



WALLER LAW GROUP

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FEB 09 2018

S.C. SUPREME COURT

February 6, 2018

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

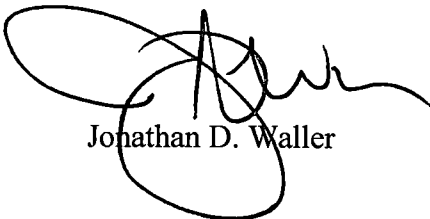
Re: Doni Terrele Anderson vs. State of South Carolina
C/A No: 2015-CP-21-1033

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. Anderson 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 803-520-7278.

Sincerely,



Jonathan D. Waller

Cc: Lindsey A. McCallister, South Carolina Office of Attorney General

Enclosures

STATE OF SOUTH CAROLINA
In The Supreme Court

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FEB 09 2018
S.C. SUPREME COURT

APPEAL FROM FLORENCE COUNTY
Thomas A. Russo, Circuit Court Judge

2015-CP-21-1033

Doni Terrele Anderson, # 361471,

Appellant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Doni Terrele Anderson, # 361471, appeals the Order of Dismissal denying his Application for Post-Conviction Relief filed January 29, 2018, issued by the Honorable Thomas A. Russo, Presiding Judge, Twelfth Judicial Circuit.



Jonathan D. Waller

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803-520-7278 (phone)
jonathan@wallergroupsc.com
ATTORNEY FOR PETITIONER

February 6, 2018

Other Counsel of Record:

Lindsey A. McCallister, Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3319

STATE OF SOUTH CAROLINA
In The Supreme Court

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FEB 09 2018

APPEAL FROM FLORENCE COUNTY
Thomas A. Russo, Circuit Court Judge

S.C. SUPREME COURT.

2015-CP-21-1033

Doni Terrele Anderson, # 361471,

Appellant,

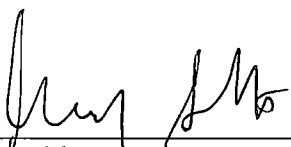
v.

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, Lindsey A. McCallister, Assistant Attorney General, by mailing in an envelope properly addressed with postage prepaid on this day, to her office located at P.O. Box 11549, Columbia, SC 29211.



M. David Scott

February 6, 2018

FILED

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2015CP2101033

Doni Terrele Anderson

2018 JAN 30 AM 9:18

South Carolina State Of

DORIS POULOS O'HARA

CCCP & GS

FLORENCE COUNTY, SC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: Plaintiff Defendant
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

Judge Code

1/30/2018

Date

For Clerk of Court Office Use Only

This judgment was entered on **January 29, 2018**, and a copy mailed first class or placed in the appropriate attorney's box on **January 30, 2018**, to attorneys of record or to parties (when appearing pro se) as follows:

CERTIFIED: A TRUE COPY

Doris Poulos O'Hara
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

Jonathan D Waller 1116 Blanding Street Suite 2B
Columbia, SC 29201

Johanna Catalina Valenzuela PO Box 142 Columbia, SC
29202

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Doris P. O'Hara

Court Reporter

Doris Poulos O'Hara - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS
TWELTH JUDICIAL CIRCUIT

Doni Terrele Anderson, #361471,)

C.A. No. 2015-CP-21-1033

Applicant,)

v.)

State of South Carolina,)

Respondent.)

ORDER OF DISMISSAL

2019 JAN 29 AM 11:02
DORIS POULOS O'HARA
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, SC

FILED

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed April 9, 2015. Respondent made its Return and Motion for a More Definite Statement on September 13, 2016. An evidentiary hearing into the matter was convened on August 29, 2017, at the Florence County Courthouse before the Honorable Thomas A. Russo. Jonathan Waller, Esquire, represented Applicant. Lindsey McCallister, Esquire, of the South Carolina Attorney General's Office, represented Respondent. At the hearing, Applicant testified on his own behalf. Scott P. Floyd, Esquire, testified for the State. This Court had before it a copy of the records of the Florence County Clerk of Court, records from the South Carolina Department of Corrections, the application, the State's Return, and the guilty plea transcript.

PROCEDURAL HISTORY

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Florence County Clerk of Court's orders of commitment. Applicant was indicted at the July 2013 term of the Florence County Grand Jury for murder and possession of a weapon during the commission of a violent crime (2013-GS-21-00914). Scott P. Floyd (Counsel), Esquire, represented Applicant. On September 15, 2014, Applicant pleaded guilty to murder before the Honorable Michael G. Nettles. The weapons charge was dismissed in exchange for Applicant's

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Doris Poulos O'Hara
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

guilty plea. Judge Nettles sentenced Applicant to a term of imprisonment for thirty-five years for murder. Applicant did not appeal this conviction or sentence.

ALLEGATIONS

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

1. "Ineffective Assistance of Counsel; Preliminary Hearing"
2. "Ineffective Assistance of Counsel; Pre-Trial Hearing"

In response to the State's Motion for a More Definite Statement, counsel for Applicant clarified the allegations against Counsel. Applicant's contention is that Counsel was ineffective for failing to investigate the circumstances surrounding Applicant's statement to the police, and this failure rendered Applicant's guilty plea involuntarily.

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 and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusion of law as required by S.C. Code Ann. Sec. 17-27-80 (2003).

Ineffective Assistance of Counsel/Involuntary Guilty Plea

In a PCR action, the 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). Where the application alleges ineffective assistance of counsel 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." Id. at 443, 334 S.E.2d at 814. 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 v. Washington, 466 U.S. 668, 689 (1984). Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove that counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Id. (quoting Strickland, 466 U.S. at 688). 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, 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, 106 (1985).

In PCR cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citations omitted). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Lockhart, 474 U.S. at 56. Further, "[t]hat a guilty plea must be intelligently made is not a requirement that all advice offered by the defendant's lawyer withstand retrospective examination in a post-conviction hearing." McMann v. Richardson, 397 U.S. 759, 770 (1970). Rather, "whether a plea of guilty is unintelligent . . . depends as an initial

matter, not on whether a court would retrospectively consider counsel's advice to be right or wrong, but on whether that advice was within the range of competence demanded of attorneys in criminal cases." Id. at 771.

The record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Dalton v. State, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Boykin v. Alabama, 395 U.S. 238, 242 (1969)). A 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 the court and defendant, between the 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)). Further, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant; thus, an applicant's right to contest the validity of such a plea is usually foreclosed. Dalton, at 137-38, 654 S.E.2d at 874 (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Therefore, 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. (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)). Additionally, "the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing." Id. at 138-39, 654 S.E.2d at 874 (citing Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997)).

Applicant testified he was arrested for murder and possession of a weapon, and Counsel was appointed to represent him on the charges. Applicant testified he was arrested in Myrtle Beach, in Horry County, and was transported back to Florence within a few hours. Applicant

^{mat}
testified at the time of his arrest, he was taking Celexa for depression, but the Celexa caused him to have anxiety and suicidal thoughts. Applicant further testified he was under the influence of this medication at the time of his arrest and statement to law enforcement. Applicant testified he told Counsel he was taking medication at the time, but he did not believe Counsel ever investigated the side effects. Applicant further testified Counsel told him "it didn't matter," but never gave any explanation why. However, Applicant could not say whether he ever asked Counsel for further explanation. Applicant further testified he and Counsel never discussed how the medication affected Applicant personally, and Counsel never discussed challenging the statement.

Applicant testified he and Counsel met three times, and he felt Counsel was not assisting him properly, so he tried to have Counsel removed. Applicant testified Counsel did not discuss the State's evidence with him. Applicant testified he was not arrested at the scene, and his cell phone and the gun were never recovered, so his statement was a major component of the evidence against him. Applicant also testified Counsel did not discuss any defenses with him, and when he asked Counsel about a defense, Counsel "downplayed" the issues Applicant brought up and told him it would not work. Applicant testified he felt he had no choice but to plead guilty because he was defenseless, and he did not want to risk receiving a life sentence.

However, Applicant also testified he did not know if he would have pleaded guilty or gone to trial if he had a defense available. On cross-examination, Applicant testified he actually gave more than one statement; he approached a man on the street in Myrtle Beach and told the man he had "done something bad," and he also admitted to the shooting during a conversation with his family members after his arrest. Applicant testified all of these statements were made

on the same day, while he was on Celexa. Applicant further testified he was not under the influence of Celexa on the day of his guilty plea.

Counsel testified he met with Applicant to discuss his case, and together they went over what Applicant had told law enforcement. Counsel testified Applicant told police where he bought the gun, and that he took it to the victim's house, and waited for her across the street. Counsel also testified he reviewed the video and audio tapes of Applicant's statements and found no indication Applicant was not coherent when the statements were given. Counsel testified Applicant was Mirandized before the statements were taken, and the statements seemed to be logical. Counsel further testified he explained Applicant would be entitled to a Jackson v. Denno¹ hearing, at which Applicant could testify, and it would be up to a judge to decide if a particular statement was admissible. Counsel testified Applicant never said he wanted to challenge the statements.

Counsel also testified his standard practice is to ask clients if they are taking any medication and/or have any mental health issues. Counsel testified if the client indicates he is on medication, Counsel always asks if it affects his ability to understand or if it causes blackouts. Counsel testified Applicant never told him the Celexa influenced his ability to reason or think freely or distinguish right from wrong.

Regarding Applicant's claim his guilty plea was induced by ineffective assistance of counsel, this Court finds Applicant has failed to meet his burden of proof. This Court finds Applicant's testimony regarding Counsel's ineffectiveness is not credible, while also finding Counsel's testimony is credible. This Court finds Counsel provided effective assistance in this case and Applicant's decision to plead guilty was made freely and voluntarily. Counsel

¹ 378 U.S. 368 (1964).

reviewed the videos and statements given by Applicant, and nothing therein alerted him that the statements weren't voluntary. Further, Applicant never told Counsel the statements were not given voluntarily or indicated he wanted to challenge the statements, even after Counsel explained the process of challenging the voluntariness of the statements pursuant to Jackson v. Denno. This Court has reviewed the record and finds nothing in it to indicate Counsel should have known to challenge the statements. In any event, Applicant testified he could not say for certain if he would have changed his decision to plead guilty, even if a defense had been available to him.

This Court finds the record reflects Applicant's plea was entered freely, voluntarily, knowingly, and intelligently. Applicant testified he was not under the influence of any medication at the time of the guilty plea. Further, Applicant's testimony as to the side effects of Celexa did not indicate it caused him not to understand what he was doing or affected his ability to reason, and Applicant offered no testimony from a doctor or other mental health professional regarding the alleged side effects of the medication. The plea judge clearly explained Applicant's right to challenge the State's case and put up a defense if Applicant wished, but Applicant would have to give up those rights if he pleaded guilty. Tr. p. 10. The plea judge also engaged in a lengthy colloquy with Applicant and gave Applicant ample opportunity to address these issues, but Applicant indicated he had not been mistreated or pressured into pleading guilty. Tr. p. 11. Additionally, Applicant told the plea judge he was satisfied with Counsel's representation and had no complaints. Tr. p. 11. Finally, the transcript of the guilty plea reflects Applicant indicated his motivation for entering into the plea was to express his remorse and provide closure to both families. Tr. pp. 23-24. Accordingly, this Court finds Applicant understood the terms of the plea and entered into it freely and voluntarily.

Therefore, this Court finds Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present compelling evidence that Counsel committed either errors or omissions in his representation of Applicant. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel’s performance. This Court also finds that the record fully supports the knowing and voluntary nature of Applicant’s guilty plea. See Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (holding defendant’s knowing and voluntary waiver of statutory or constitutional rights in a guilty plea “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.”). In addition, Applicant has presented no evidence or valid reasons why he should be allowed to depart from the truth of his statements made at the plea. See Dalton, 376 S.C. at 137, 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.”). This Court concludes Applicant has not met his burden of proving Counsel failed to render reasonably effective assistance such that his guilty plea was rendered involuntary. The allegation is hereby denied and dismissed.

CONCLUSION

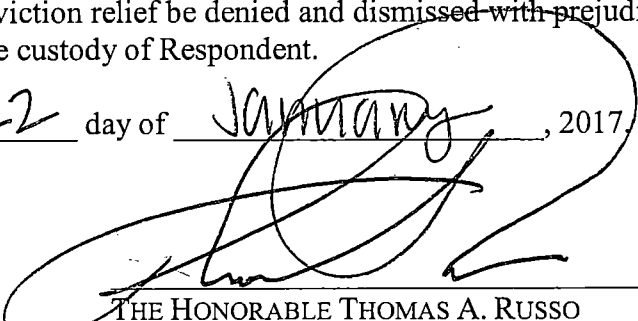
Based on all the forgoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations before or during his plea and sentencing proceedings. Counsel was not deficient, nor was Applicant prejudiced by Counsel’s representation. Therefore, this PCR application must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty 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), SCRCP, provides that if Applicant wishes to seek appellate review, Applicant must serve and file a notice of appeal on his own behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. The application for post-conviction relief be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of Respondent.

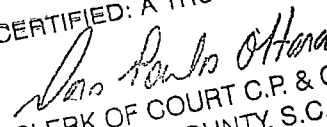
AND IT IS SO ORDERED this 22 day of January, 2017.


THE HONORABLE THOMAS A. RUSSO
Presiding Judge
Twelfth Judicial Circuit

Flonnu, South Carolina.

2018 JAN 29 AM 11:02
DORIS POULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

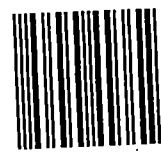
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CLERK OF COURT C.P. & G.S.
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