

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

RECEIVED

FEB 22 2018

February 14, 2018

S.C. SUPREME COURT

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

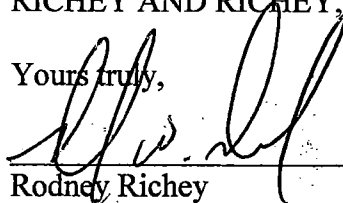
Re: Shonathan M. Jeter v. State of South Carolina
Case No: 2017-CP-11-1011

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

*Return copy
to me. JR*

RWR/
enclosures

cc: Valerie Giovanoli, Esquire

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

HONORABLE G. THOMAS COOPER, JR.

2017-CP-42-1011

SHONATHAN M. JETER, SCDC# 369635

APPELLANT,

against

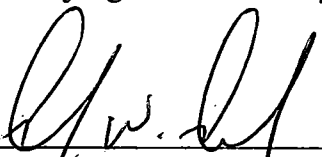
STATE OF SOUTH CAROLINA,

RESPONDENT.

RECEIVED
FEB 22 2018
S.C. SUPREME COURT

NOTICE OF APPEAL

Shonathan M. Jeter appeals the denial of his Post Conviction Relief. The Post Conviction Relief Action was heard and denied by the Honorable G. Thomas Cooper, Jr., Circuit Judge on November 17, 2018 an Order issued on January 22, 2018 and filed on January 24, 2018. The Appellant received notice of the judgment on January 30, 2018.


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

Other Counsel of Record:
Valerie 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

RECEIVED

FEB 22 2018

HONORABLE G. THOMAS COOPER, JR. S.C. SUPREME COURT

2017-CP-42-1011

SHONATHAN M. JETER, SCDC# 369635

APPELLANT,

against

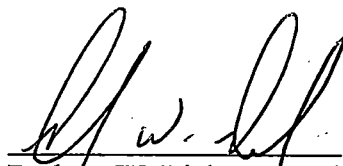
STATE OF SOUTH CAROLINA,

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 February 14, 2018, addressed to their attorney of record, Valerie Giovanoli, Office of Attorney General State of South Carolina, Post Office Box 11549, Columbia, SC 29211-1549.

Dated: February 14, 2018



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

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

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Shonathan M. Jeter, #369635,

2017-CP-42-1011

Applicant,

v.

**ORDER OF DISMISSAL
WITH PREJUDICE**

State of South Carolina,

Respondent.

2018 JAN 24 PM 1:20
M. HOPE BLACKLEY
SPARTANBURG COUNTY
COURT

This matter comes before this Court by way of an application for post-conviction relief (PCR) filed by Shonathan M. Jeter (Applicant) on November 7, 2016. The State (Respondent) made its return requesting an evidentiary hearing be held. An evidentiary hearing into the matter was convened on November 17, 2017 at the Spartanburg County Courthouse. Applicant was present and represented by Rodney Richey, Esquire. Valerie Garcia Giovanoli, Esquire, of the Office of the Attorney General represented Respondent.

At the hearing, Applicant testified on his own behalf. Candice Lapham, Esquire, (Counsel) also testified. This Court had before it a copy of the Spartanburg County Clerk of Court records, Applicant's records from the South Carolina Department of Corrections, the plea transcript, the PCR application, and Respondent's return.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. In March 2015, the Spartanburg County Grand Jury indicted Applicant for two counts of distribution of cocaine base, second offense (2016-GS-42-1670, -1671) and possession with intent to distribute (PWID) cocaine base, second offense (2016-GS-42-1672). Applicant was also charged for trafficking in

cocaine, 10-28 grams, second offense (2016-GS-42-3788). Candice Lapham, Esquire represented Applicant. Assistant Solicitor James Zachary Farr prosecuted the case. On August 25, 2016, Applicant pleaded guilty as indicted to both counts of distribution of cocaine base and PWID cocaine base before the Honorable Daniel D. Hall. Applicant also waived presentment to the grand jury and pleaded guilty to the trafficking charge. Judge Hall sentenced Applicant to imprisonment for concurrent terms of five years for each charge. The State dismissed two weapon charges in exchange for Applicant's guilty plea. Applicant did not appeal his conviction or sentence.

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

1. Ineffective Assistance of Counsel / Involuntary Guilty Plea

- a. "I pleaded guilty to more charges the State recommended."
- b. "I have the plea arraignment letter that was sent to my lawyer from the State."

SUMMARY OF TESTIMONY AT PCR

I. Counsel testified to the following:

Counsel has been practicing criminal law since 2005. Counsel was retained to represent Applicant after Richard Whelchel was appointed through the Public Defender's Office. Counsel represented Applicant on six criminal charges, however, Applicant only pled to four of them. Applicant pled without recommendation or negotiations. Counsel did not recall any offer from the State during her representation. Applicant agreed to plead to second offenses with no recommendation or negotiation other than having his two weapon charges dismissed. With regard to Applicant's trafficking charge, Counsel did not have all the discovery yet. However, Counsel did have the initial police reports and knew the field weight was 11 grams. However, it

CLERK OF COURT
CRIMINAL DIVISION
2018 JAN 24 PM 1:20
M. HOPE BLACKLEY

GC # 2

was in Applicant's best interest to waive presentment on the trafficking charge and plead guilty at the same time in order to resolve all of his outstanding charges together.

II. Applicant testified to the following:

Applicant testified the State made a ten year offer to resolve the two distribution charges and the PWID charge. Applicant testified Counsel discussed with him the plea offer, but he neither accepted nor rejected the offer. He now wishes he would have accepted the ten year offer because he believes it would have been a better sentence by giving him a chance of parole and/or work release. As such, Applicant testified his guilty plea was involuntary.

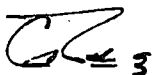
2018 JAN 24 PM 1:20
MHOPE BLACKLEY
COURT

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.

I. Ineffective Assistance of 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), SCRPC). 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 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).

Applicant also asserts his plea was involuntary. The record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Dalton, 376 S.C. 138, 654 S.E.2d at 874 (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

Ed

2009 JAN 24 PM 6:20
CLERK OF COURT
HONORABLE CLERK

applicant; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton, 376 S.C. 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)). "In considering an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, 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)).

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 who pleads guilty on the advice of counsel may collaterally attack the plea only by showing (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant 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). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56 (1985). 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

2011 JAN 4 PM 1:00
MORNING
CLERK OF COURT
JANUARY 4 2011

wrong, but on whether that advice was within the range of competence demanded of attorneys in criminal cases.” Id. at 771.

The record fully supports the knowing and voluntary nature of Applicant's plea. Applicant has failed to give a sufficient reason to be allowed to depart from the truth of his statements made during his guilty plea. Specifically, Applicant told the plea judge, under oath, that the decision to enter his plea was of his “own free will and accord,” after being advised by the court the possible penalties he faced. (Tr. p. 10, ll. 6-8). To the extent Applicant is attacking his guilty plea based on ineffective assistance of counsel, this Court finds Counsel was in no way ineffective. Applicant testified he had a better offer of ten years, but failed to substantiate this claim. Applicant did not allege Counsel failed to inform him of the offer, rather he testified Counsel discussed the offer with him. Counsel’s testimony on the issue was more credible. Counsel testified there was no ten year offer. It would make little sense for a criminal lawyer of twelve years to advise her client not to accept a ten year offer and instead advise him to plead open to charges exposing Applicant to potentially one hundred and twenty years. This Court further finds Counsel’s advice to plead guilty was sound in light of the evidence the State had against him and the benefit he received by way of the dismissal of two other five other criminal charges. (See Tr. p. 3, ll. 17-18). This Court does not find credible Applicant’s testimony that he would have accepted a ten year plea offer had he known he would receive five years by pleading open or that he would have been parole eligible under the alleged plea offer. Applicant has failed to meet his burden of proving his guilty plea was involuntary or that Counsel was any way ineffective.

FILED
2018 JAN 24 PM 1:20
HONORABLE JUDGE
BLANCHLEY
COURT
COUNTY

EL 6

CONCLUSION

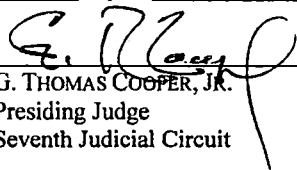
Based on all the foregoing, this Court finds and concludes Applicant has not established any violations that would require this Court to grant his application. This Court finds Applicant has failed to prove any deficiencies on the part of Counsel and further, Applicant has failed to prove prejudice from 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.C. 453 (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.

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 22nd day of January, 2010

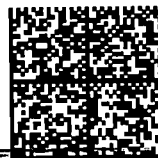

 G. THOMAS COOPER, JR.
 Presiding Judge
 Seventh Judicial Circuit

Counsel, South Carolina

CLERK OF COURT
 HANCOCK COUNTY
 2010 JAN 24 PM 1:20
 M. HOPE BLACKLEY

RICHEY AND RICHEY, P.A.
POST OFFICE BOX 10916
GREENVILLE, SC 29603

CPU



U.S. POSTAGE

\$0.92

R2305P151263

FCML 0000

Orig: 29607

Dest: 29211

02/16/18

11082435

06 25

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

2921181330 BO99

