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September 29, 2017

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OCT 03 2017

S.C. SUPREME COURT

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

RE: Bryan M. Howell v. State of South Carolina; Case #: 2013-CP-18-02123
Randal W. Benton v. State of South Carolina; Case #: 2014-CP-18-01001

Dear Mr. Shearhouse:

Enclosed for filing is the Notice of Appeal (original and clocked copy) in the above Post-Conviction Relief (PCR) cases. Also enclosed are the following:

- (1) Proof of service of the Notice of Appeal on the Respondent;
- (2) The Order of Dismissal &
- (3) A Request for Representation on Appeal.

The Applicant(s)-Appellant(s) were represented by me as indigent, pursuant to my contract with the South Carolina Commission on Indigent Defense (SCCID) to handle PCR cases. By copy of this letter, I am forwarding a duplicate set of documents to the SCCID.

The Request for Representation on Appeal and the Affidavit in Support, thereof, are signed by me as attorney for Applicant(s)-Appellant(s). Should you need anything further, do not hesitate to contact me.

Thank you for your time and attention to this matter.

Sincerely,



Rodney D. Davis
South Carolina Bar #: 12396
4000 Faber Place Drive, Suite 300
Charleston, SC 29405
(843) 323-4353
Davis@LowcountryLawOffice.com

~~Enclosures: As stated above.~~
RDD/mmt

cc: Ruston Neely, Assistant Attorney General
Kimberly McCall, Appellate Division, SCCID

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

The Honorable Robert E. Hood

Case #: 2013-CP-18-02123

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2017 SEP 28 PM 2:50
DORCHESTER COUNTY
SOUTH CAROLINA
Robert E. Hood

Bryan M. Howell,

Appellant.

v.

State of South Carolina,

Respondent.

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S.C. SUPREME COURT

NOTICE OF APPEAL

Bryan M. Howell appeals the denial of his Post Conviction Relief (PCR) application in this case. The application for relief was denied following an evidentiary hearing before the Honorable Robert E. Hood on February 27, 2017. Counsel for the Appellant received a copy of the filed Order of Dismissal on or about September 4, 2017.

September 28, 2017


Rodney D. Davis
400 Faber Place Drive, Suite 300
Charleston, SC 29405
Attorney for Appellant

Other Counsel of Record:
Ruston W. Neely, Assistant Deputy Attorney General
State of South Carolina
P.O. Box 11549
Columbia, SC 29211-1549
Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

The Honorable Robert E. Hood

Case #: 2013-CP-18-02123

2017 SEP 28 PM 2:30
CERTIFIED COPY
Robert E. Hood
DORCHESTER COUNTY

Bryan M. Howell,

Appellant.

v.

State of South Carolina,

Respondent.

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OCT 03 2017

S.C. SUPREME COURT

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the State by mailing a copy, via US Mail, to the address of record, Ruston W. Neely, P.O. Box 11549, Columbia, South Carolina 29211-1549, on September 28, 2017.

September 28, 2017

Michelle Moore Trimble

Michelle Moore Trimble
Paralegal to Rodney D. Davis
400 Faber Place Drive, Suite 300
Charleston, SC 29405
(843) 323-4353
Davis@LowcountryLawOffice.com
Attorney for Appellant

Other Counsel of Record:
Ruston W. Neely, Assistant Attorney General
Office of the Attorney General, State of South Carolina
P.O. Box 11549
Columbia, SC 29211-1549
Attorney for Respondent

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)
)
)
Bryan M. Howell, #353433,)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

Case No. 2013-CP-18-2123

ORDER OF DISMISSAL

FILED - RECORDED
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CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

This Court convened an evidentiary hearing into this post-conviction relief (PCR) matter on February 27, 2017 at the Dorchester County Courthouse. Applicant was present at the hearing and represented by Rodney Davis, Esquire. Ruston W. Neely, Esquire, of the South Carolina Attorney General's Office, represented Respondent. Applicant's plea counsel was Mitchell Farley, Esquire, (Counsel), who was present and testified. This Court had the opportunity to listen to the testimony of Applicant and Counsel. This Court had before it the records of the Dorchester County Clerk of Court regarding the subject conviction, the guilty plea transcript, Applicant's records from the South Carolina Department of Corrections, and the pleadings in this matter. This Court finds as follows:

I. PROCEDURAL HISTORY

Applicant was indicted during the November 5, 2012 term of the Dorchester County Grand Jury for Contributing to the Delinquency of a Minor, Possession of a Weapon During a Violent Crime, Armed Robbery, Carjacking, Failure to Stop for a Blue Light, Leaving the Scene of an Accident with Injury, Child Endangerment, five counts of Burglary in the Second Degree (Violent), and Attempted Burglary in the Second Degree (2012-GS-18-0685 to -0697). Applicant was represented by Mitchell D. Farley, Esquire. On December 5, 2012, Applicant appeared

before the Honorable Diane S. Goodstein, where he pled guilty to Armed Robbery, Carjacking, Failure to Stop for a Blue Light, Leaving the Scene of an Accident with Injury, Burglary in the Second Degree (Violent), and three counts of Burglary in the Second Degree (Non-Violent); the remaining indictments were dismissed pursuant to the plea. In accordance with negotiations between the State and Applicant, Judge Goodstein sentenced Applicant to fifteen years for Armed Robbery, fifteen years for Carjacking, ninety days for Failure to Stop for a Blue Light, thirty days for Leaving the Scene of an Accident with Injury, fifteen years for Burglary in the Second Degree (Violent), and ten years for each count of Burglary in the Second Degree (Non-Violent), with all sentences to be served concurrently. Applicant did not appeal his guilty pleas or sentences.

II. ALLEGATIONS

In his post-conviction relief application, Applicant alleged he is being held unlawfully for the following reasons:

1. "Mitchell Farley did not let me know about reserving the right [to an appeal]."
2. "Not enough probable cause for an arrest warrant to be obtained."
 - a. "Officers obtained an arrest warrant [sic] with little to no probable cause."
3. "Mitchell Farley did not advise me about all the rights."

III. SUMMARY OF TESTIMONY

Applicant claimed Counsel spoke with him about a potential ten year plea deal. Counsel testified he told Applicant he would attempt to obtain ten year plea deal, but was only able to obtain a fifteen year offer from the State. Applicant claimed Counsel never spoke with him about trial preparation or explained the process, elements, or defenses. Applicant claimed he told Counsel he wanted help for his drug problem and didn't feel confident going to trial.

On cross-examination, Applicant admitted he was guilty and committed the crimes, but claimed he wouldn't have committed the crimes if he wasn't on drugs. Applicant admitted he told the truth when he said he was guilty. Applicant also admitted that Judge Goodstein went over all of his rights with him at his guilty plea and the Judge took the time to go over each of his objections to make sure he knew what he was doing, including his right to appeal. Applicant admitted that he understood what he was doing at the guilty plea.

Counsel testified Applicant maintained his guilt from their very first meeting and his focus was mitigation and negotiation. Counsel testified they went over all the charges, their elements, and possible defenses. Counsel spoke with Applicant concerning his statement to law enforcement and his belief it would not be suppressed.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court reviewed the record in its entirety, listened to the testimony given, and heard the arguments presented at the evidentiary 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. This Court finds counsel's testimony was credible and persuasive and Applicant's testimony lacked credibility. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Therefore, this Court dismisses Applicant's application for the reasons set out below:

A. Ineffective Assistance of Plea Counsel

This Court finds the record fully supports the knowing and voluntary nature of Applicant's guilty plea. 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). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual, a criminal inmate's right to

contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

The court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. "A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Thus, an applicant must show both error and prejudice to win relief in a PCR proceeding." Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001). To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238 (1969). For the reasons set out below, this Court finds the record and credible testimony support Applicant had a full understanding of the charges and consequences of his guilty plea:

1. Counsel did not inform Applicant of his right to an appeal

Applicant testified and the record reflects the plea judge went over Applicant's appellate rights in detail. Tr. 68. Counsel testified Applicant never inquired about his right to an appeal. 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. See Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997).

While trial counsel is required to make certain the defendant is made fully aware of the right to appeal, the standard for a guilty plea differs. Turner v. State, 380 S.C. 223, 224, 670 S.E.2d 373, 374 (2008). Absent extraordinary circumstances, such as when there is reason to think a rational defendant would want to appeal (for example, because there are non-frivolous grounds for appeal) or when the defendant reasonably demonstrated an interest in appealing, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea. Id. at 225, 670 S.E.2d at 374. "Acts inconsistent with the continued assertion of a right, such as a failure to insist upon the right, may constitute waiver." Bonnette v. State, 277 S.C. 17, 18, 282 S.E.2d 597, 598 (1981). "Instead, there must be proof that extraordinary circumstances exist, such as where a defendant inquires about an appeal, in order for counsel to be required to advise a defendant on the right to appeal." Rolen v. State, 384 S.C. 409, 415, 683 S.E.2d 471, 474-75 (2009).

This Court finds there were no extraordinary circumstances to require Counsel to inform Applicant of his right to an appeal and perfect an appeal. Further, any error by Counsel in failing to inform Applicant was cured by the plea judge's instructions on the record. Therefore, this allegation is denied and dismissed

2. There was not enough probable cause for arrest warrant

Applicant presented no credible evidence at the hearing regarding this allegation. Further, this Court finds the record does not support this allegation nor is it appropriate for PCR. "Applicant bears the burden of proving the allegations in his application." Butler, 286 S.C. at 442, 334 S.E. at 814. A defendant who pleads guilty on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing (1) that counsel's representation fell below an objective standard of reasonableness and (2) that there is a reasonable probability that but for counsel's errors, the defendant would not have pleaded guilty but would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 56-57, 106 S.Ct. 366, 369, 88 L.Ed.2d 203, 208-09 (1985).

Therefore, this Court denies and dismisses this allegation.

3. Counsel did not inform me of my rights

Counsel credibly testified he informed Applicant of his rights. Applicant testified, and the record supports, he was informed of his rights by the plea judge. Applicant also testified he understood the plea judge's colloquy and what he was doing. 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. See Wolfe, 326 S.C. at 165, 485 S.E.2d at 370.

This Court finds Applicant was properly informed of his rights by Counsel and the plea court. This Court also finds Applicant's plea was knowingly and voluntarily made. Therefore, this Court denies and dismisses this allegation.

IV. CONCLUSION

Based on 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 notes Applicant must file and serve a notice of appeal within thirty (30) 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, his post-conviction relief attorney must serve and file a notice of appeal on Applicant's behalf. Applicant and his attorney are directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 22 day of Aug, 2017.

Re Hood

ROBERT E. HOOD
Presiding Judge
1st Judicial Circuit

Columbia, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)
)
)
BRYAN M. HOWELL,)
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Applicant.)
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-versus-)
)
STATE OF SOUTH CAROLINA,)
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)
Respondent.)

IN THE SUPREME COURT OF SOUTH CAROLINA

Case #: 2013-CP-18-02123

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OCT 03 2017

S.C. SUPREME COU

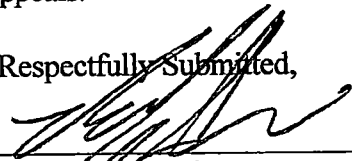
REQUEST FOR REPRESENTATION ON APPEAL

On behalf of the request of the above-named Applicant, to be represented by the South Carolina Commission of Indigent Defense, Appellate Division (SCCID), the undersigned attorney would show unto this Honorable Court that:

1. He is the attorney for the Applicant-Appellant in the above captioned case. The Applicant-Appellant was in custody during and taken into custody immediately following the Post Conviction Relief (PCR) hearing and was not available to personally sign this request;
2. The Applicant-Appellant was represented by the undersigned attorney as an indigent, pursuant to a contract with the SCCID;
3. The Applicant-Appellant has been informed that he may request assistance from the SCCID Appellate Division in perfecting his appeal;
4. A timely Notice of Intent to Appeal has been filed on the Applicant-Appellant's behalf;
5. The Applicant-Appellant has been informed that nothing requires SCCID Appellate Division to pursue this appeal unless that office's Chief Attorney is satisfied that there is arguable merit to this appeal and that he cannot afford to hire an attorney.

At this time, the Applicant-Appellant requests the aid of the SCCID Appellate Division in perfecting her appeal to the South Carolina Court of Appeals.

Respectfully Submitted,



Rodney D. Davis
South Carolina Bar #: 12396

Charleston, South Carolina.
September 28, 2017

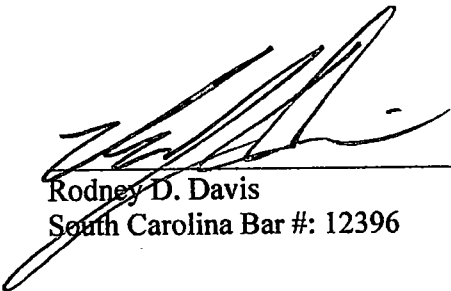
STATE OF SOUTH CAROLINA)

CASE NO: 2014-CP-18-01001

COUNTY OF DORCHESTER)

VERIFICATION

PERSONALLY appeared before me, Rodney D. Davis, being first duly sworn, deposes and says that he has read the foregoing *Request for Representation on Appeal* to be filed on behalf of the Applicant-Appellant, **Randal W. Benton**, and the same is true of his knowledge except those matters alleged on information and belief, and as to those matters, he believes them to be true.

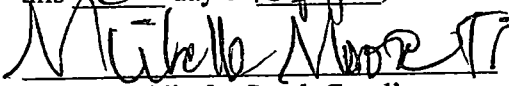

Rodney D. Davis
South Carolina Bar #: 12396

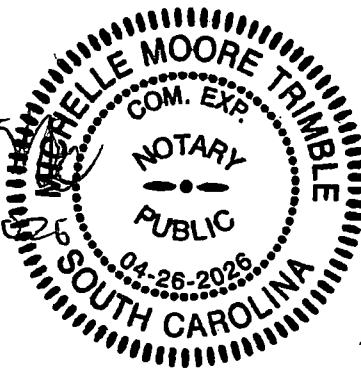
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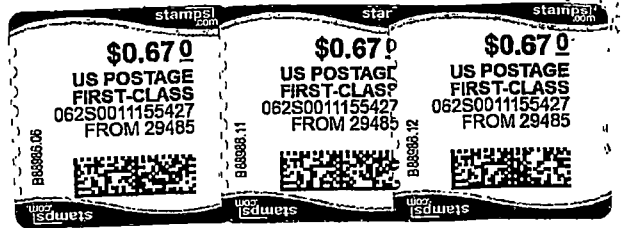
S.C. SUPREME COURT

SWORN to and subscribed to me
this 25 day of Sept, 2017.


Notary Public for South Carolina
My Commission expires 4/26/2026



MD
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Charleston, SC 29405



The Honorable Daniel E. Shearhouse
Supreme Court of South Carolina
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