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January 12, 2018

RECEIVED

JAN 19 2018

S.C. SUPREME COURT

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

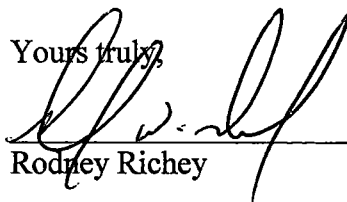
Re: Keshawn D. Jeter, SCDC# 361267 vs. State of South Carolina
Case No: 2015-CP-42-3800

Dear Mr. Shearouse:

Please find enclosed a Notice of Appeal and a Proof of Service for the same. Also, I have enclosed a copy of the Order from which the appeal is taken. Please file the copies that I have enclosed and return the copies to me. Thank you for your help and if you should have any questions please feel free to call me.

RICHEY AND RICHEY, P.A.

Yours truly,



Rodney Richey

RWR/

enclosures

cc: Ruston W. Neely, Esquire

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

HONORABLE ROBIN B. STILWELL

2015-CP-42-3800

KESHAUN D. JETER, SCDC# 361267

APPELLANT,

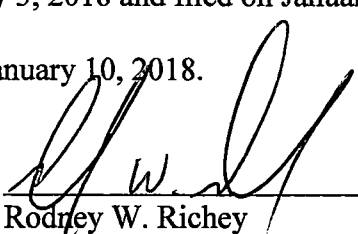
against

STATE OF SOUTH CAROLINA,

RESPONDENT.

NOTICE OF APPEAL

Keshaun D. Jeter appeals the denial of his Post- Conviction Relief. The Post Conviction Relief Action was heard and denied by the Honorable Robin B. Stilwell, Circuit Judge on March 22, 2017 and Order issued on January 3, 2018 and filed on January 8, 2018. The Appellant received notice of the judgment on January 10, 2018.



Rodney W. Richey
Attorney for the Appellant
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Other Counsel of Record:
Ruston W. Neely, Esquire
Office of Attorney General State of SC
Post Office Box 11549
Columbia, SC 29211-1549

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JAN 19 2018

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

HONORABLE ROBIN B. STILWELL

2015-CP-42-3800

KESHAUN D. JETER, SCDC# 361267

APPELLANT,

against

STATE OF SOUTH CAROLINA,

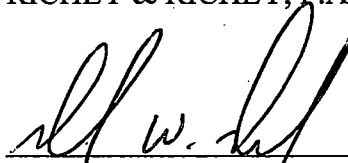
RESPONDENT.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the State of South Carolina by depositing copy of it in the United States Mail, postage prepaid, on January 12, 2018, addressed to their attorney of record, Ruston W. Neely, Office of Attorney General State of South Carolina, Post Office Box 11549, Columbia, SC 29211-1549.

Dated: January 12, 2018

RICHEY & RICHEY, P.A.



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JAN 19 2018
S.C. SUPREME COURT

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
 Keshawn D. Jeter, #361267,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 FOR THE SEVENTH JUDICIAL CIRCUIT

Case No.: 2015-CP-42-3800

ORDER OF DISMISSAL

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 H. HOPE BLANCHARD

The above-captioned matter is before the court based on a post-conviction relief (PCR) application filed by Keshawn Jeter, on August 10, 2015. This Court convened an evidentiary hearing into this matter on March 22, 2017 at the Spartanburg County Courthouse. Applicant was present at the hearing and represented by Rodney Richey, Esquire. Ruston W. Neely, Esquire, of the South Carolina Attorney General's Office, represented Respondent. Applicant's plea counsel was Robert B. Hall (Counsel), Esquire, who was present and testified. The prosecuting Assistant Solicitor, Lindsey H. Overby (the solicitor), Esquire, was also present and testified. This Court had the opportunity to listen to the testimony and assess the credibility of Applicant, Counsel, and the solicitor. This Court had before it the records of the Spartanburg County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, and the pleadings in this matter.

I. PROCEDURAL HISTORY

Applicant was indicted at the January 2013 term of the Spartanburg County Grand Jury for Criminal Sexual Conduct with a Minor, Second Degree (2013-GS-42-0027). On September 9, 2014, after two days of trial, Applicant pleaded guilty as indicted before the Honorable G.

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Edward Welmaker. Judge Welmaker sentenced Applicant to 200 months imprisonment for criminal sexual conduct with a minor - victim 11 to 14 years of age, second degree.

Applicant filed a timely notice of appeal. The South Carolina Court of Appeals dismissed Applicant's petition in an Order dated December 3, 2014. State v. Keshawn Donte Jeter, Op. No. 2014-001929 (S.C. Ct. App. filed September 18, 2014). The Remittitur was issued on December 23, 2014.

The court reporter lost the tape for the trial and the following plea proceeding. Consequently, there was no guilty plea transcript from Applicant's proceeding. Further, Judge Welmaker passed away and would be unavailable to help reconstruct the record.

II. ALLEGATIONS

In his PCR application, Applicant alleged he is being held unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. Failure to investigate
 - b. Involuntary guilty plea

III. SUMMARY OF TESTIMONY

Applicant testified he pleaded guilty as advised by his attorney on the second day of trial. Applicant did not recall who testified, how many questions were asked, or what those questions were. Applicant testified he remembered the judge asking him a series of questions and he answered them, but could not recall what those questions were. Applicant testified he did not remember much from the trial or plea proceeding.

Counsel had notes on the trial to which he referred. Counsel testified Applicant changed his mind on whether to plead guilty or not before the trial. Counsel testified, after pre-trial, Applicant wanted to plead guilty. Counsel testified the judge went over Applicant's rights during

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the plea proceeding following the pre-trial. During that proceeding, Applicant said he wanted to plead guilty, but when the Judge asked if Applicant was sure he wanted to plead guilty Applicant said no. The trial then began. Counsel testified the trial judge denied his motion to suppress the rape kit. Counsel further testified Applicant's only defense was consent, which was not a defense due to the victim's age. Counsel testified the victim and medical examiner testified. The rape kit that contained Applicant's DNA was admitted as evidence. Counsel also testified Applicant gave a video statement confessing to the crime. Counsel testified, based on his notes, there was a recommendation of a cap of fifteen years' incarceration when Applicant attempted to plead guilty after the pre-trial proceedings. Counsel testified he advised Applicant the judge was not required to follow the State's recommendations. Counsel testified there was no recommendation by the State when Applicant pleaded after the victim testified. Counsel testified he had noted where the plea judge went over each of Applicant's rights and made a check for each right. Counsel testified he used a different color pen on Applicant's final plea than the plea attempt that occurred following the pre-trial proceedings. Counsel testified he went over the evidence and explained plea consequences with Applicant.

The solicitor took extensive notes from the trial and plea proceedings. She testified there was originally a recommendation of a cap of fifteen years. However, there was no recommendation for the Applicant's plea, because the victim had testified at that point. The solicitor reiterated the same proceeding history delineated by Counsel. She also testified the colloquy was complete and she would have drawn any deficiency in the colloquy to the court's attention.

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IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court reviewed the record in its entirety, listened to the testimony given, and heard the arguments presented at the evidentiary 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. This Court finds Counsel and the solicitor's testimony was credible and persuasive and Applicant's lack of ability to recall the trial or plea was also credible. Therefore, this Court dismisses Applicant's application for the reasons set out below:

A. Ineffective Assistance of Plea Counsel

This Court finds the record fully supports the knowing and voluntary nature of Applicant's guilty plea. Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). "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. Thus, an applicant must show both error and prejudice to win relief in a PCR proceeding." Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001).

The court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. The Applicant.

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must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. 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, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. See Blackledge v. Allison, 431 U.S. 63, 73-74 (1977). Statements made during a guilty plea should be considered conclusively, unless an Applicant presents valid reasons why he should be allowed to depart from the truth of his statements. See Crawford v. U.S., 519 F.2d 347, 350 (4th Cir. 1975) (overruled on other grounds by U.S. v. Whitley, 759 F.2d 327 (4th Cir.1985)). Applicant presented no reasons to show that he should be allowed to depart from the truth of the statements he made during his guilty plea hearing. For the reasons set out below, this Court finds the record and credible testimony support Applicant had full understanding of the charges and consequences of his guilty plea:

1. Involuntary Guilty Plea

Applicant asserts his guilty plea was entered involuntarily as the result of ineffective assistance of counsel. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the Applicant had a full understanding of the consequences of his plea and the charges against him. See Boykin, 395 U.S. at 243. In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. See Harris

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S.C. at 138, 654 S.E.2d at 874. Admissions “made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements.” *Id.* at 137-38, 654 S.E.2d at 874.

Having reviewed the pleadings, considered the applicable law, and reflected upon the testimony provided at the evidentiary hearing, this Court finds Applicant’s allegation that his guilty plea was involuntary to be meritless. Applicant failed to present any evidence that Counsel’s performance or advice was deficient or that he was prejudiced by the deficiency.

Further, the evidence against Applicant was overwhelming. Applicant admitted his guilt in a video-taped statement. Applicant’s DNA was found by the rape kit performed on the 12-year-old victim. The victim testified Applicant perpetrated the sexual abuse. Based on the testimony, this Court also finds the evidence against Applicant was overwhelming and any error of Counsel would not have prejudiced Applicant. Therefore, Applicant cannot prove prejudice where the evidence against her was overwhelming. *See Harris v. State*, 377 S.C. 66, 79, 659 S.E.2d 140, 147 (2008).

This Court finds Counsel’s advice was well within the range of competence required of defense attorneys. This Court also finds Applicant’s guilty plea was voluntarily, intelligently, and knowingly made. Therefore, this Court denies and dismisses this allegation.

2. Failure to Investigate

Applicant failed to show how further investigation by Counsel would have benefited Applicant at trial. Applicant’s assertion Counsel should have investigated further is purely speculative. Applicant did not present what Counsel would have found if he had hired an investigator sooner or done further investigation. Notwithstanding the fact this Court does not find Counsel deficient for failing to investigate, a court need not first determine whether

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counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. 668. "The applicant's mere speculation what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice." State v. Glover, 318 S.C. 496, 498-499, 458 S.E.2d 538, 540. "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." Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998). The only evidence Applicant presented regarding witness testimony or further investigation was speculation on the part of Applicant. This Court finds Applicant failed to prove he was prejudiced by any lack of investigation by Counsel.

Additionally, as discussed above, the evidence against Applicant was overwhelming. Based on the testimony, this Court also finds the evidence against Applicant was overwhelming and any alleged error of Counsel would not have prejudiced Applicant. Any assertion by Applicant that had his Counsel investigated more thoroughly, Applicant would not have pled guilty, but instead insisted on going to trial is unreasonable and not credible. Hill v. Lockhart, 474 U.S. 52 (1985). Therefore, Applicant cannot prove prejudice where the evidence against him was overwhelming. See Harris, 377 S.C. at 79, 659 S.E.2d at 147.

Accordingly, this Court finds Applicant failed to prove Counsel failed to properly investigate. This Court also finds Applicant failed to prove he was prejudiced by Counsel's lack of investigation such that there was a reasonable probability Applicant would have insisted on trial rather than plead guilty. Accordingly, this Court denies and dismisses this allegation.

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IV. CONCLUSION

Based on the foregoing, this Court finds and concludes 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 Applicant must file and serve a notice of appeal within thirty (30) days from 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), SCRPC, provides that if Applicant wishes to seek appellate review, his post-conviction relief attorney must serve and file a notice of appeal on Applicant's behalf. Applicant and his attorney are 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 is remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 3rd day of January, 2018.

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N. HOPKINS BLANCHARD
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ROBIN B. STILWELL
Presiding Judge
7th Judicial Circuit

Greenville, South Carolina

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NON-MACHINEABLE SURCHARGE 2016

The Honorable Daniel E. Shearouse
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