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May 26, 2017

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

RECEIVED

MAY 30 2017

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

S.C. SUPREME COURT

**RE: Anthony Robinson, #322734, v. State of South Carolina
2015-CP-45-438**

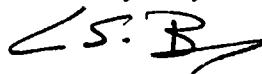
Dear Mr. Shearouse and Ms. Staggers:

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

Yours very truly,



Lance S. Boozer

Enclosures

cc: Julie Coleman, AAG
Loriene French, OAD
Anthony Robinson, #322734

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM WILLIAMSBURG COUNTY
Court of Common Pleas

The Honorable Brian Gibbons, Circuit Court Judge

RECEIVED

MAY 30 2017

Case No. 2015-CP-45-438

S.C. SUPREME COURT

Anthony Robinson, #322734,Petitioner,

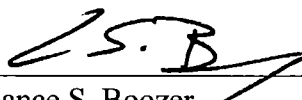
v.

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

NOTICE OF APPEAL

The Petitioner appeals the Honorable Brian Gibbons's Order dated April 25, 2017, and filed May 4, 2017, denying post-conviction relief to the Petitioner and received by undersigned counsel on May 26, 2017. A copy of the Order on appeal is attached to this notice.

Respectfully submitted,



Lance S. Boozer
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May 26, 2017

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM WILLIAMSBURG COUNTY
Court of Common Pleas

The Honorable Brian Gibbons, Circuit Court Judge

Case No. 2015-CP-45-438

RECEIVED

MAY 30 2017

S.C. SUPREME COURT

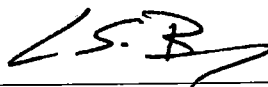
Anthony Robinson, #322734,Petitioner,

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 26th day of May, 2017.



Lance S. Boozer
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STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

Anthony Robinson, #322734,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

2015-CP-45-438

ORDER OF DISMISSAL

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This matter comes before the Court by way of a post-conviction relief (PCR) application filed on September 2, 2015. Respondent submitted its Return on January 27, 2016. An evidentiary hearing into the matter 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

The records before this Court indicate that 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 July 2014 term of the Williamsburg County Grand Jury for threatening life, person, or family of public official (2014-GS-45-0222) and two counts of throwing bodily fluids by prisoner (2014-GS-45-0223; -0224). Julie M. Shivers, Esquire represented Applicant. On May 21, 2015, Applicant pled guilty to threatening a public official before the Honorable Kristi L. Harrington. The other two charges were dismissed. Judge Harrington sentenced Applicant to five years running concurrently to his previous charges from Darlington County. 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 for the following reasons:

1. Ineffective assistance of counsel
 - a. Failing to move to dismiss the indictments.

III. SUMMARY OF RELEVANT TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified that he was served an arrest warrant on October 4, 2012 and on June 20, 2013, and he was indicted on these charges later. He stated that he met with Plea Counsel for the first time at the guilty plea. Applicant testified that he and Plea Counsel wrote letters to each other, but they never spoke on the phone. He stated that he did not see his discovery until after he pled guilty because his civil mail was withheld at the prison.

Applicant testified that a Supreme Court Administrative Order reads that criminal cases must be prosecuted within 365 days. Since his case had been pending longer than 365 days, Applicant opined that his charges should have been thrown out. Applicant testified that he told Plea Counsel about this Order, but she did not take it seriously. Applicant stated that Plea Counsel should have pursued this argument against his charges.

Applicant testified that he wanted to challenge the handwriting analysis in his Rule 5 materials, because he did not believe that his handwriting matched the threatening letter that the State alleged he sent to a public official. He stated that he told Plea Counsel that he wanted to challenge this evidence before the guilty plea, before they even had discovery. He stated that he never reviewed the threatening letter with Plea Counsel.

Plea Counsel testified at the evidentiary hearing that they were set to pick a jury for a trial on these charges, but the State extended a plea offer and offered to drop two of the charges, so they accepted the plea deal. She stated that her trial strategy was the challenge the letter, but she



stated that she never got Applicant's handwriting sample. Plea Counsel stated that she filed a pre-trial motion to suppress the letter based on handwriting.

Plea Counsel testified that Applicant mentioned the Supreme Court Administrative Order to her in February of 2015, but it was not applicable because Applicant wanted a trial, so they scheduled a trial as quickly as possible. She testified that she spoke with Applicant on the phone in May, but he never told her that he did not receive his discovery in the mail. She stated that she was not aware that Applicant did not have his discovery until the day of the plea, and as soon as she found out, she gave him a copy of the Rule 5 materials.

Plea Counsel testified that her regular practice is to go over a client's rights before a guilty plea, and she went over the acknowledgment of rights given up by pleading guilty form with Applicant before he pled. She stated that she saw no legal reason to move to dismiss Applicant's indictments because such a motion would not be successful.

IV. APPLICABLE LAW

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). 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, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

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, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant must



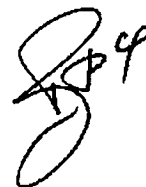
overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. 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 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).

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 alleges Counsel was ineffective in her advice 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)). 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).

Applicant has failed to meet his burden in proving Plea Counsel was ineffective in any regard. This Court finds that Plea Counsel properly relayed the State's plea negotiations and went over the discovery with Applicant, as well as fully explained the possible outcomes in sentencing. This Court further finds that Plea Counsel was not ineffective for failing to challenge the indictments, as any challenge to them would not have been successful. The record and the testimony clearly show that Plea Counsel represented Applicant well within the standards of professional norms.

Furthermore, this Court finds that Applicant has not shown that he was prejudiced by any of Plea Counsel's actions as he has failed to show that he would not have pled guilty but would have gone to trial but for Plea Counsel's actions. Accordingly this allegation must be dismissed.

Because Applicant has failed to meet his burden of proof for both prongs on the Strickland test, this allegation is denied and dismissed with prejudice.

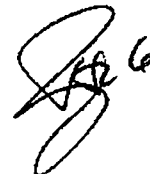
ADMINISTRATIVE ORDER

This Court finds that Applicant's allegation regarding Plea Counsel's failure to challenge his indictments under a Supreme Court Administrative Order is meritless. Any such challenge to his indictments would have been unsuccessful. Furthermore, Applicant waived his right to make this challenge when he pled guilty to the crime.

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 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

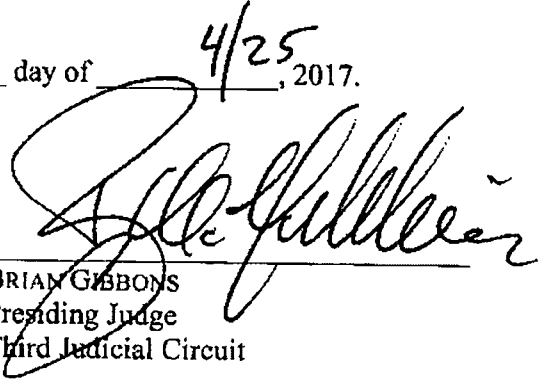
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.


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), 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 4/25, 2017.


BRIAN GIBBONS
Presiding Judge
Third Judicial Circuit


_____, South Carolina

STATE OF SOUTH CAROLINA

County of Williamsburg

Anthony Q Robinson §

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- 438

To: Lance 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 Anthony Q Robinson, the Petitioner, in this action.

This 23rd day of December, 2015.

Shawn W. Stagers
Judge/Clerk of Court

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