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RECEIVED

MAR 22 2018

S.C. SUPREME COURT

March 19, 2018

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

Re.: Hilton v. State  
2014-CP-29-0250

Dear Clerk:

Please find enclosed the Notice of Appeal, Certificate of Service and copy of Order of Dismissal that is being appealed. Please file these accordingly. Please note that I have also sent a copy of these documents to Appellate Defense and have asked that office to handle the appeal from here forward. Thank you and please contact me with any additional questions or concerns.

Sincerely Yours,

Nathan Sheldon  
The Law Office of Nathan J. Sheldon

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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MAR 22 2018

APPEAL FROM LANCASTER COUNTY  
Court of Common Pleas

S.C. SUPREME COURT

R. Knox McMahon, Circuit Court Judge

Case No. 2014-CP-29-0250

State of South Carolina, Respondent,

v.

Joseph D. Hilton, Appellant.

NOTICE OF APPEAL

Joseph D. Hilton appeals the order of the Honorable R. Knox McMahon dated February 14, 2018 denying his request for post-conviction relief. Appellant received written notice of entry of this order on February 23, 2018.

March 19, 2018



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Other Counsel of Record:  
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THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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MAR 22 2018

APPEAL FROM LANCASTER COUNTY  
Court of Common Pleas

S.C. SUPREME COURT

R. Knox McMahon, Circuit Court Judge

Case No. 2014-CP-29-0250

State of South Carolina,

Respondent,

v.

Joseph D. Hilton,

Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on DeShawn Mitchell with the Attorney General's Office by depositing a copy of it in the United States Mail, postage prepaid, on March 19, 2018 mailed to Post Office Box 11549, Columbia, South Carolina 29211-1549.

March 19, 2018



Nathan Sheldon  
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803-909-9343  
Attorney for Appellant

STATE OF SOUTH CAROLINA )  
COUNTY OF LANCASTER )  
Joseph D. Hilton, #355069, )  
Applicant, )  
v. )  
State of South Carolina, )  
Respondent. )

IN THE COURT OF COMMON PLEAS  
SIXTH JUDICIAL CIRCUIT

2014-CP-29-0250

**ORDER OF DISMISSAL**

FILED  
OFFICE OF CLERK  
OF COURT  
2018 FEB 21 AM 10:15  
CLERK OF COURT  
LANCASTER, SC

This matter comes before the Court by way of an application for post-conviction relief filed on March 3, 2014, by Joseph D. Hilton (Applicant). Respondent made its Return on or about June 18, 2014. An evidentiary hearing into the matter was convened on July 18, 2017, at the Lancaster County Courthouse in Lancaster, South Carolina. Applicant was present and represented by Nathan J. Sheldon, Esquire. 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, Mike Lifsey, Esquire also testified as did Dr. Donna Schwartz Maddox. This Court had before it a copy of the records of the Lancaster County Clerk of Court regarding the Applicant’s convictions, the transcript from Applicant’s guilty plea, the PCR application, Respondent’s Return, Applicant’s records from the Department of Corrections and a copy of Dr. Maddox’s mental health evaluation. After reviewing the record and everything presented, this Court finds Applicant has failed to establish any constitutional deprivations entitling him to post-conviction relief and denies this application.

**PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to the Lancaster County Clerk of Court's orders of commitment. On February 11, 2013, shortly before midnight the 911 center in Lancaster County got a call from Applicant. In this call Applicant said, "I just shot my wife" and I think she is dead. GP Tr. pg. 9. Applicant's explanation was, "She just kept on and on, I could not talk to her." GP Tr. pg. 9. Applicant indicated it was a domestic argument. Applicant waived presentment to the Lancaster County Grand Jury for murder (2013-GS-29-0665). Mike Lifsey, Esquire represented Applicant. On April 18, 2013, Applicant appeared before the Honorable J. Ernest Kinard Jr., where he pled guilty to the lesser included offense of voluntary manslaughter. Pursuant to negotiations, Judge Kinard sentenced Applicant to twenty-five years imprisonment. Applicant did not appeal his plea or sentence.

### **ALLEGATIONS**

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

1. Ineffective assistance of counsel.
  - a. No mental evaluation pursuant to Blair v. State.
  - b. Did not seek a sentence reduction.
  - c. Did not thoroughly investigate the case.
2. "Solicitor Barfield prejudiced himself in this case when he added 5 yrs. to the sentence just for himself, according to a conversation with my son."

### **SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTARY HEARING**

#### **Plea Counsel's Testimony**

Plea counsel was called on direct examination to testify by Applicant. Plea counsel testified he represented Applicant in this case and Applicant was charged with murder. He testified Applicant was involved in a domestic altercation in which Applicant shot his wife and was arrested for the murder at the scene of the crime. He testified his office was appointed

shortly after Applicant's arrest and he went to see him on February 20, 2013, about a week or week and a half after he had been arrested. He testified Applicant pled on April 18, 2013, approximately two months after the crime. Prior to the plea proceeding, plea counsel testified he met with Applicant six different times in those two months.

Counsel testified he asked Applicant about any medical or mental health conditions during their initial meeting. He testified he never felt Applicant needed to have a psychiatric evaluation based on their conversations and meetings. He testified that while Applicant had numerous medical conditions, it was his understanding they were physical health problems, not mental health problems. He testified Applicant seemed to understand what was going on and was able to answer questions about his case and also the questions he posed to Applicant. He testified there was no overt indication of Applicant being delusional or suffering any psychosis that he could see from his perspective.

Plea counsel testified Applicant pled guilty to a negotiated sentence of twenty-five years to voluntary manslaughter. He testified the State's initial plea offer was for murder for thirty years. He testified he talked to Applicant about the initial plea offer to murder and Applicant rejected this plea offer. Plea counsel testified he continued negotiating with the solicitor and asked for a plea offer of twenty years for voluntary manslaughter. He testified Solicitor Douglas Barfield would not agree to a twenty year plea offer but they did reach an agreement for twenty-five years. He testified in negotiating the plea offer he used Applicant's age and physical condition as mitigating circumstances. He testified this was still a significant sentence given Applicant's age as he was in his sixties.

Plea counsel testified Applicant waived presentment to the grand jury and pled within two months of being arrested. He testified this was unusual and he had never done that before but

he did at the request of Applicant. He testified he thought the State had a very good murder case based on Applicant's statements to law enforcement and his 911 call in which he basically confessed to the murder. He testified Applicant was always very remorseful and sorry for the impact on his family. Plea counsel testified he remembered from the very beginning of his representation of Applicant that Applicant did not want to go to trial. He testified he met with family members of Applicant. He testified he never had a defendant pled guilty so soon with the likelihood the sentence would probably be a life sentence given Applicant's health issues. He testified the expediting of taking the plea was not a condition of the offer. He testified he did not believe waiting longer would have made the plea offer any better. He testified he did not think it was necessary to wait for the Applicant to plead in order to get more mitigation information because the State had a good case and Applicant's case got a decent amount of public attention. Plea counsel finally testified he did not think the plea offer was ever going to be a recommendation offer or anything like that.

On cross-examination, plea counsel testified he had been practicing law since 1991 and practicing criminal law since 1994. He testified during the course of his representation he never go the sense Applicant was suffering from any type of mental illness. He further testified he did not see any evidence of delusional thinking or schizophrenia. He testified he was not a doctor but he had represented a number of mentally ill people, however he did not see anything that cried out to him that Applicant was suffering from a mental illness. Plea counsel testified Applicant seemed to understand the charges he was facing in his case and also understand the evidence the State had against him. He testified he went over Applicant's charges and constitutional rights with him. He testified during his meeting with Applicant, Applicant understood everything they were talking about. He testified Applicant never told him that he had a mental illness or had been

diagnosed with any mental illness. Plea counsel testified he became aware Applicant was taking antidepressants but he did not see any indication Applicant was suffering from depression or that it affected Applicant's competency to stand trial and ability to assist his own defense.

Dr. Donna Schwartz Maddox's Testimony

Prior to testifying, Dr. Maddox was qualified as an expert in forensic psychiatry with Respondent consenting. Dr. Maddox did however testify that she was a physician licensed to practice medicine in South Carolina and Georgia. Dr. Maddox graduated from the University of South Carolina School of Medicine in 1989 and retired from the South Carolina State Department of Mental Health after twenty-eight years. Additionally, Dr. Maddox's report of Applicant's psychiatric evaluation was admitted into evidence without objection from Respondent. Dr. Maddox testified she was a general and forensic psychiatrist and was retained by Applicant to perform an evaluation of him. She testified she examined him on January 12, 2017, at the Lee County Institution. Dr. Maddox testified she spent two hours with him conducting a psychiatric examination that included checking Applicant's cognitive function. She testified she also gave Applicant a neurological screening evaluation. She testified Applicant had a very long and complicated medical history and it was very important to determine the extent of his medical history. She testified she also performed a psychiatric history of Applicant because he had a history of treatment for depression. She testified as the interview with Applicant progressed, she realized because of his numerous medical conditions and some of the drugs he was abusing and taking at the time of the crime, she had some concerns Applicant had cognitive impairment. She testified based on her interview it was clear he had some deficits that he was reporting. Dr. Maddox testified because of this, she performed a very thorough mental status examination that looked at some of Applicant's cognitive domains in which she found he had

impairments.

After being asked how she could evaluate someone four years after a crime had occurred and rendered an opinion, Dr. Maddox testified she was asked to look at Applicant's competency and render an opinion based on her evaluation of the transcript from Applicant's guilty plea. She testified she was able to look at Applicant's words and follow his interactions in court. Additionally, she testified she was also able to render an opinion by learning the dates of some of his illnesses. Dr. Maddox testified competency to stand trial is a present capacity and it is the ability to understand the proceedings while criminal responsibility looks at your behavior at the time of the offense to determine what you were thinking and whether your mental state had something to do with your crime.

She further testified guilty but mentally ill meant that at the time of the offense one was suffering from an illness that impaired his capacity to conform his conduct. She testified in rendering her opinion she looked at Applicant's medical history and medications he had been taking. She testified Applicant's ultimate diagnosis was that Applicant had a little bit of brain impairment, cognitive impairment and long-standing depression. She testified in her medical opinion, Applicant was competent to stand trial and knew what he was doing when he committed the murder. She further testified she was able to rule out Applicant was not guilty by reason of insanity because Applicant had called 911 to tell them he shot his wife as well as calling other people to tell them.

Dr. Maddox testified she did diagnosis Applicant guilty but mentally ill. She testified she diagnosed Applicant guilty but mentally ill based on his history of longstanding depression and chronic illness. She testified based on Applicant's history, prior treatment for depression, present treatment of depression, continued symptoms of depression, and then his reports of being

irritable and certainly the 911 transcript, it would have been her opinion that because of his depression and the cognitive impairment that he lacked the capacity to conform his conduct. She testified pleading guilty but mentally and how it affects the outcome of a case is up to a judge. She testified different judges consider mental illness mitigating in terms of looking at what kind of offense versus someone who does not have a mental illness. She testified what pleading guilty but mentally ill means legally is once that a person enters the Department of Corrections they are admitted directly into Gilliam Psychiatric Hospital instead of going to regular reception and evaluation. Dr. Maddox concluded by testifying in this case Applicant has been treated by the best psychiatrist at the Department of Corrections and is getting the mental health care he would have received if he pled guilty but mentally ill originally.

On cross-examination, Dr. Maddox, testified her ultimate conclusion was she found Applicant competent to stand trial and he knew what he was doing when he committed this crime. She testified Applicant did not have a below average IQ or any type of mental retardation. She further testified he was above average in his intellect.

#### Applicant's Testimony

Applicant testified plea counsel represented him and they first met within a few days of Applicant's arrest. He testified he met with plea counsel several times over the course of two months. Applicant testified that what plea counsel testified to sounded pretty accurate. He testified the plea offer was as good as he was going to get so he took the twenty-five years. He testified he understood that he waived presentment to the grand jury and he understood what that meant. Applicant testified he waived presentment to expedite the process. He testified he had a pretty long history of health issues and it was hard to sometimes get the records but they tried to get all they could for the guilty plea hearing. He testified when he had heart surgery he felt as

though he never fully got over it so he started taking medications for his nerves and depression. He testified he became disabled in 2006 after his first heart attack and his son died in 2009 of a massive heart attack. He testified he was married to his wife for close to twenty-five years. Applicant testified he discussed his history of depression with plea counsel as best he could. He testified his case was resolved in two months because he wanted to get on through it so it would not have as much problems on the family.

On cross-examination Applicant testified he plead guilty because he wanted to get it over with and spare his family the pain of going through a trial. Applicant testified he knew what he was doing when he committed the crime.

#### **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).

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).

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. These credibility findings have been applied to the Court's findings and conclusions set forth below.

#### **Failure to get a mental health evaluation**

Applicant alleges Counsel was ineffective for failing to have him evaluated pursuant to State v. Blair, 275 S.C. 529, 273 S.E. 2d 536 (1981). In a PCR action, a petitioner has the burden of proving by a preponderance of the evidence that he was incompetent at the time of his guilty plea. Matthews v. State, 358 S.C. 456, 458, 596 S.E.2d 49, 50 (2004) (quoting Jeter v. State, 308

S.C. 230, 232, 417 S.E.2d 594, 595-596 (1992). Here, plea counsel testified at no time did he feel Applicant needed to have a psychiatric evaluation. Additionally, he testified Applicant had numerous medical problems but they were physical health problems not mental health problems. He further testified Applicant seemed to understand what was going on and was able to answer questions about his case and also the questions he posed to Applicant. Finally, he testified there were no overt indications of Applicant being delusional or suffering any psychosis that he could see from his perspective. Notwithstanding plea counsel's testimony, Dr. Maddox testified Applicant was competent to stand trial. Moreover, Dr. Maddox testified Applicant knew what he was doing when he committed this crime. This Court finds there was ample testimony on why Counsel did not get Applicant tested. This Court finds Applicant has failed to meet his burden of proving Counsel was ineffective for failing to request a mental evaluation. Therefore, this allegation is denied and dismissed with prejudice.

**Failure to investigate and present mitigation evidence**

Applicant alleges Counsel was ineffective for failing to investigate and present mitigation evidence. Additionally, Applicant alleges had Counsel investigated his long health history he could have used that information as mitigation during his guilty plea. Applicant was ultimately given a mental health evaluation prior to his evidentiary hearing and Dr. Maddox rendered an opinion that Applicant was competent to stand trial but was unable to conform his conduct to the requirements of the law. She opined that Applicant should have pled guilty but mentally ill. Plea counsel testified in negotiating the plea offer he used Applicant's age and physical condition as mitigating circumstances. Additionally, plea counsel testified Applicant did not want to prolong his case and put his family through a trial as he was well aware of what he did.

This Court finds that Counsel was not ineffective for failing to investigate. Moreover, Applicant himself testified he plead guilty because he wanted to get it over with and spare his family the pain of going through a trial and he knew what he was doing when he committed the crime. This Court finds Counsel did investigate and use Applicant's long term health problems as leverage in negotiating a plea deal on behalf on Applicant. Additionally, this Court finds Applicant plead guilty pursuant to a negotiated plea and while Counsel's mitigation was more than sufficient nothing additionally he presented could have affected the duration of the sentence Applicant received given the negotiated offer.

Furthermore, as Dr. Maddox correctly testified to pleading guilty but mentally ill means once that a person enters the Department of Corrections they are admitted directly for treatment instead of going to regular reception and evaluation. Pursuant to S.C. Code Ann. §17-24-70 if a verdict is returned of "guilty but mentally ill" the defendant must be sentenced by the trial judge as provided by law for a defendant found guilty, however: "If the sentence imposed upon the defendant includes the incarceration of the defendant, the defendant must first be taken to a facility designated by the Department of Corrections for treatment and retained there until in the opinion of the staff at that facility the defendant may safely be moved to the general population of the Department of Corrections to serve the remainder of his sentence."

Here, had the Applicant been tested prior to pleading guilty and been found guilty but mentally ill, the plea judge would have still been required to sentence Applicant the same way as a person who simply pleads guilty and is treated no different. As this Court previously noted, Counsel took Applicant's age and physical condition as mitigating circumstances to the solicitor to negotiate knowing the solicitor had a pretty good case. It would be speculative to suggest the solicitor would alter his plea offer because of this information, notwithstanding the fact the plea

judge in this case could only accept or reject the negotiated plea. As equally as important, this Court finds compelling Dr. Maddox's testimony that Applicant has been treated by the best psychiatrist at the Department of Corrections and is getting the mental health care he would have received if he pled guilty but mentally ill originally. Because of all these things, this Court finds Applicant has failed to meet his burden of proving Counsel was ineffective for failing to investigate and present mitigation evidence. Therefore, this allegation is denied and dismissed with prejudice.

#### **Prosecutorial Misconduct**

In his Application Applicant alleged Solicitor Barfield prejudiced himself in this case when he added five years to the sentence just for himself, according to a conversation with my son. Applicant did not present any evidence on this allegation at the PCR hearing. Accordingly, this Court finds Applicant failed to prove there was any evidence of prosecutorial misconduct. Accordingly, this Court denies and dismisses this allegation.

#### **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), SCRCR. 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.

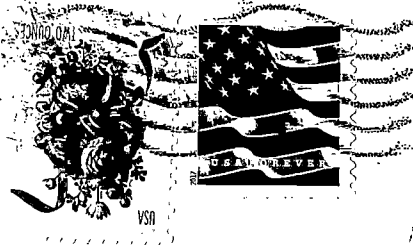
**AND IT IS SO ORDERED** this 14 day of February, 2018.

  
\_\_\_\_\_  
R. KNOX MCMAHON  
Presiding Judge  
Sixth Judicial Circuit

  
\_\_\_\_\_, South Carolina

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