impeached at trial on any alleged inconsistencies in his testimony, Applicant still would have been convicted at trial.
7. Although I possibly handled his preliminary hearing, I have no recollection of Applicant asking me to order the transcript from the preliminary hearing.


Doward K. Harvin, Esquire

SWORN to and subscribed before me this 21st
day of December, 2016.


Notary Public

My Commission Expires: April 11, 2024

STATE OF SOUTH CAROLINA)

County of Williamsburg)

George Junior Williams#191416)

Petitioner)

vs.)

STATE OF SOUTH CAROLINA)

Defendant)

IN THE COURT OF
COMMON PLEAS

3rd Judicial Circuit

NOTICE OF APPOINTMENT
FOR LEGAL COUNSEL

Case Number 2015-CP-45- 321

To: Boozer, Attorney at Law

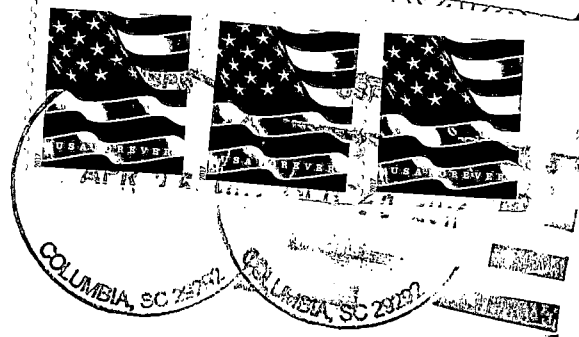
By order of the Chief Administrative Judge and pursuant to Rule 608, SCACR, you are hereby appointed to act as attorney for George J. Williams., the Petitioner, in this action.

This 9th day of Sept., 2015.

Sharon W. Staggers
Judge/Clerk of Court

THE BOOZER LAW FIRM, LLC

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Columbia, SC 29201



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