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Arthur K. Aiken

A. Bea Hightower

January 12, 2018

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

RECEIVED

JAN 16 2018

S.C. SUPREME COURT

Re: Deshaun A. Drafts v. State of South Carolina
Civil Action No.: 2016-CP-32-570

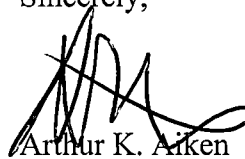
Dear Mr. Shearouse:

I am appointed counsel for the Applicant, Deshaun A. Drafts, 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 Lexington 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

Enclosures as stated

cc: Clerk, Lexington County Court of Common Pleas (w/enclosures)
Office of the Attorney General for South Carolina (w/enclosures)
Deshaun A. Drafts (w/enclosures)

THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

JAN 16 2018

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Brooks P. Goldsmith, Circuit Court Judge

Case No. 2014-CP-32-1434

Deshaun A. Drafts.....Applicant/Appellant

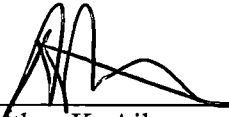
v.

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

NOTICE OF APPEAL

This is a post-conviction relief case. Appellant appeals from the Order of Dismissal signed on June 3, 2015 in this case. Appellant’s appeal is timely because the Lexington County Court of Common Pleas entered an Order on December 13, 2017 in which it granted Appellant the right to a belated appeal under Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). Appellant received written notice of the Order granting him the right to a belated appeal on December 13, 2017. Copies of both the Order appealed from and the Order granting Appellant the right to a belated appeal are attached.

January 12, 2017



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ATTORNEYS FOR APPELLANT

OTHER COUNSEL OF RECORD:

Office of the Attorney General of the State of South Carolina
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Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

JAN 16 2018

Brooks P. Goldsmith, Circuit Court Judge

S.C. SUPREME COURT

Case No. 2014-CP-32-1434

Deshaun A. Drafts..... Applicant/Appellant

v.

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

PROOF OF SERVICE AND FILING

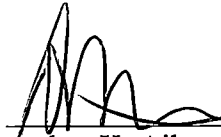
I certify that, on January 12, 2018, I served and filed the Notice of Appeal and Motion to Proceed in Forma Pauperis in the above appeal by mailing copies of those filings to the following:

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

and

Office of the Lexington County Clerk of Court
205 E. Main St.
Lexington, SC 29072

SIGNATURE ON THE FOLLOWING PAGE



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ATTORNEYS FOR APPELLANT

Columbia, SC
January 12, 2017

applicant to a negotiated term of thirty years' imprisonment for each of the indicted offenses, the sentences to be served concurrently.

A notice of appeal was filed on applicant's behalf. The South Carolina Court of Appeals dismissed the appeal pursuant to Rule 203(d)(1)(B)(iv), SCACR, for failure to provide a sufficient explanation to merit the appeal. (Order in *State v. Drafts*, Appellate Case No. 2013-002747). The court issued its remittitur on March 28, 2014.

Applicant filed his first application for PCR on April 15, 2014, and alleged plea counsel was ineffective in failing to fully investigate the case and his plea was involuntary. (2014-CP-32-01434). The State made its return on September 17, 2014.

An evidentiary hearing was held before the Honorable Brooks P. Goldsmith on April 22, 2015. Applicant was present and represented by Anna Good (now Browder), Esquire, and Walt Whitmire, Esquire, represented the State. By order dated June 3, 2015, Judge Goldsmith denied applicant's claims and dismissed with prejudice his application.

Applicant did not appeal the dismissal of his first PCR action.

ALLEGATIONS

In his current application, applicant alleges only the following claim of error:

1. Ineffective Assistance of PCR Counsel
 - a. Failure to file an appeal from the denial of his first PCR application.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant alleges that he was denied the right to appeal the dismissal of his previous post-conviction relief application. Pursuant to *Austin*, a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of his prior PCR application. At the start of the hearing in applicant's current action, the State indicated to this

Court it would be consenting to the grant of an *Austin* appeal. The State explained it consented based upon discussion with prior PCR counsel, a review of the various documents filed in the previous and current actions, and discussion with applicant's current PCR Counsel.

After review of the facts and circumstances surrounding the waiver of applicant's right to appeal the denial of a PCR action, this Court finds applicant is entitled to appeal the denial of his first application (2014-CP-32-01434) pursuant to *Austin*. This Court finds applicant did not voluntarily waive his right to appeal the post-conviction relief court's denial and dismissal of his prior action.


Based upon the foregoing, this Court finds the granting of an appeal of applicant's first post-conviction relief action (2014-CP-32-01434) pursuant to *Austin v. State* is warranted. The Court advises applicant that he must file a notice of intent to appeal within thirty (30) days from receipt of written notice of entry of this order to secure appellate review.

FILED
2017 DEC 13 PM 4:00
LESLA M. CONNER
CLERK OF COURT
COLUMBIA COUNTY
COLUMBIA SC

IT IS THEREFORE ORDERED:

1. That the Applicant be granted an appeal of case 2014-CP-32-01434 pursuant to *Austin v. State*; and
2. That applicant remain in the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 15th day of December, 2017.


THE HONORABLE J. CORDELL MADDOX, JR.
Presiding Judge

Leig, South Carolina.

ORIGINAL

FILED

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON)	ELEVENTH JUDICIAL CIRCUIT
Deshaun A. Drafts, S.C.D.C. No. 358221)	C.A. No. 2014-CP-32-1434
Applicant,)	
v.)	ORDER OF DISMISSAL
State of South Carolina,)	(with prejudice)
Respondent.)	

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on April 15, 2014. Respondent made its return on September 17, 2014. An evidentiary hearing into the matter was convened on April 22, 2015, at the Lexington County Courthouse. Applicant was present at the hearing and was represented by Anna R. Good, 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 Lexington County. Applicant was indicted at the March 2012 term of the Court of General Sessions for Lexington County for burglary, first-degree (2012-GS-32-0565), kidnapping (2012-GS-32-0566), and armed robbery (2012-GS-32-0567). He was represented by Sarah Mauldin¹, Esq. On December 13, 2013, Applicant entered a plea for a negotiated aggregate term of thirty (30) years imprisonment on all his charges². The

¹ Formerly Sarah Hahn, Esq.

² Applicant also pled guilty to a Saluda County offense (2013-CP-41-416) that is collateral to this Lexington County PCR action.

Honorable Robert E. Hood accepted Applicant's plea and imposed the negotiated sentence³. Judge Hood sentenced Applicant to a term of thirty (30) years imprisonment for burglary, first-degree, a term of thirty (30) years imprisonment for kidnapping, and a term of thirty (30) years imprisonment for armed robbery. The sentences were to be served concurrently.

A notice of appeal was filed on Applicant's behalf. The South Carolina Court of Appeals denied and dismissed Applicant's appeal pursuant to Rule 203(d)(1)(B)(iv), SCACR, for failure to provide a sufficient explanation to merit the appeal. State v. Dyshaun A. Drafts, Appellate C.A. No. 2013-002747 (filed on March 12, 2014). The Remittitur was issued on March 28, 2014

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

- (a) Ineffective assistance of counsel for failing to investigate the State's factual basis of Applicant's guilt;
- (b) Ineffective assistance of counsel for failing to negotiate a more favorable plea bargain during the course of the representation;
- (c) Ineffective assistance of counsel for representing despite a conflict of interest where counsel previously had represented a co-defendant on a separate matter;
- (d) Ineffective assistance of counsel for failing to advise Applicant that his guilty plea made him eligible for the SVP program.

SUMMARY OF TESTIMONY

At the PCR hearing, Applicant testified to his impressions of counsel and to his concerns on the competency of representation that he received. Applicant testified that counsel was substituted on his case. Applicant testified that he met with counsel six times prior to the disposition of his case. Applicant testified that they determined the defense strategy after their first consultation which was to negotiate a favorable plea bargain. Upon meeting with counsel to discuss the State's plea offer, Applicant found its terms to be unsuitable. Applicant gave

³ Applicant's plea resulted in a probation revocation on two prior convictions (2009-GS-32-3670; -2689). Judge Hood imposed four years on each suspected sentence. The revocations were to run concurrent to thirty year aggregate sentence.



conflicting testimony concerning his desire to proceed to trial. Ultimately, Applicant testified that he did not want to accept the State's offer but also did not want a trial. Applicant testified that on the day of his plea that he wanted to fire counsel. Applicant testified that he was concerned counsel represented one of his co-defendant's Brannon in 2009 and yet continued to represent him. Applicant also testified that he was upset counsel did not advise him about the SVP program before the guilty plea hearing.

Counsel testified to her course of conduct during the representation. Counsel testified that she was substituted onto Applicant's case after the original appointed attorney took a sabbatical from the practice of law. She testified that she met with Applicant eleven times in conjunction to communicating with Applicant through other means. Counsel gave a brief summary of the gruesome facts of the Applicant's offenses: Applicant and his co-defendant's committed an armed burglary, held the women and children in the home hostage where one assailant held the victims at gunpoint while they took turns raping the women; law enforcement apprehended Applicant soon after the offense where the victim's had identified him as one of the assailants; Applicant gave a full exculpatory statement to police. Counsel noted that Applicant disagreed with a limited portion of the State's evidence and narrative; Applicant told counsel that one of his sexual encounters during the burglary was consensual. However, counsel noted that Applicant relayed a different version to her investigator, Lee Connelly. As a result, Connelly conducted a follow up investigation that resulted in uncovering more inculpatory evidence against Applicant.

Counsel testified that impetus of the representation centered on negotiating a favorable plea bargain. Counsel testified that the State was only willing to come off of the negotiated thirty year sentence if one of the co-defendant's turned State's evidence and agreed to testify against



the other two. Counsel recalled advising Applicant on December 27, 2013 of the benefits of agreeing to cooperate with State in turn for a probable recommendation to a twenty year sentence. Counsel testified that Applicant rejected the State's offer because he did not want to "snitch" on his co-defendant cousin Brannon. Counsel engaged in further discussions on this matter on one more occasion; but Applicant's resolve remained firm.

Counsel testified to the Lexington County Public Defender's Office concerning its procedures to avoid conflicts. Counsel testified to the potential for a conflict of interest in the present case and noted that Applicant was well aware she represented co-defendant Brannon years back on a juvenile matter. She testified that Applicant never expressed any concerns or trepidations on the matter. Furthermore, counsel testified that she never held any knowledge that Applicant desired to have her substituted off of his case. On the contrary, counsel noted that she represented Applicant on numerous prior cases that resulted in her developing a good professional relationship with Applicant that aided her efforts in providing quality representation. Counsel further testified that if a conflict had developed because of her prior unrelated representation of Brannon, then she would have taken the appropriate action.

Last, counsel testified that she advised Applicant on several collateral consequences at play if he pled guilty that included registry on the sex offender list and effects of classification of the offenses on sentencing enhancement for future charges.

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 Applicant's allegations were solely supported by his speculative and dubious testimony. In contrast, this Court was impressed by counsel's testimony that exhibited her diligence, competency, and effectiveness. This Court is inclined to most resoundingly agree with Judge Hood's statement at the guilty hearing that "I'm going to tell you the one thing that you do need to be thankful for, you need to be thankful for your attorneys because, you know, short of this being a negotiated sentence, I'm not sure that 30 years is enough for the violent, awful horrific things that you did. So the hard work of your attorneys sticking by you and doing everything they can for you... is really a gift to you." Plea Transcript p.32, ln. 3-13.

INEFFECTIVE ASSISTANCE OF COUNSEL

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged 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. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant must

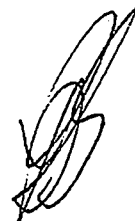


overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). 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. With respect to guilty plea counsel, 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, 88 L.Ed. 2d 203 (1985). After careful review based on the standard discussed above, the Applicant has failed to carry his burden in this action.

A.

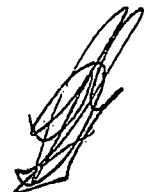
This Court finds Applicant's allegation "(a) Ineffective assistance of counsel for failing to investigate the State's factual basis of Applicant's guilt" is without merit. "Criminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential 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). "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)

In light of counsel’s dispositive, convincing, and detailed testimony on the matter, Applicant failed to even make a prima facie case of just what counsel should have objectively investigated but did not do so. This Court finds the allegation is facially defective. Miller v. Johnson, 200 F.3d 274, 282 (5th Cir. 2000) (A conclusory allegation of ineffectiveness raises no constitutional issue because a petitioner must show how counsel was deficient and how there was prejudice). Regardless, this Court finds Applicant’s convictions were supported by graphic 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) (finding overwhelming evidence of guilt negated any claim that counsel’s deficient performance could have reasonably affected the result of defendant’s trial). Therefore, this allegation is readily denied and dismissed with prejudice.

Similarly, Applicant’s allegation that “(d) Ineffective assistance of counsel for failing to advise Applicant that his guilty plea made him eligible for the SVP program” is also without merit. After Judge Hood advised Applicant on the matter, he still proceeded forward with the plea. In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. See Holden v. State, 393 S.C. 565, 713 S.E.2d 611, 614 (2011). Applicant has entirely failed to provide any compelling evidence or testimony to allow this Court to depart from the presumption of truthfulness in his assurances to Judge Hood. See Blackledge v. Allison, 431 U.S. 63, 97 S. Ct. 1621, 52 L. Ed. 2d 136 (U.S.N.C. 1977) (Solemn declarations in open court carry a strong presumption of verity). This Court notes that the record shows Applicant’s but/for motivation accepting a plea offer revolved around limiting his aggregate exposure to incarceration. Therefore, this allegation is readily denied and dismissed.



B.

Last, this Court finds Applicant's allegation "(b) Ineffective assistance of counsel for failing to negotiate a more favorable plea bargain during the course of the representation" to be fatally defective. Not only does the allegation concern a matter outside of purview of a Strickland review on deficient performance under the prevailing professional norms, it suggests ineffective assistance for a matter solely within the constitutional purview of the executive branch. "The Attorney General shall be the chief prosecuting officer of the State with authority to supervise the prosecution of all criminal cases in courts of record." S.C. Const. art. V, § 24. "Both the South Carolina Constitution and South Carolina case law place the unfettered discretion to prosecute solely in the prosecutor's hands." Ex parte Harrell v. Attorney Gen. of State, 409 S.C. 60, 69, 760 S.E.2d 808, 812 (2014). Furthermore, despite counsel's exceptional performance in advising Applicant on the benefits of turning evidence in consideration for an even better plea offer, Applicant made the knowing, intelligent, and voluntary decision to disregard counsel's advice. Therefore, this allegation is readily denied and dismissed with prejudice.

C.

This Court finds Applicant fell well short of meeting his burden to make a sufficient prima facie showing to prove the allegation "(c) Ineffective assistance of counsel for representing despite a conflict of interest where counsel previously had represented a co-defendant on a separate matter." To establish a violation of the Sixth Amendment right to effective counsel due to a conflict of interest arising from multiple representation, a defendant who did not object at trial must show an actual conflict of interest adversely affected his attorney's performance." Thomas v. State, 346 S.C. 140, 143, 551 S.E.2d 254, 256 (2001). "An



actual conflict of interest occurs where an attorney owes a duty to a party whose interests are adverse to the defendant's." Staggs v. State, 372 S.C. 549, 551, 643 S.E.2d 690, 692 (2007). "To be valid, a waiver of a conflict of interest must not only be voluntary, it must be done knowingly and intelligently." United States v. Swartz, 975 F.2d 1042, 1048-49 (4th Cir.1992).

This Court finds that in light of counsel's convincing and dispositive testimony on the matter, Applicant has produced no legitimate evidence to show that conflict developed during the representation that inured to his detriment. In contrast, this Court finds that counsel's substitution only yielded beneficial fruits to the quality of representation that Applicant received and to the favorable disposition of the case. Therefore, this allegation is readily denied and dismissed with prejudice.

ALL OTHER ALLEGATIONS

As to any and all allegations that were raised in the application or at the hearing in this matter 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.

CONCLUSION

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 notes that 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

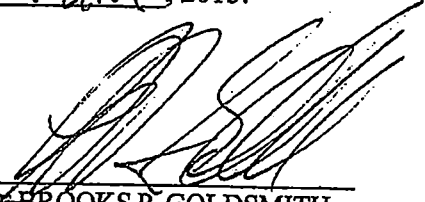


Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCR, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant 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 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 3 day of JUNE, 2015.



HONORABLE BROOKS P. GOLDSMITH
Presiding Judge
Eleventh Judicial Circuit

_____, South Carolina

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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Applicant/Appellant

v.

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

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.



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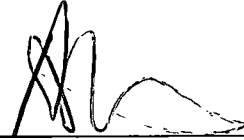
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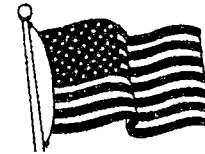
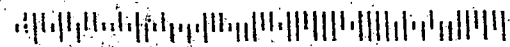
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The Honorable Daniel E. Shearouse, Clerk
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