THE STATE OF SOUTH CAROLINA

In the Supreme Court

APPEAL FROM THE COUNTY OF Georgetown

Court of Common Pleas

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

Case No. 2016-CP-22-00776

Chadwick Cribb, SCDC # 290362 ..... 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 COUNTY OF GEORGETOWN	)	IN THE COURT OF COMMON PLEAS FOR THE FIFTEENTH JUDICIAL CIRCUIT
Chadwick Cribb, S.C.D.C. No. 290362, Applicant, v. State of South Carolina, Respondent.	)	Case No.: 2016-CP-22-00776 **ORDER OF DISMISSAL**

This matter comes before the Court by way of an application for post-conviction relief filed by Chadwick Cribb ("Applicant") on March 10, 2017. Respondent made its return on or about August 31, 2016. The Court convened an evidentiary hearing into the matter on Wednesday, November 29, 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, Wyn N. Bessent, 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 Georgetown 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 Georgetown County Clerk of Court. Applicant was indicted at the May 2015 term of the Georgetown County Grand Jury for financial transaction card fraud, value more

than $500 (2015-GS-22-00406), two counts of malicious injury to property, value $2,000 or less (2015-GS-22-00408, -00410), malicious injury to property, value $10,000 or less (2015-GS-22-00409), and forgery, value less than $10,000 (2015-GS-22-00413).[1] Wyn Bessent, Esq. represented Applicant, and Alicia A. Richardson, of the Fifteenth Circuit Solicitor's Office, prosecuted the case. On October 1, 2015, Applicant pled guilty to the above charges as indicted. The Honorable Steven H. John sentenced Applicant to imprisonment for concurrent terms of five years on each charge.[2] 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, in that:
    a. "Counsel didn't give Applicant his Rule 5 or plea agreement until a year later, but 7 and ½ months after sentencing."
    b. "Counsel did not notify Applicant that he had ten days for motion for reconsideration."

With respect to the relief desired, Applicant gave conflicting testimony that he wished for a new trial and that he only wished for his sentences to run concurrent to those imposed by Judge McMahon.

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

[1] Applicant was also indicted for two counts of malicious injury to personal property, enhanced (2015-GS-22-00407, 00411), forgery, value less than $10,000 (2015-GS-22-00412), and three additional counts of financial transaction card fraud, value more than $500 (2015-GS-22-00403, -00404, -00405). These indictments were dismissed *nolle prosequi* as part of Applicant's plea.

[2] Judge John ran the sentences consecutive to unrelated terms of incarceration imposed by the Honorable Judge Knox McMahon on October 1, 2014. Judge McMahon sentenced Applicant to a total of 10 years.

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, 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.

1. Failure to Provide Discovery

Applicant alleges Counsel was deficient in failing to provide discovery until many months after he was sentenced. At the evidentiary hearing, Applicant testified he was arrested after turning himself in on February 17, 2015, was sentenced on October 1, 2015, but did not get his discovery until May 2016. Applicant claimed he told Counsel he wanted to receive his Rule 5 before pleading. Applicant testified he knew he did wrong and that all he wished for was for his sentences to all be run concurrent.

Counsel testified she received Applicant's discovery and the plea offer on the same day in May 2015, and promptly sent both to Applicant. Counsel recalled Applicant's only concern was that he wanted the sentence to be run concurrent, not consecutive to his existing sentence. Counsel attempted to talk the State into changing its position, but the solicitor would not budge. Counsel testified Applicant did not receive the 11 copies of NCIC reports provided by the State. Counsel recalled telling Applicant whether or not to run the sentences concurrent or consecutive was within the discretion of Judge John.

The Court finds no deficiency on the part of counsel, nor prejudice therefrom. The Court finds credible Counsel's testimony that she forwarded Applicant's discovery at the same time as she forwarded the plea offer that was ultimately accepted, and that Applicant's only concern was that the sentence offered would run consecutive. The Court finds that Applicant knew whether or not he had his discovery at the time he pled guilty, and he opted to plead guilty anyway. Applicant knowingly, intelligently, and voluntarily pled guilty, and even renewed his commendable and credible remorse at the evidentiary hearing. Accordingly, Applicant's request for relief by way of this allegation is **DENIED**.

2. Failure to File a Motion for Reconsideration of Sentence

Applicant alleges Counsel was ineffective for failing to tell him he had 10 days to file a motion for reconsideration. The Court is guided, in part, by the same law and reasoning that underpins the right to be informed of appellate deadlines in a 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). Therefore, in a collateral action attacking a guilty plea, the "bare assertion that a defendant was not advised of appellate rights is insufficient to grant relief." Jones v. State, 382 S.C. 589, 598, 677 S.E.2d 20, 23-24 (2009) (quoting Weathers v. State, 319 S.C. 59, 61, 459 S.E.2d 838, 839 (1995)). The Court can conceive of no reason why the same logic should not apply to a motion for reconsideration.

At the plea proceeding, the Court informed Applicant that he had only 10 days to file an appeal. (Tr. 11, ll. 6-8.) At the evidentiary hearing, Applicant testified he did not ask Counsel to file a motion to reconsider the sentence, but that she should have done so. Applicant indicated his belief that filing the motion was part of her job. Applicant offered no basis for a motion for reconsideration. Counsel testified she could conceive of no basis for any motion for reconsideration.

The Court finds no deficiency on the part of counsel, nor prejudice therefrom. The Court finds the bare assertion that Applicant was not advised of the possibility of a motion for reconsideration is insufficient to grant relief. Even if such a right exists, somehow beyond the scope of the right to be informed of the right to appeal and beyond the deference given to the solemn admission of guilt that is a guilty plea, Applicant has offered no basis on which to make such a motion, and no grounds for reconsideration are apparent on the record. 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 6 **day of** March **, 2018.**

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

Marion, South Carolina

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

CHADWICK CRIBB, #390362,

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 16th day of March, 2018.

MALLORY MORRIS
LEGAL ASSISTANT FOR RESPONDENT

SWORN to before me this 16th day of March, 2018.

Notary Public for South Carolina.
My Commission Expires: 5/20/2023

2016-CP-22-0776

ALAN WILSON
ATTORNEY GENERAL

March 16, 2018

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

Re: **Chadwick Cribb, #290362 v. State of South Carolina**
2016-CP-22-0776

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

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