

Lowcountry Law Office

4000 Faber Place Drive, Suite 300
Charleston, SC 29405
Phone: 843-323-4353 Fax: 843-323-4101
E-Mail: Davis@LowcountryLawOffice.com

July 31, 2017

RECEIVED

AUG 02 2017

S.C. SUPREME COURT

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

RE: Damon Brown v. State of South Carolina, Case #: 2015-CP-08-1033

Dear Mr. Shearhouse:

Enclosed for filing is the Notice of Appeal (original and clocked copy) in the above Post-Conviction Relief (PCR) case. Also enclosed are the following:

- (1) Proof of service of the Notice of Appeal on the Respondent;
- (2) The Order of Dismissal &
- (3) A Request for Representation on Appeal.

The Applicant-Appellant was represented by me as an indigent pursuant to my contract with the South Carolina Commission on Indigent Defense (SCCID) to handle PCR cases. By copy of this letter, I am forwarding a duplicate set of documents to the SCCID.

The Request for Representation on Appeal and the Affidavit in Support thereof are signed by me as attorney for Applicant-Appellant. If you need anything further, do not hesitate to contact me. Thank you for your time and attention to this matter.

Sincerely,



Rodney D. Davis
South Carolina Bar #: 12396
4000 Faber Place Drive, Suite 300
Charleston, SC 29405
(843) 323-4353
Davis@LowcountryLawOffice.com

~~Enclosures: As stated above.~~
RDD/mmt

cc: Ruston W. Neely, Assistant Attorney General
Kimberly McCall, Appellate Division, SCCID

RECEIVED

AUG 02 2017

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

The Honorable G. Thomas Cooper, Jr.

Case #: 2015-CP-08-1003

NOTICE OF APPEAL

Damon Brown appeals the denial of his Post Conviction Relief application in this case. The Application for relief was denied, following an evidentiary hearing before the Honorable G. Thomas Cooper, Jr., on December 9, 2016.

July 20, 2017



Rodney D. Davis
400 Faber Place Drive, Suite 300
Charleston, SC 29405
(843) 323-4353
Davis@LowcountryLawOffice.com
Attorney for Appellant

Other Counsel of Record:
Ruston Neely, Assistant Attorney General
Office of the Attorney General, State of South Carolina
P.O. Box 11549
Columbia, SC 29211-1549
Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

AUG 02 2017

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

S.C. SUPREME COURT

The Honorable G. Thomas Cooper, Jr.

Case #: 2014-CP-08-1003

Damon Brown,

Appellant.

v.

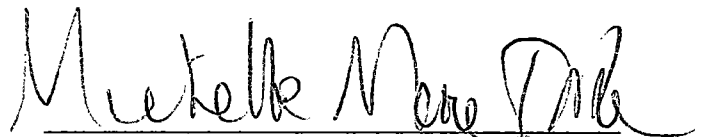
State of South Carolina,

Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the State by mailing a copy, via US Mail, to the address of record, Ruston W. Neely, P.O. Box 11549, Columbia, South Carolina 29211-1549, on July 22, 2017.

July 22, 2017



Michelle Moore Trimble
Paralegal to Rodney D. Davis
400 Faber Place Drive, Suite 300
Charleston, SC 29405
(843) 323-4353
Davis@LowcountryLawOffice.com
Attorney for Appellant

Other Counsel of Record:
Ruston W. Neely, Assistant Attorney General
Office of the Attorney General, State of South Carolina
P.O. Box 11549
Columbia, SC 29211-1549
Attorney for Respondent

STATE OF SOUTH CAROLINA) IN THE SUPREME COURT OF SOUTH CAROLINA
)
 COUNTY OF BERKELEY) Case #: 2015-CP-08-1003
)
)
 DAMON BROWN,)
)
 Applicant.) REQUEST FOR REPRESENTATION ON APPEAL
)
 -versus-)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent.)

On behalf of the request of the above-named Applicant, to be represented by the South Carolina Commission of Indigent Defense, Appellate Division (SCCID), the undersigned attorney would show unto this Honorable Court that:

1. He is the attorney for the Applicant-Appellant in the above-captioned case. The Applicant-Appellant was in custody during and taken into custody immediately following the Post Conviction Relief (PCR) hearing and was not available to personally sign this request;
2. The Applicant-Appellant was represented by the undersigned attorney as an indigent, pursuant to a contract with the SCCID;
3. The Applicant-Appellant has been informed that he may request assistance from the SCCID Appellate Division in perfecting his appeal;
4. A timely Notice of Intent to Appeal has been filed on the Applicant-Appellant's behalf;
5. The Applicant-Appellant has been informed that nothing requires SCCID Appellate Division to pursue this appeal unless that office's Chief Attorney is satisfied that there is arguable merit to this appeal and that he cannot afford to hire an attorney.

At this time, the Applicant-Appellant requests the aid of the SCCID Appellate Division in perfecting his appeal to the South Carolina Court of Appeals.

Respectfully Submitted,



 Rodney D. Davis
 South Carolina Bar #: 12396

Charleston, South Carolina.
7/20, 2017



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July 31, 2017

Kimberly McCall
South Carolina Commission on Indigent Defense
P.O. Box 11433
Columbia, SC 29211-1433

RE: Damon Brown v. State of South Carolina, Case #: 2015-CP-08-1033

Dear Ms. McCall:

Enclosed is a duplicate set of Appeal documents that I have forwarded to the Clerk of the Supreme Court concerning the above-listed Post Conviction Relief (PCR) case. I was appointed to the PCR case pursuant to a contract that I have with your office. I have requested that your office assume the appeal of this case.

Should you need anything further, please do not hesitate to contact me.

Thank you for your time and attention to this matter.

Sincerely,



Rodney D. Davis
South Carolina Bar #: 12396
4000 Faber Place Drive, Suite 300
Charleston, SC 29405
(843) 323-4353
Davis@LowcountryLawOffice.com

Enclosure(s). As stated above.
RDD/mmt

cc: Damon Brown (with enclosures)



Lowcountry Law Office

4000 Faber Place Drive, Suite 300

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E-Mail: Davis@LowcountryLawOffice.com

July 22, 2017

Ruston W. Neely
Assistant Attorney General
Office of the Attorney General
State of South Carolina
P.O. Box 11549
Columbia, SC 29211-1549

RE: Damon Brown v. State of South Carolina; Case #: 2014-CP-08-1003

Dear Mr. Neely:

Enclosed is a duplicate set of Appeal documents that I have forwarded to the Clerk of the Supreme Court of South Carolina concerning the above-listed Post Conviction Relief (PCR) case.

Should you need anything further, please do not hesitate to contact me.

Thank you for your time and attention to this matter.

Sincerely,



Rodney D. Davis
South Carolina Bar #: 12396
4000 Faber Place Drive, Suite 300
Charleston, SC 29405
(843) 323-4353
Davis@LowcountryLawOffice.com

Enclosures. As stated above.
RDD/mmt

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BERKELEY)
)
 Damon Brown, #357300)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE NINTH JUDICIAL CIRCUIT

Case No. 2014-CP-08-1008

ORDER OF DISMISSAL

MARY P. BROWN
 CLERK OF COURT
 BERKELEY COUNTY, S.C.

2017 JUN 12 PM 2:48

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 FILED

This Court convened an evidentiary hearing into this matter on December 9, 2016, at the Berkeley County Courthouse. Applicant was present at the hearing and represented by Rodney Davis, Esquire. Ruston W. Neely, Esquire, of the South Carolina Attorney General’s Office, represented Respondent. Applicant’s plea counsel, Steve Davis, Esquire (“Counsel”), was present and testified. This Court had the opportunity to listen to the testimony of Applicant and counsel. This Court had before it a copy of the plea transcript, the records of the Berkeley County Clerk of Court regarding the subject conviction, Applicant’s records from the South Carolina Department of Corrections, and the pleadings in this matter. This Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Berkeley County Clerk of Court. Applicant was indicted at the June 2012 term of the Berkeley County Grand Jury for trafficking cocaine base, third offense 10-28g (2012-GS-08-1108) and distribution of cocaine (2012-GS-08-1107).

After being charged, Applicant hired Eduardo Curry to represent him. Curry negotiated a plea deal for Applicant of fifteen years’ incarceration to the lesse-included offense of trafficking cocaine base second offense. During that first plea proceeding, Applicant withdrew from the plea

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and hired Steve Davis, who told Applicant he thought Applicant would get less than fifteen years incarceration on a straight up plea.

On October 3, 2013, the Applicant pled guilty with Steve Davis as his attorney. The Honorable R. Markley Dennis sentenced the Applicant to confinement for a period of fourteen years. The Applicant did not appeal his convictions or sentences.

II. ALLEGATIONS

Applicant alleged the following grounds in his original application:

1. Ineffective assistance of counsel.
 - a. Failure to move to withdraw the guilty plea and unkempt plea.
 - b. Failure to object to the prosecutor's statement.

III. SUMMARY OF FACTS

On March 20, 2012, law enforcement utilized a confidential informant, equipped with audio and video recording equipment, to purchase 1.2 grams of cocaine from Applicant. Law enforcement obtained warrants based on that drug purchase. During surveillance of Applicant's residence, law enforcement saw Applicant get into his vehicle. Based on Applicant's warrant, law enforcement stopped the vehicle and arrested Applicant. Pursuant Applicant's arrest, law enforcement conducted a search of the vehicle he was in and found 14.9 grams of cocaine in the vehicle. Applicant's criminal history contained multiple drug convictions including two counts of distribution of cocaine base (2008-GS08-0727 and 2008-GS08-0728) and possession of cocaine (2006-GS08-1308).

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court finds the record fully supports the knowing and voluntary nature of Applicant's guilty plea. In addition, Applicant has presented no evidence or valid reasons why he should be allowed to depart from the truth of his statements made at the plea. See Dalton v.

 2

State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007). (“[Admissions] made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements.”) Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984). The proper measure of performance is whether plea counsel provided representation within the range of competence required in criminal cases. Id.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel’s performance was deficient. Id. Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. 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.

This Court reviewed the record in its entirety, listened to the testimony given, and heard the arguments presented at the evidentiary 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. This Court finds counsel's testimony was credible and persuasive and Applicant's testimony lacked credibility. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

A. Ineffective Assistance of Counsel

This Court finds that Applicant has failed to satisfy his burden to prove that counsel was deficient or that he was prejudiced by counsel's alleged deficiencies. Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The Court strongly presumes counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63. 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. Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

Here, counsel articulated valid reasons for his recommendation to Applicant that he plead guilty. Counsel reasonably explained the steps he undertook to mitigate Applicant's sentence and the discussions they had concerning the consequences of his choices. For the reasons set out below, this Court finds counsel was not ineffective.



1. Advice to Plead Guilty

Based on the evidence the State had against him and his conversations with Applicant, counsel advised Applicant that he should plead guilty. The evidence against Applicant was overwhelming. Law enforcement used a confidential informant, equipped with audio and video recording equipment, to purchase 1.2 grams of cocaine from Applicant. Law enforcement then arrested Applicant in his vehicle and, pursuant to that arrest, found 14.9 grams of cocaine in his vehicle.

Applicant attempted to plead guilty with Eduardo Curry as his attorney before withdrawing during the plea proceedings. Curry obtained a plea deal for Applicant for a recommendation of 15 years' incarceration. Applicant testified he was willing to plead guilty at that first plea proceeding, but believed he could obtain a better plea deal with a different attorney. "A defendant who pleads guilty upon the advice of counsel may attack the voluntary and intelligent character of the guilty plea only by showing the advice he received from counsel was not within the there is a reasonable probability that, but for counsel's alleged error, he would not have pleaded range of competence demanded of attorneys in criminal cases." Carter v. State, 329 S.C. 355, 495 S.E.2d 773 (1998). Applicant's testimony indicated he did not intend to insist on a trial, but rather sought to obtain the best possible plea deal.

After Applicant withdrew from that plea proceeding, Applicant's family dismissed Eduardo Curry from representing Applicant and hired counsel. Counsel's understanding of the situation was he was hired in order to negotiate Applicant a better plea deal. Counsel advised Applicant that mitigation was his best chance at a shorter sentence. Counsel told Applicant he believed Applicant would receive less than 15 years if he pleaded straight up and focused on mitigation. Applicant did plead guilty straight up and, after counsel's mitigation, was sentenced

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to 14 years. Thus, counsel's advice was accurate because Applicant received 1 year less than the original plea deal. This Court finds Applicant has failed to meet his burden to prove counsel's advice was deficient. This Court finds counsel's advice was within the range of competence required of an attorney.

Applicant testified that he understood he was pleading straight up to Trafficking Cocaine Base 2nd offense and understood the potential sentence and collateral consequences he was facing. "The longstanding test for determining the validity of a guilty plea is 'whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant.'" Holden v. State, 393 S.C. 565, 573, 713 S.E.2d 611, 615 (2011). Applicant was a sophisticated defendant. As indicated by Applicant's record, he had been through serious criminal procedures before. Applicant understood the options available to him and chose to plead guilty to a lesser charge rather than proceeding to trial. This Court finds Applicant understood the consequences of pleading guilty and that he pleaded guilty freely, voluntarily, and knowingly. This Court finds there was no reasonable probability that Applicant would have insisted on a trial, but for counsel's advice.

This Court finds that Applicant failed to satisfy his burden to prove that counsel's advice was deficient. Counsel's advice was accurate and his representation was within the range of competence demanded of attorneys. Applicant also failed to prove he was prejudiced by the alleged deficiency. Applicant received the benefit he sought; he received a lesser sentence with counsel as his new attorney. Accordingly, Applicant has failed to satisfy his burden to prove ineffective assistance of counsel with regard to this allegation. Therefore, this allegation is denied and dismissed.



2. Sentence Reduction

Counsel correctly advised Applicant the State's plea deal was a reduction of his trafficking charge from a third offense to a second offense. Applicant alleged this advice is erroneous because he was originally charged with a second offense. The record does not support this contention and the Court finds this argument is without merit. Here, counsel advised Applicant the plea deal was a reduction in the charge from a third offense to a second offense of trafficking cocaine base and that the plea was straight up, without recommendation or negotiation. The record supports the accuracy of counsel's advice.

As required by S.C. Code Ann. §44-53-460 for enhancement to a third offense, Applicant had at least two prior qualifying drug offenses, shown by indictments 2006-GS08-1308 and 2008-GS08-0727. Per the statute, Applicant's record showed the charge was for a third offense of Trafficking Cocaine Base. As part of Applicant's plea bargain, the State allowed him to plead guilty to the lesser included second offense. The plea judge went over the complete colloquy with Applicant. Applicant knew the charge and sentence range to which he was pleading. Applicant pleaded guilty to Trafficking Cocaine Base 2nd offense without a recommendation or negotiation and received 14 years' incarceration. "[He] received the benefit of the agreement for which he bargained and cannot now complain." Rollison v. State, 346 S.C. 506, 511-12, 552 S.E.2d 290, 293 (2001).

Therefore, this Court finds Counsel's advice was not erroneous. Counsel advised Applicant the plea deal was for a reduction in charge from a 3rd offense of Trafficking Cocaine Base to a 2nd offense and the record proves this advice was correct. This Court finds Applicant has failed to meet his burden to prove counsel's advice was deficient. Therefore, this allegation is denied and dismissed.



3. Failure to Object to Improper Statements by the Solicitor

Applicant failed to present evidence or legal argument that any of the statements by the solicitor, during Applicant's plea proceeding, were improper or objectionable. Regardless, this Court finds and the record shows there were no objectionable statements made by the solicitor during Applicant's plea. This Court finds Applicant failed to satisfy his burden to prove counsel was deficient for failing to object to the statements made by the Solicitor. This Court also finds Applicant failed to prove he was prejudiced by any alleged deficiency. Therefore, this allegation is denied and dismissed.

V. CONCLUSION

Based on the foregoing, this Court finds and concludes 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 Applicant must file and serve a notice of appeal within thirty (30) days from 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, his post-conviction relief attorney must serve and file a notice of appeal on Applicant's behalf. Applicant and his attorney are directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.



IT IS THEREFORE ORDERED THAT:

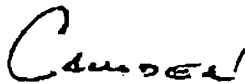
1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and

2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 7 day of June, 2017.



THE HONORABLE G. THOMAS COOPER, JR.
Presiding Judge
9th Judicial Circuit



, South Carolina



State of South Carolina
The Circuit Court of the Fifth Judicial Circuit

G. Thomas Cooper, Jr.
Judge

Post Office Box 1557
1121 Broad Street, Room 313
Camden, SC 29021
Phone: (803) 425-7182
gcooperj@sccourts.org

June 8, 2017

The Honorable Mary P. Brown
Berkeley County Clerk of Court
Post Office Box 219
Moncks Corner, South Carolina 29461-0219

RE: Damon Brown, #357300 v State of South Carolina 2014CP081003

Dear Ms. Brown:

Please find enclosed for filing, a signed order in the above captioned case. I have enclosed copies of the orders and if possible, please timestamp and return to Judge Cooper's chambers for our records.

Very truly yours,

A handwritten signature in black ink, appearing to read "George James".

George James

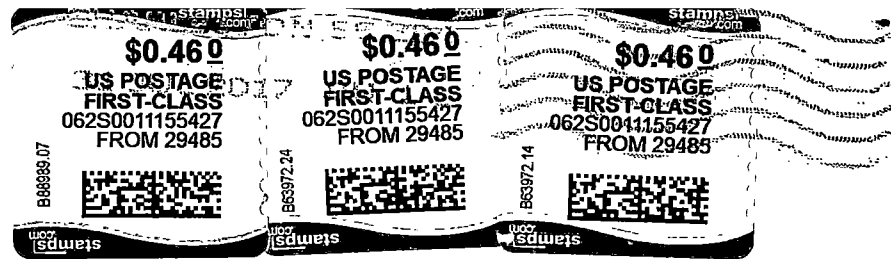
Law Clerk to the Honorable G. Thomas
Cooper, Jr.

GTCJr.:gcj

Enclosures

MD
Lowcountry Law Office

Rodney D. Davis
4000 Faber Place Drive, Suite 300
Charleston, SC 29405



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

062111330

