

THE BOOZER LAW FIRM, LLC

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January 18, 2018

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

RECEIVED

JAN 22 2018

The Honorable Mary Brown
Clerk, Berkeley County
300 California Dr.
Moncks Corner, SC 29461

S.C. SUPREME COURT

**RE: Radu Renciu, #348233, v. State of South Carolina
2016-CP-08-1385**

Dear Mr. Shearouse and Ms. Brown:

Enclosed for filing is a Notice of Appeal in the above-referenced case. Also enclosed are the following:

- (1) Proof of Service of the Notice of Appeal;
- (2) A copy of the Order which is to be challenged on appeal; and
- (3) Prior Order of Appointment of Counsel.

As I was appointed to represent Mr. Renciu in his PCR proceeding, I anticipate that the Office of Appellate Defense will represent Mr. Renciu in this appeal.

Yours very truly,


Lance S. Boozer

cc: Julie Coleman, AAG
Office of Appellate Defense
Radu Renciu, #348233

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

JAN 22 2018

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

S.G. SUPREME COURT

The Honorable Michael G. Nettles, Circuit Court Judge

Case No. 2016-CP-08-1385

Radu Renciu, #348233,.....Petitioner,

v.

State of South Carolina,.....Respondent.

NOTICE OF APPEAL

The Petitioner appeals the Honorable Michael G. Nettle's Order dated December 13, 2017, denying post-conviction relief to the Petitioner. Undersigned counsel received notice of entry of the Order on January 5, 2018. A copy of the Order on appeal is attached to this notice.

Respectfully submitted,



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January 18, 2018

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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JAN 22 2018

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

S.C. SUPREME COURT

The Honorable Michael G. Nettles, Circuit Court Judge

Case No. 2016-CP-08-1385


Radu Renciu, #348233,.....Petitioner,

v.

State of South Carolina,.....Respondent.

PROOF OF SERVICE

I, Lance S. Boozer, attorney for Petitioner, certify that I have today served within Notice of Appeal upon the Respondent by depositing a copy of it in the United States Mail, postage prepaid, addressed to Assistant Attorney General Julie Coleman, P.O. Box 11549, Columbia, SC 29211. I further certify that all parties required by Rule to be served have been served this 18th day of January, 2018.


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STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)
)
Radu Renciu, #348233,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

2016-CP-08-1385

ORDER OF DISMISS

MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

17 DEC 28 AM 9:14

FILED

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on June 24, 2016. Respondent submitted its return on June 27, 2017. An evidentiary hearing into the matter was convened on December 4, 2017, at the Berkeley County Courthouse. Applicant was present at the hearing and was represented by Lance S. Boozer, Esquire. Respondent was represented by Assistant Attorney General Julie A. Coleman of the South Carolina Attorney General's Office.

Before this Court are the records of the Berkeley County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the plea transcript, the State's Return, and the application. Based on these records and the testimony presented, the Court finds as follows:

I. PROCEDURAL HISTORY

The records before this Court indicate that Radu Renciu ("Applicant") is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Berkeley County Clerk of Court. During its December 2013 term, the Berkeley County Grand Jury indicted Applicant for first-degree burglary (2013-GS-08-1765) and second-degree burglary (non-violent) (2013-GS-08-1766). Thereafter, during its March 2015 term, the Berkeley

County Grand Jury indicted Applicant second-degree burglary (violent) (2015-GS-08-0308). The Berkeley County Grand Jury also indicted Applicant for possession of methamphetamine (2012-GS-08-0574). Chad D. Shelton, Esquire ("Plea Counsel"), represented Applicant. Assistant solicitor Wilton McNeely, Esquire, prosecuted the case. On June 24, 2015, Applicant appeared before the Honorable R. Markley Dennis, Jr. and pled guilty as indicted to all four offenses. Judge Dennis sentenced Applicant to a term of thirty years' imprisonment suspended upon the service of eighteen years imprisonment for first-degree burglary, to a concurrent term of ten years' imprisonment for second-degree burglary (non-violent), to a concurrent term of fifteen years' imprisonment for second-degree burglary (violent), and a concurrent term of one years' imprisonment for possession of methamphetamine. Applicant did not appeal his convictions or sentences.

II. ALLEGATIONS

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

1. "Ineffective Assistance of Counsel"
 - a. "Counsel failed to ensure court accepted drug rehab."
2. "Failure to honor plea deal"
 - a. "Trial court sentenced me above agreement."
3. "Invalid Guilty Plea"
 - a. "Involuntary guilty plea based on counsel advice."

At the end of the evidentiary hearing, Applicant moved to conform his allegations to the testimony presented, and added an allegation of ineffective assistance of counsel for failure to enforce the original plea agreement.

III. SUMMARY OF RELEVANT TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. Respondent presented testimony from Chad D. Shelton, Esquire.

Applicant's testimony

Applicant testified he is currently serving a thirty year sentence for all his charges. He testified the State originally made an offer to allow him to plead to second-degree burglary for a fifteen year sentence, and he would only serve sixty-five percent. He stated Plea Counsel never fully explained this offer to him, and after he told him about it, Applicant bonded out of jail. He stated he did not know if Plea Counsel tried to contact him after he bonded out, but he did not go visit Plea Counsel to discuss his case. He stated that, while out on bond and before he could accept the plea deal, he was arrested for new charges, and the plea deal was taken off the table. He stated the State offered him a new deal for his charges, and he took the deal so he would not get a life sentence if convicted at trial.

Plea Counsel's testimony

Plea Counsel testified that Applicant never seriously considered going to trial on these charges. He stated the State made its original plea offer for a negotiated fifteen year sentence for second-degree burglary, violent. He stated they negotiated and changed the offer to a straight up plea so that Plea Counsel could argue for probation, but he opined it would have been difficult to argue for probation because Applicant was already on probation at the time. Plea Counsel testified that he conveyed the offer to Applicant, and they intended to accept the offer. However, Applicant bonded out of jail to take care of a probation matter in Dorchester County and he lost touch with Plea Counsel. Plea Counsel stated Applicant was not in Dorchester County when he went to visit him. He stated he spoke with Applicant's father about Applicant working and trying

to stay out of trouble. He stated Applicant was accepted into the South Carolina STRONG drug program, and they were just waiting for the right opportunity to accept the plea deal and plead guilty.

Plea Counsel testified he lost contact with Applicant until he was arrested months later on new charges of first-degree burglary and second-degree burglary, non-violent. He stated that, after Applicant was arrested on new charges, the State withdrew their offer and refused to allow him to plead to that deal. He stated the prosecutor made it clear that he would not make that offer again. Plea Counsel testified the State wanted to seek a life without parole sentence, and they could have done so based on Applicant's record and charges. He stated the State offered a plea deal with a cap of twenty years, so they accepted the offer. Plea Counsel testified he presented mitigation at the guilty plea and argued for the minimum sentence, but Applicant had confessed to the crimes.

Plea Counsel stated the original plea offer had an expiration date in April, 2014, but the Dorchester County probation issue came up, so the deadline was extended to June 2014, and then Plea Counsel lost contact with Applicant because he was out on bond, so it was extended to August, 2014. He stated Applicant was arrested on the new charges in October. Plea Counsel testified there was no doubt they were going to take the original plea offer. He stated he told the Solicitor's Office that Applicant was going to accept the plea deal, but they never had a formal hearing for the court to accept the deal. Plea Counsel testified he did not make a motion to enforce the original plea offer because he thought Applicant's new charges justified the State's withdrawal of their offer.

IV. APPLICABLE LAW

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.

V. 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).

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).

In the present case, this Court finds Applicant has failed to meet his burden in proving Plea Counsel was ineffective in any regard. This Court finds the original plea offer was made and clearly communicated to Applicant through Plea Counsel. Applicant did not follow up on the plea offer while he was out on bond, and they were unable to get back into court to accept the offer because Applicant did not reach out to his attorney and lost contact with him. Applicant

lost the plea offer through his own actions when he committed new crimes, resulting in a new arrest on new charges. The offer from the State was not unconditional; there was an expiration date, and there was always an understanding that Applicant must stay out of trouble to keep the offer. This Court finds the original plea offer was never accepted by Applicant, regardless of his intent to accept it at some point.

Plea Counsel credibly testified he did not make a motion to enforce the original plea agreement because he felt Applicant's new charges justified the State's decision to withdraw the offer. The solicitor has broad discretion in plea negotiations leading up to trial. State v. Johnson, 287 S.C. 171, 172, 337 S.E.2d 204, 205 (1985). This Court finds the State did not abuse their authority in any way in choosing to withdraw their prior offer, and Applicant lost the opportunity to accept the offer because of his own actions. This Court finds Applicant did not detrimentally rely on the original plea agreement.

This Court finds Plea Counsel represented Applicant well within the bounds of professional norms, and none of his actions were ineffective. Plea Counsel participated in ongoing plea negotiations with the State, and ultimately Applicant was able to avoid a sentence of life without parole by pleading guilty. This Court finds neither deficiency nor prejudice on any ground, and this allegation is denied and dismissed with prejudice.

INVOLUNTARY GUILTY PLEA

Applicant argues his plea was not given freely and voluntarily. This Court finds otherwise and concludes that Applicant's plea was entered freely and voluntarily. 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).

The guilty plea transcript shows Applicant was fully advised of his rights and the consequences of pleading guilty. Applicant testified on the record at the plea that he was not promised anything or threatened to plead guilty, and he had the opportunity to address the court with any concerns about the plea arrangement. Applicant testified he was guilty of the charges and he gave a statement to law enforcement admitting that he was guilty. This Court finds that there was no coercion affecting Applicant's decision to plead guilty, the record reflects that Applicant was fully advised of the rights he was waiving by pleading guilty, and that his plea was entered into knowingly and intelligently. Applicant presented no credible evidence as to why he should be able to depart from his statements at the plea hearing. This Court finds very credible Plea Counsel's testimony that Applicant understood everything at the plea and that it was solely Applicant's decision to plead guilty. Applicant has failed to present any probative or credible evidence that he was coerced into pleading guilty. As a result, he has failed to meet his burden, and this allegation is denied and dismissed.

VI. CONCLUSION

Based on all 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 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 is denied and dismissed with prejudice in regard to all allegations; and
2. Applicant must be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 13 day of Dec, 2017.


_____, South Carolina



MICHAEL G. NETTLES
Presiding Judge
Ninth Judicial Circuit

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)
Radu Renciu #348233,)
Plaintiff(s),)
-vs-)
State of South Carolina,)
Defendant(s).)

IN THE COURT OF COMMON PLEAS
9th JUDICIAL CIRCUIT
CASE NO.: 2016CP0801385
APPOINTMENT OF COUNSEL OR GAL
(Select one.)

ORDER
 AMENDED ORDER

TYPE OF CASE/PROCEEDING: (Check one.)

- Post-Conviction Relief (PCR)/habeas case Adoption Juvenile
 SVP case Custody and/or Visitation Abuse and Neglect
 Minor Name Change Other: Post Convict Rel 500

It appears Radu Renciu #348233, who is a litigant in this case, is entitled to court-appointed counsel or a guardian ad litem.

It further appears that: (Select only one.)

- counsel/guardian ad litem has not yet been appointed by the court; therefore, an appointment for counsel/guardian ad litem is necessary.
 counsel or a guardian ad litem was previously appointed by the court but has indicated either a possible conflict of interest, an entitlement to exemption, or other good cause warranting the appointment of new counsel or guardian ad litem based on:
 counsel was previously appointed by the court but has not indicated that the litigant has retained private counsel and is no longer entitled to appointed counsel.
 court appointed counsel has obtained , Esquire as substitute counsel pursuant to Rule 608(h)(2); provided, however, only the member who originally received the appointment and who sought substitute counsel shall receive credit.
 Other:


Therefore, it is ordered that Lance Boozer hereby is appointed as (Select one.)

- counsel lead counsel (if capital PCR case) guardian ad litem
for the above-named person. Any counsel or GAL previously appointed is/are hereby relieved.

- (If Death Penalty PCR Case) It is further ordered that , Esquire, is hereby appointed as second counsel in this capital PCR case.

The clerk of court is directed to forward a copy of this order to all persons entitled to notice.

IT IS SO ORDERED
September 9, 2016


 Circuit Judge Clerk of Court

Plaintiff Attorney:

Lance Boozer	
807 Gervais Street, Ste 203	
Columbia, SC 29211	

Defendant Attorney:

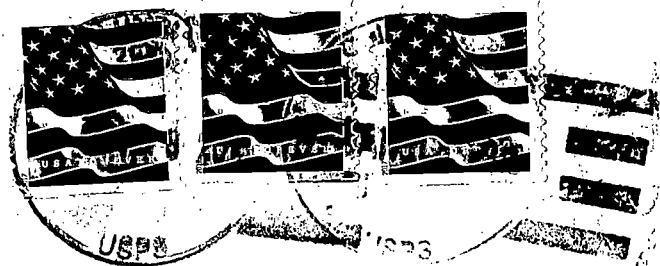
James Rutledge Johnson	
PO Box 11549	
Columbia, SC 29211	

NOTICE: SC Supreme Court Order of September 29, 2006, requires appointed counsel entitled to payment from the Office of Indigent Defense (OID) to register the case online with OID within fifteen (15) days of this appointment at www.sccid.sc.gov, and further directs that reimbursement vouchers be submitted directly to SCCID and not to the trial judge or clerk of court. See SCCID website for further details.

FILED
2016 SEP -9 PM 3:45
CLERK OF COURT
BERKELEY COUNTY

THE BOOZER LAW FIRM, LLC

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Columbia, SC 29201



The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
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