



ALAN WILSON
ATTORNEY GENERAL

RECEIVED

September 25, 2017

SEP 25 2017

S.C. SUPREME COURT

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

Re: Brandon H. Eaton, #356444 v. State of South Carolina
2014-CP-42-2792

Dear Mr. Shearouse:

Enclosed are the following:

1. Notice of Appeal
2. Proof of Service of the notice of appeal on the Respondent
3. A copy of the order which is to be challenged on appeal.

Sincerely,

Valerie Garcia Giovanoli
Assistant Attorney General

VGG/lm
Enclosures

cc: J Brandt Rucker, Esquire
The Honorable M. Hope Blackley, Clerk of Court of Spartanburg County
The Honorable Barry J. Barnette, Seventh Circuit Solicitor
SCCID, Division of Appellate Defense
Vincent J. Barton, Esquire
Victims Advocacy Division

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

APPEAL FROM SPARTANBURG COUNTY
COURT OF COMMON PLEAS

SEP 25 2017
S.C. SUPREME COURT

The Honorable R. Ferrell Cothran, Jr., Circuit Court Judge

Case No. 2014-CP-42-2792

BRANDON H. EATON, #356444,

Respondent,


v.

STATE OF SOUTH CAROLINA

Petitioner.

NOTICE OF APPEAL

The State of South Carolina appeals the Honorable R. Ferrell Cothran, Jr.'s amended order dated July 11, 2017 and filed July 31, 2017 granting post-conviction relief to the Respondent. The State received notice of entry of the order on September 5, 2017 by electronic mail. A copy of the order on appeal is attached to this notice.



Valerie Garcia Giovanoli
Assistant Attorney General
South Carolina Bar No. 102524
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3737

September 25, 2017

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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SEP 25 2017

APPEAL TO SPARTANBURG COUNTY
COURT OF COMMON PLEAS

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The Honorable R. Ferrell Cothran, Jr., Circuit Court Judge

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v.

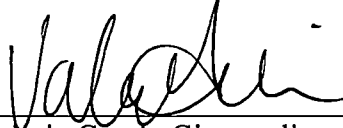
STATE OF SOUTH CAROLINA

Petitioner.


PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Respondent by depositing a copy of it in the United States Mail, postage prepaid, on September 25, 2017, to J. Brandt Rucker, Esquire, his attorney of record, to the address below.

John Brandt Rucker, Esquire
The Rucker Law Firm, LLC
128 Millport Circle STE 200
Greenville, South Carolina 29607


Valerie Garcia Giovanoli
Assistant Attorney General

SWORN to before me this 25th day of September, 2017.



Notary Public for South Carolina.

My Commission Expires: 5/20/2025

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
)
 Brandon Harley Eaton, #356444)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 SEVENTH JUDICIAL CIRCUIT

2014-CP-42-2792

**AMENDED ORDER GRANTING
 RELIEF**

This matter came before the Court by way of an Application for Post-Conviction Relief (PCR). The Applicant is represented by Brandt Rucker, Esq. The State of South Carolina was represented by Assistant Attorney General Alicia Olive. The Applicant is currently serving two twenty year concurrent sentences in the South Carolina Department of Corrections pursuant to a guilty plea.

A hearing was held on January 12, 2016. The Applicant appeared and testified. The applicant's former attorney, Geddes Anderson, Esq., appeared and also gave testimony. The Court reviewed the entire case file, including the plea transcript, and heard the testimony of all parties and witnesses.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. The Applicant was indicted at the February 2012 term of the Spartanburg County Grand Jury for criminal sexual conduct, first degree. (2012-GS-42-0798) The Applicant was

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 COURT
 CLERK
 SPARTANBURG COUNTY

also indicted at the August 2013 term of the Laurens County Grand Jury for criminal sexual conduct with a minor, first degree (2013-GS-30-1428). The applicant waived venue for the Laurens County charge, and consented to pleading guilty in Spartanburg County in order to plead to both the Laurens County charge and the Spartanburg County charge at the same time. The applicant waived presentment and pled guilty to two counts of criminal sexual conduct, first degree before the Honorable Roger L. Couch. The applicant was sentenced by Judge Couch to concurrent terms of twenty (20) years. The applicant did not appeal his convictions or sentences. Of note, the applicant has also filed an application in Laurens County for post-conviction relief. (2013-CP-30-0789) arising from this guilty plea.

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 had the opportunity to weigh the testimony of the witnesses, review the transcript, and review and weigh the evidence in this case pursuant to S.C. Code Ann. § 17-27-80 (2003). This Court previously ordered that relief should be granted to the Applicant. Respondent made a Motion pursuant to Rule 59(e), SCRCP, on July 8, 2016, to reconsider, alter, or amend the judgment, and the Court granted the motion to make specific findings as to each allegation raised at the evidentiary hearing, to-wit: (1) failing to request a competency evaluation; (2) failing to adequately investigate and to adequately consult with Applicant; (3) failing to advise Applicant that his confession could have been challenged in a pretrial Jackson v. Denno hearing.

The Applicant alleges he received ineffective assistance of counsel. For 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

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CLERK OF COURT
LAURENS COUNTY

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). In order to prove prejudice, an applicant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052). Additionally, 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).

The Applicant presented evidence through his testimony, his mother's testimony, and exhibits. The State of South Carolina called Mr. Anderson in response. Mr. Anderson admitted that his representation was constitutionally deficient, and that he made the following errors in his representation: he failed to properly research the applicable law, he failed to properly investigate the facts of the case including a potential third person who may have committed the crimes and a dubious confession of the applicant, and that he failed to have the applicant evaluated because of the applicant's diminished capacity. Mr. Anderson also failed to conduct proper discovery and review it with his client.

The Court has reviewed the allegations of the Applicant thoroughly and finds that Mr. Anderson's representation failed to meet the standard required under Strickland is that he failed to render reasonably effective assistance regarding the guilty plea. The Applicant has met his burden of proof regarding his claim that trial counsel was

ineffective in failing adequately represent the applicant in his guilty pleas.

A guilty plea defendant is also entitled to the effective assistance of plea counsel. Hill v. Lockhart, 474 U.S. 52, 58 (1985); Hyman v. State, 397 S.C. 35, 43, 723 S.E.2d 375, 379 (2012). The two-prong Strickland analysis applies to PCR claims alleging plea counsel was ineffective. Hill, 474 U.S. at 58. "In the context of a guilty plea, the deficiency prong inquiry turns on whether the plea was voluntarily, knowingly, and intelligently entered." Taylor v. State, 404 S.C. 350, 360, 745 S.E.2d 97, 102 (2013). To show prejudice, a guilty plea defendant must establish there is a reasonable probability that, but for plea counsel's errors, he would not have pled guilty and would have insisted on going to trial. Hill, 474 U.S. at 58-60; Hyman, 397 S.C. at 43, 723 S.E.2d at 379. The prejudice prong "focuses on whether [plea] counsel's constitutionally ineffective performance affected the outcome of the plea process." Taylor, 404 S.C. at 360, 745 S.E.2d at 102. "In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing." Bennett v. State, 371 S.C. 198, 204, 638 S.E.2d 673, 675 (2006).

In reviewing the guilty plea, it is clear that the applicant's education level is limited. Based on the transcript, and the testimony of the applicant, there are real questions about his mental capacity. Because of the seriousness of the crime, and the applicant's uniformly acknowledged limited mental capacity, a reasonable attorney would have asked for a mental evaluation in this case. The results of the mental evaluation could have affected the outcome of the plea. Additionally, Mr. Anderson testified that he failed to review the forensic evaluation and videos with the applicant, and failed to investigate the alleged confession of the applicant, and failed to inform

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JULIA COOPER
STATE OF MISSISSIPPI
LABORATORY

applicant of the potential suppression of that statement to police.

Additionally, allegations were made against another suspect, and it appears from the testimony at the PCR hearing that there may have been problems with the alleged victim's statements, including outright contradictions. Mr. Anderson never informed the Applicant about these issues. Mr. Anderson's testimony and the applicant's testimony create true concerns regarding the alleged confession and give rise to real questions regarding the voluntariness of the alleged confession as well as whether that alleged confession was taken under undue duress. None of this was properly investigated by Mr. Anderson. Mr. Anderson also failed to inform the Applicant that he could challenge the admissibility of the alleged confession. The guilty plea does not appear to be free, voluntary and with advice of competent counsel. There is a likely possibility that had the applicant been evaluated and been fully informed of the implications of the discovery that he would not have gone forward with this plea. Counsel's errors lead directly to the guilty pleas in this matter. Clearly, counsel's representation was constitutionally insufficient, and led to undue prejudice for the applicant. The applicant has met his burden and the case must be remanded for a new trial.

CONCLUSION

Based on the foregoing, the Court finds and concludes the applicant has met his burden, and that this case must be remanded for a new trial.

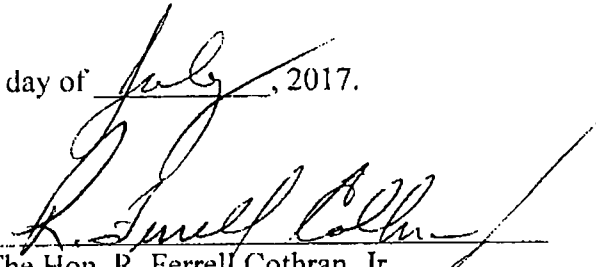
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M. ROPE BLANCHETT

COURT
CLERK
JAMES ROBERTSON

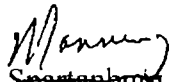
IT IS THEREFORE ORDERED:

1. The applicant's current sentence should be vacated and the matter should be remanded for a new trial.

AND IT IS SO ORDERED this 11 day of July, 2017.



The Hon. R. Ferrell Cothran, Jr.
Presiding Judge, Seventh Judicial Circuit


Spartanburg, SC

Date: 7-11-17

CLERK OF COURT
SPARTANBURG COUNTY
2017 JUL 31 PM 1:46
H. HOPE BLACKLEY

Spartanburg County

Spartanburg County Court House
180 Magnolia Street
P. O. Box 3483
Spartanburg, SC 29304-3483

Phone (864) 596-2591
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M. Hope Blackley
Clerk of Court

July 31, 2017

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

7TH JUDICIAL CIRCUIT

~~Shawanda Huley Eaton~~
Applicant # 356444

CASE # ~~2014CPA 2792~~

VS
State
Respondent

CERTIFICATE OF SERVICE

I certify that, on this date, I served a copy of the Amended Ord. of T. Ruling
In this action dated 7-11, 2017 on 7-31-17

By mailing to him/her, at his/her last known address, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

Breanna Arnone
Alicia Duce
Suzanne White

7-31-17
(Date)

Carrie Seaf
(Signature)