

THE BOOZER LAW FIRM, LLC

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May 19, 2017

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

The Honorable James C. Campbell
Clerk, Sumter County
215 N. Harvin Street
Sumter, SC 29150

**RE: James Butler, #232706, v. State of South Carolina
2014-CP-43-1052**

Dear Mr. Shearouse and Mr. Campbell:

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. Butler in his PCR proceeding, I anticipate that the Office of Appellate Defense will represent Mr. Butler in this appeal.

Yours very truly,



Lance S. Boozer

Enclosures

cc: Julie Coleman, AAG
Loriene French, OAD
James Butler, #232706

RECEIVED

MAY 22 2017

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

MAY 22 2017

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

S.C. SUPREME COURT

The Honorable Brian Gibbons, Circuit Court Judge

Case No. 2014-CP-43-1052

James E. Butler, #232706,Petitioner,

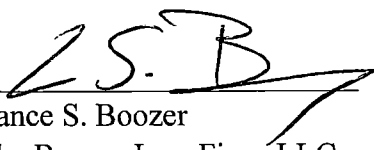
v.

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

NOTICE OF APPEAL

The Petitioner appeals the Honorable Brian Gibbons's Order dated March 13, 2017, denying post-conviction relief to the Petitioner. The Order was received by undersigned counsel on May 19, 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
Tele: 803-608-5543

May 19, 2017

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

MAY 22 2017

S.C. SUPREME COURT

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

The Honorable Brian Gibbons, Circuit Court Judge

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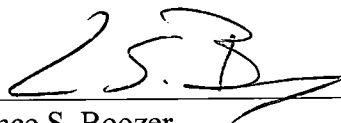
James E. Butler, #232706,Petitioner,

v.

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

PROOF OF SERVICE

I, Lance S. Boozer, appointed 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 19th day of May, 2017.



Lance S. Boozer
The Boozer Law Firm, LLC
1400 Laurel Street, Suite 4A
Columbia, SC 29201
Tele: 803-608-5543

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

RECORDED

THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

2017 MAR 13 PM 3:41

James E. Butler, #232706,

2014-CP-43-1052

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

Applicant,

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on May 21, 2014. Respondent submitted its return on September 26, 2014. An evidentiary hearing was convened on November 9, 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 Sumter County Clerk of Court. Applicant was true bill indicted at the January 2013 term of the Sumter County Grand Jury for Murder and Burglary--First Degree (2013-GS-43-01112). Timothy Murphy, Esquire represented Applicant. On June 5, 2013, Applicant pled guilty to the lesser included offense of voluntary manslaughter. The Honorable R. Ferrell Cothran, Jr., sentenced Applicant to an eighteen year term of imprisonment for voluntary manslaughter.

A timely Notice of Appeal was filed. However, Applicant requested that his appeal be withdrawn. By order filed September 18, 2013 the South Carolina Court of Appeals dismissed his appeal pursuant to his request. The remittitur was issued on October 17, 2103.

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. "My lawyer did not investigate my mental condition."
 - b. "Did not do a thorough investigation on my case."
 - c. "He did not go and question the two witnesses."

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 that he was currently serving time for a crime that he did not do. He stated that he was charged with murder and burglary first degree, and he does not remember all of it, but his memory came back to him over time. He testified that he pled guilty to voluntary manslaughter for a term of eighteen years' imprisonment.

Applicant testified that he met with Plea Counsel one or two times prior to his guilty plea. He testified that he suffered from a memory lapse from a brain cancer medication that he took that did not suit him. He stated that this medication was for "mental people." Applicant stated that he was on this medication at the time of the guilty plea and it had no effect on him. He testified that he no longer takes this medication because the doctor told him that it would "erase" his mind. He stated that he was fine the day of the evidentiary hearing, and that he understands right from wrong now.

Applicant introduced two exhibits; Applicant's Exhibit #1, a witness statement of Tadonzeba Bailey, and Applicant's Exhibit #2, a witness statement of Sheldon Brunson. Applicant testified that he did not see these statements until after his guilty plea, and that these statements did not identify him as the person who committed this crime. He stated that both



statements said that the suspect was 20-30 years old or in his early 20's, but Applicant was 52 years old when the crime was committed. Applicant stated that he never went over these statements with Plea Counsel, but if he had, he would have chosen to go to trial instead of plead guilty.

Applicant testified that Plea Counsel did not investigate his case or discuss his trial strategy. He stated that Plea Counsel was very unprofessional. Applicant testified that he is currently being treated for schizophrenia, paranoia, and personality mood swings.

Plea Counsel testified at the evidentiary hearing that he met with Applicant at the preliminary hearing on June 21, 2012, and again at the jail on October 8, 2012, on January 17, 2013, on April 5, 2013, and in May, 2013 at the plea. He testified that Applicant never wanted a trial; he was always insistent about pleading guilty to voluntary manslaughter. Plea Counsel stated that he actually lost leverage in his negotiations for a plea offer because Applicant adamantly expressed his wish to plead guilty to several people, including the Solicitor, to whom Applicant wrote a personal letter.

Plea Counsel testified that the evidence against Applicant was strong, including DNA scraping from under the victim's fingernails, statements from witnesses, and multiple statements that he had made confessing his involvement. Plea Counsel stated that there was no question of Applicant's guilt. Plea Counsel testified that Applicant gave him several different versions of a self-defense story that he did not believe was very credible. Plea Counsel testified that he tried to explain self-defense and other options to Applicant, but he was very insistent about wanting to plead guilty.

Plea Counsel testified that he investigated the criminal background of the victim and spoke to officers about the case. He testified that Applicant never told him that he had any

A handwritten signature or set of initials, possibly "A. J. K.", written in black ink. The signature is stylized and somewhat illegible, with a large loop at the bottom.

mental condition. Plea Counsel stated that he never thought that Applicant did not understand something. He stated that Applicant acted the same at the guilty plea as he did during the evidentiary hearing. He testified that he did not recall Applicant taking any medications around the time of the guilty plea, and if he had known of any, Plea Counsel stated that he would have researched the medications.

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 his 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.



Plea Counsel testified at the hearing that he did investigate Applicant's case, but that Applicant always wanted to plead guilty to voluntary manslaughter instead of going to trial, so his efforts were focused on obtaining a plea deal. Plea Counsel credibly testified that Applicant never told him about any mental conditions or medications that he was taking before the guilty plea, and if he had, Plea Counsel would have investigated them further. Plea Counsel further stated that the State's evidence against Applicant was very strong, and included multiple confessions made by Applicant that would have been used against him at trial.

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 his representation and went above and beyond what was required of him. 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 interview any potential witnesses or investigate any mental condition that Applicant did not tell him about.

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. Applicant insisted from the moment he was charged with this crime that he wanted to plead guilty rather than go to trial. He faced charges of murder and burglary first degree if he had gone to trial, but instead he pled to the lesser included offense of voluntary manslaughter. Plea Counsel reviewed discovery with Applicant and explained to him that he did not have any defenses that would have been successful at trial, including self-defense. The State's evidence against Applicant included fingernail scrapings that matched Applicant's DNA, multiple witness statements placing Applicant at the scene of the crime, and, most

A handwritten signature in black ink, appearing to be the initials 'JG' followed by a stylized flourish.

importantly, several statements made by Applicant confessing his guilt and his desire to plead guilty. Even if Plea Counsel had interviewed the two witnesses who gave the statements Applicant presented at the hearing as Applicant alleged he should have, their interview would not have changed Applicant's decision to plead guilty. 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 his ineffectiveness prejudiced him, these allegations are 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-

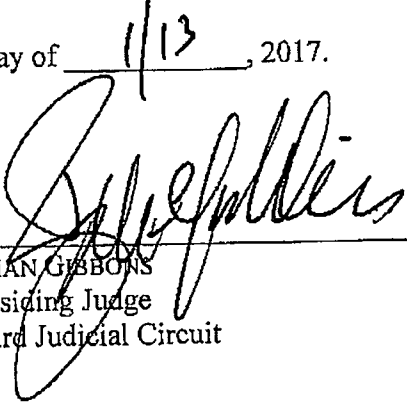


conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.


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 1/13, 2017.



BRIAN GIBBONS
Presiding Judge
Third Judicial Circuit


_____, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF

2016 JUN 29 13:10:07
CLERK OF COURT
SUMTER COUNTY, S.C.

IN THE COURT OF (Select one.)

COMMON PLEAS FAMILY COURT

JUDICIAL CIRCUIT

James Butler

CASE NO.: 2014-CP-43-1052

Plaintiff(s),

-vs-

APPOINTMENT OF COUNSEL OR GAL

(Select one.)

SC State of

ORDER

Defendant(s).

AMENDED ORDER

TYPE OF CASE/PROCEEDING: (Check one.)

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

It appears that ^{James Butler} James Butler, who is a litigant in this case, is entitled to court-appointed counsel or a guardian ad litem.

It further appears that: (Select only one.)

- counsel/guardian ad litem has not yet been appointed by the court; therefore, an appointment for counsel/guardian ad litem is necessary.
- counsel or a guardian ad litem 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 or guardian ad litem 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:
Lance Boozer
1331 Park St
Columbia, SC 29201

counsel lead counsel (if capital PCR case) guardian ad litem

Therefore, it is ordered that ^{Boozer} Boozer, hereby is appointed as (Select one.) for the above-named person. Any counsel or GAL previously appointed is/are hereby relieved.

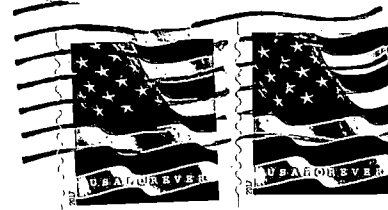
(If Death Penalty PCR Case) It is further ordered that _____, Esquire, is hereby appointed as second counsel in this capital PCR case.

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

IT IS SO ORDERED THIS 29 DAY OF June, 20 16.

THE BOOZER LAW FIRM, LLC

1400 Laurel Street, Suite 4A
Columbia, SC 29201



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