

THE LAW OFFICE OF NATHAN J. SHELDON,
LLC
Working on your behalf

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RECEIVED

APR 19 2018

S.C. SUPREME COURT

April 15, 2018

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

Re.: Duncan v. State
2016-CP-46-03163

Dear Clerk Shearouse:

Please find enclosed the Notice of Appeal and Proof of Service on the above referenced case along with the Order of Dismissal that is being appealed. Please file the original Notice of Appeal and Proof of Service and mail the copies back to me in the also enclosed self-addressed stamped envelope. Please note that I also sent this information to Appellate Defense and have asked them to handle the appeal going forward. Thank you and please contact me with any additional concerns.

Sincerely Yours,

Nathan Sheldon
The Law Office of Nathan J. Sheldon

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

APR 19 2018

APPEAL FROM YORK COUNTY
Court of Common Pleas

S.C. SUPREME COURT

J. Cordell Maddox, Jr., Circuit Court Judge

Case No. 2016-CP-46-03163

State of South Carolina, Respondent,

v.

John Brooks Hall Duncan, Appellant.

NOTICE OF APPEAL

John Brooks Hall Duncan appeals the order of the Honorable J. Cordell Maddox, Jr. dated March 30, 2018 denying his request for post-conviction relief. Appellant received written notice of entry of this order on April 9, 2018.

April 16, 2018



Nathan J. Sheldon
331 E. Main St., Suite 200
Rock Hill, South Carolina 29730
(803) 909-9343
Attorney for Appellant

Other Counsel of Record:
Justin J. Hunter, Esquire
Assistant Attorney General
Post Office Box 11549
Columbia, South Carolina 29211-1549
Attorney for Respondent
(803) 734-3970

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM YORK COUNTY
Court of Common Pleas

J. Cordell Maddox, Jr., Circuit Court Judge

Case No. 2016-CP-46-03163

State of South Carolina, Respondent,

v.

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PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Justin J. Hunter with the Attorney General's Office by depositing a copy of it in the United States Mail, postage prepaid, on April 16, 2018 mailed to Post Office Box 11549, Columbia, South Carolina 29211-1549.

April 16, 2018



Nathan Sheldon
331 E. Main St., Suite 200
Rock Hill, SC 29730
803-909-9343
Attorney for Appellant

FORM 4

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

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2016CP4603163

John Brooks Hall Duncan		South Carolina State Of	
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PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON): Rule 12(b), SCRCP; Rule 41(a), SCRCP (Vol. Nonsuit);
 Rule 43(k), SCRCP (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON): Rule 40(j) SCRCP; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- STAYED DUE TO BANKRUPTCY
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
 Affirmed; Reversed; Remanded; Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: **Order of Dismissal**

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

s/ J. Cordell Maddox, Jr.

2131

3/30/2018

J. Cordell Maddox, Jr.
 Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on April 6, 2018, and a copy mailed first class or placed in the appropriate attorney's box on April 6, 2018, to attorneys of record or to parties (when appearing pro se) as follows:

Nathan James Sheldon PO Box 36682 Rock Hill, SC 29732

Justin James Hunter PO Box 11549 Columbia, SC
29211-1549

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

Court Reporter

David Hamilton - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCF.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
FOR THE SIXTEENTH JUDICIAL CIRCUIT

John Brooks Hall Duncan,)
S.C.D.C. #344423,)

2016-CP-46-3163

Applicant,)

ORDER OF DISMISSAL

v.)

State of South Carolina,)

Respondent.)

FILED-RECEIVED
2018 APR -6 AM 10:00
D.J. HAMILTON
C.C.P. & GS
YORK COUNTY, SC

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed October 26, 2016. An evidentiary hearing into the matter was convened on November 6, 2017, at the Moss Justice Center in York, South Carolina. Applicant was present at the hearing and represented by Nathan Sheldon, Esquire. Justin Hunter, Esquire, of the South Carolina Attorney General's Office represented Respondent. At the hearing, Applicant testified on his own behalf. Melissa Inzerillo, Esquire, also testified. This Court also had before it a copy of Applicant's PCR application, the records of the York County Clerk of Court regarding the subject convictions, Respondent's Return, and the plea transcript.

I. PROCEDURAL HISTORY

Applicant is presently confined to South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. Applicant waived presentment to the York County Grand Jury for seven counts of solicitation to commit a felony (2015-GS-46-3270 through 3276). Mellissa Inzerillo, Esquire, represented Applicant. On October 29, 2015, Applicant pled under North Carolina v. Alford as indicted before the Honorable Daniel Hall. Pursuant to a negotiated sentence, Judge Hayes sentenced Applicant to imprisonment for

concurrent terms of ten years on indictments 2015-GS-46-3270, 3271, 3272, 3273, 3274, and 3276 and a consecutive term of eight years on indictment 2015-GS-46-3275. Applicant did not appeal his guilty plea or sentence.

Allegations

In his application for post-conviction relief, and the amendment filed thereto, Applicant alleges he is being held unlawfully for the following reasons:

1. Ineffective Assistance of Counsel

- a. "Lack of proper evidence"
- b. "Unfair over sentencing"
- c. "Codefendant and counsel both from same office and codefendant was witness against me for the State over sentencing on a misdemeanor crime"

II. APPLICABLE LAW

In a post-conviction relief action, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (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, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

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. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of

counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any 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." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

III. SUMMARY OF THE TESTIMONY AT PCR HEARING

Applicant's Testimony

Applicant testified he met with Counsel several times. He testified Counsel and his codefendant's attorney were both part of the York County Public Defender's Office. He testified Counsel discussed this fact with him and told him that she is allowed to represent him under these circumstances. Applicant testified he did not know what an Alford plea was and thought he was guaranteed a ten year sentence. Applicant testified he wanted pictures of the attempted murder scene. Applicant testified Counsel told him they would have lesser charges. He further testified he did not understand what waiving presentment meant.

Counsel Melissa Inzerillo's Testimony

Counsel testified she represented Applicant on two sets of unrelated charges. She testified she received discovery. She testified Applicant was in the detention center and wrote letters to someone outside the jail asking to kill certain officers. She testified the notes were given to another inmate who turned him in to jail officials. Counsel testified the original plea offer was

for thirty years, which she believed to be too high, and the last offer was for a cap of eighteen years and dismissing many other charges. She testified a cap of eighteen years meant that consecutive time would have to be ordered. She testified Applicant received a big benefit by pleading guilty and having twelve other charges dismissed.

Counsel testified she explained what an Alford plea meant to Applicant. She testified she told him he was acknowledging a benefit by pleading and was not technically pleading guilty but the plea could still be used against him. She testified she explained he was maintaining his innocence but recognizing that if he went to trial they could likely lose based on the State's evidence. Counsel testified she believed Applicant understood what was going on during the plea hearing. She testified he understood what waiving presentment meant and she went over the plea waiver form with him.

Counsel testified she discussed with Applicant the likely outcomes of the plea, and that she would ask for concurrent time but the cap of eighteen years mandated some consecutive time. She testified she did not make any promises to Applicant about the sentence he would receive. She testified she did not hire a handwriting expert to examine the letters but discussed the possibility of doing so.

Counsel testified that her office did not represent the other inmate involved in these seven charges. She testified her office's policy is for an attorney to not discuss the charges with any attorney in their office who is representing a defendant related to her defendant's case.

IV. 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 Clerk of Court records regarding the subject

convictions, the plea transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief and amendment, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

Ineffective Assistance of Counsel

This Court finds Applicant has failed to meet his burden of proving Counsel was ineffective. Applicant alleged Counsel was ineffective because her office represented Applicant's codefendant. This Court finds Counsel provided credible testimony that her office did not represent anyone related to the seven solicitation charges to which Applicant pled guilty. This Court finds there is no evidence of any conflict of interest that existed in Counsel's representation. Applicant has failed to prove that Counsel was ineffective in this regard.

This Court finds Counsel's actions were not deficient regarding Applicant's plea. Counsel provided credible testimony that she explained the plea offers, the consequence of the negotiated eighteen year cap, waiving presentment to the Grand Jury, and meaning and consequences of an Alford plea. Counsel testified she went over the plea waiver form with Applicant. This waiver form is signed by Applicant and evidences his understanding of the charges he was pleading to, the charges being dismissed, and the negotiated cap of eighteen years. The form also indicates Applicant was not promised anything to plead guilty. Applicant acknowledged during the plea hearing that he understood the Alford plea after the judge thoroughly explained it to him. Plea transcript pp. 6-7. The plea hearing transcript also indicates Applicant understood his right to have his charges presented to the grand jury and that he was waiving this right. Plea transcript pp. 5-6. Applicant also indicated he understood when the plea judge discussed that the charges carry up to ten years imprisonment each and the negotiation was

for a cap of eighteen years. Plea transcript pp. 10-11. After reviewing the plea hearing transcript and the plea waiver form, this Court finds Applicant has failed to meet his burden of showing the plea was not made knowingly, freely, and voluntarily or that Counsel was ineffective in any way.

Furthermore, Applicant has failed to present any testimony or evidence to prove he was prejudiced by Counsel's actions, as he has failed to show he would not have pled guilty but would have proceeded to trial but for Counsel's actions. Accordingly, this application must be dismissed.

IV. CONCLUSION

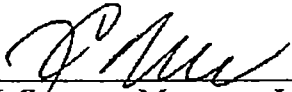
Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Applicant failed to demonstrate Counsel's performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt 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, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCR, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

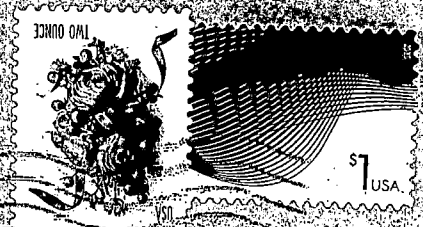
1. The application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant will remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 30 day of March, 2018.



J. CORDELL MADDOX, JR.
Presiding Judge
Sixteenth Judicial Circuit

Anderson, South Carolina



Charlotte, NC 28202
MON 16 APR 2018 PM

Law Office of Nathan Sheldon
1 E. Main St., Suite 200
Columbia, SC 29201

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