

Hugh W. Welborn

Attorney at Law
Post Office Box 173
913 Carolina Circle
Anderson, South Carolina 29622

RECEIVED

SEP 11 2017

S.C. SUPREME COURT

Office (864) 226-5787
Fax: (864) 224-3738

email to:
hughwelborn@bellsouth.net

September 6, 2017

South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

In RE: Charlie Tyler Robinson #335823 vs. State of South Carolina
Case #: 2013-CP-04-1925

Dear Sir/Madam:

Please find enclosed herewith the original and one (1) copy of the Appellant's Notice of Appeal in connection with the foregoing matter which I ask that you file for record, returning the clocked copy to my office. I also enclose a copy of the Order of Dismissal and the original Proof of Service on Walt Whitmire, Office of the Attorney General. Please use the enclosed self-addressed envelope to return the clocked copy to my office.

With kind regards,



Hugh W. Welborn

HWW/sba
Enclosures

cc: Office of the Appellate Defense
Office of the Attorney General
Client

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM ANDERSON COUNTY
COURT OF COMMON PLEAS

HONORABLE R. LAWTON MCINTOSH

2013-CP-04-1925

CHARLIE T. ROBINSON, #335823

APPELLANT,

VS

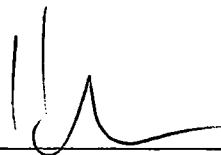
STATE OF SOUTH CAROLINA,

RESPONDENT.

RECEIVED
SEP 11 2017
S.C. SUPREME COURT

NOTICE OF APPEAL

Charlie T. Robinson, #335823 appeals the denial of his Post Conviction Relief. The Post Conviction Relief Action was heard and denied by the Honorable R. Lawton McIntosh, Circuit Court Judge on February 9, 2015, and Order of Dismissal issued on January 27, 2017 and filed on January 31, 2017. The Order of Dismissal was received on September 6, 2017. The Appellant received Order of Dismissal on September 6, 2017.



Hugh W. Welborn
Attorney for the Appellant
Post Office Box 173
Anderson, South Carolina 29622
(864) 226-5787
Attorney for Charlie T. Robinson, #335823

Other Counsel of Record:
Walt Whitmire
Office of Attorney General State of SC
Post Office Box 11549
Columbia, South Carolina 29211

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM ANDERSON COUNTY
COURT OF COMMON PLEAS

HONORABLE R. LAWTON MCINTOSH

2013-CP-04-1925

CHARLIE T. ROBINSON, #335823

APPELLANT,

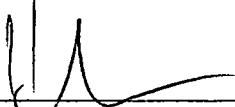
VS

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 a copy of it in the United States Mail postage prepaid on September 5, 2017 addressed to its attorney of record Walt Whitmire, Office of the Attorney General, Post Office Box 11549, Columbia, South Carolina 29211-1549



Hugh W. Welborn
Attorney for the Appellant
Post Office Box 173
Anderson, South Carolina 29622
(864) 226-5787
Attorney for Charlie T. Robinson, #335823

Anderson, South Carolina

9/6/17

Hugh W. Welborn

Attorney at Law
Post Office Box 173
913 Carolina Circle
Anderson, South Carolina 29622

Office Telephone:
(864) 226-5787

Fax:
(864) 224-3738

September 6, 2017


South Carolina Office of Appellate Defense
P. O. Box 11589
Columbia, South Carolina 29211-1589

In RE: Charlie Tyler Robinson #335823 vs. State of South Carolina
Case #: 2013-CP-04-1925

Dear Sir or Madam:

In connection with the foregoing matter, please be advised that I was the Court Appointed Attorney and enclose herewith a copy of my appointment. I also enclose copies of all documents you requested for filing a copy of the Appellant's Notice of Appeal in this matter together with a copy of the Order and Proof of Service. I ask that your office assume representation of this indigent Applicant.

Very truly yours,



Hugh W. Welborn

HWW/sba
Enclosures

cc: South Carolina Supreme Court
Office of Attorney General
Client

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

Charlie Tyler Robinson,
Plaintiff(s),

-vs-

South Carolina State Of,
Defendant(s).

IN THE COURT OF COMMON PLEAS
JUDICIAL CIRCUIT
CASE NO.: 2013CP0401925
APPOINTMENT OF COUNSEL OR GAL

(Select one.)

ORDER
 AMENDED ORDER

A TRUE COPY

JUL 29 2014

Richard W. Welborn
Clerk of Court

TYPE OF CASE/PROCEEDING: (Check one.)

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

It appears Charlie Tyler Robinson, 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 Hugh W. Welborn, 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
July 28, 2014

Richard W. Welborn
 Circuit Judge Clerk of Court

Plaintiff Attorney:

Defendant Attorney:

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-CLERK'S OFFICE
ANDERSON SC



STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON) FOR THE TENTH JUDICIAL CIRCUIT

Charlie T. Robinson,
S.C.D.C. No. 335823,

Applicant,

v.

State of South Carolina,

Respondent.

COMMON PLEAS AND
GENERAL SESSIONS

C.A. No. 2013-CP-04-1925

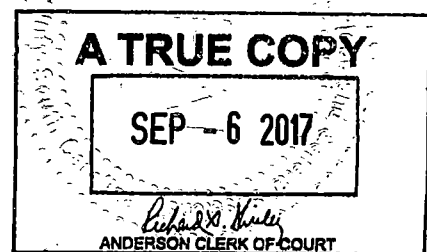
ORDER OF DISMISSAL

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed August 23, 2013. An evidentiary hearing into the matter was convened on February 9, 2015, at the Anderson County Courthouse. Applicant was present and represented by Hugh Welborn, Esquire. Respondent was represented by Assistant Attorney General Walt Whitmire.

Applicant and Applicant's plea counsel, Norman Epps, Esquire, testified at the hearing. This Court also had before it all relevant pleadings and documents, the Clerk of Court records for Anderson County, the South Carolina Department of Corrections' records, and Applicant's plea transcript.

PROCEDURAL HISTORY

Applicant is presently confined in the Department of Corrections pursuant to orders from the Anderson County Clerk of Court. On October 11, 2011, the Anderson County grand jury indicted Applicant for murder (2011-GS-04-1846). He was represented by Norman Epps, Esq. On April 19, 2013, Applicant entered a guilty plea to the lesser-included offense of voluntary manslaughter. The Honorable J. Cordell Maddox Jr., accepted the plea and sentenced Applicant



to a term of twenty-five years' imprisonment. Applicant did not appeal his sentence or conviction.

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

1. Ineffective Assistance of Counsel:
 - a. "Failure to investigate facts of case;"
2. Involuntary Guilty Plea:
 - a. "Resulting from ineffective assistance of counsel."

SUMMARY OF THE TESTIMONY

Applicant testified at the PCR hearing that his plea counsel was ineffective for failing to hire an investigator to "retravel the distance" and thereby prove Applicant innocent, for failing to preserve cell phone records, and for failing to investigate his alibi witness. Applicant testified plea counsel stated he did not hire an investigator and did not continue investigating the case after Applicant indicated he wanted to plead. Applicant claims plea counsel did not preserve cell phone records and by the time there was an attempt to retrieve cell phone records, the phone was determined to be too damaged to be helpful, and Applicant alleges this was the fault of SLED for failing to turn the cell phone into the evidence locker. Applicant also claimed he was with his brother and his brother's wife during the time of the murder and he told plea counsel that information, but Applicant alleges plea counsel did not get in touch with his brother. Applicant testified the reason his co-defendants claimed he was involved with the murder is because he was out on bond, his co-defendants knew his criminal record, and his co-defendants decided to blame him for the murder. Applicant acknowledged these same co-defendants also pleaded guilty to the crime.

Applicant also alleged counsel was ineffective for failing to hire an investigator to “retravel the distance” (PCR Hearing Tr. p. 20, ll. 5-6), which would have helped prove Applicant’s innocence. Finally, Applicant alleged he only pleaded because he was expecting to get “somewhere in the middle” of twenty-five and ten, about sixteen or seventeen years. (PCR Hearing Tr. p. 20, ll. 17-24.)

On cross-examination, Applicant claimed he was not with any of the three co-defendants the night of the murder. He admitted, however, that he had reviewed video footage with his plea counsel that showed him with one of the co-defendants after the murder. Applicant agreed counsel reviewed the statements of his co-defendants and explained how at least one co-defendant would testify against him if he went to trial.

Plea counsel, Norman Epps, testified at the PCR hearing as well. He explained that M. J. Goodwin, Esquire, had originally been representing Applicant until Mr. Epps was substituted in. At the time Mr. Epps was substituted in as counsel, Applicant’s case was already set for trial. Mr. Epps informed the Court he met with Applicant “many times” over the course of his representation and that he received and reviewed the discovery in the case, to include the co-defendants’ statements. Plea counsel also went to the sheriff’s department to review evidence in the evidence room. (PCR Hearing Tr. p. 33, ll. 2-4.) Part of the file that plea counsel received from M. J. Goodwin included a statement from Applicant’s brother, Trey Robinson, and his common-law wife about “picking [Applicant] up at Chase Alley’s house after they left the Spinx station.” (PCR Hearing Tr. p. 32, ll. 7-12.) Mr. Epps explained that when trial was called in March he moved for and secured a continuance in order to try and get Trey Robinson, who was in a prison in Georgia, transported to the trial. (PCR Hearing Tr. p. 32, ll. 12-24.)

Plea counsel explained that prior to the next trial date he discussed all of the evidence with Applicant. That evidence included two written statements by Holly Whitfield, which were different from each other, but the statement placed Applicant at the scene. (PCR Hearing Tr. p. 33, ll. 6-14); a statement by another co-defendant, Chad Thayer, that also had inconsistencies but also stated Applicant was there (PCR Hearing Tr. p. 33, ll. 14-17); video showing some of the co-defendants together at the Spinx station (PCR Hearing Tr. p. 33, ll. 17-20); a statement from Sammy Kirk, who had a long criminal record, but who claimed he saw Applicant with the co-defendants all together at the Spinx station either directly or right before the time of the murder (PCR Hearing Tr. p. 33, ll. 19-25); an individual in Greenville who identified the four individuals after the murder, to include picking Applicant out of a line-up, but that line-up had "an issue" (PCR Hearing Tr. p. 34, ll. 1-4); and video at Hart's Cove at Clemson the next day showing all the co-defendants together again (PCR Hearing Tr. p. 34, ll. 12-13).

Mr. Epps explained the entire defense was the alibi Applicant's brother was going to provide. However, that defense fell apart when the solicitor and investigator went to Georgia and interviewed Applicant's brother, who stated "in absolutely no unequivocal terms, that didn't happen; [Applicant] was not with him that night." (PCR Hearing Tr. p. 34, l. 14-p. 35, l. 6.) Mr. Epps testified he informed Applicant about his brother's statement and asked what he wanted to do. Mr. Epps explained that he was ready to proceed to trial at this point and had subpoenaed Anderson Independent to get Holly Whitfield's dad as a witness and had subpoenaed an inmate who would have testified Chase Allen tried to get him to say Applicant was the shooter when it was actually Chase. (PCR Hearing Tr. p. 35.)

Mr. Epps explained that when it came to the cell phone, he did approach law enforcement about it and it had been "sitting in the backseat of the SLED agent['s car]." (PCR Hearing Tr. p.

36, ll. 2-9.) Once Mr. Epps raised the issue, law enforcement had a report done by Thomas Slovenski stating there was “a failed data port.” (PCR Hearing Tr. p. 36, ll. 12-13.) Mr. Epps planned to argue failure to preserve evidence. (PCR Hearing Tr. p. 36.)

Mr. Epps maintained that hiring an investigator would not have made a difference because distance between the victim’s house, the co-defendant’s house, Greenville and Hart’s Cove did not matter when you had three individuals saying Applicant was with them and Applicant’s brother denied being Applicant’s alibi (PCR Hearing Tr. p. 37.)

Finally, Mr. Epps explained that he discussed the plea offer with Applicant and “absolutely did not promise him . . . [he] could get less than that” and explained he could “walk out of there with the full twenty-five.” (PCR Hearing Tr. p. 38, ll. 5-12.) Mr. Epps believed that based on the State’s evidence, had Applicant proceeded to trial, the State would have been able to meet its burden and Applicant would have been convicted of murder. (PCR Hearing Tr. p. 38, ll. 12-19.)

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Ineffective Assistance of Counsel

Applicant alleges he received ineffective assistance of counsel when counsel failed to investigate his case, preserve phone records, and secure alibi witnesses.

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), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, 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, 286 S.C. at 441, 334 S.E.2d at 813. Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, 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, 466 U.S. at 668, 104 S.Ct. at 2064). Second, counsel's deficient performance must have prejudiced 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 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

Prejudice from trial counsel's failure to interview or call witnesses cannot be shown where the witnesses do not testify at post-conviction relief. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Bassette v. Thompson, 915 F.2d 932 (4th Cir. 1990), cert. denied, 499 U.S. 982 (1991). Applicant's mere speculation as to what a witnesses' testimony would have been cannot, by itself, satisfy his burden of showing prejudice. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993); Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995).

Applicant claims plea counsel failed to investigate witnesses who could have provided an alibi on his behalf. However, Applicant failed to present any of these witnesses at the PCR

hearing; therefore, no prejudice can be shown pursuant to Underwood. Specifically as to the potential alibi from Applicant's brother, testimony from the hearing was that Applicant's brother provided a statement to law enforcement that he was **not** with Applicant the night of the murder. Applicant presented no information as to what an investigator would have developed. As to the cell phone records, Applicant did not establish that Mr. Epps failed to do anything. By the time, Mr. Epps was made aware of the phone, he took action to secure its records and planned to challenge the failure to preserve the evidence at trial. The loss of the records was not due to some act or omission on behalf of Mr. Epps.

Accordingly, 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 specific and compelling evidence that Counsel committed either errors or omissions in his representation of Applicant. This Court also finds Applicant has failed to prove the second prong of Strickland: that he was prejudiced by Counsel's performance.

Involuntary Guilty Plea

Applicant also argues his guilty plea was involuntary because he thought he would be getting somewhere in between ten and twenty-five years.

Applicant's allegation that his guilty plea was involuntary is also without merit. In post-conviction relief 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) (citing Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993); Hyman v. State, 278 S.C. 501, 299 S.E.2d 330 (1983); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993)). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea

only by showing (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pleaded guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citing Hill v. Lockhart, 474 U.S. 52; Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000); Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000); Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994)). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. at 56. Furthermore, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant. Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63 (1977)). 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. at 137-38, 654 S.E.2d at 874 (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)).

In this case, the plea court did a very thorough review with Applicant to ensure he made a knowing, intelligent and voluntary waiver of his right to a jury trial and his other constitutional rights in deciding to enter a plea of guilty. More than once, the plea court reviewed the sentencing range and advised Applicant the court did not have to accept the recommendation and could sentence Applicant to thirty years. Through its colloquy with Mr. Epps and the State, the plea court established Applicant understood his constitutional rights and established the State could prove its case against Applicant sufficiently if they were to go to trial. The plea court also went over the fact that Applicant had a mental examination and that it did not prevent him from going forward. Additionally, the plea court asked Applicant if he needed additional time to speak

with his attorney and whether his attorney had done everything he had asked him to do. The plea transcript shows Applicant repeatedly admitted he was guilty and was pleading guilty because he was guilty.

This Court finds the guilty plea transcript and Counsel's testimony at the PCR hearing directly refute Applicant's claims. This Court also finds Applicant pleaded guilty freely, voluntarily and without any coercion, threats or promises. Therefore, this allegation is denied.

Accordingly, 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 specific and compelling evidence that Counsel committed either errors or omissions in his representation of Applicant.

This Court also finds Applicant has failed to prove the second prong of Strickland: that he was prejudiced by Counsel's performance. This Court concludes Applicant has not met his burden of proving counsel failed to render reasonably effective assistance.

Therefore, having reviewed the pleadings, considered the applicable law, reflected upon the testimony and evidence at the plea, and considered the arguments of counsel, this Court finds Applicant is not entitled to relief.

CONCLUSION

Based on all 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 notifies 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

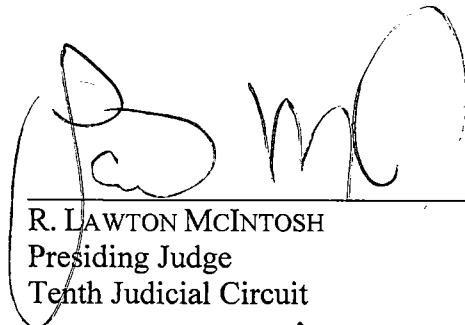


appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on Applicant's behalf. Your 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. Applicant must be remanded to the custody of the Respondent.

IT IS SO ORDERED.



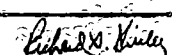
 R. LAWTON MCINTOSH
 Presiding Judge
 Tenth Judicial Circuit

Order received 1-26-17



1-27-17 (date)
Anderson, South Carolina

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 ANDERSON CLERK OF COURT

Hugh W. Welborn
P.O. Box 173
Anderson, SC 29622

USA



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South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211