

THE STATE OF SOUTH CAROLINA

In the Supreme Court

APPEAL FROM THE COUNTY OF HORRY

Court of Common Pleas

The Honorable Circuit Court Judge, William H. Seals, Jr.

Case No. 2015-CP-26-08485

Fitzgerald McDuffie, SCDC # 363060 Petitioner,

v.

State of South Carolina, Respondent.

NOTICE OF APPEAL

The Petitioner appeal the Honorable William H. Seals Jr.'s Order filed on March 13, 2018, 2018, denying post conviction relief to the Petitioner.

The Order was received by the undersigned counsel on March 21, 2018. A copy of the said Order on appeal is attached to this Notice.

This is the 24th day of March, 2018.



Steven W. Fowler
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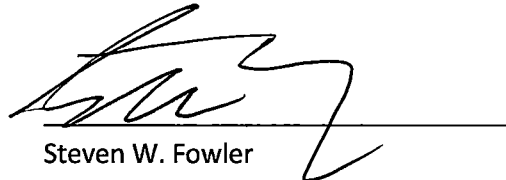
PROOF OF SERVICE

I, Steven W. Fowler, court- appointed attorney for Petitioner, certify that I have today served within Notice of Appeal and Copy of the Order signed by the presiding Judge upon the Respondent by depositing a copy of it in the United States Mail, postage prepaid, addressed to the following:

- 1) Assistant Attorney General, PO Box 11549, Columbia, SC 29211 and
- 2) Clerk of the South Carolina Supreme Court , 1231 Gervais St, Columbia, SC 29201

I further certify that all parties required by Rule to be served have been served on this below named date.

This is the 24th day of March, 2018.



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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY)	
Fitzgerald McDuffie,)	Case No.: 2015-CP-26-08485
S.C.D.C. No. 363060,)	
)	
Applicant,)	
)	ORDER OF DISMISSAL
v.)	
)	
State of South Carolina,)	
)	
Respondent.)	

HORRY COUNTY
 CLERK OF COURT
 HORRY COUNTY, SC
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This matter comes before the Court by way of an application for post-conviction relief filed by Fitzgerald McDuffie (“Applicant”) on December 1, 2015. Respondent made its return on or about February 17, 2017. The Court convened an evidentiary hearing into the matter on Thursday, November 30, 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, Dean N. Mureddu, Esq. (“Counsel”) also testified. The Court had before it Applicant’s records from the South Carolina Department of Corrections, a copy of the original plea 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 June 2014 term of the Horry County Grand Jury for two counts of possession of a weapon during the

commission of a violent crime (2014-GS-26-02075, -02177), two counts of armed robbery (2014-GS-26-02077, -02178), and two counts of attempted murder (2014-GS-26-02076, -02179). Dean Mureddu, Esq. represented Applicant, and Monica Wooten, of the Fifteenth Circuit Solicitor's Office, prosecuted the case. On February 17, 2015, Applicant pled guilty as indicted to one count of armed robbery (-02178); all other indictments were dismissed *nolle prosequi*. The Honorable Benjamin H. Culbertson, upon recommendation by the State of a maximum sentence of 15 years, sentenced Applicant to imprisonment for a term of 12 years.¹ 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
2. Involuntary guilty plea

By order dated June 12, 2017, and filed June 23, 2017, the Honorable Roger E. Henderson granted Respondent's motion for a more definite statement, requiring Applicant to amend his application within 30 days of receipt of the order. At the evidentiary hearing, Applicant proceeded forward on the following allegations, as developed through testimony:

1. Ineffective assistance of counsel, in that:
 - a. Counsel failed to challenge or explain Applicant's treatment as an adult, rather than a juvenile;
 - b. Counsel failed to explain all of the evidence against him or provide all of his discovery; and
2. Involuntary guilty plea, in that:
 - a. Applicant did not really know what he was pleading to.

Respondent indicated the State was prepared to proceed and the hearing was conducted without written amendment.

¹ Judge Culbertson sentenced Applicant to the same term as received by Applicant's older brother.

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 & Involuntary Guilty Plea

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRPC; 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, 59 (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. Lecke, 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)).

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.

1. Failure to Challenge, Explain Adult vs. Juvenile Status

Applicant alleged at the hearing that Counsel was ineffective for failing to challenge or even explain Applicant's treatment as an adult, rather than a juvenile. Whether or not a defendant qualifies as a "juvenile" is defined by statute:

“Child” or “juvenile” means a person less than seventeen years of age. “Child” or “Juvenile” does not mean a person sixteen years of age or older who is charged with a Class A, B, C, or D felony as defined in Section 16-1-20 or a felony which provides for a maximum term of imprisonment of fifteen years or more.

S.C. Code Ann. § 63-19-20. Both attempted murder and armed robbery are Class A felonies.

S.C. Code Ann. § 16-1-90(A).

At the plea proceeding, during mitigation, Counsel informed the Court that Applicant was the age of 16 at the time the crimes occurred and was held in the custody of the Department of Juvenile Justice until he turned 17. (Tr. 15, ll. 14-15.) At the evidentiary hearing, Applicant confirmed he was 16 when he was arrested, and 17 at the time of his plea. Applicant testified that Counsel did not talk about the importance of being treated as an adult. Counsel testified Applicant was treated as an adult from the start and that there was no way to challenge Applicant’s adult status. Counsel recalled that Applicant’s greatest concern was that the State would have three shots at convicting him.

The Court finds no deficiency on the part of counsel, nor prejudice therefrom. By law, Applicant was not a juvenile, and no amount of conversation on the subject would have changed that. Accordingly, Applicant has failed to prove either prong of Strickland, and his request for relief by way of this allegation is **DENIED**.

2. Failure to Explain, Provide Discovery

Applicant alleges Counsel was ineffective for failing to explain all of the evidence against him and otherwise provide a complete copy of his discovery. At the evidentiary hearing, Applicant testified Counsel did not go over all of the evidence against him, but rather told Applicant the case against him was entirely circumstantial and explained what circumstantial evidence was. Applicant noted the State never found a murder weapon and that he was never identified in a lineup. Applicant testified he never received a copy of Counsel’s Brady motion,

but received a lot of what looked like police reports. Applicant recalled that Counsel did not want to give him everything lest it be used against Applicant.

Counsel testified motions pursuant to Rule 5, SCCrimP, and Brady were properly filed by the public defender's office. Counsel testified he reviewed the production of materials and did so with Applicant. Counsel provided Applicant with a copy of *relevant* discovery, but noted that he usually cautions clients against the possibility of jailhouse informants. Counsel recalled a jailhouse informant "snitched" against Applicant's brother and co-defendant. For these reasons, Counsel gave Applicant physical copies of only "the meat" of discovery, but did not give Applicant matters that had no bearing on the case. Counsel noted that Applicant pled at arraignment, and that more would have been done to develop and prepare a defense for Applicant had he not pled guilty.

The Court finds no deficiency on the part of counsel, nor prejudice therefrom. Counsel reviewed the evidence against Applicant, both personally and with Applicant. Counsel articulated valid reasons, both general and specific to Applicant's case, as to why he did not provide absolutely all materials to his incarcerated client. Furthermore, Applicant neither identified nor offered any materials not provided to him which would have changed his decision to plead guilty. Accordingly, Applicant's request for relief by way of this allegation is **DENIED.**

3. General Ignorance in Pleading

Applicant alleges his guilty plea was not voluntarily entered because he did not really know what he was pleading to. The plea transcript reflects that Applicant was fully and thoroughly apprised of the charges against him, the charges to which he would be pleading, the rights he would be waiving as a consequence of his plea, and his sentencing exposure as a

consequence of his plea. At the evidentiary hearing, Counsel testified he reviewed each charge against Applicant and the fact that Applicant could end up facing three separate trials. As already concluded in the prior sections, Counsel reviewed discovery with Applicant and explained the nature of the State's case against him. For all these reasons, the Court finds no merit in Applicant's vague assertion of ignorance, and finds no deficiency on the part of counsel, nor prejudice therefrom. 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), SCRCR 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 6 day of March, 2018.



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

Marion, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF Horry)

Fitzgerald McDuffie, #363060)

Plaintiff)

v.)

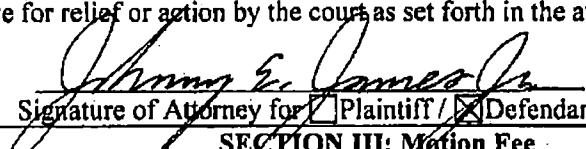
State Of South Carolina)

Defendant.)

IN THE COURT OF COMMON PLEAS

CASE NO.
2015-CP-26-8485

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Steven W. Fowler, Bar No. 69683 Address: 730 Main St., Unit 237 N. Myrtle Beach, SC 29582 phone: fax: e-mail: other:	Defendant's Attorney: Johnny E. James Jr, Bar No. 101260 Address: Post Office Box 11549 Columbia SC 29211-1549 phone: (803) 734-3737 fax: (803) 734-4113 e-mail: other:
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS II and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input checked="" type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: _____ Estimated Time Needed: _____ Court Reporter Needed: <input type="checkbox"/> YES / <input type="checkbox"/> NO	
SECTION II: Motion/Order Type	
<input type="checkbox"/> Written motion attached <input checked="" type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
 Signature of Attorney for <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant	March 1, 2018 Date submitted
SECTION III: Motion Fee	
<input type="checkbox"/> PAID - AMOUNT: _____ <input checked="" type="checkbox"/> EXEMPT: <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support (check reason) <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input checked="" type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ <input type="checkbox"/> Other: _____	
JUDGE'S SECTION	
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE: _____ CODE: _____ Date: _____
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____	
<input type="checkbox"/> MOTION FEE COLLECTED: _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: _____	

Horry County
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 CLERK OF COURT
 Horry County, SC



ALAN WILSON
ATTORNEY GENERAL

March 9, 2018

2018 MAR 13 PM 1:01
HONORABLE RENE E. ELVIS
CLERK OF COURT
HORRY COUNTY, SC

The Honorable Renee N. Elvis
Clerk of Court, Horry County
Post Office Box 677
Conway, SC 29528-0677

Re: **Fitzgerald McDuffie, #363060 v. State of South Carolina**
2015-CP-26-8485

Dear Ms. Elvis:

Enclosed please find the original **Order of Dismissal** signed by the Honorable William H. Seals, Jr., in the above-captioned case, for filing in your office.

Pursuant to Rule 71.1(f), of the South Carolina Rules of Civil Procedure, please "provide notice of entry of judgment and serve a copy of the order or judgment to the parties as provided in Rule 77(d), SCRPC."

In addition, please forward proof of service and a time stamped copy back to our office for our file.

If you have any questions, please do not hesitate to call me at (803) 734-3737.

Sincerely,

Johnny Ellis James Jr.
Assistant Attorney General

JEJ/mm

Enclosure



ALAN WILSON
ATTORNEY GENERAL

March 15, 2018

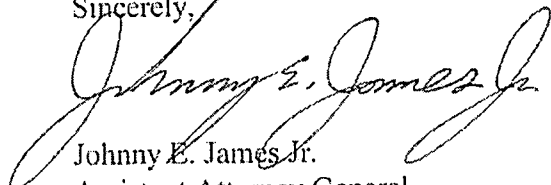
Steven W. Fowler, Esquire
Fowler Law Firm
730 Main Street, Unit 237
North Myrtle Beach, SC 29582

**Re: Fitzgerald McDuffie, #363060 v. State of South Carolina
2015-CP-26-8485**

Dear Mr. Fowler:

Enclosed please find a copy of the **Order of Dismissal** for the above-captioned post-conviction relief application; signed by the Honorable William H. Seals, Jr., Presiding Judge for the Fifteenth Judicial Circuit.

Sincerely,



Johnny E. James Jr.
Assistant Attorney General

JEJ/mm
Enclosure

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

FITZGERALD MCDUFFIE, #363060,

Applicant,

v.

STATE OF SOUTH CAROLINA,


Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Order of Dismissal** has been served upon the applicant by mailing one (1) copy in the United States mail, postage prepaid, addressed to:

Steven W. Fowler, Esquire
Fowler Law Firm
730 Main Street, Unit 237
North Myrtle Beach, SC 29582

This 15th day of March, 2018.


MALLORY MORRIS
LEGAL ASSISTANT FOR RESPONDENT

SWORN to before me this 15th day of March, 2018.


Notary Public for South Carolina.

My Commission Expires: 5/14/2024

neopost FIRST CLASS MAIL

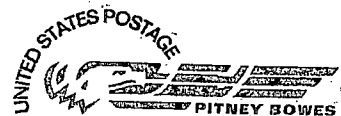
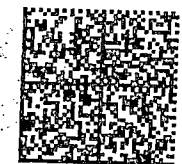


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FOWLER
Law Firm
Member FWSB (Fowler)

To → Clerk Astilo Thompson
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