

FALK LAW FIRM, LLC.

James K. Falk

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April 28, 2017

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

RECEIVED

MAY 01 2017

S.C. SUPREME COURT

Re: Melvin Holmes, 2015-CP-07-1209

Dear Clerk Shearouse:

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

I have also enclosed two other documents. A copy of the Order appointing me to represent Mr. Holmes in his PCR along with a copy of the Form 4 order. You will note on the Form 4, that the Beaufort clerk did not mail me a copy of the final order. A copy went to Mr. Holmes but my name is not on the service list. I only became aware of the entry of the final order when I saw it listed on the SC Courts site.

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: Ruston Neely, Esq.; Melvin Holmes 310276

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

MAY 01 2017

APPEAL FROM BEAUFORT COUNTY

S.C. SUPREME COURT

Court of Common Pleas

Honorable Michael G. Nettles, Circuit Judge

Case No.: 2015-CP-07-01209

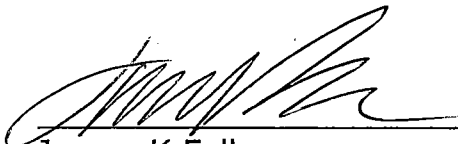
Melvin Holmes 310276.....PETITIONER

V.

State of South Carolina.....RESPONDENT

NOTICE OF APPEAL

The Petitioner James Little appeals the Honorable Michael G. Nettles December 20, 2016, Order of Dismissal. Undersigned counsel received notice of entry of the order on April 28, 2017. A copy of the order on appeal is attached hereto.



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

April 28, 2017

Ruston Neely, 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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MAY 01 2017

APPEAL FROM BEAUFORT COUNTY

S.C. SUPREME COURT

Court of Common Pleas

Honorable Michael G Nettles, Circuit Judge

Case No.: 2015-CP-07-01209

Melvin Holmes 310276.....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, Ruston Neely, 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 28, 2017.



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

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

Melvin Holmes, #310276,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT

Case No. 2015-CP-07-1209

ORDER OF DISMISSAL

2016 DEC 28 PM 12:57
JEREMY M. ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

This Court convened an evidentiary hearing into the matter on October 17, 2016, at the Beaufort County Courthouse. Applicant was present at the hearing and represented by James Falk, Esquire. Ruston W. Neely, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant's trial counsel Robert Hughes, Esquire (hereinafter "plea counsel") was present and testified. Testimony was elicited from Applicant. The Court had before it a copy of the trial transcript, the records of the Beaufort County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, and the pleadings in this matter. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Beaufort County Clerk of Court. Applicant was indicted at the April 2013 term of the Beaufort County Grand Jury for one (1) count of Trafficking in Meth or Cocaine Base, 1st Offense and Possession of a Weapon During the Commission of a Violent Crime (2013-GS-07-00204, -00207). Robert Hughes, Esquire, represented him. Applicant plead guilty to both charges and was sentenced by the Honorable Edgar W. Dickson to incarceration

for ten (10) years for Trafficking in Meth or Cocaine Base, 1st Offense and five (5) years for Possession of a Weapon During the Commission of a Violent Crime, with the sentences to run concurrently. Applicant did not appeal his conviction or sentence.

II. ALLEGATIONS

In his application for post-conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Guilty plea was involuntary.
2. Plea counsel failed to request credit for time served while on an ankle monitor.
3. Plea counsel failed to challenge search warrant.
4. Plea counsel had a conflict of interest.
5. Third party guilt issue was not raised by plea counsel.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court reviewed the record in its entirety, listened to the testimony given, and heard the arguments presented at the evidentiary 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 fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

In this post-conviction relief action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of plea counsel as a ground for relief, Applicant must prove plea counsel's "conduct so undermined the proper functioning of the adversarial process" that the plea proceedings "cannot be relied upon as having produced a just result." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The Court uses a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove counsel's performance was deficient. Id. Under this first prong, the proper measure of performance is whether trial counsel provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The Court strongly presumes trial counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). 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). Second, any deficient performance must have prejudiced 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. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 688.

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 (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). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. 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. Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976). A defendant

who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. 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).

Applicant has not presented valid reasons why his statements during the guilty plea or shown plea counsel's representation fell below professional norms. Applicant has not met his burden.

A. Voluntariness of the Plea

This Court finds the plea was entered into freely and voluntarily. The transcript of the plea and the testimony at the evidentiary hearing establishes Applicant understood the charges, his conversations with his attorney, and his constitutional rights. The plea transcript further establishes the decision to plead guilty was his own decision and Applicant was satisfied with his attorney. This Court finds Applicant's testimony not credible regarding his lack of voluntariness to plead guilty. This Court finds Applicant's allegation is without merit. Therefore, this allegation is dismissed.

B. Ankle Monitor

Applicant contends plea counsel failed to request credit for time served while Applicant was on an ankle monitor. This contention is unfounded. The transcript reflects that plea counsel specifically asked the judge to give Applicant credit for the time he served with the ankle monitor. The plea judge considered the request and denied it, as is within his discretion. This Court finds Applicant's allegation without merit. Therefore, this allegation is dismissed.

C. Failure to Challenge the Search Warrant

The plea transcript reflects Applicant understood that he forfeited his defenses by entering into the guilty plea. Plea counsel credibly testified the search warrant issues were discussed with Applicant in detail. Therefore, he voluntarily waived his right to challenge the search warrant. This Court finds Applicant's allegation without merit. Therefore, this allegation is dismissed.

D. Conflict of Interest

The Court finds the fact that plea counsel and Ian Deysach, Esquire, share an office building is not a conflict of interest. Further, plea counsel was not involved in this case nor did he represent the codefendant. The allegation Mr. Deysach was married to the prosecutor is of no consequence. Mr. Deysach credibly testified they did not discuss the case. The Court finds there was no conflict given the facts and circumstances of this case. Therefore, this allegation is dismissed.

E. Issue of Third Party Guilt

There is no merit to this allegation. Applicant was in actual possession of the drugs and his DNA was found on the baggies containing the drugs. Additionally, the Court finds plea counsel spent adequate time preparing, investigating, and discussing the elements of the offense and potential defenses with the Applicant. Applicant knowingly and intelligently waived these defenses at his plea. Therefore, this allegation is dismissed.

F. 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, the Court finds Applicant failed to present any

evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

IV. CONCLUSION

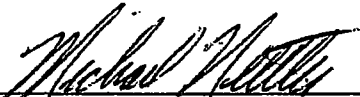
Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from 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), SCRCP, provides that if Applicant wishes to seek appellate review, his post-conviction relief attorney must serve and file a notice of appeal on Applicant's behalf. Applicant and his attorney are 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; and
2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 20 day of December, 2016.



MICHAEL G. NETTLES
Presiding Judge
Fourteenth Judicial Circuit

Florence, South Carolina

FORM 4

**STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT
IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE
CASE NUMBER 2015CP0701209**

Melvin Holmes		South Carolina State Of	
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PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <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 Statement of Judgment by the Court:

Order of Dismissal

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: _____

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.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

s/ M.G. Nettles
Circuit Court Judge

2140
Judge Code

12/20/2016
Date

For Clerk of Court Office Use Only

This judgment was entered on **December 28, 2016**, and a copy mailed first class or placed in the appropriate attorney's box on **December 29, 2016**, to attorneys of record or to parties (when appearing pro se) as follows:

Melvin Holmes #310276 Ridgeland Corr. Inst. Ga/12 Post
Office Box 2039 Ridgeland, SC 29936

Ruston Wesley Neely PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Melissa Kilby

Court Reporter

Jerri Ann Roseneau - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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.

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)
Melvin Holmes,)
Plaintiff(s),)
-vs-)
South Carolina State Of,)
Defendant(s).)

IN THE COURT OF COMMON PLEAS
14th JUDICIAL CIRCUIT
CASE NO.: 2015CP0701209
APPOINTMENT OF COUNSEL
(Select one.)

2015 JUN 15 AM 8:43

ORDER
 AMENDED ORDER

TYPE OF CASE/PROCEEDING (Check one.)

- Post-Conviction Relief (PCR)/habeas case Adoption Juvenile
 SVP case Custody and/or Visitation Abuse and Neglect
 Minor Name Change Other: Post Convict Rel 500

It appears Melvin Holmes, who is a litigant in this case, is entitled to court-appointed counsel.

It further appears that: (Select only one.)

- counsel has not yet been appointed by the court; therefore, an appointment for counsel is necessary.
 counsel was previously appointed by the court but has indicated either a possible conflict of interest, an entitlement to exemption, or other good cause warranting the appointment of new counsel based on:
 counsel was previously appointed by the court but has not indicated that the litigant has retained private counsel and is no longer entitled to appointed counsel.
 court appointed counsel has obtained , Esquire as substitute counsel pursuant to Rule 608(h)(2); provided, however, only the member who originally received the appointment and who sought substitute counsel shall receive credit.
 Other: .

Therefore, it is ordered that James Falk, Esq hereby is appointed as (Select one.)

counsel lead counsel (if capital PCR case) guardian ad litem
for the above-named person. Any counsel previously appointed is/are hereby relieved.

(If Death Penalty PCR Case) It is further ordered that , Esquire, is hereby appointed as second counsel in this capital PCR case.

The clerk of court is directed to forward a copy of this order to all persons entitled to notice.

IT IS SO ORDERED
June 11, 2015


 Circuit Judge Clerk of Court

Plaintiff Attorney:	Plaintiff:
James Falk, Esq	Melvin Holmes #310276
3 Broad Street, Ste 450	Ridgeland Corr. Inst. GA/12
Charleston, SC 29401	PO Box 2039
	Ridgeland, SC 29936

Defendant Attorney:	
James Rutledge Johnson	
PO Box 11549	
Columbia, SC 29211	

NOTICE: SC Supreme Court Order of September 29, 2006, requires appointed counsel entitled to payment from the Office of Indigent Defense (OID) to register the case online with OID within fifteen (15) days of this appointment at www.sccid.sc.gov, and further directs that reimbursement vouchers be submitted directly to SCCID and not to the trial judge or clerk of court. See SCCID website for further details.

FALK-LAW FIRM

P.O. Box 1058

Charleston, SC 29402

BATTLE of NEW ORLEANS
The War of 1812



BATTLE of NEW ORLEANS
The War of 1812



BATTLE of NEW ORLEANS
The War of 1812



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

2921181330 8099

