

Richard Warder

Attorney At Law

April 3, 2018

South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211


Re: Alexander Coreano vs. State

Dear Court:

Enclosed please find for filing a Notice of Intent to Appeal and Certificate of Mailing in the above captioned case.

Thank you for your cooperation in this matter.

Sincerely,


Richard H. Warder

RHW/ts

Enclosures

cc: DeShawn H. Mitchell, Assistant Attorney General
Alexander Coreano.

proveninnocent@netscape.net

15 Primrose Street
Post Office Box 26133
Greenville, SC 29616
271-9955 Office
232-8045 Fax

RECEIVED
APR 05 2018
SC COURT OF APPEALS

RECEIVED

APR 06 2018

S.C. SUPREME COURT



THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
COURT OF COMMON PLEAS

ROBIN B. STILWELL , CIRCUIT COURT JUDGE
2014-CP-23-4668

RECEIVED
APR 05 2018
SC Court of Appeals

ALEXANDER COREANO 356641.....Appellant

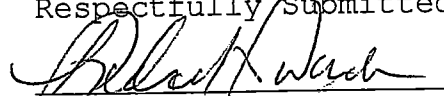
v.

STATE OF SOUTH CAROLINARespondent

NOTICE OF INTENT TO APPEAL

Alexander Coreano, 356641, appeals the Order signed by the
Honorable Robin B. Stilwell, on March 21, 2018.

Respectfully Submitted



RICHARD H. WARDER
Attorney at Law
P.O. Box 26133
Greenville, SC 29601
(864) 271-9955

April 3, 2018

Other counsel of record:
DeShawn Mitchell
South Carolina Attorney General Office
P.O. Box 11549
South Carolina 29211-15

RECEIVED
APR 06 2018
S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
COURT OF COMMON PLEAS

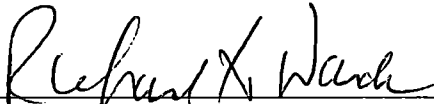
HONORABLE ROBIN B. STILWELL

CASE NUMBER: 2014-CP-23-4668


RECEIVED
APR 05 2018
SC Court of Appeals

Alexander Coreano 356641.....Appellant
V
State of South CarolinaRespondent

I certify that I have served the Notice of Intent to Appeal on DeShawn H. Mitchell, Assistant Attorney General, by depositing a copy of it in the United States Mail, postage prepaid on April 3, 2018, addressed to her at South Carolina Attorney General Office, P.O. Box 11549, Columbia, South Carolina 29211-1549


RICHARD H. WARDER
P.O. BOX 26133
GREENVILLE, S.C. 29616
ATTORNEY FOR APPELLANT

SWORN to before me this
3rd day of April, 2018.


NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 9-25-23

RECEIVED
APR 06 2018
S.C. SUPREME COURT

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS)
THIRTEENTH JUDICIAL CIRCUIT)

Alexander Maldonado Coreano, #356641)
Applicant,)

2014-CP-23-4668

v.)

ORDER OF DISMISSAL

State of South Carolina,)
Respondent.)

RECEIVED

APR 05 2018

SC Court of Appeals

FILED-CLERK OF COURT
PAUL H. BROWN
GREENVILLE, SOUTH CAROLINA

2018 MAR 26 PM 1:12

gm

This matter comes before the Court by way of an application for post-conviction relief filed on August 22, 2014 by Alexander Maldonado Coreano (Applicant). Respondent made its Return on or about January 8, 2015. An evidentiary hearing into the matter was convened on December 15, 2017, at the Greenville County Courthouse in Greenville, South Carolina. Applicant was present and represented by Richard H. Warder, 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 Matthew P. Pinckney, Esquire also testified. Additionally, Martin Pollack was sworn in as an interpreter for Applicant. 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 from the Department of Corrections. 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 Greenville County Clerk of Court's orders of commitment. The Greenville County Grand

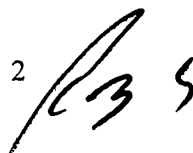
1
Rm 7

MAR 30 2018

Jury indicted the Applicant at the November 2011 term of General Sessions for possession of cocaine (2011-GS-23-2474), trafficking cocaine (2011-GS-23-5010, count 1), and possession of a weapon during commission of a violent crime (2011-GS-23-5010, count 2). Matthew Pinckney, Esquire represented the Applicant. On August 14, 2013, the Applicant pled guilty pursuant to North Carolina v. Alford, 400 U.S. 25, 91 S. Ct. 160 (1970) before the Honorable J. Mark Hayes, II. Judge Hayes sentenced Applicant to concurrent terms of three years for possession of cocaine, twelve years for trafficking cocaine (28-100 grams), and five years for possession of a weapon during commission of a violent crime. Applicant did not appeal his sentences or convictions.

FACTUAL HISTORY

On August 31, 2010, Applicant was pulled over in Greenville County for a traffic violation. He consented to a search and found in his left pocket was 6.18 grams of marijuana. Applicant was arrested and his vehicle was searched incident to his arrest where police found three baggies of cocaine. During this stop Applicant gave a false name. (GP Tran. pg. 7-8). On April 29, 2011, Greenville County Sheriff's Department and SLED executed a search warrant on Applicant's residence. Applicant was asleep on a bed in the master bedroom when police entered. The officers executed the search warrant and in the room Applicant was in was a 25-caliber handgun on the counter of the bedroom. Police also found in the master bedroom 20 plastic baggies with residue which field tested positive as cocaine. There were three plastic baggies which also contained cocaine weighing 1.29 grams. Additionally, police found beneath the bed that Applicant was asleep in a red cooler that contained what was analyzed as 228.06 grams of cocaine. There were latent prints lifted from these packages of cocaine, which did come back as matched to Applicant. (GP Tran. pg. 7-8).

2 

MAR 30 2018

ALLEGATIONS

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

1. Ineffective assistance of counsel:
 - a. “[F]ailed to properly investigate the facts surrounding the circumstances that lead to [the Applicant’s] arrest.”
2. “Coerced into plea of guilty.”
 - a. Counsel failed to assist the Applicant in deciding whether or not to plead guilty.
 - b. Counsel did not familiarize himself with the facts of the case.
 - c. Counsel did not “impart to the Applicant an understanding of the law on the relation of the facts.”
 - d. Counsel gave “erroneous advice to the Applicant as to the length of the sentence he would receive by entering his plea.”
 - e. Counsel gave advice to the Applicant “to the effect that no defense was possible to his charge.”
 - f. Counsel “coerced the Applicant into entering his plea by making threats as to length of sentence he would receive by not pleading guilty.”
3. “Counsel failed to advise his client as to his right to appeal.”
4. “Community Service Program (CSP) Unlawfully Applied to Sentence.”

SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTARY HEARING

Applicant’s Testimony

Applicant testified he was originally represented by his current PCR counsel but he ended up hiring Plea Counsel. ¹ He testified he ended up pleading guilty on Plea Counsel’s advice. He testified he believed the investigation into his case was insufficient. Applicant testified after he was arrested he contacted Richard Warder, Esquire. He testified Mr. Warder presented him with a plea offer of seven years and he signed the offer. Applicant testified immediately thereafter he talked to his family which changed his mind and he decided to fire Mr. Warder. Applicant testified after he fired Mr. Warder, Plea Counsel was retained to represent him but that he did not see Plea Counsel for two years. He testified Plea Counsel was in the military and deployed at that

¹ At his PCR hearing Applicant testified he had no objection to his current PCR counsel representing him on his PCR notwithstanding the fact his current PCR counsel represented him at one point on the charges he ultimately pled guilty to.

time. Applicant testified when Plea Counsel returned he only discussed his case with him a few times. Applicant testified Plea Counsel told him he now had a twelve year plea offer from the State.

On cross-examination, Applicant testified he rejected the initial plea deal that was presented to him by his previous attorney.

Plea Counsel's Testimony

Plea Counsel testified he had been practicing law since 2008 and part of his practice was devoted to criminal law. Plea Counsel testified Applicant's case was a drug case where Applicant was pulled over by police and drugs were found in the vehicle. Plea Counsel also testified Applicant's home was also searched by the police based on a search warrant they had and drugs were also found in his home. Plea Counsel testified once he was hired he filed a notice of appearance and motion for discovery. He testified he was hired in December of 2011 and that he deployed to Afghanistan in March of 2012. Plea Counsel testified he went over the discovery in Applicant's case with him and met with him numerous times. He testified he went over Applicant's constitutional rights with him and the charges he was facing along with the sentences he was facing and that he also spoke Spanish. He testified he spoke to Applicant's previous attorney after being hired and had several conversations with the Solicitor on Applicant's case as well.

On cross-examination Plea Counsel testified he did not go listen to tape recordings the State had of drug transactions involving Applicant and a confidential informant because the State told him the tape had been destroyed. However, Plea Counsel testified the confidential informant was available to testify. Plea Counsel testified he filed a motion to suppress the search warrant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

4 *AS*

MAR 30 2018

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

In PCR cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citations omitted). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel’s advice was not “within the range of competence demanded of attorneys in criminal cases.” Lockhart, 474 U.S. at 56. Further, “[t]hat a guilty plea must be intelligently made is not a requirement that all advice offered by the defendant’s lawyer withstand retrospective examination in a post-conviction hearing.” McMann v. Richardson, 397 U.S. 759, 770 (1970). Rather, “whether a plea of guilty is unintelligent . . . depends as an initial matter, not on whether a court would retrospectively consider counsel’s advice to be right or wrong, but on whether that advice was within the range of competence demanded of attorneys in criminal cases.” Id. at 771.

The record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Dalton v. State, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Boykin v. Alabama, 395 U.S. 238, 242 (1969)). A defendant’s knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and “may be accomplished by colloquy between the court and defendant, between the court and defendant’s counsel, or both.” Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). Further, “[a] guilty plea is a solemn, judicial admission of the truth of the charges” against the applicant; thus, an

applicant's right to contest the validity of such a plea is usually foreclosed. Dalton, at 137–38, 654 S.E.2d at 874 (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Therefore, admissions “made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements.” Id. (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)). “In considering an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing.” Id. at 138–39, 654 S.E.2d at 874 (citing Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997)).

Ineffective Assistance of Counsel/Involuntary Guilty Plea

Regarding Applicant's claim his guilty plea was induced by ineffective assistance of counsel, this Court finds Applicant has failed to meet his burden of proof. This Court finds Counsel provided effective assistance in this case. Counsel is a trial practitioner who had experience in the trial of criminal offenses. Counsel conferred with Applicant on multiple occasions, during which Counsel discussed the pending charges, the State's evidence, possible defenses and courses of action, and answered all of Applicant's questions.

This Court further 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 told the plea judge that he was satisfied with his attorney. 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.

Therefore, this Court finds Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present compelling evidence that Counsel committed either errors or omissions in his representation of Applicant. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. This Court also finds that the record fully supports the knowing and voluntary nature of Applicant's guilty plea. See Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (holding defendant's knowing and voluntary waiver of statutory or constitutional rights in a guilty plea “must be established by a complete record, and may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both.”). In addition, Applicant has presented no evidence or valid reasons why he should be allowed to depart from the truth of his statements made at the plea. See Dalton, 376 S.C. at 137, 654 S.E.2d at 874 (“[Admissions] made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements.”). This Court concludes Applicant has not met his burden of proving Counsel failed to render reasonably effective assistance. The allegation is denied and dismissed.

Failure to File Notice of Appeal

Applicant alleges plea counsel was ineffective for 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).

This Court finds no deficiency on the part of plea counsel or prejudice therefrom. The Court relies upon the credibility findings already set forth above, and finds Applicant never asked for an appeal and no other reason existed for plea counsel to believe Applicant wanted or would want an appeal. Accordingly, Applicant's request for relief by way of this allegation is denied and dismissed.

Community Service Program

Applicant alleges a community service program was unlawfully applied to his sentence. PCR relief is only proper when the application collaterally attacks the validity of the conviction or sentence. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). Claims that affect only the duration of the sentence or quality of the inmate's confinement do not affect the validity of the conviction or sentence and therefore are considered *non-collateral* attacks on the conviction. Cooper v. State, 338 S.C. 202, 525 S.E.2d 886 (2000). A credit-related claim or challenge to other conditions of confinement does not fall into that category. *Id.* In Cooper the petitioner made a similar claim as Applicant here, that he was not given correct credit for the time served before his conviction. The South Carolina Supreme Court in Cooper stated that PCR was improper for the petitioner because by challenging the duration of the sentence, the petitioner was trying to enforce his sentence under law and therefore *not* challenging the validity of the

underlying conviction or sentence. Id. A claim for time served is a *non-collateral* attack of a conviction and must be pursued through the Administrative Procedures Act (APA). Accordingly, Applicant's request for relief by way of this allegation is denied and dismissed.

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 21st day of March, 2018.


ROBIN B. STILWELL
Presiding Judge
Thirteenth Judicial Circuit

Greenville, South Carolina

MAR 30 2018

UNITED STATES POSTAGE

02 1P \$ 006.70⁰⁰
0004715743 APR 03 2018
MAILED FROM ZIP CODE 29601

Post Office Box 26133 • Greenville, SC 29616



South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

RECEIVED
APR 05 2018
SC Court of Appeals

