February 15, 2018

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FEB 23 2018
S.C. SUPREME COURT

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

RE: State of South Carolina, Respondent v.
Cliston John Bellamy, Appellant,
Case No.: 2016-CP-26-06674

Dear Mr. Shearouse:

Enclosed for filing is a notice of appeal in the above case. Also enclosed are the following:

(1) Proof of service of the notice of appeal on the Respondent.

(2) A copy of the order which is to be challenged on appeal.

Sincerely,

/s/ Cliston Bellamy

Cliston J. Bellamy, #343259
McCI F-4 A-side
386 Redemption Way
McCormick, SC 29899

Appellant, pro-se

cc:
Johnny Ellis James, Jr.
Assistant Attorney General
PO Box 11549
Columbia, SC 29211-1549

Attorney for Respondent

THE STATE OF SOUTH CAROLINA

In The Supreme Court

RECEIVED

FEB 23 2018

S.C. SUPREME COURT

APPEAL FROM HORRY COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

Case No.: 2016-CP-26-06674

State of South Carolina, ... Respondent,

V.

Cliston John Bellamy, ... Appellant.

NOTICE OF APPEAL

Cliston J. Bellamy appeals the order of dismissal of the Honorable William H. Seals, Jr. dated January 5, 2018. Appellant received written notice of entry of the order on January 22, 2018.

February 15, 2018

/s/ Cliston Bellamy

Cliston J. Bellamy,343259
McCI F-4 A-side
386 Redemption Way
McCormick, SC 29899

Appellant, pro-se

Other Counsel of Record:

Johnny Ellis James, Jr.
Assistant Attorney General
PO Box 11549
Columbia, SC 29211-1549

THE STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM HORRY COUNTY
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Case No.: 2016-CP-26-06674

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S.C. SUPREME COURT

State of South Carolina, ... Respondent,

V.

Cliston John Bellamy, ... Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the Respondent by depositing a copy of it in the United States at the McCormick Correctional Institution mailroom, postage prepaid, on February 15, 2018, addressed to the attorney of record, Johnny Ellis James, Jr., PO Box 11549, Columbia, South Carolina 29211-1549.

February 15, 2018

/s/ Cliston Bellamy

Cliston J. Bellamy, #343259
McCI F-4 A-side
386 Redemption Way
McCormick, SC 29899

Appellant, pro-se

STATE OF SOUTH CAROLINA COUNTY OF HORRY	)	IN THE COURT OF COMMON PLEAS FOR THE FIFTEENTH JUDICIAL CIRCUIT
Cliston John Bellamy, S.C.D.C. No. 343259, Applicant, v. State of South Carolina, Respondent.	)	Case No.: 2016-CP-26-06674 **ORDER OF DISMISSAL**

This matter comes before the Court by way of an application for post-conviction relief filed by Cliston John Bellamy ("Applicant") on October 9, 2016. Respondent made its return on or about August 9, 2017. The Court convened an evidentiary hearing into the matter on Wednesday, September 20, 2017, at the Horry County Courthouse in Conway, South Carolina. Applicant was present at the hearing and represented by Steven W. Fowler, Esq. Johnny Ellis James Jr., of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's plea counsel, Jonathan D. McCoy, Esq. ("Counsel") also testified. The Court had before it Applicant's records from the South Carolina Department of Corrections, a copy of the original trial transcript, the records of the Horry County Clerk of Court regarding the subject convictions, and the pleadings. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. Applicant was indicted at the September 2015 term of the Horry County Grand Jury for murder (2015-GS-26-03778). Jonathan D.

McCoy, Esq. represented Applicant, and J. Stephen Grooms, of the Fifteenth Circuit Solicitor's Office, prosecuted the case. On May 16, 2016, Applicant pled guilty to the lesser-included offense of voluntary manslaughter. The Honorable Thomas W. Cooper, Jr. accepted the terms negotiated between Applicant and the State and sentenced Applicant to imprisonment for a term of 20 years. Applicant did not appeal his plea or sentence.

Present Application

In his post-conviction relief application, Applicant alleges he is being held unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
    a. "Counsel was ineffective for failing to advise Applicant of his right to a self-defense instruction, which would have prompted Applicant to contest the charge of murder at a trial and there is evidence of a fight in a bar that would have supported such an instruction."
    b. "Counsel was ineffective for failing to provide Applicant with discovery materials before Applicant plead guilty to twenty (20) years, as there is nothing in the discovery to contradict self-defense."
    c. "Counsel was ineffective for failing to file an appeal which is fundamental in jury trials and guilty pleas after a conviction and sentence."
2. Involuntary guilty plea, in that:
    a. "Applicant could not have knowingly, intelligently made an informed decision to plead to 20 years without first knowing what was in the file."

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the records submitted to it by the parties and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented.

A. Ineffective Assistance of Counsel

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she must prove "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." Butler at 442, 334 S.E.2d 441 (quoting Strickland v. Washington, 466 U.S. 668, 686 (1984)). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Id.

"[C]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Butler at 442, 334 S.E.2d 441 (quoting Strickland at 690). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989). "Judicial scrutiny of counsel's performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel's assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Strickland, 466 U.S. at 689; Edwards v. State, 392 S.C. 449, 456-57, 710 S.E.2d 60, 64 (2011). "[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)).

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 at 117, 386 S.E.2d at 625 (citing Strickland 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 at 117-18, 386 S.E.2d at 625 (citing Strickland at 694). 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).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. Strickland at 696. A court need not first determine whether 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. at 696-97.

Applicant further claims his plea was not entered knowingly or voluntarily. To find a guilty plea is voluntarily and knowingly entered into, the record must establish Applicant had a full understanding of the consequences of his plea and the charges against him. See Boykin v. Alabama, 395 U.S. 238, 243 (1969); Dover v . State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). 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 v. Leeke, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984).

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.

An applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness, and that there is a reasonable probability that, but for trial counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial instead. See Roscoe v. State, 345 S.C.16, 20, 546 S.E.2d 417, 419 (2001); see also Richardson v. State, 310 S.C. 360, 362 426 S.E.2d 795, 797 (1993). Given Applicant's burden of proof and the analysis to be applied to this claim, Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it will be treated as such.

IAC Allegation #1 – Failure to Advise Applicant Regarding Self-Defense Strategy

Applicant alleges Counsel was ineffective for failing to advise him "of his right to a self-defense instruction[.]" "If there is any evidence of record from which it can be reasonably inferred that an accused justifiably inflicted a wound in self-defense, then the accused is entitled to a charge on the law of self-defense." State v. Jackson, 384 S.C. 29, 35, 681 S.E.2d 17, 20 (Ct. App. 2009) (quoting State v. Wigington, 375 S.C. 25, 31, 649 S.E.2d 185, 188 (Ct. App. 2007)). "When any evidence in the record entitles the accused to a jury charge on self-defense, a trial judge's refusal to give the charge is reversible error." Id. (quoting State v. Muller, 282 S.C. 10, 10, 316 S.E.2d 409, 409 (1984)). However, "[a] self-defense charge is only required when the

evidence supports it." Id. (quoting State v. Slater, 373 S.C. 66, 69, 644 S.E.2d 50, 52 (2007)). To establish self-defense in South Carolina, four elements must be present:

(1) The defendant must be without fault in bringing on the difficulty;
(2) The defendant must have been in actual imminent danger of losing his life or sustaining serious bodily injury, or he must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury;
(3) If his defense is based upon his belief of imminent danger, defendant must show that a reasonably prudent person of ordinary firmness and courage would have entertained the belief that he was actually in imminent danger and that the circumstances were such as would warrant a person of ordinary prudence, firmness, and courage to strike the fatal blow in order to save himself from serious bodily harm or the loss of his life; and
(4) The defendant had no other probable means of avoiding the danger.

Id. (quoting Slater, 373 S.C. at 69-70, 644 S.E.2d at 52). "[W]hen a defendant claims self-defense, the State is required to disprove the elements of self-defense beyond a reasonable doubt." State v. Dickey, 394 S.C. 491, 716 S.E.2d 97 (2011) (quoting State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006)).

At the guilty plea proceeding, the plea judge asked Applicant if he understood that by pleading guilty he was giving up any defenses he may have, to which Applicant replied that he understood. Tr. 5, ll. 2-6. In mitigation, Counsel argued to the court that the shooting was out of Applicant's character and the result of "a fight that got out of control." Tr. 10, ll. 12-13.

At the evidentiary hearing, Applicant testified Counsel did not talk to him about self-defense or the defense of others. Applicant claimed to discover "self-defense" after visiting the law library in jail. Applicant asserted Counsel should have brought "Castle Doctrine" to his attention. Applicant testified he only spoke to Counsel once before going to court, despite retaining him a year prior. Applicant claimed Counsel did not review any potential defenses with him. Applicant testified the shooting occurred as part of a bar fight and that he was protecting himself.

Counsel testified that Applicant was on the lam for around eight months before his capture. Counsel recalled meeting Applicant five times in jail, several times in court appearances, and several times by phone. Counsel further testified that he met with Applicant's brother, with Applicant's consent, regularly. Counsel explained that the nightclub in which the shooting took place had five different angles of the killing recorded on security video. By the time Counsel met with Applicant, Applicant had already seen the nightclub's security video of the incident, and declined to watch it again. Regardless, Counsel showed Applicant a number of still frames. Counsel testified the self-defense strategy, namely defense of others, was his idea and he explained it to Applicant. Counsel explained that the victim punched another individual in the club in the course of a fight, and that Applicant casually walked up to the victim and shot him. Counsel estimated that the strategy was not likely to win at trial, as they could not get over the first element of being "without fault" in bringing on the difficulty.

The Court finds no deficiency on the part of counsel, nor prejudice therefrom. Based upon this Court's observations of Applicant at the hearing and the near total inconsistency of his testimony with any other part of the record before this Court, the Court finds Applicant's testimony not credible. Conversely, the Court finds Counsel's testimony credible. Counsel identified a strategy of self-defense and communicated it to Applicant. Counsel thoroughly explained that strategy to Applicant, including its strengths and, given the facts of the case, considerable weaknesses. Applicant knew of the potential self-defense strategy and knowingly waived it at the plea proceeding. Applicant knowingly, willingly, and voluntarily pled guilty with full awareness of his potential defenses. Accordingly, Applicant's request for relief by way of this allegation is **DENIED**.

IAC Allegation #2 – Failure to Provide Discovery

Applicant also alleges Counsel was ineffective by failing to provide and review with him the discovery in his case. The Court incorporates and largely relies upon testimony already explored in Section II.A.1 above, and finds no deficiency on the part of Counsel or prejudice therefrom. This Court finds Applicant's testimony not credible and, in particular, gives no weight to his claim that Counsel never shared or reviewed with him the discovery in his case. Counsel credibly testified that he took discovery to Applicant and reviewed materials with his client to the extent that applicant was willing. Applicant knowingly, willingly, and voluntarily pled guilty with full awareness of the case against him. Accordingly, Applicant's request for relief by way of this allegation is **DENIED**.

IAC Allegation #3 – Failure to File Notice of Appeal

Applicant alleges Counsel was ineffective by failing to file a notice of appeal after his guilty plea. Though counsel is required to make certain that a defendant is made fully aware of his or her right to appeal after a *trial*, a different standard applies to a guilty plea:

> Absent extraordinary circumstances, such as when there is reason to think a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal) or when the defendant reasonably demonstrated an interest in appealing, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea.

Turner v. State, 380 S.C. 223, 224-25, 670 S.E.2d 373, 374 (2008) (citations omitted). At the plea proceeding, the court informed Applicant in no uncertain terms that he had 10 days to appeal to a higher court, to which Applicant affirmed that he understood. Tr. 6-7.

At the evidentiary hearing, Applicant testified that he asked Counsel to file an appeal the same day he was sentenced. Applicant argued he had wanted to appeal because he did not have all of the information. Counsel, on the other hand, testified that Applicant never asked for an appeal. Counsel saw no reason to appeal the plea or sentence.

The Court finds no deficiency on the part of Counsel or prejudice therefrom. The Court relies upon the credibility findings already set forth in both Sections II.A.1 and A.2, above, and finds Applicant never asked for an appeal and no other reason existed for Counsel to believe Applicant wanted or would want an appeal. Applicant's assertion at the evidentiary hearing that he wished to appeal based upon some known-unknown, to borrow a designation from former Secretary of Defense Donald Rumsfeld, only reaffirms this Court's finding that Applicant's attestations of ignorance in his plea are entirely without evidentiary support and not credible. Accordingly, Applicant's request for relief by way of this allegation is **DENIED**.

III. CONCLUSION

Based on all the foregoing, this Court finds and concludes that 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 notifies the Applicant that he must file and serve a notice of appeal within thirty (30) 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 PCR. Rule 71.1(g), SCRCP provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention 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 must be denied and dismissed with prejudice; and

2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 5 day of Jan, 2018.

WILLIAM H. SEALS, JR.
Presiding Judge
Fifteenth Judicial Circuit

Marion, South Carolina

Cliston J. Bellamy #343259
MCCI F-4 A-side
386 Redemption Way
McCormick, SC 29899

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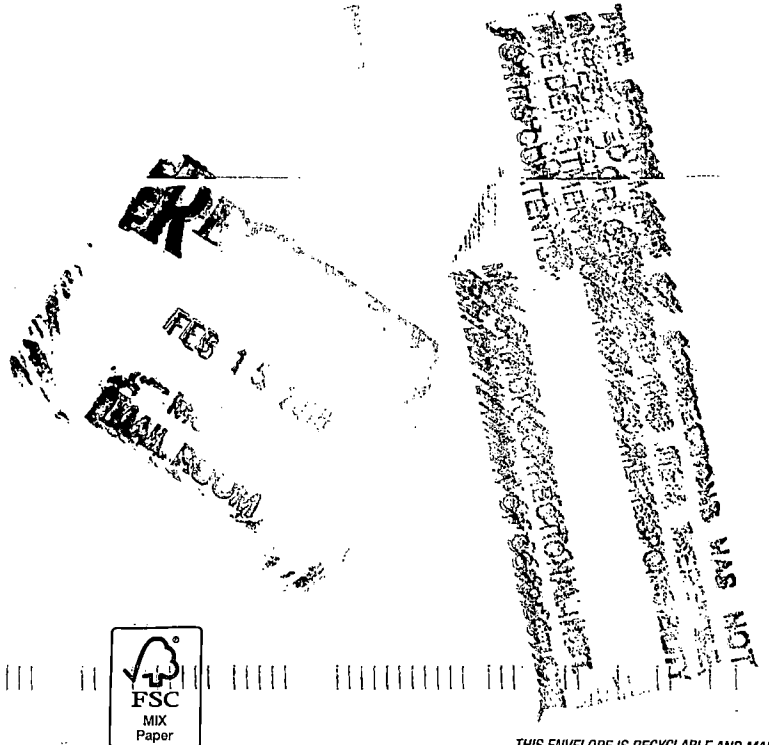
The Honorable Daniel E Shearouse
Clerk, South Carolina Supreme Court
PO Box 11330
Columbia, SC 29211

Legal Mail

29211@1330 8099



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