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S.C. SUPREME COURT

November 29, 2016

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

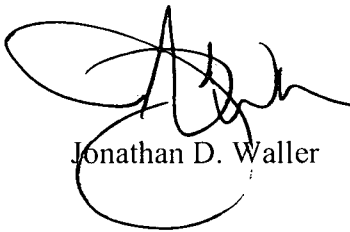
Re: Quintin Shavjonte' Lumpkins vs. State of South Carolina
C/A No: 2014-CP-38-1493

Dear Mr. Shearouse:

Please find enclosed one (1) original and one (1) copy each of Applicant's Notice of Appeal and Certificate of Service in the above referenced case. I would appreciate you filing the original and returning the clocked copies in the enclosed envelope.

I was appointed to represent Mr. Lumpkins in this matter and am also enclosing a copy of the Order of Dismissal. If you have any questions, please do not hesitate to ask. My telephone number is 803-708-6767.

Sincerely,



Jonathan D. Waller

Cc: J. Clayton Mitchell, South Carolina Office of Attorney General

Enclosures

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DEC 01 2016

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ORANGEBURG COUNTY
Benjamin H. Culbertson, Circuit Court Judge

2014-CP-38-1493

Quintin Shavjonte' Lumpkins, #359238,

Appellant,

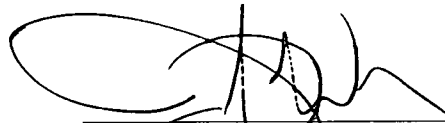
v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Quintin Shavjonte' Lumpkins, #359238, appeals the Order of Dismissal denying his Application for Post-Conviction Relief filed November 7, 2016 issued by the Honorable Benjamin H. Culbertson, Presiding Judge, First Judicial Circuit.



Jonathan D. Waller

Giese Law Firm

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jonathanwallerlaw@gmail.com

ATTORNEY FOR PETITIONER

This 29 day of November, 2016.

Other Counsel of Record:
J. Clayton Mitchell, Assistant Attorney General
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Columbia, SC 29211
(803) 734-3319

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ORANGEBURG COUNTY
Benjamin H. Culbertson, Circuit Court Judge

2014-CP-38-1493

RECEIVED

DEC 01 2016

S.C. SUPREME COURT

Quintin Shavjonte' Lumpkins, #359238,

Appellant,


v.

STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the Appellant's Notice of Appeal in the above-entitled case has been served upon opposing counsel, J. Clayton Mitchell, Assistant Attorney General, by mailing in an envelope properly addressed with postage prepaid on this 29th day of November, 2016, to his office located at P.O. Box 11549, Columbia, SC 29211.



Kelly Giese

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

Quintin Shavjonte' Lumpkins, #264678,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

2014-CP-38-1493

ORDER OF DISMISSAL

2016 NOV - 7 P 12:17
FILED FOR RECORD
WINNIFAB. CLARK
CLERK OF COURT
ORANGEBURG, SC

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed December 2, 2014. Respondent filed a Return on August 12, 2015, requesting that a hearing be held. Jonathan D. Waller, Esquire, was appointed by the Orangeburg County Clerk of Court to represent Applicant. Applicant moved for and was granted an order filed November 25, 2015, directing that he be examined and evaluated by the Department of Mental Health to determine competency. The examination found Applicant competent while diagnosing him with anti-social and major depressive disorder. An evidentiary hearing was held on May 18, 2016, at the Dorchester County Courthouse. Applicant was present and represented by Counsel Waller. J. Clayton Mitchell, of the South Carolina Attorney General's Office, represented Respondent.

At the PCR hearing, Applicant testified on his own behalf. Also testifying was Applicant's plea counsel, Breen R. Stevens, Esquire. This Court had before it the Orangeburg County Clerk of Court records, Applicant's South Carolina Department of Corrections records, the appellate records, the PCR application, the Return, and the guilty plea transcript.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Orangeburg County. Applicant was indicted at

the March 2013 term of the Court of General Sessions for Orangeburg County for armed robbery (2013-GS-38-0369)¹; and at the March 2014 term for possession of cocaine, first offense (2013-GS-38-1490), armed robbery (2013-GS-38-1491), attempted murder (2013-GS-38-1492)², and possession of a weapon during the commission of a violent crime (2013-GS-38-1493). Applicant also received a uniform traffic ticket on September 1, 2013, for disorderly conduct (28149GM).³ Christopher J. Murphy, Esquire represented Applicant on the first armed robbery charge (2013-GS-38-0369). Applicant was represented by Breen R. Stevens, Esquire on the remaining charges. On March 13, 2014, Applicant appeared before the Honorable Edgar W. Dickson with Counsel Stevens and pled guilty. Judge Dickson sentenced Applicant to fifteen (15) years for common law robbery; twenty (20) years for ABHAN provided upon the service of fifteen (15) years the balance would be suspended with five (5) years' probation; and to twenty (20) years for armed robbery provided upon the service of fifteen (15) years the balance would be suspended with five (5) years' probation. A motion to reconsider the sentence was filed and Judge Dickson amended the armed robbery sentence to a straight fifteen (15) year sentence. Applicant did not appeal his plea or sentences.

In this action, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Plea not knowingly and voluntarily entered because Applicant was not properly advised on the nature and consequences of pleading guilty.

¹ Applicant waived presentment of this indictment to the grand jury and pled guilty to common law robbery.

² Applicant was indicted for attempted murder, but he pled guilty as to assault and battery of a high and aggravated nature as a lesser included offense.

³ Although Applicant lists Indictments 2013-GS-38-1490, 2013-GS-38-1493, and ticket number 28149GM in his application, these were nolle prossed. Thus, only the remaining three indictments may be challenged.

II. APPLICABLE LAW

In a post-conviction relief action, Applicant bears the burden of proving the allegations in the 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, 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, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (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, 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 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 plea counsel, the Applicant must show 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, 59 (1985).

III. 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 has reviewed the Clerk of Court records regarding the subject convictions, the guilty plea transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

As a matter of general impression, this Court finds Applicant's testimony and assertions to be not credible. In contrast, this Court finds Counsel's testimony to be credible and persuasive. These credibility findings have been applied to the Court's findings and conclusions set forth below.

Unintelligent and Involuntary Guilty Plea

Applicant alleges he did not plead guilty knowingly and voluntarily. Specifically, Applicant argues that Counsel Murphy failed to advise and to review the State's evidence with him. He argues Counsel Murphy did not advise him regarding the plea offer he eventually accepted. This Court finds Applicant's guilty plea was entered freely and voluntarily entered. 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, 89 S. Ct. 1709, 23 L.Ed.2d 274 (1969). 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." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000)

(citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). 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. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing 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).

Applicant claims he did not plead guilty voluntarily because Counsel did not review with him the evidence the State planned to present if the case were to go to trial. Applicant also alleges Counsel Murphy failed to advise him of whether he should plead guilty or proceed to trial. Applicant testified that Counsel Murphy did not adequately review the discovery materials with him, specifically witness statements. This Court finds these contentions meritless and finds Applicant's testimony not credible. This Court finds the record reflects Applicant was fully advised of the State's evidence. The plea court's thorough colloquy with Applicant demonstrates that he understood the charges, penalties, and the waiver of his rights. While Applicant claims he was not properly advised of the rights he was waiving by pleading guilty, Judge Dickson ensured Applicant understood those rights. See Wolfe v. State, 326 S.C. 158, 164, 485 S.E.2d 367, 370 (1997) (any possible misconceptions about sentence length cured by colloquy at guilty plea hearing). The record further reflects that at the plea hearing Applicant fully admitted his guilt and agreed with the facts as the solicitor stated them. (Plea Tr. p. 11; 15; 16). Applicant presented no credible evidence as to why he should be able to depart from his statements at the plea hearing that Counsel Stevens had answered all of his questions and that he was satisfied with the advice.

(Plea Tr. p. 10). This Court finds very credible Counsel Stevens's testimony regarding his preparation and advice concerning the case, specifically that he reviewed the evidence with Applicant and discussed with him that it would be in his best interests to accept the plea offer. Counsel Stevens went through a guilty plea checklist reviewing each right and charge with Applicant right before the plea. This Court further finds Applicant cannot meet this burden because the record reflects Applicant was fully aware of the nature of the evidence against him. See Hyman v. State, 397 S.C. 35, 49, 723 S.E.2d 375, 382 (2012) (applicant failed to demonstrate possibility of different outcome had he personally received discovery where he "was fully aware of the inculpatory nature of the [evidence] throughout the negotiations and the guilty plea proceedings").

As to whether Applicant pled guilty without receiving proper advice from Counsel Murphy, this allegation is similarly denied. Counsel Stevens undertook the representation on the separate armed robbery charge and reasonably advised Applicant that it would be in his best interests to have all charges against him disposed at once. Counsel Stevens was comfortable handling the additional charge and had spoken to Counsel Murphy prior to the plea. Counsel Stevens's testimony that Applicant was fully aware Counsel Murphy would not be at the plea and that Applicant knew he did not have to go forward without Counsel Murphy is credible and persuasive. Applicant's position that he would have not pled guilty and proceeded to trial had Counsel Murphy been present and involved in the plea is not persuasive. Therefore, this Court finds Applicant's plea was freely, voluntary, and intelligently made.

All Other Allegations

As to any and all allegations that were raised in the application and not specifically addressed in this order, the Court finds Applicant failed to present any evidence regarding such

allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

IV. CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Applicant failed to demonstrate counsels' performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's 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, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is 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 shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 27 day of October, 2016.

Benjamin H. Culbertson

BENJAMIN H. CULBERTSON
Presiding Judge

Conway, South Carolina

THE

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