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RECEIVED

JUN 02 2017

May 27, 2017

S.C. SUPREME COURT

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

Re.: David Pate v. State
2015-CP-29-01379

Dear Clerk Shearouse:

Please find enclosed the following documents in reference to the above listed case:

- 1- Notice of Appeal
- 2- Proof of service
- 3- Order Denying PCR Relief

Thank you and please feel free to contact me with any additional questions or concerns. Please note that I have also sent all of this information to the South Carolina Commission on Indigent Defense and have asked them to handle this appeal from here forward.

Sincerely Yours,

Nathan Sheldon
The Law Office of Nathan J. Sheldon

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

W. Jeffrey Young, Circuit Court Judge

Case No. 2015-CP-29-01379

State of South Carolina,

Respondent,

v.

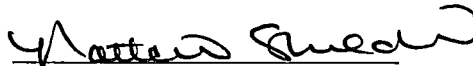
David Adam Pate,

Applicant.

NOTICE OF APPEAL

David Adam Pate appeals the order of the Honorable W. Jeffrey Young dated May 10, 2017 denying his request for post-conviction relief. Applicant received written notice of entry of this order on May 18, 2017.

May 30, 2017



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Other Counsel of Record:
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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM LANCASTER COUNTY JUN 02 2017
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W. Jeffrey Young, Circuit Court Judge

Case No. 2015-CP-29-01379

State of South Carolina,

Respondent,

v.

David Adam Pate,

Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on DeShawn Mitchell with the Attorney General's Office by depositing a copy of it in the United States Mail, postage prepaid, on May 30, 2017 mailed to Post Office Box 11549, Columbia, South Carolina 29211-1549.

May 30, 2017



Nathan Sheldon
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Attorney for Appellant

STATE OF SOUTH CAROLINA

COUNTY OF LANCASTER

David Adam Pate,
S.C.D.C. No. 341659

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS

) SIXTH JUDICIAL CIRCUIT

) C.A. No. 2015-CP-29-1379

ORDER OF DISMISSAL
(with prejudice)

RECEIVED
JUN 02 2017

S.C. SUPREME COURT

CLERK OF COURT
LANCASTER, SC

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OF COURT
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This matter comes before the Court by way of a post-conviction relief (PCR) application filed on October 6, 2015. Respondent subsequently filed its responsive pleadings. An evidentiary hearing into the matter was convened on January 11, 2017, at the Lancaster County Courthouse. The Applicant was present and testified in his defense. The Applicant's plea counsel, Michael H. Lifsey, Esquire, also testified. The Applicant was represented by Nathan J. Sheldon, Esquire. Respondent was represented by Patrick Schmeckpeper, Esquire, of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Lancaster County Clerk of Court's orders of commitment. Applicant was indicted at the February 2014 term of the Lancaster County Grand Jury for murder (2014-GS-29-221). Applicant was represented by Michael H. Lifsey, Esquire. On April 9, 2015, Applicant pled guilty as indicted. The Honorable Daniel D. Hall sentenced Applicant to a term of life imprisonment. Applicant did not appeal his sentence or conviction.



Allegations

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

1. Ineffective assistance of counsel, in that:
 - a. Counsel failed to conduct a reasonable investigation
 - i. Which rendered the applicant's plea of guilty not knowingly, voluntarily, or intelligently mad
 - b. Counsel advised applicant to plead guilty when counsel did not have any of the discovery material
 - c. "Counsel also hoodwinked the applicant in believing that he would receive 35 year sentence if he plead guilty"

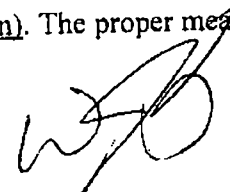
At the evidentiary hearing, the Applicant proceeded solely on the allegation that counsel was ineffective in advising him that he would not receive a life sentence if he pled guilty.

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 guilty pleas, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the transcripts and documents from the prior proceedings, and the legal arguments of counsel. Pursuant to S.C. Code Ann. §17-27-80 (2015), this Court has made the following findings of fact and conclusions of law based upon all of the probative evidence presented.

Ineffective Assistance of Counsel

A two-pronged test is used 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 v. State, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland v. Washington). The proper measure

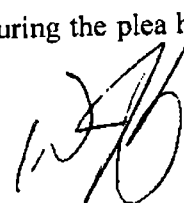


of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland v. Washington. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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. Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). In other words, where ineffective assistance of counsel is alleged as a ground for relief, the Petitioner 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). With respect to guilty plea counsel, 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, 88 L.Ed. 2d 203 (1985).

Advice Regarding Sentencing

The Applicant alleged counsel was ineffective in advising him that the judge he had picked would most likely not give him a life sentence. This Court finds he has failed to meet his burden. The Applicant testified that his attorney did not guarantee any specific outcome, but thought the judge would not give him a life sentence. Counsel testified at the evidentiary hearing that he conveyed to the Applicant that life was a very real possibility. During the plea hearing,



the Applicant acknowledged that murder carried a minimum sentence of thirty years and a maximum sentence of life. Tr. p. 10.

Inasmuch as the Applicant testified that his attorney guaranteed him a specific sentence, this Court finds he is not credible. This Court finds counsel's contrary testimony – that he conveyed the very real possibility of a life sentence – to be credible. Regardless, even if counsel inappropriately guaranteed the Applicant that he would not be sentenced to life imprisonment, “any possible misconceptions on [the Applicant's] part were cured by the colloquy during the actual guilty plea hearing,” where the judge “asked [the Applicant] about the range of sentences.” Wolfe v. State, 326 S.C. 158, 485 S.E.2d 367 (1997). The Applicant also told the guilty plea judge he had not been promised anything to get him to plead guilty. Tr. p. 15. Because the Applicant has not presented any reliable evidence in support of his allegation, this Court finds he has failed to meet his burden. This allegation is therefore denied.

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.

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

CONCLUSION

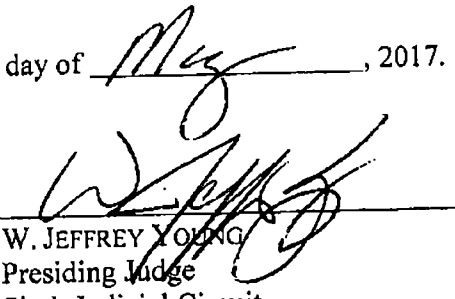
Based on the foregoing, this Court finds that the Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of intent to appeal within thirty (30) days from receipt of this Order to secure the appropriate appellate review. See Rule 203, SCACR. Rule 71.1(g), SCRCP; Bray v. State, 336 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant's counsel to file and serve notice of appeal. The Applicant's attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely filed.

IT IS THEREFORE ORDERED

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 10 day of May, 2017.


W. JEFFREY YOUNG
Presiding Judge
Sixth Judicial Circuit

Sumter, South Carolina