

RICHEY AND RICHEY
ATTORNEYS AT LAW

A PROFESSIONAL ASSOCIATION

RODNEY W. RICHEY
LOLA S. RICHEY

POST OFFICE BOX 10916
GREENVILLE, SOUTH CAROLINA 29603

(864) 467-0503
(864) 467-0646 FAX

January 29, 2018

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

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FEB 02 2018

Re: William J. Palmer, III v. State of South Carolina
Case No: 2016-CP-42-316234

S.C. SUPREME COURT

Dear Mr. Shearouse:

Please find enclosed a Notice of Appeal and an affidavit of service for the same. Also, I have enclosed a copy of the Order from which the appeal is taken. 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: Valerie Garcia Giovanoli, Esquire

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

HONORABLE ROBIN B. STILWELL

2016-CP-42-3561

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FEB 02 2018

S.C. SUPREME COURT

William J. Palmer, III, SCDC# 316234

APPELLANT,

against

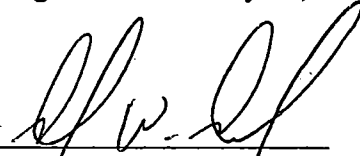
STATE OF SOUTH CAROLINA,

RESPONDENT.

NOTICE OF APPEAL

William J. Palmer, III 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 21, 2017 an Order issued on January 11, 2018 and filed on January 12, 2018.

The Appellant received notice of the judgment on January 26, 2018.


Rodney W. Richey, Esquire
Attorney for the Appellant
33 Market Point Drive
Post Office Box 10916
Greenville, South Carolina 29603
(864) 467-0503
Attorney for Applicant

Other Counsel of Record:
Valerie Garcia Giovanoli, Esquire
Office of Attorney General State of SC
Post Office Box 11549
Columbia, SC 29211-1549

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

HONORABLE ROBIN B. STILWELL

2016-CP-42-3561

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S.C. SUPREME COURT

William J. Palmer, III, SCDC# 316234

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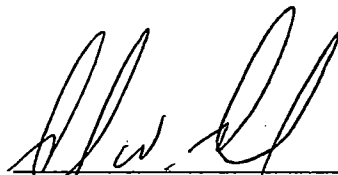
STATE OF SOUTH CAROLINA,

RESPONDENT.

AFFIDAVIT 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 26, 2018, addressed to their attorney of record, Valerie Garcia Giovanoli, Office of Attorney General State of South Carolina, Post Office Box 11549, Columbia, SC 29211-1549.

Dated: January 26, 2018



Rodney W. Richey, Esquire
Attorney for the Appellant
33 Market Point Drive
Post Office Box 10916
Greenville, South Carolina 29603
(864) 467-0503
Attorney Appellant

Other Counsel of Record:
Valerie Garcia Giovanoli, Esquire
Office of Attorney General State of SC
Post Office Box 11549
Columbia, SC 29211-1549

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

William J. Palmer, III, #316234,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2016-CP-42-3561

**ORDER OF DISMISSAL
WITH PREJUDICE**

M. HOPE BLACKLEY

2018 JAN 12 PM 1:14

This matter comes before the Court by way of an application for Post-Conviction Relief (PCR) filed on September 26, 2016. Respondent made its Return requesting an evidentiary hearing be convened. An evidentiary hearing into the matter was convened on March 21, 2017, at the Spartanburg County Courthouse. Rodney W. Richey, Esquire, represented Applicant. Alicia A. Olive, Esquire, of the South Carolina Office of the Attorney General, represented Respondent.

Applicant testified on his own behalf. Applicant's original plea counsel, Andrea L. Price, Esquire, testified, as well as Applicant's second plea counsel, Stephen S. Wilson, Esquire, ("Counsel"). This Court had before it a copy of the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the Department of Corrections, the transcript from Applicant's guilty plea, the PCR application, and Respondent's Return.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to the orders of commitment of the Clerk of Court for Spartanburg County. Applicant was indicted at the March 2016 term of the Spartanburg County Grand Jury for trafficking in cocaine

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base, 10 to 28 grams, second offense (2016-GS-42-1405), possession with intent to distribute ("PWID") cocaine base within one-half mile of a school or park (2016-GS-42-1406), PWID marijuana (2016-GS-42-1407), PWID marijuana within one-half mile of a school or park (2016-GS-42-1408). Stephen S. Wilson, Esquire, represented Applicant.

On June 23, 2016, Applicant pleaded guilty to trafficking in cocaine base, 10 to 28 grams, *first* offense, before the Honorable R. Keith Kelley. The State dismissed the remaining three charges in exchange for Applicant's plea. Pursuant to the State's recommendation, Judge Kelley sentenced Applicant to a term of imprisonment for three years and a fine of \$25,000. At the time of his plea hearing, Applicant was also on probation for a prior drug charge. Judge Kelley revoked Applicant's probation in full and ordered that Applicant serve these sentences consecutively. Applicant did not appeal his plea or his sentence.

In his original application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. "I pleaded guilty to the understanding that my lawyer gave that I would only get 3 years. No more than 3 and no less than 3."
 - b. "I was not advised in open court that I would be facing a probation violation. The Solicitor never brought that charge against me or said it at the proceeding of my plea."
 - c. Failure to object to the Solicitor suppressing evidence
 - d. "Violation of my right to a speedy trial"
 - i. Andrea Price "secretly waived" my preliminary hearing. "I never told her to waive my hearing."
 - ii. "I never sign[ed] a waiver of prelim at all"
 - e. Failure to review Discovery with Applicant
 - i. Did not review arrest warrants and indictments with Applicant
 - f. Failure to move to quash the indictment
 - i. "indictments were done 9 months later after my arrest"
 - g. Failure to challenge the arrest warrant
 - h. Failure to file an appeal
2. Due Process Violations
3. Forgery
 - a. "what is on my sentence sheet wasn't sign[ed] by me"

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A. HOPE BACKLEY

- b. Dates on the indictment are wrong
- 4. Prosecutorial Misconduct
 - a. "They try to cover up my preliminary hearing. All this covering up can be consider[ed] as a conspiracy."
 - i. "Why wasn't the waiving of my preliminary hearing not documented."
 - b. Suppressed evidence
 - c. "They are covering up the warrant that was used."
 - d. Solicitor never gave the indictment to the Grand Jury
- 5. Breach of Contract
 - a. "My plea was negot[iated] not recommended. I told my lawyer [the] only way I would plea[d] is only [to] a negotiated plea and that's what it was."

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SUMMARY OF TESTIMONY

I. Applicant testified to the following:

Applicant testified he received the minimum sentence for the charge to which he pled guilty – three years for trafficking first. At the same time, his probation was revoked. Applicant testified he had an absolute right to a preliminary hearing and that his counsel was ineffective for waiving that hearing. Applicant explained he testified he was satisfied with Counsel at his guilty plea because he believed he was only going to get three years. It was only until he investigated his own case when he felt things were not right. Applicant explained he did not investigate his case prior to pleading guilty because he believed he would get three years and that only when Judge Kelly sentenced him to eight years, he began investigating.

Applicant testified he believes he was not properly indicted because his indictments were not signed by a grand juror. Applicant testified Andrea Price represented him first before Stephen Wilson began representing him. Applicant testified he did not know his preliminary hearing was waived until after he pled guilty. He also testified that had he had his preliminary hearing, he would not have pled guilty. Applicant testified he had four other drug charges that were dismissed as a result of his guilty plea. Applicant denied he ever knew he was originally indicted for trafficking, second offense, and maintained he had always been charged with

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trafficking, first offense. Applicant also testified he had no defense to his charges because nothing was ever given to him. He admitted Counsel reviewed discovery with him, but insisted there was more to it.

Applicant expressed dissatisfaction with his sentence. Applicant testified he was supposed to get only three years, but at the very end of the plea, the judge asked him about his probation violation and then gave him eight years. Applicant admitted when the judge informed him of the probation violation, he did not ask to withdraw his guilty plea.

II. Andrea L. Price testified to the following:

Price testified she originally was assigned to Applicant's case through the Public Defender's Office. She had represented him on 2014 charges prior to the new charges. Price recalled Applicant retained Counsel thereafter. Counsel testified that during her representation, she filed a request for discovery and a request for a preliminary hearing. She also met with Applicant and reviewed the discovery with him. Counsel testified she generally advises clients to skip the preliminary hearing because the evidentiary standard is very low and most every time, probable cause will be shown. According to her notes, Applicant waived his preliminary hearing. Counsel testified she would never waive a preliminary if a client insisted on having the hearing.

III. Stephen Wilson ("Counsel") testified to the following:

Counsel testified he's been practicing law for thirty eight years in Spartanburg. Counsel went over Applicant's discovery with him numerous times and had no question Applicant understood it all. Applicant never complained about waiving his preliminary hearing until after he pled guilty. Counsel received letters from Applicant, after his guilty plea, complaining about the preliminary hearing.

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Counsel testified Applicant had been on probation for one month when he committed the current offenses. Counsel testified after reviewing the evidence with Applicant numerous times, about May, Applicant told Counsel to see what deal Counsel could get him. Counsel negotiated a deal and took it back to Applicant. Counsel explained the State would drop the other charges if Applicant pled guilty to trafficking first and they would recommend three years. Counsel also explained if he did not accept the deal, the State would try him for trafficking second. Counsel also explained that this would open him up to a probation revocation, but that he would ask for a concurrent sentence or a partial revocation. However, Counsel never made promises regarding the probation revocation.

Counsel originally focused on the search warrant executed against Applicant to determine if they had a basis to challenge it. After an investigation, Counsel determined that a challenge to the legality of the search would most likely be unsuccessful and only result in a worse plea offer.

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 had the opportunity to observe the witnesses presented at the hearing, and has weighed their testimony and credibility accordingly. Below are the findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2017). Applicant has failed to prove by a preponderance of the evidence that Counsel was deficient or that he was prejudiced by any deficiency. A Post-Conviction Relief application is not a venue for questioning each and every a of counsel. Rather, the Applicant must demonstrate by a preponderance of the evidence that counsel was deficient. Applicant has failed to do so.

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I. Ineffective Assistance of Counsel

In his amended application filed by PCR counsel, Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the Applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). 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, 104 S.Ct. 2052, 2064 (1984); Butler v. State, 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, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). 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 (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. 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).

This Court finds not credible Applicant's testimony that he was not advised he was indicted for trafficking second, that he was not advised he was facing a probation revocation, that he was not advised of his preliminary hearing nor did he waive it, that his indictments were not signed by the grand jury, that Counsel promised he would only get three years, and that Counsel did not review all of the discovery and evidence with him. The testimony is self-serving and contradicted by the record and the testimony of two credible witnesses, Price and Counsel. This Court can find no other reason for these assertions other than Applicant's attempt at a "do-over." That is not the purpose of post-conviction relief.

The record of Applicant's guilty plea demonstrates a thorough colloquy addressing essentially every issue raised by Applicant now on PCR. Furthermore, Price and Counsel both testified credibly that they reviewed all of the discovery and evidence with Applicant. With regard to Applicant's main contention, the waiver of his preliminary hearing, this Court finds Applicant failed to prove either deficiency or prejudice. It is a common practice to waive preliminary hearings, especially in cases where the grand jury has already true-billed an indictment. As such, Price's advice to Applicant to waive his preliminary hearing was reasonable based on prevailing professional norms. This Court also believes Price waived Applicant's preliminary hearing on his behalf and with his consent, not "secretly" and in collusion with the State, as Applicant alleges in his application. This Court further finds Applicant's assertion that had he had his preliminary hearing, he would not have pled guilty to be unreasonable and wholly without credibility.

Additionally, the records of Applicant's indictments show no irregularities and thus no basis upon which they could be challenged. Applicant failed to meet his burden to prove Counsel was deficient in failing to move to quash or challenge the indictments. Any assertion by

Applicant that had Counsel done *anything* differently, Applicant would not have pled guilty, but would have insisted on trial is simply unreasonable and not credible. This is especially true in light of the fact Applicant pled to a lesser offense of trafficking second, which requires a mandatory sentence of five years and up to thirty years, was also facing four other drug charges for which Counsel negotiated the dismissals, and only received a three year sentence for the lesser trafficking.

Applicant seems to really only be upset with his consecutive five year sentence resulting from the revocation of his probation. However, this application is not in reference to his prior convictions for which he was serving probation. That sentence was handed down well before the guilty plea in this case in which Applicant was allowed to serve a probationary sentence with a suspended prison sentence. It was in the plea judge's discretion to revoke Applicant's probation in full and require Applicant to serve his suspended sentence in full and consecutive to his new sentence. This Court also believes it was appropriate to do so in light of the fact Applicant was on probation for only one month before committing the instant offenses. Regardless, this Court believes Counsel advised Applicant he was facing the probation revocation and what that would entail while explaining to Applicant he would ask for concurrent time or a partial revocation, which he did on the record. This was reasonable.

Applicant has utterly failed to meet his burden of proving Counsel was deficient in any manner whatsoever. Likewise, he did not meet his burden to prove he was prejudiced by any alleged deficiency by Counsel. To the contrary, this Court finds he received reasonable and competent representation, which resulted in an outstanding deal and benefit to Applicant. It is unfortunate Applicant cannot appreciate the benefit he received from Counsel's representation. The allegations of ineffective assistance of counsel are denied and dismissed with prejudice.

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II. Prosecutorial Misconduct

In his application, Applicant alleged prosecutorial misconduct for the destruction of evidence. It is Applicant's burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989). Applicant has set forth no evidence supporting his allegations of prosecutorial misconduct. Therefore, Applicant has failed to meet his burden to prove prosecutorial misconduct by a preponderance of the evidence. This allegation is denied and dismissed with prejudice.

CONCLUSION

Based on all the foregoing, this Court finds and concludes Applicant has not established any violations that would require this Court to grant his application. This Court finds Applicant has failed to prove any deficiencies on the part of Counsel and further, Applicant has failed to prove prejudice from any alleged deficiencies in Counsel's representation of him. Therefore, as Applicant has failed to meet his burden of proof in this post-conviction relief action, his application is denied and dismissed with prejudice.

This Court notifies Applicant he must file and serve a notice of appeal within thirty (30) days from receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. An applicant has a right to an appellate counsel's assistance when they are seeking review of the denial of PCR. Austin v. State, 305 S.Ct. 53 (1991). If an applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. See Rule 71.1 (g), SCRCP. You must look at Rule 243 of the South Carolina Appellate Court Rules for appropriate procedures for appeal.

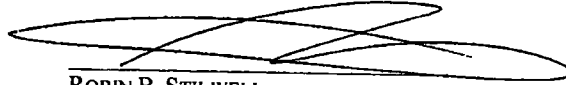
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CLERK OF COURT

IT IS THEREFORE ORDERED THAT:

1. The application for Post-Conviction Relief is denied and dismissed with prejudice;
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 11 day of Jan, 2018.



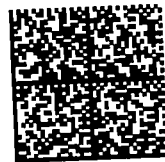
ROBIN B. STILWELL
Presiding Judge
Seventh Judicial Circuit

Columbia, South Carolina

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