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Arthur K. Aiken ***A. Bea Hightower***

November 15, 2017

The Honorable Daniel E. Shearouse, Clerk
South Carolina Supreme Court
PO Box 11330
Columbia, SC 29211

Re: Rashawn J. Isaac v. State of South Carolina
Civil Action No.: 2016-CP-02-2650

Dear Mr. Shearouse:

I am appointed counsel for the Applicant, Rashawn J. Isaac, in the above captioned post-conviction relief case. I have enclosed, for filing in your office, a Notice of Appeal and Motion to Proceed in Forma Pauperis for this case. Please return file stamped copies to me.

By copy of this letter with the filings enclosed, I have filed these filings with the Clerk of the Aiken County Court of Common Pleas and have served these filings on the Office of the Attorney General for South Carolina. Please call with any questions.

Thank you for your help

Sincerely,

Arthur K. Aiken
art@aikenandhightower.com

cc: Clerk, Aiken County Court of Common Pleas (w/enclosures)
Office of the Attorney General for South Carolina (w/enclosures)
Rashawn J. Isaac (w/enclosures)

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

J. Mark Hayes, Circuit Court Judge

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S.C. SUPREME COURT

Case No. 2016-02-2650

Rashawn J. Isaac.....Applicant/Appellant

v.

State of South Carolina.....Respondent/Respondent

NOTICE OF APPEAL

This is a post-conviction relief case. Appellant appeals from the Order of Dismissal entered in this case on October 21, 2017. Appellant received written notice of the entry of the Order of Dismissal entered on October 21, 2017 on October 16, 2017. A copy of the Order of Dismissal appealed from is attached.

November 15, 2017

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ATTORNEYS FOR RESPONDENT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

J. Mark Hayes, Circuit Court Judge

Case No. 2016-02-2650

Rashawn J. Isaac.....Applicant/Appellant

v.

State of South Carolina.....Respondent/Respondent

PROOF OF SERVICE AND FILING

I certify that, on November 15, 2017, I served and filed the Notice of Appeal and Motion to Proceed in Forma Pauperis in the above appeal by mailing copies of those filings to the following:

Office of the Attorney General for South Carolina
PO Box 11549
Columbia, SC 29201

and

Office of the Aiken County Clerk of Court
PO Box 583
Aiken, SC 29802

SIGNATURE ON THE FOLLOWING PAGE

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Columbia, SC
November 15, 2017

STATE OF SOUTH CAROLINA COUNTY OF AIKEN	)	IN THE COURT OF COMMON PLEAS SECOND JUDICIAL CIRCUIT
Rashawn J. Isaac, #366517, Applicant, v. State of South Carolina, Respondent.	)	2016-CP-02-2650 **ORDER OF DISMISSAL**

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on November 29, 2016. Respondent submitted its Return on August 23, 2017. An evidentiary hearing was convened on September 22, 2017, at the Aiken County Courthouse. Applicant was present at the hearing and was represented by Arthur Aiken, Esquire. Respondent was represented by Assistant Attorney General Julie A. Coleman of the South Carolina Attorney General's Office.

Applicant testified on his own behalf at the evidentiary hearing. Respondent presented testimony from Michael Chesser, Esquire ("Plea Counsel"). The Court had before it a copy of the guilty plea transcript, the records of the Aiken County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, and the pleadings. The Court finds as follows:

I. PROCEDURAL HISTORY

The records before this Court indicate Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. In the November term of 2013, the Aiken County Grand Jury indicted Applicant for murder (2013-GS-02-1731), first degree burglary (2013-GS-02-1732), and armed robbery

(2013-GS-02-1733). Michael W. Chesser, Esquire, represented Applicant. John W. "Bill" Weeks, Esquire, prosecuted the case. On December 10, 2015, Applicant pled guilty as indicted to first degree burglary and armed robbery and to the lesser included offense of voluntary manslaughter before the Honorable James R. Barber, III. Pursuant to a negotiated sentence, Judge Barber sentenced Applicant to imprisonment for concurrent terms of thirty years each for voluntary manslaughter, first degree burglary, and armed robbery. Applicant did not appeal his conviction or sentence.

II. ALLEGATIONS

In his current application, Applicant alleges that he is being held in custody unlawfully based on the following allegations:

1. Ineffective Assistance of Counsel
    a. Counsel failed "to obtain mental health documents."

On September 11, 2017, Applicant amended his application to include the following additional allegations:

(i) Failure to obtain mental health records;
(ii) Failure to present the option of trying the case;
(iii) Failure to advise Applicant of the advantages and disadvantages of a trial and the advantages and disadvantages of a plea; and
(iv) Failure to review the evidence with Applicant.

III. APPLICABLE LAW

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application 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, (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any 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. With respect to guilty pleas, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart , 474 U.S. 52, 106 S.Ct. 366 (1985).

V. SUMMARY OF RELEVANT TESTIMONY

Applicant's testimony

Applicant testified that he had three codefendants on these charges—Markese East, Leon Simmons, and Brian Morton. He stated that all four of them drove to the victim's house with the plan to rob it, and while the other three were armed and went inside to commit the robbery, he stayed behind with the car. He stated that during the robbery, Leon Simmons shot and killed the victim. Applicant stated he met with Plea Counsel three or four times before his guilty plea. He stated he did not recall reviewing any discovery or discussing any possible defenses with Plea

Counsel. Applicant testified that Plea Counsel told him if he pled guilty he would get a 25 year sentence and the State would drop it down to 22 years. He stated he only took the plea because he thought he would get parole. He testified he and Plea Counsel had this discussion just a few days before the trial was scheduled to begin.

Plea Counsel's testimony

Plea Counsel testified Applicant was the actor who drove the vehicle during the crime, and he stayed in the car while his three codefendants climbed the fence and went inside to rob the drug house. He stated Applicant would have been convicted under the "hand of one is the hand of all" theory of accomplice liability. He stated Applicant admitted to being at the house before the crime. Plea Counsel testified Applicant claimed he did not know what was going to happen when he drove his codefendants to the victim's house. He stated Leon Simmons used Applicant's gun to kill the victim.

Plea Counsel stated that the prosecution took a hard line on this case—they charged all four codefendants with murder. He stated the other three codefendants all pled guilty before the trial and each of them received a thirty year sentence for murder. He stated Applicant was going to be tried, and his codefendants were going to testify against him. He testified the State offered him a plea deal for a thirty year sentence for voluntary manslaughter, meaning he would have to serve eighty percent, which is about twenty-five years. He stated he explained to Applicant that if he accepted this plea offer, he would essentially only have to serve about twenty-two or twenty-three *more* years.

Plea Counsel testified the evidence against Applicant included the video interviews from his codefendants, which they discussed extensively. He stated the State also planned to present the gun that was used to kill the victim, which belonged to Applicant, as well as testimony from

multiple witnesses who were in the house during the robbery, and statements that Applicant gave law enforcement. He testified he met with Applicant anywhere from six to eight times before the plea, and they did review the discovery. He stated Applicant did not have a valid alibi defense to pursue because the police disproved it. Plea Counsel stated the best defense they could pursue at trial was a "mere presence" defense to the accomplice liability theory. He stated Applicant had very little chance of winning at trial, and taking the plea deal was in his best interest. Plea Counsel testified that he had Applicant evaluated for mental competency before the plea, and he was found competent to stand trial. He stated he never had any communication problems with Applicant during his representation.

VI. 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 at the post-conviction relief 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. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

As a matter of general impression, this Court finds Plea Counsel's testimony to be credible and persuasive. These credibility findings have been applied to the Court's findings and conclusions set forth below.

INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant alleges Plea Counsel was ineffective in his representation surrounding his guilty plea. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. See Al-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (1999) (citing Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517,

520 (1993)). An applicant 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 applicant 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) (citations omitted). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985).

Applicant has failed to meet his burden in proving Plea Counsel was ineffective in any regard. This Court finds that Plea Counsel properly relayed the State's plea negotiations and went over the discovery with Applicant, as well as fully explained the possible outcomes in sentencing. This Court finds Plea Counsel did discuss with Applicant the option of going to trial rather than pleading guilty, as they were had been preparing for a trial for quite some time and he chose to plead guilty immediately before the trial was scheduled to begin. The transcript of the plea hearing is thorough as to Applicant's understanding of his right to a trial and his willingness to forgo the trial, so any alleged failure of Plea Counsel to discuss a trial as an option cannot be prejudicial. Finally, this Court finds Plea Counsel was not deficient for failing to obtain any mental health records, as he had him evaluated and Applicant was found competent to stand trial, and there was a thorough discussion on the record at the plea about his competence and the plea judge made a finding that he was competent. Tr. 11 line 6 – 13 line 8.This Court finds that Applicant has not shown that he was prejudiced by any of Plea Counsel's actions as he has failed to show that he would not have pled guilty but would have gone to trial but for Plea Counsel's actions. Accordingly this allegation must be dismissed.

OVERWHELMING EVIDENCE

This Court further finds that Applicant cannot meet his burden to show that he was prejudiced by any alleged deficiencies by Trial Counsel because there is overwhelming evidence of his guilt. See Franklin v. Catoe, 346 S.C. 563, 570 n. 3, 552 S.E.2d 718, 722 n. 3 (2001), cert. denied, 535 U.S. 1114, 122 S.Ct. 2332, 153 L.Ed.2d 162 (2002) (finding overwhelming evidence of guilt negated any claim that counsel's deficient performance could have reasonably affected the result of the defendant's trial); Geter v. State, 305 S.C. 365, 367, 409 S.E.2d 344, 346 (1991) (concluding reasonable probability of a different result does not exist when there is overwhelming evidence of guilt); cf. Ford v. State, 314 S.C. 245, 248, 442 S.E.2d 604, 606 (1994) (holding respondent failed to prove prejudice from trial counsel's failure to request an alibi charge where there was overwhelming evidence of guilt).

Trial Counsel credibly testified at the evidentiary hearing that the State planned to introduce at trial several pieces of evidence including testimony and video interviews from all three of his codefendants, the gun that was used to kill the victim which belonged to Applicant, testimony of multiple witnesses who were present at the house and witnesses the crime, and statements Applicant gave to law enforcement, placing himself as the driver of the car during the crime. The guilty plea transcript shows Applicant took possession of the weapon again after the shooting and gave it to a family member. Tr. 18 line 25 – 19 line 3.

Applicant did not dispute the evidence against him. This is clearly overwhelming evidence of Applicant's guilt. As a result, Applicant can show no prejudice from any of the allegations raised in his PCR application as no deficiency on behalf of trial counsel could have reasonably changed the outcome of trial, and these allegations are denied and dismissed with prejudice.

VII. CONCLUSION

Based on all the foregoing, this Court finds and concludes that 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 that Applicant must file and serve a notice of appeal within thirty 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 post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant 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 is denied and dismissed with prejudice; and

2. That Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 10th day of October, 2017.

J. MARK HAYES
Presiding Judge
Second Judicial Circuit

Aiken, South Carolina

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In the Supreme Court

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Court of Common Pleas

J. Mark Hayes, Circuit Court Judge

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and

Office of the Aiken County Clerk of Court
PO Box 583
Aiken, SC 29802

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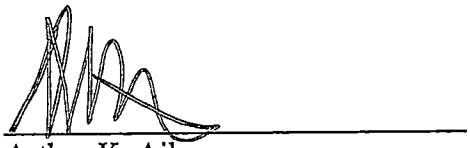

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MOTION TO PROCEED *IN FORMA PAUPERIS*

I, Arthur K. Aiken, hereby Motion the Court to allow Appellant to proceed in this matter without requirement of the filing fee and other applicable fees. I was appointed counsel for the Appellant in this post-conviction relief case. and appellate counsel will be provided by the South Carolina Commission on Indigent Defense due to Appellant's indigence.

November 15, 2017

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