

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
APPEAL FROM ANDERSON COUNTY
COURT OF COMMON PLEAS
HONORABLE CARMEN T. MULLEN

2013-CP-04-1432

JASON SANFORD #340276

APPELLANT,

vs

STATE OF SOUTH CAROLINA,
RESPONDENT.

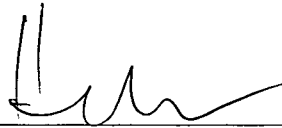
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S.C. Supreme Court

NOTICE OF APPEAL

Jason Sanford, #340276 appeals the denial of his Post Conviction Relief. The Post Conviction Relief Action was heard and denied by the Honorable Carmen T. Mullen, Circuit Court Judge on December 1, 2014, and Order of Dismissal issued on February 6, 2015, and filed on February 12, 2015. The Appellant received Order of Dismissal on February 26, 2015.



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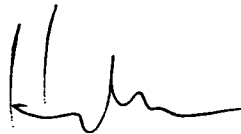
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PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the State of South Carolina by depositing a copy of it in the United States Mail postage prepaid on February 26, 2015, addressed to its attorney of record Walt Whitmire, Office of the Attorney General, Post Office Box 11549, Columbia, South Carolina 29211-1549



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Anderson, South Carolina

February 26, 2015



STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON) FOR THE TENTH JUDICIAL CIRCUIT

A TRUE COPY
FEB 12 2015
Richard W. Kintley
CLERK OF COURT

Jason Sanford,
S.C.D.C. No. 340276,

C.A. No. 2013-CP-04-1432

Applicant,

v.

State of South Carolina,

Respondent.

ORDER OF DISMISSAL

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COMMON PLEAS AND
GENERAL SESSIONS

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed June 12, 2013. Respondent subsequently filed its responsive pleadings. An evidentiary hearing into the matter was convened on December 1, 2014 at the Anderson County Courthouse. Applicant was present and was represented by Hugh W. Welborn, Esq. Respondent was represented by Walt Whitmire, Esq., of the Office of the Attorney General.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Anderson County. Applicant was indicted at the April 2012 term of the Court of General Sessions for Anderson County for murder. (2012-GS-04-0986). He was represented by Scott Robinson, Esq. On December 4, 2012, Applicant entered a guilty plea, as indicted and pursuant to the State's recommendation for the mandatory minimum thirty (30) year term of imprisonment, before the Honorable J. Cordell Maddox Jr. Judge Maddox accepted Applicant's plea and sentenced him pursuant to the State's recommendation. Applicant did not appeal his sentence or conviction.

At the PCR hearing, Applicant proceeded on the limited allegations of ineffective assistance of counsel in his assertion that he was being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel:
 - a. failure to quash a purportedly defective and untimely indictment;
 - b. failure to investigate the State's ballistic and trace evidence;
 - c. failure to investigate and pursue a theory of self-defense;
 - d. failure to submit Applicant for a psychological evaluation.
2. Involuntary Guilty Plea:
 - a. failure to apprise Applicant of the terms of the plea offer, that Applicant was pleading guilty, as indicted, to the offense murder
 - b. failure to apprise Applicant of the terms of the plea offer, that murder carried a mandatory minimum sentence of thirty years to life imprisonment;
 - c. failure to apprise Applicant of the elements of murder;
 - d. failure to apprise Applicant on the consequences of the plea offer, that the offense of murder was classified a no-parole offense.

Summary of Evidence and Testimony from the PCR Hearing

Applicant testified that he would have proceeded to trial if counsel had advised him of certain consequences concerning his plea and sentence. Applicant testified he was unaware that he would be required to serve "day for day" on a murder sentence. Applicant testified that he was unaware that murder carried a mandatory minimum sentence of thirty years. Applicant testified that he was unaware of the elements of murder; moreover, he asserted that had counsel advised him on this matter, he would have proceeded to trial. Applicant also testified that counsel warned him that he would receive the maximum sentence to murder if he went to trial. He testified that counsel told him that they could win at trial. Although Applicant testified that he recalled his

plea hearing, Judge Maddox "did not speak directly to him" during the colloquy.

Applicant testified that counsel did not fully investigate possible defenses in his case. Applicant testified that counsel should have submitted him for a mental evaluation based upon his prior mental health history. Applicant testified that counsel should have pursued a self-defense theory and strategy to his case. However, he also testified that he was uncertain if the victim was armed at the time of his death. Applicant asserted that his attorney should have moved to quash the purportedly defective indictment because it was issued in an untimely manner.

Next, Applicant testified counsel should have further investigated the State's ballistics evidence. He opined that ballistics would have implicated his co-defendant as the killer. He asserted that the State's evidence concerning his possession and ownership of a .40 caliber pistol was inaccurate. Applicant testified counsel never reviewed the surveillance tape that implicated him and the co-defendant in the murder.

Counsel testified to his course of conduct during the representation. Applicant retained counsel months prior to his plea. He met with Applicant three to six times during the representation. Counsel summarized the State's evidence and case against Applicant as follows: Applicant and his co-defendant were driven to the location, acted with deliberation, and executed the victim because of prior animosity between the parties. The driver gave a statement to police that placed Applicant and his co-defendant at the scene. She provided the police a chronological account of the evening that impacted both in the murder. Numerous residents of the neighborhood witnessed the murder and gave statements to police. A security camera from the immediate convenience store captured the murder where two suspects ambushed the victim and killed him while he was operating his moped.

Counsel evaluated the State's evidence and apprised Applicant of his impressions on matter. He was adamant that he reviewed the State's ballistics and trace evidence, among other things, with Applicant. Counsel noted that self-defense was not applicable to Applicant's case. He discussed the elements of murder and the accomplice liability theory of guilt with Applicant. Counsel testified that Applicant appeared coherent and competent during the representation. He had he had no reason to submit Applicant for a psychological evaluation based on his observations. Further, Applicant did not request a competency evaluation.

Counsel testified that the State did not engage him in substantive plea negotiations during the case. He conveyed the State's position to make a recommendation on sentencing, to the mandatory minimum, if Applicant pled guilty as indicted. Counsel testified that he reviewed the implications of pleading guilty with Applicant. He testified that it was Applicant's ultimate decision to plead. Counsel did not advise Applicant on parole eligibility and further noted that he does not advise his clients on the matter as a matter of his general practice.

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, 286 S.C. at 441, 334 S.E.2d at 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. at 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland, *supra*. 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." Cherry, 300 S.C. at 117-18, 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. Kolle v. State, 386 S.C. 578, 588, 690 S.E.2d 73, 78 (2010)

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court reviewed the Clerk of Court records regarding the subject's convictions, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the transcripts and documents from the prior proceedings, and legal arguments of counsel. Pursuant to S.C. Code Ann. §17-27-80 (2003), this Court makes the following findings of fact based upon all of the ~~prelative evidence~~ presented.

As a general matter, this Court finds Applicant's global lack of credibility was fatal to his

PCR case. Several allegations of ineffective assistance of counsel were refuted by the plea colloquy that include failure to advise on the sentencing range for murder; Applicant's allegation that counsel was ineffective for failing to investigate a self-defense theory was refuted by his own PCR testimony where Applicant acknowledged that he was unaware if the victim was armed during murder; last, counsel provided credible and convincing testimony that further rendered Applicant's *post-hoc* assessment of his attorney's performance to be illusory. Therefore, this PCR Application is without merit.

A.

Applicant failed to meet his burden to prove that counsel's performance was either deficient or ineffective for failing to move to quash the purportedly defective indictment. In State v. Culbreath, 282 S.C. 38, 316 S.E.2d 681 (1984) the South Carolina Supreme Court interpreted the [Rule 3, SCRCimP] requiring solicitors to act on a warrant within ninety days of its issue. The court agreed with and affirmed the trial court's holding that such a rule was administrative not jurisdictional. Id. Furthermore, the court stated a solicitor's delay does not within itself invalidate a warrant or prevent subsequent prosecution. Id. at 40, 316 S.E.2d at 681. "[T]he United States Supreme Court, in United States v. Cotton, 535 U.S. 625 (2002), held that a defective indictment does not deprive a court of jurisdiction." State v. Gentry, 363 S.C. 93, 99, 610 S.E.2d 494, 498 (2005). "The circuit 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." Id. at 102-03, 610- S.E.2d 494 at 500 (internal citations omitted). This Court finds Applicant was certainly

aware that the State intended to proceed on a murder charge against him. He was immediately detained upon arrest and served a copy of the arrest warrant. He retained counsel and met with counsel numerous times prior to the disposition of charge. Furthermore, Applicant failed to even prove that either the indictment or the matter in which it was true-billed necessitated an action from counsel. This Court agrees with counsel that the allegation is per se non-prejudicial where the State sufficiently placed Applicant on notice of the charge. Therefore, this allegation is readily denied and dismissed.

B.

This Court finds Applicant failed to meet his burden to prove that counsel's performance was either deficient or ineffective for failing to investigate the State's ballistics and trace evidence. "Criminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." Edwards v. State, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011) (internal citations omitted). In light of counsel's credible testimony that he evaluated and apprised Applicant on the matter, Applicant has produced no credible testimony that would even remotely diminish his culpability in the murder. Counsel gave credible testimony that he apprised Applicant of the "hand of one is the hand of all" and its application to the case. See State v. Dickman, 341 S.C. 293, 295, 534 S.E.2d 268, 269 (2000) ("It is well-settled that a defendant may be convicted on a theory of accomplice liability pursuant to an indictment charging him only with the principal offense."). Regardless, the allegation rests entirely on logically incoherent speculation. See Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998) ("failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result.") Therefore,

this allegation is readily denied and dismissed.

Applicant's allegation that counsel was ineffective for failing to pursue a self-defense theory of the case is without merit. This Court finds that Applicant failed to produce any credible testimony or evidence on the four prongs necessary to the invocation of the affirmative defense. See State v. Slater, 373 S.C. 66, 69, 644 S.E.2d 50, 52 (2007). Applicant's testimony that he was unaware if the victim was armed at the time of the ambush was telling. This Court rejects Applicant's contention that evidence of feud qualified as "self-defense." Therefore, this allegation is readily denied and dismissed without further discussion on the matter.

Applicant's allegation that counsel was ineffective for failing to submit him for a psychological evaluation is without merit. The Court rejects Applicant's notion that Strickland provides a "fishing expedition" as a remedy in a collateral criminal allegation. Furthermore, this Court agrees with counsel's assessment on the matter. Regardless, even the prospect of prejudice rested upon mere speculation. See Dempsey v. State, 363 S.C. 365, 369, 610 S.E.2d 812, 814 (2005). ("A PCR applicant cannot show that he was prejudiced by counsel's failure to call a favorable witness to testify at trial if that witness does not later testify at the PCR hearing or otherwise offer testimony within the rules of evidence."). Therefore, this allegation is readily denied and dismissed.

C.

Applicant fell well short of meeting his burden to prove any of the allegations that his guilty plea was rendered involuntary because of deficient and counsel's purportedly deficient and prejudicial performance in failing to advise him of the terms and consequences of the guilty plea. "To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him."

Boykin v. Alabama, 395 U.S. 238, 242 (1969); Roddy v. State, 339 S.C. 29, 33–34, 528 S.E.2d 418, 421 (2000). “A defendant’s knowing and voluntary waiver of the constitutional rights which accompany a guilty plea may be accomplished by colloquy between the Court and the defendant, between the Court and defendant’s counsel, or both.” Pittman v. State, 337 S.C. 597, 600, 524 S.E.2d 623, 625 (1999). “[T]he voluntariness of a guilty plea is not determined by an examination of the 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 the record of the post-conviction hearing.” Harres v. Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984).

This Court finds Applicant’s suspect *post-hoc* assertion that “Judge Maddox didn’t address me directly” during the plea colloquy was completely lacking in credibility. “A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, 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). “Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements.” Crawford v. United States, 519 F.2d 347 (4th Cir.1975). Therefore, this Court finds that Applicant was apprised that he was pleading guilty to the offense of murder; that the offense carried minimum thirty year prison sentence to a life sentence; and that Applicant did not dispute counsel’s assurance that he fully discussed the elements of murder with Applicant to Judge Maddox. **Plea Transcript, p.11; p.9, p.10**. This Court also finds counsel’s testimony credible on the matter. Therefore these three allegations are readily denied and dismissed.

Last, this Court finds Applicant’s allegation that counsel’s performance was deficient and prejudicial for failing to advise him on parole eligibility to be without merit. In contrast, parole

eligibility has been held to be a collateral consequence of sentencing of which a defendant need not be specifically advised before entering a guilty plea. Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983). This Court further finds Applicant's contention that he would have proceeded to trial if had been advised on parole eligibility to be dubious and unavailing. Counsel's testimony and general practice approach on the matter was sound. Therefore, this allegation is summarily denied and dismissed.

D.

Except as discussed above, this Court finds that the Applicant affirmatively abandons the remaining allegations set forth in his application at the hearing. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

CONCLUSION

Based on all the forgoing, 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 for post-conviction relief. 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 intent to appeal within thirty (30) days from receipt of this Order to secure the appropriate appellate review. See Rule



203, SCACR. Rule 71.1(g), SCRCP; Bray v. State, 336 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant's counsel to file and serve notice of appeal. The Applicant's attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely filed.

IT IS THEREFORE ORDERED

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of Respondent

AND IT IS SO ORDERED this 6 day of Feb., 2015.

CARMEN T. MULLEN
Presiding Judge
Tenth Judicial Circuit

Beaufort, South Carolina

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2015 FEB 12 AM 11:00
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GENERAL SESSIONS

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February 26, 2015

South Carolina Supreme Court
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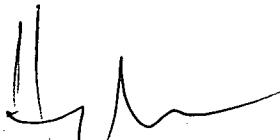
In RE: Jason Sanford, #340276 vs. State of South Carolina
Case #: 2013-CP-04-1432

S.C. Supreme Court

Dear Sir/Madam:

Please find enclosed herewith the original and one (1) copy of the Appellant's Notice of Appeal in connection with the foregoing matter which I ask that you file for record, returning the clocked copy to my office. I also enclose a copy of the Order of Dismissal and the original Proof of Service on Walt Whitmire, Office of the Attorney General. Please use the enclosed self-addressed envelope to return the clocked copy to my office.

With kind regards,



Hugh W. Welborn

HWW/sba

cc: Office of the Appellate Defense
cc: Office of the Attorney General

Hugh W. Welborn
P.O. Box 173
Anderson, SC 29622



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