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March 5, 2018

RECEIVED

MAR 09 2018

S.C. SUPREME COURT

Via US Mail

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

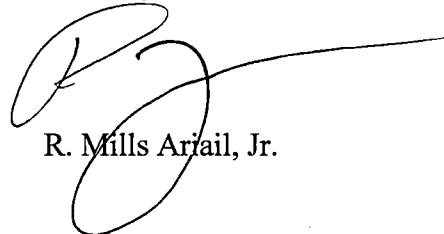
***Re: Notice of Intent to Appeal from State of SC v. Conrad Allen
C.A. No.: 2016-CP-23-0400***

Dear Mr. Shearouse:

I was Court Appointed in the above referenced matter, and I expect that appellate defense will handle the appeal and petition for certiorari. On behalf of my client, enclosed for filing please find the Notice of Appeal and proof of service. I've enclosed a copy of the Honorable Daniel D. Hall's Order of Dismissal to be challenged on appeal. By copy of this letter, I am also serving my client, counsel for the State of South Carolina, the South Carolina Commission of Indigent Defense - Appellate Defense Division and the Greenville County Clerk's Office.

Thank you for your assistance in this matter and if you have any questions, please feel free to contact me.

Sincerely,
LAW OFFICE OF R. MILLS ARIAIL, JR.
Attorney at Law



R. Mills Ariail, Jr.

RMAjr/dl
Enclosures (as stated)

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Daniel D. Hall, Circuit Court Judge

Case No. 2016-CP-23-400

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MAR 09 2018

S.C. SUPREME COURT

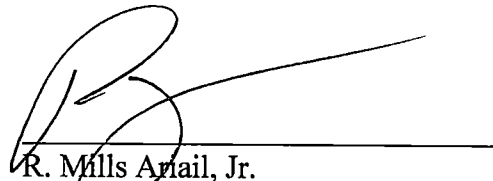
Conrad Antonio Allen,..... Appellant,

v.

State of South Carolina Respondent.

NOTICE OF APPEAL

Appellant appeals the Honorable Daniel D. Hall's Order of Dismissal dismissing Appellant's application for post-conviction relief. On March 2, 2018, the Honorable Daniel D. Hall's Order of Dismissal dismissing Appellant's application for post-conviction relief with prejudice was filed. Appellant, through counsel, received written notice of entry of this order on March 2, 2018. A copy of the Honorable Daniel D. Hall's Order of Dismissal is attached.



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Attorney for Conrad Allen

Greenville, South Carolina
March 05, 2018

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Daniel D. Hall, Circuit Court Judge

Case No.2016-CP-23-400

Conrad Antonio Allen,..... Appellant,

v.

State of South Carolina Respondent.

CERTIFICATE OF SERVICE

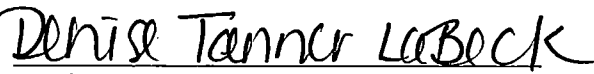
I, Denise Tanner LaBeck, paralegal to R. Mills Ariail, Jr., do hereby certify that on this March 5, 2018, I served upon the below named Respondents copies of the **NOTICE OF APPEAL** by depositing copies of the same via U.S. Mail, postage prepaid, Registered Mail in an envelope addressed as set forth herein below:

DeShawn Mitchell, Esq.
Assistant Attorney General
PO Box 11549
Columbia, SC 29211
Attorney for the State of South Carolina

Greenville County Clerk's Office
Greenville County Courthouse
305 East North Street
Greenville, SC 29601

Conrad Allen SCDC# 365648
Perry Correctional Institution
430 Oaklawn Road
Pelzer, SC 29669

SC Commission of Indigent Defense
Division of Appellate Defense
PO Box 11433
Columbia, SC 29211-1433


Denise Tanner LaBeck

March 5, 2018

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Conrad Antonio Allen, #365648,

2016-CP-23-0400

Applicant,

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

FILED
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JL

This matter comes before the Court by way of an application for Post-Conviction Relief filed on January 27, 2016. Respondent made its Return on or about January 12, 2017. An evidentiary hearing into the matter was convened on June 28, 2017 at the Greenville County Courthouse in Greenville, SC at which time the Applicant was present in court and represented by R. Mills Ariail, Esquire. The Respondent was represented by DeShawn H. Mitchell, Esquire of the South Carolina Attorney General's Office.

At the hearing, Applicant testified on his own behalf. Applicant's plea counsel, Michael D. Brown, Esquire also testified. This Court had before it a copy of the records of the Greenville County Clerk of Court regarding the Applicant's convictions, the transcript from Applicant's guilty plea, the PCR application, Respondent's Return, and Applicant's records for the Department of Corrections.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Greenville County Clerk of Court. Applicant was indicted by the August 2015 term of the Greenville County Grand Jury for murder and Possession of a weapon during the commission of a violent crime (2014-GS-23- 10987), attempted armed robbery(2014-

GS-23-10986) and conspiracy (2014- GS-23-11096). Michael D. Brown, Esquire, represented Applicant. On October 12, 2015, Applicant pled guilty as indicted to all charges. The Honorable Perry H. Gravely sentenced Applicant to imprisonment for forty years consecutive for murder, fifteen years consecutive for attempted armed robbery, five years concurrent for possession of a weapon during the commission of a violent crime, and five years concurrent for conspiracy.

ALLEGATIONS

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

1. Sentence was too harsh.
 - a. "My allegation is it wasn't justifiable to sentence me to 55 years because murder is 30 years and a weapon poss. Is 5 to 15 years that they over sentence me and I'm trying to give some of this time back".
 - b. "The facts are that when I was in the courtroom, I was high off my medicane (sic) and they support (sic) to keep going they support (sic) to send me back back to the county jail, and look they gave me 55 years.."

Applicant subsequently amended his application on April 25, 2017 making the following allegations:

1. Plea Counsel failed to advise Applicant of Direct Appeal.
2. Plea Counsel failed to file Notice of Appeal.
3. Applicant was incompetent during Guilt Phase due to the effects of controlled substances. (antidepressants)
4. Applicant was denied competency hearing in violation of his right to due process of the law.

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 can weigh 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). This Court finds the testimony of Counsel to be credible. This Court further finds that the testimony by Applicant is not credible.

Ineffective Assistance of Counsel

In a post-conviction relief 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." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. 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, 466 U.S. at 689. 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 v. Washington, 466 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).

Applicant testified he met with Counsel and he discussed charges with Counsel. Applicant testified he never saw any discovery materials or a file Rule five Motion for discovery. He further testified he had issues with medicine and was on medicine at the time of the guilty plea but the plea judge never inquired as to whether he was taking any medicine. On cross-examination, Applicant testified he had not been diagnosed with any mental illness before the evidentiary hearing. Applicant testified he did not have any medical documents with him that would show he had been diagnosed with a mental illness. Applicant further testified he called his sister in jail and told her he was going to pretend to act "crazy" prior to pleading guilty.

Counsel testified about the facts of the case. Counsel testified he met with Applicant and discussed the charges and the potential sentences those charges carried. Counsel testified Applicant never indicated he did not understand the discussions there were having about the case. Additionally, Counsel testified the Solicitor's office did have a recording of Applicant making a phone call to his sister.

After careful review of the entire record, including the testimony presented at the evidentiary hearings, based on the standard discussed above, this Court finds Applicant has failed to carry his burden in this action regarding any of his allegations of ineffective assistance of counsel. Applicant also failed to prove he was prejudiced by the alleged deficiencies. As a matter of general impression, this Court finds the testimony of Applicant's counsel to be credible and persuasive on all matters. These credibility findings have been applied to the Court's findings and conclusions set forth below.

Allegation #1

Applicant alleges that his sentence was too harsh. Applicant was charged with murder which carries a sentence of thirty years to life imprisonment, possession of a weapon during the commission of a violent offense which carries zero to five years imprisonment, attempted armed robbery which carries zero to twenty years imprisonment and conspiracy which carries zero to five years imprisonment. After a review of the guilty plea transcript it is clear from the colloquy between the plea judge and Applicant that Applicant understood what sentences each charge carried. Furthermore, the sentences handed down by the plea court were appropriately issued. A trial court has broad discretion in imposing criminal sentences within the limits prescribed by law. State v. Franklin, 267 S.C. 240, 226 S.E.2d 896 (1976); Clark v. State, 259 S.C. 378, 192 S.E.2d 209 (1972). The courts normally have no discretion to correct a sentence given within statutory limits. To be entitled to relief, the Applicant must prove that the alleged excessive sentence was the result of partiality, prejudice, oppression or corrupt motive, or that the sentence constitutes cruel and unusual punishment per se. Clark, Id.; State v. Cogdell, 273 S.C. 563, 257 S.E.2d 748 (1979). The Applicant has failed to show his sentence was a result of any of these factors. Accordingly, this Court finds that this allegation is denied and dismissed.

Allegation #2

Applicant alleges that plea counsel failed to advise him of a direct appeal and failed to file a notice of appeal for him. Applicant did not present any evidence on this allegation at the PCR hearing. Accordingly, this Court finds Applicant failed to prove Counsel was deficient or that Applicant was prejudiced by Counsel's performance. Accordingly, this Court denies and dismisses this allegation.

Allegation #3

Applicant alleges that he was incompetent during guilty plea due to the effects of controlled substances. This Court interprets this allegation as Applicant asserting his guilty plea was involuntary. This Court finds Applicant has failed to carry his burden regarding this allegation. This Court finds the record reflects Applicant's plea was entered freely, voluntarily, knowingly, and intelligently. The plea judge explained the charges to Applicant, including the maximum penalties for each. The plea judge also went through Applicant's constitutional rights and questioned Applicant as to whether he understood those rights and wished to give them up to plead guilty. Applicant agreed that he did. Applicant admitted he was guilty of these offenses and did not challenge the facts presented by the State at the plea. Applicant told the plea judge that he was satisfied with his attorney, that Counsel had done everything Applicant had asked of him, and he did not need any more time to discuss this matter with Counsel. Applicant further told the plea judge no one had threatened him or made him any promises to get him to plead guilty, and he was doing so of his own accord. Additionally, Applicant told the plea judge he did not have any physical or mental issues which would prevent him from understanding the proceeding, and Applicant indicated he understood all of the plea judge's questions and had answered them honestly. This Court therefore finds that Applicant understood the terms of the plea and the possible sentences he could receive and that his plea was not involuntary. Accordingly, this Court finds that this allegation is denied and dismissed.

Allegation #4

Applicant alleges he was denied competency hearing in violation of his right to due process of the law. This Court finds Applicant has failed to carry his burden regarding this allegation. Counsel testified he never thought Applicant lacked the ability to comprehend or was

incompetent. "When a PCR applicant raises issues of competency in the context of a plea proceeding, the two-prong Strickland analysis still applies; however, because of the nature of the claim, proof of deficiency of counsel is intertwined with prejudice." Ramirez v. State, 419 S.C. 14, 21, 795 S.E.2d 841, 844-45 (2017). "Specifically, when establishing Strickland prejudice in the context of plea counsel's failure to request a mental competency evaluation, 'the [applicant] need only show a 'reasonable probability' that he was ... incompetent at the time of the plea.'" *Id.* (quoting Jeter v. State, 308 S.C. 230, 233, 417 S.E.2d 594, 596 (1992)); see also Matthews v. State, 358 S.C. 456, 458-60, 596 S.E.2d 49, 50-51 (2004) (expanding the reasonable probability standard as the burden for proving both the deficiency of counsel and the prejudice prongs). This Court finds Applicant has failed to meet his requisite burden of proof as to either deficiency of counsel or prejudice. Therefore, this allegation is denied and dismissed.

Therefore, Applicant having failed to prove any deficiency by Counsel as required by Strickland, his application is denied and dismissed with prejudice.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any violations 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 Applicant that 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), SCRPC. Refer to 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 13th day of February, 2018.



DANIEL D. HALL
Presiding Judge
Thirteenth Judicial Circuit

York, South Carolina



R. MILLS ARIAIL, JR.

11 NORTH IRVINE STREET, SUITE 11
GREENVILLE, SC 29601

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