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August 2, 2017

The Honorable Daniel E. Shearouse
The Supreme Court of South Carolina
Post Office Box 11330
Columbia, SC 29211

Re: Gregory F. Young, SCDC# 362732 vs. State of South Carolina
Case No: 2015-CP-37-0628

Dear Mr. Shearouse:

Please find enclosed a Notice of Appeal and a Proof of Service for the same. Also, I have enclosed a copy of the Order from which the appeal is taken. Please filed the copies that I have enclosed and return the copies to me. Thank you for your help and if you should have any questions please feel free to call me.

RICHEY AND RICHEY, P.A.

Yours truly,

Rodney Richey

RWR/
enclosures
cc: Lindsey McCallister, Esquire

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

HONORABLE JOCELYN NEWMAN

2015-CP-37-0628

GREGORY F. YOUNG, SCDC#: 362732,

APPELLANT,

against

STATE OF SOUTH CAROLINA,

RESPONDENT.

NOTICE OF APPEAL

Gregory F. Young. appeals the denial of his Post- Conviction Relief. The Post-Conviction Relief action was heard and denied by the Honorable Jocelyn Newman, Circuit Judge on June 27, 2017 and Order issued on July 25, 2017 and filed on July 31, 2017. The Appellant received notice of the judgment on August 2, 2017.

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Other Counsel of Record:
Lindsey McCallister, Esquire
Office of Attorney General State of SC
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THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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S.C. SUPREME COURT

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

HONORABLE JOCELYN NEWMAN

2015-CP-37-0628

GREGORY F. YOUNG, SCDC#: 362732,

APPELLANT,

against

STATE OF SOUTH CAROLINA,

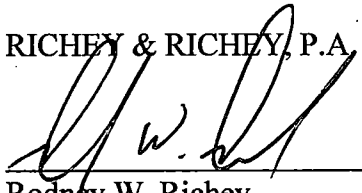
RESPONDENT.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the State of South Carolina by depositing copy of it in the United States Mail, postage prepaid, on August 2, 2017, addressed to their attorney of record, Lindsey McCallister, Esquire, Office of Attorney General State of South Carolina, Post Office Box 11549, Columbia, SC 29211-1549.

Dated: August 2, 2017

RICHEY & RICHEY, P.A.



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STATE OF SOUTH CAROLINA COUNTY OF OCONEE	IN THE COURT OF COMMON PLEAS OF THE TENTH JUDICIAL CIRCUIT
Gregory F. Young, # 362732, Applicant, v. State of South Carolina, Respondent.	Case No.: 2015-CP-37-0628 **ORDER OF DISMISSAL**

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed August 20, 2015. Respondent made its Return on May 25, 2017. An evidentiary hearing into the matter was convened on June 27, 2017, at the Anderson County Courthouse before the Honorable Jocelyn Newman. Rodney Richey, Esquire, represented Applicant. Lindsey McCallister, Esquire, of the South Carolina Attorney General's Office, represented Respondent. At the hearing, Applicant testified on his own behalf. Suzanne Earle, Esquire, also testified. This Court had before it a copy of the records of the Oconee County Clerk of Court, records from the South Carolina Department of Corrections, the application, the State's Return, and the guilty plea transcript.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Oconee County Clerk of Court. Applicant was indicted at the June 2014 term of the Oconee County Grand Jury for two counts of Criminal Sexual Conduct (CSC) with a Minor – First Degree (2014-GS-37-0691, -0692). Applicant waived presentment of an indictment for one count of CSC – Second Degree (2015-GS-37-0088) on January 15,

2015. On that same date, Applicant appeared before the Honorable Eugene C. Griffith, Jr., and pleaded guilty as indicted to the charge of CSC – Second Degree. Applicant's charges under the 2014 indictments were dismissed in exchange for his plea. Applicant was represented by Suzanne E. Earle, Esquire. Judge Griffith sentenced Applicant to a term of imprisonment twenty years, as recommended by the State, and required him to register as a Sex Offender. Applicant did not appeal his conviction or sentence.

Attached herewith and incorporated herein are the records of the Oconee County Clerk of Court regarding the subject guilty plea, Applicant's records from the South Carolina Department of Corrections, the Application, and the plea transcript. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

ALLEGATIONS

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 request a competency evaluation;
    b. Counsel failed to investigate information given by Applicant;
    c. Counsel violated various Rules of Professional Conduct;
    d. Counsel coerced Applicant's guilty plea;
    e. Counsel failed to file a notice of appeal or motion for reconsideration of sentence.

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 and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusion of law as required by S.C. Code Ann. Sec. 17-27-80 (2003).

Ineffective Assistance of Counsel

In a post-conviction relief action, the 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). 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 (1984); Butler, 286 S.C. at 443, 334 S.E.2d at 814. 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. at 689. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove that counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Id. (quoting Strickland v. Washington, 466 at 688). 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, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 (1985).

In PCR cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citations omitted). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Lockhart, 474 U.S. at 56. Further, "[t]hat a guilty plea must be intelligently made is not a requirement that all advice offered by the defendant's lawyer withstand retrospective examination in a post-conviction hearing." McMann v. Richardson, 397 U.S. 759, 770 (1970). Rather, "whether a plea of guilty is unintelligent . . . depends as an initial matter, not on whether a court would retrospectively consider counsel's advice to be right or wrong, but on whether that advice was within the range of competence demanded of attorneys in criminal cases." Id. at 771.

The record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Dalton v. State, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Boykin v. Alabama, 395 U.S. 238, 242 (1969)). A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between the court and defendant, between the court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). Further, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant; thus, an applicant's right to contest the validity of such a plea is usually foreclosed. Dalton, at 137–38, 654 S.E.2d at 874 (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Therefore, 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." Id. (citing

Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)). "In considering an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing." Id. at 138–39, 654 S.E.2d at 874 (citing Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997)).

Applicant testified he felt Counsel should have arranged for a competency evaluation to be performed on him although he acknowledged he does not have a mental illness, Applicant testified he has difficulty with reading and writing and has a hard time understanding. Applicant testified Counsel did not believe his version of events and refused to investigate Applicant's allegations that the victim was performing similar sexual acts with other children. Applicant further testified he was coerced into pleading guilty because Counsel told him at his bond hearing that he was facing a life sentence. Applicant further testified he did not want to plead guilty, but Counsel told him it was the best thing to do. Applicant testified he would have wanted a trial if Counsel had investigated his case. Finally, Applicant testified Counsel failed to file an appeal. Although Applicant admitted he never asked Counsel to do so, Applicant testified the judge at his bond hearing directed Counsel to file a PCR application on Applicant's behalf.

Counsel testified she has practiced law for approximately eighteen years, primarily focusing on criminal work. Counsel testified she did not recall having a conversation with Applicant about obtaining a competency evaluation, but they did discuss Applicant's education level and the fact that he was in special education classes in school. Counsel testified she believed Applicant was competent, and Applicant understood all of their discussions and knew the difference between right and wrong. Counsel testified Applicant's story about what

happened did not make any sense, and Applicant claimed he had confessed to protect another child. Counsel testified she went over all the State's evidence with Applicant, including his confession, and she explained to Applicant the alleged additional incidents between the victim and other people could not be introduced as evidence at a trial. Counsel testified Applicant wanted her to call witnesses to testify about the victim's prior sexual history. Counsel further testified after reviewing all the evidence, she concluded it was unlikely Applicant would be found not guilty at trial, and she advised him a conviction was likely. Counsel testified Applicant did not firmly maintain his innocence, and his version of the story changed several times, including differences between what he told her and what he told law enforcement. Counsel testified Applicant could have received a life sentence as he was originally charged with CSC – first degree, but he pleaded guilty to CSC – second degree, which was a lesser offense, to avoid the possibility of a life sentence. Finally, Counsel testified she did not believe Applicant had ever asked her to file an appeal, and she explained the "extraordinary circumstances" standard to him and informed him she did not see any in this case. Counsel produced a letter she sent to Applicant explaining he had ten days from the date of his plea to file an appeal, there needed to be extraordinary circumstances, and she did not plan to file a notice on his behalf.

Regarding Applicant's claim his guilty plea was induced by ineffective assistance of counsel, this Court finds Applicant has failed to meet his burden of proof. This Court finds Applicant's testimony regarding Counsel's ineffectiveness is not credible, while also finding Counsel's testimony is credible. This Court finds Counsel provided effective assistance in this case, and Applicant's decision to plead guilty was made freely and voluntarily. Counsel is a trial practitioner who had experience in the trial of criminal offenses. Counsel conferred with Applicant to discuss the pending charges, the State's evidence, possible defenses and courses of

action, and answered all of Applicant's questions. This Court finds Applicant presented no evidence he asked for an appeal or motion for reconsideration. This Court finds credible Counsel's testimony she felt he had no grounds to support an appeal, and the record reflects she informed Applicant she did not plan to file a notice of appeal on his behalf. Finally, this Court finds Applicant presented no evidence of incompetency which would support a finding that Counsel was deficient for failing to obtain an evaluation prior to Applicant's guilty plea. See Jeter v. State, 308 S.C. 230, 232, 417 S.E.2d 594, 596 (1992) (Applicant "is required to show by a preponderance of the evidence he was incompetent at the time of his plea.").

Additionally, this Court finds the record reflects Applicant's plea was entered freely, voluntarily, knowingly, and intelligently. The plea judge explained the charges to Applicant in detail, including the maximum penalty, and the State's recommendation of a twenty-year sentence. The plea judge explained Applicant's constitutional rights and questioned Applicant as to whether he understood those rights and wished to give them up to plead guilty. Applicant agreed that he did. Applicant admitted he was guilty of the offense and agreed with the facts presented by the State at the plea. Applicant told the plea judge he was satisfied with his attorney, and he did not need any more time to discuss this matter with Counsel. Applicant further told the plea judge no one had threatened him or made him any promises to get him to plead guilty, and he was doing so of his own accord. Additionally, Applicant explained to the plea judge his educational limitations and stated he had a hard time understanding consequences, and the plead judge thoroughly questioned Applicant a second time as to whether Applicant understood the plea and the nature of the decision he was making. Applicant indicated he understood all of the plea judge's questions, and Counsel had fully explained the agreement to

him. This Court therefore finds that Applicant understood the terms of the plea, and it was knowingly entered into of Applicant's own free will.

Therefore, 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 compelling evidence that Counsel committed either errors or omissions in his representation of Applicant. By Applicant's own admission, he has not been diagnosed with a mental illness, and Applicant introduce no evidence to meet his burden of proving he was incompetent at the time of the plea or the time of sexual act. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance, as Counsel negotiated a twenty-year sentence to a lesser offense, sparing Applicant from the possibility of a life sentence, and additional charges were dismissed.

This Court also finds that the record fully supports the knowing and voluntary nature of Applicant's guilty plea. See Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (holding 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."). 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, 376 S.C. at 137, 654 S.E.2d at 874 ("[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."). This Court concludes Applicant has not met his burden of proving Counsel failed to render reasonably effective assistance. The allegation is denied and dismissed.

CONCLUSION

Based on all the forgoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations before or during his plea and sentencing proceedings. Counsel was not deficient, nor was Applicant prejudiced by Counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty 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, Applicant must serve and file a notice of appeal on his own behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. The application for post-conviction relief be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 25th day of July, 2017.

Jocelyn Newman

THE HONORABLE JOCELYN NEWMAN
Presiding Judge
Tenth Judicial Circuit

Columbia, South Carolina.

FILED OCONEE COUNTY, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
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