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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM YORK COUNTY
Court of Common Pleas

J. DURHAM COLE, Circuit Court Judge

Civil Action Number: 2014-CP-46-2671

RONNIE K. BRADY, JR
#357967,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

The Petitioner above appeals the order of the Honorable J. Durham Cole, dated August 23, 2016, received by me on August 29, 2016 denying his application for Post-Conviction Relief.

September 28, 2016

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APPEAL FROM YORK COUNTY
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J. Durham Cole., Circuit Court Judge

Civil Action Number: 2014-CP-46-02671

Ronnie K. Brady, Jr.
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State of South Carolina, Respondent.

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PROOF OF SERVICE

I certify that I have served the Notice of Appeal in the above captioned case on the following individuals by depositing a copy of it in the United States Mail, postage prepaid, on September 28, 2016, addressed to:

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September 28, 2016

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	OF THE SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK)	
)	2014-CP-46-2671
Ronnie K. Brady, Jr.,)	
S.C.D.C. No. 357967,)	
)	
Applicant,)	**ORDER OF DISMISSAL**
)	
v.)	
)	
State of South Carolina,)	
)	
Respondent.)	
)	

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed August 15, 2014. Respondent made its Return on or about December 10, 2014. An evidentiary hearing into the matter was convened on January 21, 2015, at the Moss Justice Center in York, South Carolina. Applicant was present at the hearing and represented by Michael Hemlepp, Jr., Esquire. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office represented the Respondent. At the hearing, Applicant testified on his own behalf. Ashley Anderson, Esquire, also testified. This Court also had before it a copy of the records of the York County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the Return, and the plea transcript.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. Applicant was indicted at the August 2013 term of the York County Grand Jury for Manufacturing of Methamphetamine (2013-GS-46-2963). Applicant was represented by E. Ashley Anderson, Esquire, of the York County Public Defender's Office. On November 21, 2013, Applicant pled guilty to the charge as

indicted. The Honorable J. Mark Hayes, II, sentenced Applicant to a term of twenty-five (25) years imprisonment.

A Notice of Appeal was timely filed on behalf of Applicant. The South Carolina Court of Appeals dismissed Applicant's appeal by written order, dated June 2, 2014. The Remittitur was returned on June 26, 2014.

Allegations

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

1. Ineffective Assistance of Counsel
    a. "My Public Defender told me I would get 10 years and I got 25. This is only my 2nd felony of any kind, but they charged me with a 3rd."

II. SUMMARY OF EVIDENCE PRESENTED AT PCR HEARING

Applicant's Testimony

Applicant testified that he spoke with Counsel about his charges and the potential sentences. He testified that they discussed the possibility of going to trial or pleading guilty. Counsel also testified that Counsel guaranteed that he would receive a ten year sentence. Applicant testified that it was his decision to plead guilty and he admitted guilt to the plea court.

Applicant further testified that he would not have pled guilty had he known that Solicitor Kevin Brackett would come in and speak. He testified that Counsel did not tell him that the Solicitor would be speaking at his plea. He further testified that he would have gone to trial if he had known that he would have received a ten year sentence.

Counsel Ashley Anderson's Testimony

Counsel testified that she reviewed discovery and explained it to Applicant. She testified that Applicant admitted to making methamphetamine from the beginning. She testified that she

tried to negotiate a plea offer but the State refused to make an offer. She testified that she tried to get the State to allow Applicant to plead to a second offense drug charge. She testified that Applicant had prior charges stemming from 2004 and 2009 and that she explained this fact to Applicant. Counsel also testified that she went over the plea waiver form with Applicant before he signed the form.

Counsel testified that she explained the minimum and maximum sentences of manufacturing methamphetamine, third offense, to Applicant. She testified that she did not promise Applicant that he would receive a ten year sentence and testified that she believed that he was well aware that the range was ten to thirty years. Counsel testified that she asked the plea judge for the minimum ten year sentence. She testified that Applicant's sentence was legal.

Counsel testified that she did not know that Solicitor Brackett would be speaking or making a presentation, and that if she had known this fact then she would have told Applicant. She testified that she discussed with Applicant everything the plea judge would take into account in making his sentence determination. Counsel further testified that Applicant never told her that he did not want to plead guilty.

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 plea counsel, the Applicant must show 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, 59 (1985).

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the guilty plea transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

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 on all matters. These credibility findings have been applied to the Court's findings and conclusions set forth below.

Ineffective Assistance of Counsel

Applicant alleges Counsel was ineffective in guaranteeing that he would receive a ten year sentence. This Court finds that Applicant failed to meet his burden of proving that his plea counsel was ineffective. This Court finds Applicant's attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, 466 U.S. at 668; Butler, 286 S.C. 441, 334 S.E.2d 813.

An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the applicant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citations omitted). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). 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).

This Court finds that the plea waiver form, signed and initialed by Applicant, clearly states that Applicant was agreeing to plead guilty to manufacturing methamphetamine, 3rd

offense, and that the offense carries a ten to thirty year sentence. The waiver form explains that the State was not making a recommendation and also lists his prior convictions which include PWID methamphetamine and possession of drug paraphernalia with intent to manufacture methamphetamine from 2009 and possession of a controlled substance without a prescription from 2004.

This Court finds Counsel's testimony credible that she did not promise or guarantee a particular sentence to Applicant. This Court finds that Applicant's desire to receive a sentence of ten years does not change the fact that he was well informed from Counsel, the plea waiver form, and the plea judge that he was pleading to a charge that carried ten to thirty years. See Wolfe v. State, 485 S.E.2d 367, 371, 326 S.C. 158, 165 (1997) (Wishful thinking regarding sentencing does not equal a misapprehension concerning the possible range of sentences, especially where one acknowledges on the record that one knows the range of sentences and that no promises have been made).This Court also finds that the record reflects that Applicant told the plea court that his decision to plead guilty was made freely and voluntarily and no one had promised him anything to get him to plead.

Based on the foregoing, this Court finds that Applicant has failed to meet his burden of proving that Counsel provided erroneous advice that induced Applicant to plead guilty. Applicant has failed to show that he otherwise would have elected to go to trial and has not shown any error in Counsel's assistance that led him to plead guilty instead. Therefore he cannot prove any prejudice. Accordingly, this allegation is denied and dismissed with prejudice.

Involuntary Guilty Plea

To the extent that Applicant alleges that his plea was given involuntarily, this Court finds this allegation must be dismissed. 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, and the record reflects, Applicant was fully advised that he was pleading guilty and therefore waiving any challenges to the evidence against him. The plea court's thorough colloquy with Applicant demonstrates that he understood the consequences of pleading guilty and the potential sentence he could receive. 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 Counsel's testimony regarding his preparation and advice concerning the case. The record reflects Applicant fully admitted his guilt to the plea court and agreed with the State's version of the facts. "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). After a full review of the guilty plea transcript, this Court finds the plea judge correctly found Applicant's plea was freely, voluntary, and intelligently made.

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

V. 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. Applicant failed to demonstrate counsels' performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). 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 PCR counsel's 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, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant 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; and

2. Applicant will remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 23rd day of August, 2016.

J. DERHAM COLE
Presiding Judge
Sixteenth Judicial Circuit

York, South Carolina


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