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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

The Honorable Deadra L. Jefferson, Circuit Court Judge

Case No. 2013-CP-42-2352

State of South Carolina

Respondent,

v.

James Edward Johnson, Jr.
#353643

Appellant.

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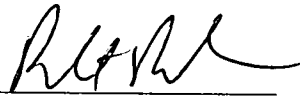
S.C. Supreme Court

Notice of Appeal

James Edward Johnson, Jr. appeals the order of the Honorable Deadra L. Jefferson dated March 31, 2015. Appellant received written notice of entry of this order on April 3, 2015.

May 2, 2015

Sincerely,

s/ 

Brandt Rucker
Attorney for Appellant James
Edward Johnson, Jr.
522 North Church Street
Greenville, South Carolina 29601
(864) 271-9925
Attorney for Appellant

cc:
Other Counsel of Record:

Suzanne White
Office of the South Carolina Attorney General
P.O. Box 11549
Columbia, S.C. 29211

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Proof of Service

I certify that I have served the Notice of Appeal on the State of South Carolina by depositing a copy of those documents in the United States Mail, postage prepaid, on May 2, 2015, addressed to its attorney of record, Suzanne White Office of the South Carolina Attorney General, P.O. Box 11549, Columbia, S.C. 29211

May 2, 2015

Sincerely,

s/


Brandt Rucker
Attorney for Appellant James
Edward Johnson, Jr.
522 North Church Street
Greenville, South Carolina 29601
(864) 271-9925
Attorney for Appellant

cc:

Other Counsel of Record:

Suzanne White
Office of the South Carolina Attorney General

P.O. Box 11549
Columbia, S.C. 29211

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)
)
James Edward Johnson Jr, #353643,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2013-CP-42-2352

ORDER OF DISMISSAL

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SC Court of Appeals

Presiding Judge:
Applicant's Attorney:
Respondent's Attorney:
Plea Counsel:
Date of Hearing:
Court Reporter:

Hon. Deadra L. Jefferson
J. Brandt Rucker, Esquire
Suzanne H. White, Esquire
Andrea L. Price, Esquire
January 12, 2015
Pamela E. Green

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR), filed April 29, 2013. The Respondent made its Return on or about June 27, 2014. An evidentiary hearing into the matter was convened on January 12, 2015, at the Spartanburg County Courthouse. The Applicant was present at the hearing and was represented by J. Brandt Rucker, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. Andrea L. Price, Esquire, also testified. This Court also had before it a copy of the records of the Spartanburg County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the Return, and the plea transcript.

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PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. He was indicted at the August 2010 term of the Spartanburg County Grand Jury for four (4) counts of Kidnapping¹ (2012-GS-42-4476, -4477, -4481, -4482), three (3) counts of Armed Robbery² (2012-GS-42-4474A, -4475, -5167), two (2) counts of Attempted Armed Robbery³ (2012-GS-42-4483, -4484), one (1) count of Failure to Stop for a Blue Light Without Injury or Death, First Offense⁴ (2012-GS-42-4478), and one (1) count of Unlawful Possession of a Stolen Pistol⁵ (2012-GS-42-4485).

The Applicant was also before the plea court for a hearing on his probation violation stemming from warrant number W-42-120311 (Tr. 28: 1-29:14). The Applicant was placed on probation on January 11, 2008 before Judge Hayes for the offense of Attempted Armed Robbery (2007-GS-42-4434) and was sentenced to fifteen (15) years' imprisonment suspended to time served and five (5) years' probation. The Applicant was also under special probation conditions, including restitution, fines, fees, and other obligations, random alcohol and drug testing, no possession of a firearm, and no contact with the victim. At the hearing, the plea court revoked the

¹ Kidnapping is a violent, most serious felony punishable by thirty (30) years' imprisonment. See S.C. CODE ANN. § 16-3-910 (2012); S.C. CODE ANN. § 16-1-60 (2012); S.C. CODE ANN. § 17-25-45 (2012).

² Armed Robbery is a violent, most serious felony punishable by imprisonment for a "mandatory minimum term of not less than ten [(10)] years or more than thirty [(30)] years, no part of which may be suspended or probation granted. A person convicted under this subsection is not eligible for parole until the person has served at least seven [(7)] years of the sentence." See S.C. CODE ANN. § 16-11-330 (A) (2012); S.C. CODE ANN. § 16-1-60 (2012); S.C. CODE ANN. § 17-25-45 (2012)

³ Attempted Armed Robbery is a violent, most serious felony punishable by twenty (20) years' imprisonment. See S.C. CODE ANN. § 16-11-330(B) (2012); S.C. CODE ANN. § 16-1-60 (2012); S.C. CODE ANN. § 17-25-45 (2012).

⁴ An offender who commits Failure to Stop for a Blue Light, "for a first offense where no great bodily injury or death resulted from the violation, is guilty of a misdemeanor and, upon conviction, must be fined not less than five hundred dollars [(\$500.00)] or imprisoned for not less than ninety [(90)] days nor more than three [(3)] years. The Department of Motor Vehicles must suspend the person's driver's license for at least thirty [(30)] days." S.C. CODE ANN. § 56-5-750(B)(1) (2012).

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Applicant's probation in full and imposed the Applicant's active sentence of fifteen (15) years' imprisonment. (Tr. 36:16-25).

The Applicant was represented by Andrea Leah Price, Esquire. On December 18, 2010, the Applicant pled guilty as indicted to all charges. The Honorable J. Derham Cole sentenced the Applicant as follows: four (4) counts of Kidnapping (2012-GS-42-4476, -4477, -4481, -4482) to twenty (20) years each concurrent, three (3) counts of Armed Robbery (2012-GS-42-4474A, -4475, -5167) to thirty (30) years each concurrent, two (2) counts of Attempted Armed Robbery (2012-GS-42-4483, -4484) to twenty (20) years each concurrent, one (1) count of Failure to Stop for a Blue Light Without Injury or Death, First Offense (2012-GS-42-4478) to three (3) years concurrent, and one (1) count of Unlawful Possession of a Stolen Pistol (2012-GS-42-4485) to five (5) years concurrent. The Applicant's thirty (30) year sentence on indictment number 2012-GS-42-4474 one (1) count of Armed Robbery was consecutive to the Applicant's probation violation revocation on indictment number 2007-GS-42-4434. The Applicant's co-defendant Jalek Jonques Miller likewise pled guilty and was sentenced during the Applicant's hearing. The Applicant did not appeal his plea, sentences, or probation revocation.

ALLEGATIONS

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

1. Ineffective assistance of counsel, in that;
 - i. Counsel's inadequate investigation or research leading to plea,
2. Involuntary guilty plea, in that;
 - i. Erroneous legal advice led to the plea,
3. Due process violation, in that;
 - i. The due process right to trial was denied

⁵ Unlawful Possession of a Stolen Pistol is a "felony and, upon conviction, [an offender] must be fined not more than two thousand dollars [(\$2,000.00)] or imprisoned not more than five [(5)] years, or both. S.C. CODE ANN. § 16-23-50(A)(1) (2012).

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based on erroneous legal advice and inadequate research.

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 (2012).

Summary of Testimony and Proceeding

The Applicant testified that he was sentenced to forty-five (45) years' imprisonment. The Applicant testified he met with Counsel approximately three (3) times while he was in the Spartanburg County Detention Center including once at the preliminary hearing, where Counsel waived the Applicant's preliminary hearing and the Applicant ultimately pled guilty. The Applicant testified his guilty plea was involuntary, Counsel was ineffective, Counsel gave him erroneous advice, and Counsel failed to investigate or research his case. He testified that he admitted his guilt, but that Counsel advised him that a guilty plea was in his best interest and not to seek a trial because he was facing the potential sentence of imprisonment for life without the possibility of parole.

The Applicant testified that during their first meeting, he and Counsel discussed the charges and warrants and Counsel told him that he had no defense. However, the Applicant testified that Counsel never explained the law or reviewed the indictments with him, although he acknowledged receiving copies of the indictments, sentencing sheets, and motions from Counsel. The Applicant testified that during the second meeting, Counsel showed him a copy of an e-mail regarding the possibility the State would seek the sentence of life in prison without parole and

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reviewed with him some of the discovery materials Counsel had forwarded earlier. The Applicant testified that Counsel advised him that the evidence against him was overwhelming and discussed the possibility of a plea. The Applicant testified that he had no knowledge if Counsel attempted to negotiate any plea offer on his behalf. The Applicant acknowledged that the attempted murder charge he faced was dropped. The Applicant testified that he believes that he might have still been convicted if he went to trial, but it should have been his choice. However, the Applicant testified that he was not able to make the decision properly and ultimately decided to plead guilty because Counsel advised him that he had no defense.

The Applicant acknowledged that he committed the crimes he pled guilty to, but testified he received improper advice from Counsel. However, the Applicant also testified that he did not believe that he was guilty of one Armed Robbery, one Attempted Armed Robbery, or one Kidnapping because he "didn't take what [they] said he took," took cell phones from only Christina Hughes and Annette Smith, and he committed a crime, but not an Armed Robbery. The Applicant alleged that he did not have the indictments when he was sentenced. The Applicant testified that the statement of victim Alice Williams (Applicant's Exhibit #1), which was included in the discovery indicates the armed intruders kicked her phone away. The Applicant states that page nine (9) of a supplemental investigative report (Applicant's Exhibit #2), which was likewise included in the discovery indicated that the store manager found all the phones in a trash bin near the back exit of the store and returned them to the victims, so the Applicant did not believe he could be guilty of an armed robbery of the phones when they were left in the store. The Applicant testified he did not "take" the phones and that he believes the victim's statements are exculpatory because they tend to show that there was a long gun by the register and that when the victim was ordered to lie down and turn over her phone, the Applicant kicked away her

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phone and did not "take" her phone. The Applicant alleged that he was charged with two counts of Attempted Armed Robbery and Armed Robbery for the "same things" and one store, but for another victim. Further, the Applicant testified that he believes the indictments should have been challenged because there were multiple indictments for the same store robbery and indictments – 4474 and –4475 have the exact same language, but different victim names. The Applicant testified that Counsel should have raised this issue prior to the plea and that his attorney should have told him that he had a defense. The Applicant testified about the "shotgun effect" and opined that the more counts of armed robberies that are before the judge, the less incarceration he would receive. The Applicant also testified that his co-defendant received twenty (20) years' imprisonment on six (6) charges, while he had eleven (11) charges.

The Applicant admitted that the plea court advised him of his constitutional rights and that he was aware he gave up his rights during his plea hearing. The Applicant testified that Counsel did not investigate his case because Counsel felt the Applicant was guilty. He further testified that this deprived him of his right to go to trial. He further testified that he felt it was his "decision" to get "life." The Applicant testified he received an "email print out" containing his LWOP notice, but he was not served with the notice. On cross examination however, he conceded that he was served with LWOP notice by email. The Applicant denied Counsel explained or discussed the elements of the charged offenses, looked at the indictments, discussed the police statement with him, reviewed the discovery, or enumerated his options. He likewise denied seeing the video while he was in the county detention center and denied pleading guilty in order to receive a lesser sentence. The Applicant admitted he had guns, participated in the police chase, and made a statement and confession to the police. He testified Counsel advised him that the evidence of his guilt was overwhelming, including a video, that he had a "lot of stuff against

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[him],” and that he should “look into” a guilty plea, but never explained the evidence or discovery in depth. The Applicant testified that he committed the crimes because his head was not on “straight” and was seeing a psychiatrist because of stress and family matters, whose name he provided to his attorney.

Counsel testified that she met with the Applicant four (4) times. First, she met with the Applicant shortly after his arrest to discuss his bond hearing, which considering the allegations against the Applicant, Counsel did not think was a good idea. Second, Counsel met with the Applicant at his scheduled preliminary hearing in September 2012. At the Applicant’s preliminary hearing, which the Applicant ultimately waived, Counsel explained the process, reviewed the warrants and charges as well as the evidence against the Applicant and discovery. Counsel and the Applicant discussed the fact that although the Applicant and his co-defendant robbed one store, multiple victims—two patrons and two employees—could serve as eyewitnesses. They discussed how the Applicant and his co-defendant robbed the Family Dollar then fled the scene and were chased by the police. The perpetrators eventually were apprehended when they wrecked their getaway car; the Applicant’s co-defendant broke his arm and was hospitalized. Counsel advised the Applicant that his armed robbery of the store patron and the two (2) employees gave rise to three (3) victims, each deprived of property, three (3) incident reports, and ultimately, three (3) counts of Armed Robbery.

Counsel testified she next met with the Applicant in November 2012 to discuss a possible guilty plea and the Solicitor’s intention to seek a potential life without parole sentence if the Applicant was found guilty at trial. Counsel discussed the State’s burden of proof, the offenses’ penalty ranges, the potential sentences the Applicant was facing, and the Applicant’s choices and options, especially considering his youth. Counsel testified she and the Applicant agreed that he

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had no defenses, especially since the Applicant made a post-Miranda confession and full, inculpatory statement to the police. Counsel opined that the Applicant's best interest was to plead guilty and avoid life imprisonment without possibility of parole. Counsel testified that the fact that the phones were still in the store and two were removed and found in a garbage can at the back of the store created no viable defense. Further, Counsel testified that the "kicking away" of a phone versus the taking of a phone was not a viable defense. Counsel testified she reviewed the video with the Applicant's co-defendant's attorney, Robert B. Hall, and determined the video was "not a good video" from the defense's standpoint.

Counsel explained that in her statement to law enforcement, one of the victims, Hughes, said the defendants took all the cell phones from everyone. One of the victims of an Attempted Armed Robbery charge was Mattison Dawkins, an eleven-year-old child. The Attempted Armed Robbery victim, a mother, Tameeka Young made a statement. Together, three (3) victims were deprived of their cell phones, which constituted the three (3) Attempted Armed Robbery charges. Counsel testified that she reviewed the discovery several times with the Applicant and considering the evidence against him, felt it was in the Applicant's best interest to plead guilty. Counsel testified that the fourth time she met with the Applicant was prior to his guilty plea. Finally, Counsel testified that she discussed the theory of hand of one, hand of all with the Applicant.

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. This Court finds Counsel's testimony more credible and compelling than the Applicant's testimony as to all allegations raised in the application and at the hearing. Although the Court perceives the Applicant to be very intelligent.

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In a PCR action, “the burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.” Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 622, 300 S.E.2d 482, 483 (1983)). Where the Applicant alleges ineffective assistance of counsel 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, 686, 104 S. Ct. 2052, 2064 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 686, 104 S. Ct. at 2064).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. See Strickland at 690, 104 S. Ct. at 2066. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. See id. The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

Courts use a two-pronged test to evaluate allegations of ineffective assistance of counsel. First, the applicant must prove that counsel’s performance was deficient. See id. at 117–18, 386 S.E.2d at 625. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Id. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 668, 104 S. Ct. at 2052). 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.” Id. at 117–18, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 694, 104 S. Ct. at 2068). “A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial.” Johnson v. State

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325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland, 466 U.S. at 694, 104 S. Ct. at 2068).

This Court finds Counsel is a criminal practitioner who has experience in the trial of serious offenses. This Court finds Counsel provided credible testimony during the Applicant's evidentiary hearing. Counsel conferred with the Applicant on numerous occasions. During conferences with the Applicant, Counsel discussed the pending charges, the elements of the charges and what the State was required to prove, range of penalty, the Applicant's constitutional rights, the Applicant's version of the facts, and his possible defenses or lack thereof. The record reflects that the Applicant's plea was entered freely, voluntarily, knowingly, and intelligently.

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds that the Applicant's attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 5, 239 S.E.2d 750, 752 (1977); Strickland, 466 U.S. at 687-88, 104 S. Ct. 2052, 2064-65; Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 687-88, 104 S. Ct. at 2064-65, Turner v. Bass, 753 F.2d 342, 348 (4th Cir. 1985), *rev'd on other grounds*, Turner v. Murray, 106 S. Ct. 1683 (1986); Marzullo v. Maryland, 561 F.2d 540, 543 (4th Cir. 1977)). This Court further finds Counsel adequately conferred with the Applicant, conducted a proper investigation, and provided thorough representation. This Court finds that Counsel's representation did not fall below an objective standard of reasonableness.

Insufficient Indictments

The Applicant summarily argues that Counsel was ineffective for failing to challenge the sufficiency of the indictments. This Court finds that an indictment is purely a notice document:

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Every indictment shall be deemed and judged sufficient and good in law which, in addition to allegations as to time and place, as required by law, charges the crime substantially in the language of the common law or of the statute prohibiting the crime or so plainly that the nature of the offense charged may be easily understood and, if the offense be a statutory offense, that the offense be alleged to be contrary to the statute in such case made and provided.

S.C. CODE ANN. § 17-19-20 (2012). “The primary purpose of an indictment is to put the defendant on notice of what he is called upon to answer, by apprising him of the elements of the offense, and to allow him to decide whether to plead guilty or stand trial, and to enable the circuit court to know what judgment to pronounce if the defendant is convicted.” State v. Smalls, 364 S.C. 343, 346-47, 613 S.E.2d 754, 756 (2005). The court

should judge the sufficiency of the indictment by determining whether (1) the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, and the defendant to know what he is called upon to answer and whether he may plead an acquittal or conviction thereon; and (2) whether it apprises the defendant of the elements of the offense that is intended to be charged.

State v. Gentry, 363 S.C. 93, 102-03, 610 S.E.2d 494, 500 (2005) (citing State v. Wilkes, 353 S.C. 462, 578 S.E.2d 717 (2003)). “In determining whether an indictment meets the sufficiency standard, the court must look at the indictment with a practical eye in view of all the surrounding circumstances.” Id. (citing State v. Adams, 277 S.C. 115, 283 S.E.2d 582 (1981)). “[W]hether the indictment could be more definite or certain is irrelevant.” Id. (citing State v. Knuckles, 354 S.C. 626, 583 S.E.2d 51 (2003)). See also State v. Tumbleston, 376 S.C. 90, 97-98, 654 S.E.2d 849, 853 (2007) (citing Evans v. State, 363 S.C. 495, 508, 611 S.E.2d 510, 517 (2005)) (noting that all of the surrounding circumstances must be weighed to make an accurate determination of whether the defendant was prejudiced by a lack of notice and an insufficient indictment).

Moreover,

a signed document that informs a defendant of the charges against him, such as a sentencing sheet, gives rise to a presumed regularity in the proceedings and

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signifies that the defendant has been notified of the charges to which he has pled guilty. . . . In a criminal case, a defendant who chooses to plead guilty has ample opportunity to be fully notified of the charges he is pleading guilty to. . . . [A] defendant may check a box to indicate that he wishes to plead guilty. In addition, a defendant may sign the sentencing sheet, indicating the defendant is informed of the choices and has selected the box that corresponds to the course of action the defendant wants to take in the case. As a result, we believe that all of these factors indicate that the Defendant had notice of the charges to which he chose to plead guilty.

Smalls, 364 S.C. at 347, 613 S.E.2d at 756.

The Applicant was fully aware of the charges he was facing. Based on the Applicant and Counsel's factual synopsis, this Court finds that the indictments sufficiently describe the offenses in order to provide the Applicant notice of the charged offenses. Therefore, this Court finds that the indictments are sufficient on their face. Accordingly, this Court finds that Counsel was not ineffective for failing to challenge the indictments. The Applicant's assignment of error is without merit.

This Court finds that the Applicant faced the potential sentence of life without parole even if the State had prevailed on only one Armed Robbery charge at trial because of his prior record. The Applicant was on probation at the time of the armed robbery for the charge of Attempted Armed Robbery. Further, the evidence of the case contained a contemporaneous video of the events, which would be the most damaging evidence and would support a charge of accomplice liability even without a charge of conspiracy. This Court finds that the Applicant failed to present any evidence or testimony to support a claim that he had any viable defenses for trial. Substantial circumstantial evidence indicates that the Applicant had control over the victims' phones; the victims' testimony at trial would reflect and the jury could easily infer that the Applicant and his co-defendant removed and placed the victims' phones in the trash bin. There does not have to be a complete taking for the "asportation" element of the crime to occur.

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This Court finds that the Applicant has failed to meet his burden of proof as to this claim and it is denied and dismissed.

Involuntary Guilty Plea

In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347, 350 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566, 566 (4th Cir. 1976).

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, 474 U.S. at 52, 106 S. Ct. at 366; Roscoe, 345 S.C. at 20, 546 S.E.2d 419; Hill, 474 U.S. at 52, 106 S. Ct. at 366; Jackson v. State, 342 S.C. 95, 535 S.E.2d 26 (2000); Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000); Rayford v. State, 314 S.C. 443, 501 S.E.2d 805 (1994)). To be knowing and voluntary, a plea must be entered with full

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understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243–44, 89 S. Ct. 1709, 1712 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991) (citing State v. Hazel, 275 S.C. 392, 394, 271 S.E.2d 602, 602 (1980)). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Rolen v. State, 384 S.C. 409, 413, 683 S.E.2d 471, 474 (2009) (citing Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 650 (2000). See Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)). “Specifically, the voluntariness of a guilty plea is not determined by an examination of a specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea, and also from the record of the PCR hearing.” Roddy v. State, 339 S.C. 29, 33, 528 S.E.2d 418, 420 (2000). “In order for a defendant to knowingly and voluntarily plead guilty, he must have a full understanding of the consequences of the plea.” Id. (citing Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991); State v. Hazel, 275 S.C. 392, 271 S.E.2d 602 (1980)). A defendant’s knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and “may be accomplished by colloquy between court and defendant, between court and defendant’s counsel, or both.” State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993). “Under the procedure, a defendant, before his guilty plea may be accepted, is examined under oath on the voluntariness of his plea, including particularly its freedom from coercion by threat.” Edmonds, 546 F.2d at 567. When a defendant pleads guilty on the advice of counsel, the plea may be attacked through only a claim of ineffective assistance of counsel. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 411, 412 (2002) (citing Al-Shabazz v. State, 338 S.C. 354, 363–64, 527 S.E.2d 742, 747 (1999)).

This Court finds that the Applicant failed to meet his burden of proof as to his claim.

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This Court finds the transcript of the guilty plea to be most compelling. The plea court thoroughly questioned the Applicant in order to ensure that he was pleading guilty with full knowledge of the charges, potential sentences, and constitutional rights he waived.

The Solicitor and the plea court published the indictments for the record and noted that the Applicant was pleading to the charges "straight up" (Tr. 3:4-16; 5:5-9:15). The Applicant affirmed he understood the potential penalties associated with each charge, the fact that they were classified as violent, most serious, and no-parole offenses (Tr. 13:11-14:7, 14:19-23; 17:3-18), and the fact that the plea court was bound to impose a mandatory minimum sentence and could impose the maximum penalty based on the Applicant's plea to the charges "straight up." (Tr. 6:1-8, 20-22; 7:13-15, 23-25; 8:8-10, 20-21; 8:22-9:2). The plea court determined that the Applicant entered his guilty plea freely and voluntarily (Tr. 18:4-8), understood and had ample opportunity to discuss with his attorney the charges and potential penalties he was facing (Tr. 12:13-16), understood and had ample opportunity to discuss with his attorney the consequences of entering a guilty plea (Tr. 12:4-8), and that the Applicant understood he was waiving his right to assert any defenses to the charges (Tr. 4:15-24). Further, the Applicant affirmed that he was able to explain and understand the facts and circumstances of the offense and any possible defenses with his lawyer (Tr. 12:18-13:8). The Applicant affirmed that he understood he was waiving his constitutional rights (Tr. 14:24-15:17). The Applicant told the plea court that he was not promised anything in order to plead guilty and had not been threatened or forced into entering his plea (Tr. 15:19-18:8). Additionally, the Applicant told the plea court that he had not been treated for, nor did he suffer from any addiction, mental illness, or emotional condition that prevented him from fully understanding the guilty plea proceeding (Tr. 19:20-20:23).

Finally, the Applicant allocuted to the facts of the incident as summarized by

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Solicitor, police officer, and victim (Tr. 25:24–26:2), his criminal record, which consists of a 2008 conviction for Attempted Armed Robbery, and told the plea court that he still intended to plead guilty (Tr. 26:9–16). Additionally, the plea court and Solicitor clarified that the Armed Robbery indictments concerned the robbery of Annette Smith, an employee of the Family Dollar Store, Christina Hughes, an employee of the Family Dollar Store, and Alice Williams, a customer of the Family Dollar Store (Tr. 5:13–7:7) and the Attempted Armed Robbery indictments concerned the attempted robbery of Tameka Young and Mattison Dawkins (Tr. 7:18–22). Ultimately, the Defendant stated he knew the consequences of his actions and his guilty plea and was satisfied with his attorney’s services: “I know that I told Ms. Andrea Price that I would be at the mercy of the Court. I know what my crimes carry. I know what I did was wrong. . . . I want to thank Ms. Price for doing everything she could for me and I want to thank the Solicitor also for helping me as much as they have” (Tr. 30:22–24; 31:5–7).

Not only did the Applicant fail to establish that Counsel was deficient in her representation of Applicant in any manner, but the Applicant has failed to establish that he would have proceeded to trial but for these alleged deficiencies of Counsel. Further, the record is clear that the Applicant informed the court that he agreed with the facts as articulated by the Solicitor and wanted to plead (Tr. 26:9–16) and that the Applicant was aware of the strength of the State’s case, particularly the video evidence (Tr. 26:21–27:2). The Applicant informed the court “they said if I plead today that I wouldn’t go through trial. So that’s what I want to do. I don’t want to go to trial” (Tr. 18:1–3). The testimony and record support the findings that the Applicant pled guilty freely and voluntarily. Therefore, the Applicant’s claim is denied and dismissed.

Due Process Violations

This Court finds that although the Applicant raised this allegation in his application,

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failed to proceed with presenting any evidence or testimony in support of his claim of violations of the Applicant's due process rights. Therefore, Court finds that the Applicant voluntarily abandoned this allegation.

All Other Allegations

As to any and all allegations that the Applicant raised in the application and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant abandoned such allegations. Therefore, they are hereby denied and dismissed.

CONCLUSION

This Court finds in regards to the allegations of ineffective assistance of counsel and involuntary guilty plea, Applicant's testimony as a whole was not credible. This Court further finds Counsel adequately conferred with the Applicant, conducted a proper investigation, was thoroughly competent in her representation, and that Counsel's conduct does not fall below the objective standard of reasonableness.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test specifically that counsel failed to render reasonably effective assistance under prevailing professional norms. See Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). The Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in her representation of the Applicant. The Applicant failed to show that Counsel's performance was deficient. Therefore, this Court need not address whether the Applicant was prejudiced by counsel's representation. See id. The Applicant's complaints concerning counsel's performance are without merit and are denied and dismissed.

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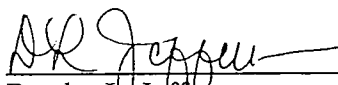
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court cautions 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, 454, 409 S.E.2d 395, 396 (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 the Applicant's behalf. The 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 this 26th day of March, 2015.



Deadra L. Jefferson
Presiding Judge
Seventh Judicial Circuit

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SC Court of Appeals

The Honorable Jenny Abbott Kitchings
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