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April 13, 2016

RECEIVED

Clerk of Court
Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

APR 15 2016

S.C. SUPREME COURT

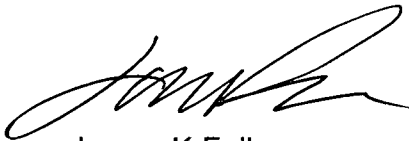
Re: Deangelo Mitchell, 2014-CP-10-05358

Dear Clerk Shearouse:

Please find the enclosed Notice of Appeal, Proof of Service, and Order of Dismissal in the above Horry County PCR action. Please return a clocked copy of the Notice of Appeal and Proof of Service in the enclosed SASE.

Should you have any additional questions please do not hesitate to contact my office.

With best regards, I am,



James K Falk

Thank you for your assistance.

Cc: Rutledge Johnson, Esq.; Deangelo Mitchell 322456.

THE STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas

Honorable Perry H Gravely, Circuit Judge

Case No.: 2014-CP-10-5358

Deangelo Mitchell 322456.....PETITIONER

V.

State of South Carolina.....RESPONDENT

NOTICE OF APPEAL

The Petitioner Deangelo Mitchell appeals the Honorable Perry H Gravely's March 14, 2016, Order of Dismissal. Undersigned counsel received notice of entry of the order on April 7, 2016. A copy of the order on appeal is attached hereto.



James K Falk
Falk Law Firm
PO Box 1058
Charleston, SC 29402

April 13, 2016

Rutledge Johnson, Esq.
Office of S.C. Attorney General
PO Box 11549
Columbia, SC 29211-1549

THE STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas

Honorable Perry H. Gravely, Circuit Judge

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S.C. SUPREME COURT

Case No.: 2014-CP-10-05358

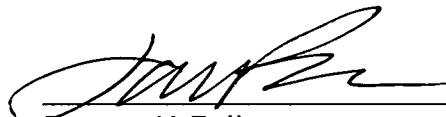
Deangelo Mitchell 322456.....PETITIONER

V.

State of South Carolina.....RESPONDENT

PROOF OF SERVICE

I, James Falk, certify that I have today served the within notice of appeal upon the Respondent by depositing a copy of it in the U.S. Mail, postage prepaid, addressed to its attorney of record, Rutledge Johnson, Office of the S.C. Attorney General, PO Box 11549, Columbia, SC 29211-1549. I further certify that all parties required by Rule to be served have been served this April 13, 2016.



James K Falk
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CG
AG
AT
GS
SOL

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS)
NINTH JUDICIAL CIRCUIT)

Deangelo Mitchell, #322456,)

2014-CP-10-5358)

Applicant,)

ORDER OF DISMISSAL)

v.)

State of South Carolina,)

Respondent.)

FILED
2016 MAR 30 PM 4:02
JULIE M. WOODRUFF
CLERK OF COURT

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed September 3, 2014. Respondent made its Return on March 26, 2015. An evidentiary hearing into the matter was convened on January 20, 2016, at the Charleston County Courthouse. James K. Falk, 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. Applicant's plea counsel, Mark Peper, Esquire, also testified. This Court had before it a copy of the records of the Charleston 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 Charleston County Clerk of Court. Applicant was indicted at the March 2012 term of the Charleston County Grand Jury for distribution of cocaine- second offense (2012-

GS-10-1680) and involuntary manslaughter (2012-GS-10-1818). Applicant was represented by Mark Peper, Esquire.

On September 16, 2013, Applicant pled guilty as indicted. The Honorable Kristi L. Harrington sentenced Applicant to confinement for a period of fifteen years for distribution of cocaine and five years for involuntary manslaughter. The sentences are to be served concurrent to a probation violation on indictments 2010-GS-10-7618, 2010-GS-10-7621. The Court revoked probation for five years. Applicant did not appeal his convictions or sentence.

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

1. Ineffective assistance of counsel.
 - a. Counsel failed to advise Petitioner of the right to appeal.
2. Involuntary guilty plea.
 - a. Plea based on erroneous advice of counsel.

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

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 conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel/Involuntary Guilty Plea

The 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).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel’s ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). When there has been a guilty plea, the applicant must prove that counsel’s representation was below the standard of reasonableness and that, but for counsel’s unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citations omitted).

Applicant testified that Counsel told him his sentence would be fifteen years non-violent and that he would serve a 65% sentence. Applicant then testified if he had known that his sentence would be 85%, he would not have pled guilty. Upon questioning by the Court, Applicant admitted that the plea judge explained that Applicant should expect to serve the sentence “day for day.”

Plea counsel testified that he was the second lawyer on this case and that he reviewed the entire file and prior plea discussions with Applicant. Plea counsel stated that prior to the guilty plea, he was brought in because Applicant had turned down the last plea offer on the record and the case was scheduled for trial. Plea counsel testified he was prepared for trial. Plea counsel also testified that he could not recall a ten year offer or presenting this ten year offer to Applicant. Plea counsel testified he sent a letter to Applicant on September 5, 2013, stating that this offense would carry a 65% sentence; however, he corrected this advice prior to the plea and explained to Applicant that this



charge would in fact be an 85% sentence. Plea counsel corrected this mistake after reviewing the sentencing sheet and prior to Applicant's plea. The case was scheduled for trial the next week. Plea counsel then stated it was Applicant's choice whether to pursue a trial or accept a plea. Plea counsel testified that Applicant wanted him to go back to the State and get a better offer and he told Applicant that it was not possible.

This Court finds the Applicant failed to meet his burden of proving plea counsel misadvised him about the sentence he would receive if he pled guilty. Plea counsel testified he reviewed with Applicant that he was facing a charge that carried a possible twenty-five year sentence. This Court finds this testimony is credible. This Court finds the plea counsel initially advised Applicant that he would have to serve 65% of his sentence; however, upon reviewing the sentencing sheet and prior to Applicant pleading guilty, he corrected this advice and explained to Applicant prior to the plea that he would have to serve 85% of his sentence. This court also finds that the plea judge advised Applicant that he should expect to serve his sentence "day for day." This Court finds Applicant was aware of the sentences he could receive if he pled guilty and received lawful sentences. This Court finds the guilty plea transcript refutes Applicant's assertion that he was led to believe he would serve only 65% of his sentence. See Stalk v. State, 375 S.C. 289, 300, 652 S.E.2d 402, 407 (Ct. App. 2007). While Applicant may have wished that he would only have to serve 65% of his sentence, he was clearly advised of the potential sentence he could receive. See Holden v. State, 713 S.E.2d 611, 617, 393 S.C. 565, 575-76 (2011) (citation omitted) ("Wishful thinking regarding sentencing does not equal a misapprehension concerning the possible range of sentences, especially where one acknowledges on the record that one knows the range of sentences and that no promises have been made."). 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 finds Applicant failed to meet his burden of proving plea counsel was deficient.

Accordingly, this Court finds Applicant has failed to prove the first prong of the Strickland test – that plea counsel failed to render reasonably effective assistance under prevailing professional norms. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by plea counsel's performance. This Court concludes Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

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, this Court finds Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds Applicant has abandoned any such allegations.

CONCLUSION

Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient and Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

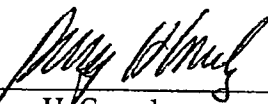
This Court advises Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the

appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

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

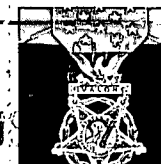
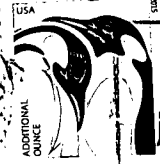
AND IT IS SO ORDERED this 14th day of March, 2016.



Perry H. Gravely
Presiding Judge
Ninth Judicial Circuit

Charleston, South Carolina.

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Clerk of Court
Supreme Court of South Carolina
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