J. FALKNER WILKES

Attorney at Law

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May 23, 2017

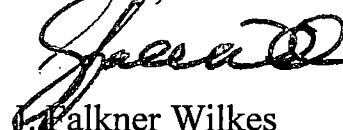
Hon. Daniel E. Shearouse, Clerk
Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211
via facsimile also to: (803) 734-1499

Re: Manuel Rashon Jeter, 322715 v. State of South Carolina,
2016-CP-42-200380

Dear Mr. Shearouse,

I represent Manuel Rashon Jeter in the above captioned case. I am enclosing a Notice of Appeal and Certificate of Service along with a copy of the order under appeal. My representation does not extend to the appeal of the case and, as Mr. Jeter is incarcerated, he will most likely qualify for the services of SCCID. I am by copy of this letter requesting that SCCID engage in representation in the case. I have provided Mr. Jeter with the appropriate application for indigent representation provided by SCCID as well as a postage prepaid envelope to SCCID. As I believe that he will qualify for services I will not order a transcript or take any further action unless notified by your office or SCCID to the contrary.

Sincerely,



J. Falkner Wilkes

Robert Michael Dudek
S.C. Commission on Indigent Defense
PO Box 11589
Columbia, SC 29211

Manuel Rashon Jeter, 322715
Lieber Correctional Institute
136 Wilborn Avenue
Ridgeville, SC 28472

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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

Court of Common Pleas, Spartanburg County
Honorable Robin B. Stillwell

Circuit Court Case No. 2016-CP-42-0380
Appellate Case No. _______________

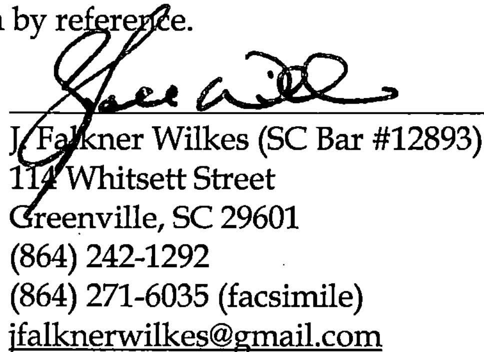
Manuel Rashon Jeter, #322715, ... Appellant,

v.

State of South Carolina, ... Respondent.

NOTICE OF APPEAL
(PCR CASE)

Appellant hereby appeals the judgment of the Court of Common Pleas dismissing his action for post conviction relief, **ORDER OF DISMISSAL** signed by the Honorable Robin B. Stillwell on April 19, 2017 and entered of record on April 24, 2017, which was received by Appellant's counsel on April 27, 2017. A copy of said Order is attached hereto and incorporated herein by reference.



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Counsel for Appellant

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S.C. SUPREME COURT

Other Counsel of Record:

Valerie Giovanoli, Esq.
Alicia Olive, Esq.
Office of the Attorney General
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(803) 734-4113 (fax)

Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In the Supreme Court

Court of Common Pleas, Spartanburg County
Honorable Robin B. Stillwell

Circuit Court Case No. 2016-CP-42-0380
Appellate Case No. ____________

Manuel Rashon Jeter, #322715, ... Appellant,

v.

State of South Carolina, ... Respondent.

CERTIFICATE OF SERVICE

I certify that on May 23, 2017, I served Appellant's notice of appeal and attached orders on the Respondent, and others if indicated, by placing a copy in the U.S. Mail, first class, postage prepaid, addressed as follows, and by electronic means if indicated:

Valerie Giovanoli, Esq.
Alicia Olive, Esq.
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
via facsimile also to: (803) 253-6283

Counsel for Respondent

Also to:

M. Hope Blackley
Clerk of Court
PO Box 3483
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Robert Michael Dudek
S.C. Commission on Indigent Defense
PO Box 11589
Columbia, SC 29211

Hon. Daniel E. Shearouse, Clerk
Supreme Court of South Carolina
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Respectfully submitted,

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Counsel for Appellant

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
) FOR THE SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG)

Manuel Rashon Jeter, #322715,)
) Case No.: 2016-CP-42-0380
Applicant,)
)
v.) **ORDER OF DISMISSAL WITH PREJUDICE**
)
State of South Carolina,)
)
Respondent.)

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This matter comes before the Court by way of an application for Post-Conviction Relief (PCR) filed January 25, 2016. Respondent made its Return on August 23, 2016. An evidentiary hearing into the matter was convened on March 24, 2017 at the Spartanburg County Courthouse. J. Falkner Wilkes, Esquire, represented Applicant. Valerie Garcia Giovanoli, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

At the hearing, Applicant testified on his own behalf. Applicant called Jackie Praylor and Tayvana Stinson as witnesses on his behalf. E. Joshua Shultz, Esquire, also testified. This Court had before it a copy of the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the PCR application, Respondent's Return and the transcript from Applicant's plea.

PROCEDURAL HISTORY

Manuel Rashon Jeter ("Applicant") is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Spartanburg County. Applicant was indicted at the February 2015 term of the Spartanburg County Grand Jury for trafficking cocaine 28–100 grams, second offense, (2015-GS-42-0384), assault on a police officer while resisting arrest, (2015-GS-42-0385), and possession of cocaine

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base (2015-GS-42-0475). E. Joshua Schultz, Esquire (Counsel), represented Applicant. On April 1, 2015, Applicant pleaded guilty as indicted before the Honorable J. Derham Cole. Pursuant to the State's recommended cap of 20 years on all charges, Judge Cole sentenced Applicant to imprisonment for concurrent terms of 15 years for trafficking cocaine, 10 years for assaulting an officer while resisting arrest, and five years for possession of a cocaine base. Applicant did not appeal his conviction or sentence.

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

1. "Ineffective Assistance of Counsel," in that:
   a. Counsel failed to investigate and discover the existence of the #07-0242-14 incident report
      i. Applicant's vehicle was stopped on the basis that Tayvona Stinson had made a police report implicating Applicant in a domestic assault upon her.
      ii. Police pulled Applicant over, detained and attempted to arrest Applicant, based on drugs that were discovered during this stop. After review of evidence rules with counsel, Applicant made a decision based upon the evidence to plead guilty to the offense to 15 years.
      iii. Upon incarceration Applicant discovered incident report #07-0242-14 that stated Tayvona Stinson did not contact police until some 12 minutes after Applicant was detained and police did not come into contact with Stinson until some 20 minutes after Applicant was arrested.
      iv. "As a direct result of counsel's failure to Investigate/State failure to disclose- the #07-0242014 incident report, the guilty/plea was involuntary
      v. "As the #07-0242014 incident report provides evidence that the reasons for the initial stop were a product of fabrication by police and this the initial stop was not support by probable cause or reasonable suspicion, but rather police used a post hoc- Rationalization to justify an illegal stop and arrest
      vi. "Had applicant been aware of the #07-0242-14 incident report, he could have made a cogent argument to suppress the fruit of illegal stop/arrest as fruit of the poisonous tree and not have pleaded guilty

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vii. "Gibson v State, 513 S.E.2d 320 (1999), Held that State's failure to provide evidence favorable to accused and material to guilt or innocence can render the guilty plea involuntary

viii. "Ard v. Catoe sets forth the standard of counsel duty to investigate the case

b. Counsel failed to move to suppress evidence

c. Counsel failed to secure or subpoena witnesses

i. Counsel should have subpoenaed or called six witnesses whose testimony would have corroborated that someone else committed the crimes Applicant was charged with.

d. "This case sets forth a violation of 4th, 5th, 6th, and 14th amendment of the U.S. Constitution

2. "Prosecutorial Misconduct"

a. "The State failed to disclose the contents of the #07-0242-14 incident report, which was material to Applicant's decision to plead guilty

b. "The State's failure to disclose Tayvona Stinson's #07-0242-14 incident report rendered Applicant's decision to plead guilty, involuntary and counsel, alternatively, should have investigated and discovered this incident report and pursuant, to Ward v. Dretke, 420 F.3d 476, 488 (5th 2005) counsel should have made a motion to suppress the drugs based upon the facts contained in the incident report."

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SUMMARY OF TESTIMONY

Applicant testified to the following:

Applicant first met Counsel while he was in the County Jail. He met with Counsel four times, which included an initial meeting, two bond motions, and one meeting to prepare for trial. On April 1, 2015, Counsel met with Applicant and informed him that he was going to trial after lunch that day. However, Counsel did not subpoena witnesses on behalf of Applicant for that day. No one had ever mentioned trial to Applicant until the day of trial. Because Applicant was dressed in his jail uniform, Counsel told Applicant's aunt to bring clothes for trial. Counsel was unprepared for trial, but prepared to have Applicant plead guilty. Applicant claims he ended up in front of the judge to plead guilty although he insisted he was not guilty.

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Applicant wanted Counsel to pursue a motion to suppress based on an unlawful traffic stop. After Applicant reviewed the discovery in his case, he determined the reports from an unrelated incident contradicted the investigative reports in his case. The unrelated case involved a domestic dispute to which police responded. According to the police report, the victim told the investigating officer that her assailant was in a green Honda. Applicant was the passenger of a green Chevy Malibu when they were stopped. The officers who stopped Applicant's car claimed they were stopping the car as part of the investigation of the unrelated domestic dispute. Applicant believes the officers stopped the wrong car and had no reason to stop the car in which he was a passenger. The victim of the unrelated domestic dispute refused to give a statement to police. Applicant did not know the victim.

Despite believing he had a valid defense against the charges, Applicant did not stop the plea hearing because he did not fully know. During a brief pause in the proceeding, indicated on page 7, line 20 of the guilty plea transcript, Applicant testified that he asked Counsel why Counsel was making him plea. Counsel promised him seven years on house arrest. Applicant also had two other pending charges and Counsel advised him that he could be subject to a life sentence based on the number of strikes against him. Applicant claimed that had the witnesses been called by Counsel, he would not have pled, but would have instead gone to trial.

<u>Jackie Praylor (Praylor) testified to the following:</u>

Applicant is Praylor's nephew. She received a call from Counsel at 9:30am the day of trial, requesting that she bring suitable clothes for Applicant to wear for court. Praylor brought Applicant's clothes, as requested. Counsel did not tell her why Applicant was going to court.

<u>Tayvana Stinson (Stinson) testified to the following:</u>

The same day Applicant was arrested, Stinson had an altercation with her boyfriend which resulted in him dragging her from a car. Stinson called 911 and a female officer responded. Stinson told the officer her boyfriend was in a green Honda. She then pointed to another green vehicle that was not the vehicle that her boyfriend was in, and said, "like that!" Stinson did not ever tell the officer her boyfriend was in a Chevy Malibu.

Counsel testified to the following:

Counsel has been practicing criminal law since 2005. He represented Applicant on his criminal charges and recalled meeting with Applicant six to seven times. Counsel received the discovery in this case, including the investigative reports, and reviewed all the discovery with Applicant during the meetings. Counsel remembered Counsel admitted that the week Applicant's case was called to trial was a busy week for him and he was not expecting Applicant's case to be called for trial. Although surprised, Counsel did not request a continuance. Counsel testified that had they proceeded to trial and was unprepared, he would have requested a continuance. Counsel did not subpoena witnesses the day of the trial because they did not have any witnesses they intended to call in Applicant's defense.

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Counsel had considered a motion to suppress in this case, based on an unlawful stop. Upon investigation, however, Counsel learned that although the officers were looking for a suspect in a different car, that the victim in the unrelated case, pointed out the car in which Applicant was a passenger and stated that it was the car. Counsel believed that the motion would not have been successful and therefore advised Applicant that it was in his best interest to plead guilty. Counsel negotiated with the State on Applicant's behalf and got the state to recommend a cap of twenty years. Counsel advised Applicant of his constitutional right to a jury trial and advised him that the decision to plead guilty was his alone. Applicant, based upon his advice,

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made the decision to plead guilty. Counsel also discussed the possible penalties for his charges. Counsel never promised Applicant home detention, but told him he would ask the Judge for a home detention sentence, which he did.

APPLICABLE LAW

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), SCRCP). 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).

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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).

Involuntary 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 Boykin 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).

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 counsel'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).

Prosecutorial Misconduct

Applicant also alleges prosecutorial misconduct. Prosecutorial misconduct is not an issue for post-conviction relief. Rather, this allegation is a direct appeal issue that is procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). Regardless, it is applicant's burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989).

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).

This Court finds 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 in this case. The record indicates that Counsel advised Applicant of all of the charges and the possible sentences the charges carried. This Court further finds that Applicant was fully aware of his rights and those rights that he was waiving. The record also shows that Applicant and his Counsel reviewed discovery and discussed potential defenses. The thorough colloquy by the plea court shows Applicant knew that he was waiving the right to present any defense by pleading guilty. This Court finds Applicant made the decision to plead guilty on his own accord upon the sound advice of learned counsel. Additionally, this Court finds the transcript of record includes a very thorough colloquy by the Court that indicates Applicant made this decision freely and voluntarily without any undue pressure or coercion.

This Court finds Counsel's testimony with regard to fully reviewing all of the discovery with Applicant to be credible, while finding Applicant's claim that he was not aware of some of the discovery to be not credible. The record is clear that during the plea hearing, Counsel indicated that he was aware of a "very compelling" issue to present at pretrial, but that he believed it would ultimately be an unsuccessful argument. Applicant was also present at this plea hearing and did not rebut anything put forth to the plea court by Counsel. Applicant voluntarily waived any suppression hearing by and through a free and voluntary plea. This Court finds that Counsel conducted a thorough investigation of the case and reviewed all of the discovery with Applicant.

This Court recognizes that any defendant is nervous and under pressure during a court proceeding. However, there is no precedent for overturning a conviction or a guilty plea because a party to the action was nervous or under pressure. This Court is reluctant to second-guess a thorough trial court proceeding in favor of self-serving testimony by a PCR Applicant.

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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.

With regard to the allegation of prosecutorial misconduct, this Court finds the claim is not appropriate for PCR. Regardless, Applicant has failed to prove actual prosecutorial misconduct. Having not carried his burden to prove actual prosecutorial misconduct, the allegation is denied and dismissed with prejudice.

CONCLUSION

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Based on all the foregoing, this Court finds and concludes that 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 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), SCRCP, provides that if the applicant wishes to seek appellate

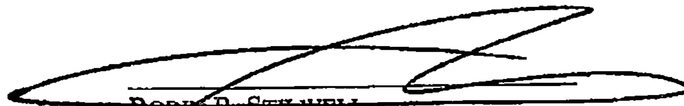
review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

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 9 day of April, 2017.



ROBIN B. STILWELL
Presiding Judge
Seventh Judicial Circuit

[illegible], South Carolina

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M. Hope Blackley
Clerk of Court

April 24, 2017

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS

Manuel Ramon Jolly #332715
Applicant

7TH JUDICIAL CIRCUIT

CASE # 2016CP42-380

vs
State
Respondent

CERTIFICATE OF SERVICE

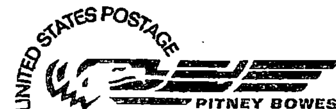
I certify that, on this date, I served a copy of the Order of Dismissal
In this action dated 4-15 2017 on 4-24-17

By mailing to him/her, at his/her last known address, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

Ashley Hamworth
Alicia Olive
J. Fontaine Wilkes

4-24-17
(Date)

Carrie [signature]
(Signature)



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