

THE BOOZER LAW FIRM, LLC

Lance S. Boozer, Esq.*

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September 14, 2015

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

The Honorable Mary Brown
Clerk, Berkeley County
300 California Dr.
Moncks Corner, SC 29461

RECEIVED

SEP 17 2015

S.C. SUPREME COURT

**RE: Derrick J. Miles, #307815, v. State of South Carolina
2014-CP-08-2847**

Dear Mr. Shearouse and Ms. Brown:

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

Yours very truly,



Lance S. Boozer

cc: Rutledge Johnson, AAG
Office of Appellate Defense
Derrick Miles, #307815

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

The Honorable Roger E. Henderson, Circuit Court Judge

Case No. 2013-CP-08-2847

RECEIVED

SEP 17 2015

S.C. SUPREME COURT

Derrick J. Miles, #307815,.....Petitioner,

v.

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

NOTICE OF APPEAL

The Petitioner appeals the Honorable Roger E. Henderson's Order dated August 28, 2015, denying post-conviction relief to the Petitioner. Undersigned counsel received notice of entry of the Order on September 12, 2015. A copy of the Order on appeal is attached to this notice.

Respectfully submitted,



Lance S. Boozer
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September 14, 2015

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

The Honorable Roger E. Henderson, Circuit Court Judge

Case No. 2013-CP-08-2847

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SEP 17 2015

S.C. SUPREME COURT

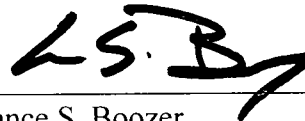
Derrick J. Miles, #307815,.....Petitioner,

v.

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

PROOF OF SERVICE

I, Lance S. Boozer, appointed 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 Rutledge Johnson, P.O. Box 11549, Columbia, SC 29211. I further certify that all parties required by Rule to be served have been served this 14th day of September, 2015.



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STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)
)
)
Derrick J. Miles, #307815,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

2013-CP-08-2847

ORDER OF DISMISSAL

This matter comes before the Court by way of an Application for Post-Conviction Relief filed December 23, 2013. Respondent made its Return on March 31, 2015. An evidentiary hearing into the matter was convened on July 21, 2015 at the Charleston County Courthouse. Lance S. Boozer, Esquire represented Applicant. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

At the hearing, Applicant testified on his own behalf. Bill Runyon, Esquire also testified. This Court had before it a copy of the records of the Berkeley 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

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Berkeley County Clerk of Court. The Applicant was indicted at the February 2012 term of the Berkeley County Grand Jury for burglary- first degree (2012-GS-08-0255). The Applicant was represented by Bill Runyon, Esquire.

On July 25, 2013, the Applicant pled guilty to Burglary, 2nd degree, as a lesser included offense, to a negotiated fifteen year sentence. The Honorable Stephanie P. McDonald sentenced the Applicant to confinement for a period of fifteen years. The Applicant did not appeal his conviction or sentence.

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

1. Ineffective assistance of Counsel.
 - a. Lack of personal contact.
 - b. Lack of any verbal communication while in jail.

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

1. "Counsel failed to ensure the enforcement of terms of negotiated guilty plea?"
2. "Counsel failed to request the plea judge enforce the negotiated plea agreement or move to withdraw the plea agreement."

At the hearing, the Applicant proceeded on his claims of ineffective assistance of plea Counsel.

SUMMARY OF TESTIMONY

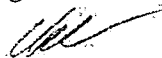
At the evidentiary hearing, Applicant testified he wants a new trial and was charged with Burglary, 1st degree and Criminal Conspiracy. Applicant first claimed there was a lack of personal contact with Counsel and only met one time with Counsel to discuss a plea agreement. Applicant stated he saw Counsel one other time to reject a fifteen-year plea agreement. Applicant testified he paid Counsel \$5,000 and Counsel got him a bond. Applicant stated he pled on July 25, 2013 and met once with Counsel to discuss the charges. Applicant claims he and Counsel did not discuss any defenses.



Applicant then testified Counsel failed to ensure the negotiated plea agreement or moved to withdraw the guilty plea. Applicant stated Counsel handed him a plea agreement and said Applicant needed to take the plea. Applicant claimed the plea agreement was for five (5) years' imprisonment with five (5) years' probation and said he signed the sentencing sheet without the time listed on it. Applicant testified he decided at the last second he did not want to accept the plea offer. Applicant then claimed Counsel "boxed him in the aisle" and told him to accept the plea or get life at trial. Applicant stated he thought he was receiving five (5) years, not fifteen (15).

Applicant next claimed he thought he was getting credit for house arrest since he had to wear an ankle monitor because the statute allows for it. He claimed Counsel said he would get credit for all of the time. Applicant also testified he pled guilty because he thought he was getting five (5) years and that Counsel had him scared about the potential of life without parole. He then stated he did not know he was going to plead guilty on the day he did. Applicant lastly stated he was "out of it" because he was going through tough times.

On cross-examination, Applicant admitted when he pled guilty he was under oath and swore to tell the truth. Applicant then admitted when the plea judge asked him if he knew the plea was negotiated for fifteen (15) years, he replied, "yes, ma'am." Applicant admitted he understood when the plea judge explained to him that his sentence could be 85% but that it would be left to SCDC. Applicant also stated that while he was going through tough times, he was still well enough to proceed with his plea. Applicant claimed he was in tears during his plea, but admitted that he never stopped the judge and explained that he thought he was only getting five (5) years. Applicant lastly admitted he knew the statute concerning credit for house arrest states that a judge "may" give credit for time served on house arrest.

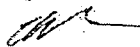


Counsel testified he was retained and met with Applicant twice at the Berkeley County Detention Center before Applicant made bond and at least twice more at his office. Counsel stated Applicant had charges in Berkeley and Charleston Counties and that Applicant's co-defendant was cooperating with the State and would testify against Applicant. Counsel testified this case looked like a plea down the road due to the seriousness of the charges. Counsel stated they appeared in court for the first time because the judge made the Applicant reject the first offer on the record. The second appearance in court was for the actual plea, which was after his co-defendant was convicted at trial.

Counsel then stated the Solicitor would not agree to Applicant leaving the state or removing the ankle monitor. Counsel also stated the Solicitor emphasized this was the last plea offer. Counsel testified he did not tell Applicant or his mother that the plea offer was for five (5) years, but that the plea was for fifteen (15) years. Counsel stated he told Applicant there was no guarantee that he would serve a 65% sentence, but would have to serve whatever time SCDC calculated. Counsel testified he explained to Applicant that Applicant would receive credit for time served at the detention center, but did not discuss credit for house arrest. Counsel then testified he discussed various sentencing possibilities with Applicant.

Counsel testified Applicant filed a fee dispute against Counsel as well as ODC complaints against him, the Solicitor and the plea judge. Counsel lastly stated a letter he wrote to Applicant stated he would be out in 2016, but was not what Applicant pled to.

On cross-examination, Counsel testified the letter was dated March 19, 2014, which was after the plea date and was in response to the dispute filed by Applicant. Counsel stated that SCDC has a "magic calculator" and nobody can figure out exactly how much time a defendant will serve. He



then stated he would have taken this case to trial if Applicant wanted and that Applicant was "on board" with plea. Counsel testified he never threatened Applicant to accept the plea and that it was Applicant's decision to accept the plea agreement.

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).

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), SCRPC). 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).

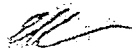
The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The 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).

This Court finds Counsel provided effective assistance of counsel in this case. Counsel advised Applicant of all of the charges and the sentences the charges carried. Counsel also negotiated with the State in Applicant's best interest. This Court finds Applicant made the decision on his own accord with the help of learned counsel. Additionally, this Court finds Applicant made this decision freely and voluntarily without any threats or promises from anyone else. Furthermore, this Court finds that it was ultimately the Applicant's decision to plead guilty.

This Court further finds the Applicant's testimony regarding Counsel's ineffectiveness is not credible while also finding Counsel's testimony is credible. This Court finds the Applicant has failed to meet his burden of proving Counsel's performance was deficient or that he was prejudiced thereby.

Applicant's main contention for post-conviction relief is that he thought the plea offer was for five (5) years' imprisonment and five (5) years' probation. However, the record and Counsel's testimony clearly indicate Applicant was fully apprised that the negotiated plea offer was for fifteen (15) years. On page 6 of the plea transcript, the Court asks Applicant, "Sir that [charge] carries up to



15 years, however because it's a negotiated plea I've been presented with a negotiation that you will be sentenced to 15 years and I can't change that any in way, do you understand that?" to which the Applicant replied, "Yes, ma'am." Additionally, Counsel testified he did not tell Applicant the offer was for five (5) years but for fifteen (15). This Court finds Applicant has failed to meet his burden of proof as to this claim. Accordingly, this allegation is denied.

Applicant also claims Counsel failed to sufficiently meet with him. The "brevity of time spent in consultation, without more, does not establish that Counsel was ineffective." Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980). Counsel testified he met with Applicant twice while Applicant was incarcerated at the Berkeley County Detention Center and at least twice more at his office. Applicant has failed to prove that had Counsel spent more time with him, he would not have pled guilty but pursued a trial or how more time spent with Applicant would change the outcome of his case. This Court finds Applicant has failed to meet his burden of proof as to this claim. Accordingly, this allegation is denied.

Lastly, Applicant claims Counsel told him he would receive credit for time served on house arrest. However, Counsel testified he discussed with Applicant credit for time served in the detention center but not concerning while Applicant was on house arrest. S.C. Code Ann. § 24-13-40 states: "In every case in computing the time served by a prisoner, full credit against the sentence must be given for time served prior to trial and sentencing, and **may be given for any time spent under monitored house arrest.**" (emphasis added). This Court find Applicant has failed to meet his burden of proof that Counsel promised him credit for time served on house arrest or that he misguided him concerning the possible credit. Accordingly, this allegation is denied.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in his representation of the Applicant.

This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. This Court concludes the Applicant has not met his burden of proving Counsel failed to render reasonably effective assistance. Therefore, these allegations are denied.

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.

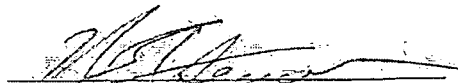
This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by Counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate Counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRPC, 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. Applicant's attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

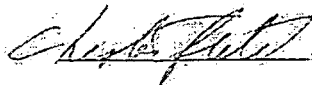


IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED!


Roger E. Henderson
Presiding Circuit Court Judge
Ninth Judicial Circuit

8-28, 2015
, South Carolina

2013-CP-08-2847

STATE OF SOUTH CAROLINA)
 COUNTY OF BERKELEY)
 Derrick J Miles,)
 Plaintiff(s),)
 -vs-)
 State of South Carolina,)
 Defendant(s).)

IN THE COURT OF COMMON PLEAS
 Ninth JUDICIAL CIRCUIT
 CASE NO.: 2013CP0802847
 APPOINTMENT OF COUNSEL OR GAL
 (Select one.)

ORDER
 AMENDED ORDER

TYPE OF CASE/PROCEEDING: (Check one.)

- Post-Conviction Relief (PCR)/habeas case Adoption Juvenile
 SVP case Custody and/or Visitation Abuse and Neglect
 Minor Name Change Other: Post Convict Rel 500

It appears Derrick J Miles, who is a litigant in this case, is entitled to court-appointed counsel or a guardian ad litem.

- It further appears that: (Select only one.)
- counsel/guardian ad litem has not yet been appointed by the court; therefore, an appointment for counsel/guardian ad litem is necessary.
- counsel or a guardian ad litem was previously appointed by the court but has indicated either a possible conflict of interest, an entitlement to exemption, or other good cause warranting the appointment of new counsel or guardian ad litem based on:
- counsel was previously appointed by the court but has not indicated that the litigant has retained private counsel and is no longer entitled to appointed counsel.
- court appointed counsel has obtained , Esquire as substitute counsel pursuant to Rule 608(h)(2); provided, however, only the member who originally received the appointment and who sought substitute counsel shall receive credit.
- Other: .

Therefore, it is ordered that Lance Boozer hereby is appointed as (Select one.)

- counsel lead counsel (if capital PCR case) guardian ad litem
 for the above-named person. Any counsel or GAL previously appointed is/are hereby relieved.

(If Death Penalty PCR Case) It is further ordered that , Esquire, is hereby appointed as second counsel in this capital PCR case.

The clerk of court is directed to forward a copy of this order to all persons entitled to notice.

IT IS SO ORDERED
 April 7, 2014

Mary P Brown / JMW

Circuit Judge Clerk of Court

Plaintiff Attorney:

Lance Boozer	
1331 Park Street	
Columbia, SC 29201	
803-608-5543	

Defendant Attorney:

Ashleigh Rayanna Wilson	
PO Box 11549	
Columbia, SC 29211	

NOTICE: SC Supreme Court Order of September 29, 2006, requires appointed counsel entitled to payment from the Office of Indigent Defense (OID) to register the case online with OID within fifteen (15) days of this appointment at www.sccid.sc.gov, and further directs that reimbursement vouchers be submitted directly to SCCID and not to the trial judge or clerk of court. See SCCID website for further details.

FILED
 2014 APR -7 AM 11:10
 MARY P BROWN
 CLERK OF COURT
 BERKELEY COUNTY S.C.
 JMW

THE BOOZER LAW FIRM, LLC

807 Gervais Street, Suite 203
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