

 **RESNICK & LOUIS, P.C.**
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REPLY TO THE CHARLESTON OFFICE
234 Seven Farms Drive, Suite 128
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(843) 800-1187

April 19, 2018

RECEIVED

APR 23 2018

S.C. SUPREME COURT

VIA U.S. MAIL

The Honorable Daniel E. Shearhouse
Clerk of South Carolina Supreme Court
Supreme Court Building
Post Office Box 11330
Columbia, SC 29211

Re: Bill Boyd Booker, #228462 v. State of South Carolina
Civil Action No.: 2017-CP-10-0280

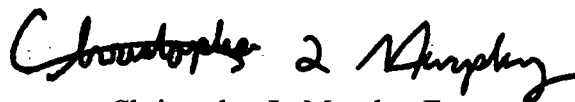
Dear Mr. Shearhouse:

Enclosed for filing, please find an original and two copies of Appellant's Notice of Appeal of the denial of his application for Post-Conviction Relief, and a Proof of Service regarding same. If you find everything in order, please file the original and return the clocked-in copies in the enclosed self-addressed envelope.

Please note, I was appointed to this and case and have copied the Office of Appellate Defense on this who will handle the appeal. Please call if you have any questions.

With kindest regards, I am

Sincerely,



Christopher L. Murphy, Esq.
For the Firm

CLM/jh

Enclosures

cc (w/ encls.): Mr. Bill Booker
Rasheeda Cleveland, Asst. AG
Robert M. Dudek, Esquire, Off of Appellate Defense
The Honorable Thomas A. Russo
The Honorable Julie J. Armstrong, Clerk, 9th Jud. Cir.

RECEIVED

APR 23 2018

THE STATE OF SOUTH CAROLINA
In the Supreme Court

S.C. SUPREME COURT

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Thomas A. Russo, Circuit Court Judge

Case No.: 2017-CP-10-0280

Bill Boyd Booker, #228462 Appellant

v.

State of South Carolina Respondent

NOTICE OF APPEAL

Appellant appeals the Court's denial of his application for post-conviction relief.
Attached is the order from the court dated April 4, 2018 and received April 11, 2018.

April 19, 2018



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THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

APR 23 2018

S.C. SUPREME COURT

Thomas A. Russo, Circuit Court Judge

Case No.: 2017-CP-10-0280

Bill Boyd Booker, #228462 Appellant

v.

State of South Carolina Respondent

PROOF OF SERVICE

I certify that I have served APPELLANT'S NOTICE OF APPEAL by delivering a copy via U.S. Mail First-Class postage prepaid on the 19th day of April, 2018, on the following:

Rasheeda Cleveland, Esquire
Assistant Attorney General
SC Office of the Attorney General
PO Box 11549
Columbia, SC 29201

The Honorable Thomas A. Russo
181 North Irby Street, Suite 3600
Florence, SC 29501

The Honorable Julie J. Armstrong
Clerk of Court, Ninth Judicial Circuit
100 Broad Street, Suite 106
Charleston, SC 29401

Robert M. Dudek, Esquire
Office of Appellate Defense
PO Box 11433
Columbia, SC 29211-1433

Mr. Bill Boyd Booker, II, SCDC #228462
Lieber Correctional Institution
PO Box 205
Ridgeville, SC 29472




STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
)
)
BILL BOYD BOOKER, II, #228462)
 Plaintiff,)
)
 vs.)
)
)
STATE OF SOUTH CAROLINA)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 NINTH JUDICIAL CIRCUIT

CASE NO: 2017-CP-10-0280

**MOTION AND ORDER INFORMATION
 FORM AND COVERSHEET**

Plaintiff's Attorney: Christopher L. Murphy, Bar No. Address: Murphy Law Offices, LLC 234 Seven Farms Drive, Suite 128 Charleston, SC 29492 Phone: _____ Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: Rasheeda Cleveland, Bar No. Address: South Carolina Attorney General's Office PO Box 11549 Columbia, SC 29211 Phone: _____ Fax _____ E-mail: _____ Other: _____
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input checked="" type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input 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 checked="" 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.	
<div style="display: flex; justify-content: space-between;"> <div style="text-align: center;">  Signature of Attorney for <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant </div> <div style="text-align: right;"> March 20, 2018 Date submitted </div> </div>	
SECTION III: Motion Fee	
<input type="checkbox"/> PAID – AMOUNT: \$ _____ EXEMPT: (check reason)	
<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support <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, SCRCP) <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: \$ _____	

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AG
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STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

Bill Boyd Booker, II, #228462,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

FILED
2018 APR 13 PM 2:26
J. ARMSTRONG
CLERK OF COURT
BY
Case No. 2017-CP-10-0280
IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
ORDER OF DISMISSAL

This matter is before the Court by way of an application for post-conviction relief ("PCR") filed on January 19, 2017 by Bill Boyd Booker, II ("Applicant"). Respondent submitted its Return and Partial Motion to Dismiss on July 7, 2017. An evidentiary hearing into the matter was convened on Wednesday, February 28, 2018, at the Charleston County Courthouse. Applicant was present at the hearing and represented by Christopher L. Murphy, Esquire. Rasheeda Cleveland, Esquire of the South Carolina Attorney General's Office, represented the State.

Before the Court are the records of the Charleston County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the plea transcript, and the post-conviction relief application.

I. PROCEDURAL HISTORY

Bill Boyd Booker, II ("Applicant") is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. In May 2014, the Charleston County Grand Jury indicted Applicant for armed robbery (2014-GS-10-2535) and strong arm robbery (2014-GS-10-2536). Applicant was subsequently indicted by the December 2015 term of the Charleston County Grand Jury for attempted armed

robbery (2015-GS-10-6798). Russell D. Hilton, Esquire, represented Applicant. Assistant Solicitor Charles Condon, Esquire, prosecuted the case. On January 27, 2016, Applicant pleaded guilty, pursuant to Alford¹, as indicted to all charges before the Honorable Deadra Jefferson. Pursuant to a negotiated sentence, Judge Jefferson sentenced Applicant to imprisonment for concurrent terms of twenty-five years for armed robbery, fifteen years for strong arm robbery, and twenty years for attempted armed robbery. Applicant did not appeal his conviction or sentence.

SUMMARY OF FACTS

On January 5, 2012, Applicant took possession of his mother's car without her permission. (Tr. pg. 12). Applicant's mother reported her vehicle missing. (Tr. p. 12).

On the same night, a robbery occurred at a James Island gas station at 9:15 p.m. (Tr. p. 12). According to the gas station attendant, Applicant bought a soda and when handing over the payment, also handed the attendant a note demanding money. (Tr. p. 12). The attendant did not initially see this note, causing Applicant to proceed to verbally demand for the money from the drawer. (Tr. p. 12). Applicant then reached into the cash drawer, took all the cash, and fled the gas station. (Tr. p. 12). The attendant was able to get the license plate of the car and informed law enforcement of the robbery. (Tr. p. 12). Law enforcement responded and chased after Applicant, until they lost Applicant in traffic. (Tr. p. 12).

The following morning, January 6, 2012 at 1:30 a.m., a second robbery occurred. (Tr. p. 12). Applicant displayed a knife to the bartender and made an attempt to rob a Mount Pleasant bar. (Tr. pp. 12-13). The bartender reciprocated his action, reaching for a firearm, which caused Applicant to leave the bar. (Tr. p. 13). A car matching the description of the mother's missing car was reported. (Tr. p. 13).

¹ North Carolina v. Alford, 25 U.S. 400 (1970).

Around 2:15 a.m., Applicant committed a third robbery, this time robbing a Mount Pleasant gas station. (Tr. p. 13). Applicant tried to purchase a candy bar from the attendant, handed the attendant cash for the candy bar, and once the cash drawer was opened, Applicant pointed a knife at the attendant and demanded she give him all the money. (Tr. p. 13). Applicant then reached into the drawer and took all the money inside and then fled the gas station in the same car reported missing. (Tr. p. 13).

The last robbery took place that morning around 3:30 a.m. at a John's Island gas station. (Tr. pp. 13-14). While paying for a drink, Applicant demanded the attendant give him all the money from the cash drawer. (Tr. p. 14). Applicant then reached into the drawer himself and took the money from the drawer and left the gas station in the same missing vehicle. (Tr. p. 14). All four incidents are backed by video surveillance from each location. (Tr. p. 14).

After the final robbery, the Charleston Police Department found the missing vehicle on Highway 17. (Tr. p. 14). Law enforcement began a traffic stop and Applicant sped off until he crashed further up the road. (Tr. p. 14). After the accident, Applicant continued to flee by foot and was missing from the scene for approximately an hour at which point he returned to the car where the cops interviewed him and he admitted to being the one in the surveillance footage. (Tr. pp. 14-15).

II. ALLEGATIONS

In his application, Applicant alleges is his being held in custody unlawfully on the following grounds:

1. Involuntary plea.
 - a. "Coerced into pleading by intimidation."
2. "Ineffective assistance of counsel."
 - b. "Wasn't advised of certain rights and certain issues were not raised."
3. "Prosecutorial Misconduct"

At the hearing, Applicant went forward on only one issue. Alleging the following grounds for relief:

1. Ineffective assistance of counsel.
 - a. "Told him he'd serve 65% only."
 - b. "Failure to investigate."
 - c. "Mental health issues."

III. SUMMARY OF RELEVANT TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. Plea Counsel Russell Hilton also testified.

On direct examination, Applicant testified that initially he was represented by Mary Ford but it was discovered that Ms. Ford also represented a victim, so she was relieved as counsel. Plea Counsel was then appointed to Mr. Booker's case. Applicant testified that there was never a hearing held relieving Ms. Ford but the matter was address^{ed} off the record. Applicant further testified that he met with Plea Counsel three times, and the last meeting occurred one week before trial and lasted "maybe a half hour." Applicant stated that during those meetings with Plea Counsel, they discussed the charges against him and the twenty-five year plea offer from the State. Applicant asserted that he was served with a life without parole ("LWOP") eligibility notice on Christmas Eve of 2014 or 2015.

Regarding Applicant's mental health issues, he testified that his prior counsel asked for a mental health evaluation, and he received one. Applicant testified that he had two meetings with the doctor, one lasting 1 ½ hours and then the second meeting lasted one hour. He stated that following those meetings he was on additional meds after the evaluation. Applicant also testified that he did not recall asking Plea Counsel about an evaluation. Applicant then asserted that he was not sure if he was competent during the present hearing or during his plea.

Applicant further testified that he understood the charges against him, and the possible

penalties associated with those charges. Applicant asserted, however, that it was not explained to him that he would have to do twenty-two out of twenty-five years. Applicant also stated that he did not know what Alford was or how it differs from a regular plea. Specifically, Applicant testified that Plea Counsel told him he would only have to serve 65% of the sentence. Applicant stated that he and plea counsel discussed the evidence and whether to go to trial or not, but he did not want a life sentence and pled guilty. Applicant contends that Plea Counsel did not investigate possible defenses despite him asking him to do so.

On cross-examination, Applicant testified that during the plea hearing, Judge Jefferson explained Alford to him. However, Applicant denied ever telling Judge Jefferson that he was satisfied with Plea Counsel's representation despite the transcript reflecting that he had. Applicant again asserted that he did not want a life sentence. Applicant also denied telling Judge Jefferson that he was not threatened or coerced into pleading guilty pursuant to Alford. Applicant was again shown the transcript which reflected that he had told Judge Jefferson that he was not.

On direct examination, Plea Counsel testified that he ^{was} appointed in May 2015 through a contract with indigent defense because there had been a conflict with the public defender who was originally appointed in the case. Regarding the number of times he and Applicant met, Plea Counsel testified that he met with Applicant 3-4 times. However, he recalled received ^{no} numerous letters from ~~him~~ ^{Applicant}. Plea Counsel testified that Applicant was competent and "very intelligent."

Plea Counsel recalled Applicant being very vocal about the fact the he did not commit the armed robbery, and pleading under Alford to that charge. Plea Counsel further recalled that the other pleas were straight up pleas, and he did not contest at all. Plea Counsel testified that at the

time of Applicant's plea, he was unaware of ^{the bar's surveillance} video but, after watching the video, Applicant agreed he could see why it looks as if he had a weapon. Plea Counsel testified that prior to the plea, he entered into plea negotiations with the State. He recalled asking for twenty-five years after seeing the video, and the State eventually agreed. He further recalled there was never an offer for less time. Concerning Applicant's receipt of the notice of LWOP, Plea Counsel testified that it was due to Applicant's prior armed robberies.

Regarding his strategy and investigation, Plea Counsel testified that he did not talk to witnesses because Applicant admitted to performing the robbery, and the only issue was whether he was armed with a knife. Plea Counsel recalled there were multiple victims. Plea Counsel testified that he and Applicant had some discussions about going to trial because Applicant had turned down ^{the} original offer, and had been served with an LWOP notice. However, Plea Counsel testified that had Applicant decided he wanted to go to trial, he would have been prepared. Counsel further testified that he did not file or discuss a motion to reconsider because it was a negotiated sentence.

On cross examination, Plea Counsel testified that he believed it was in Applicant's best interest to plead because he was facing LWOP, and the State had a good case. Plea Counsel present^{ed} to the Court a letter from Applicant that was written to the Solicitor saying he wanted to plead guilty.² Plea Counsel further testified that Applicant never indicated that he did not understand anything, and was very intelligent. Plea Counsel recalled Applicant being one of the more intelligent clients he had.

IV. APPLICABLE LAW

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCF; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

² A copy of the letter was moved into evidence as State's Exhibit #1.

Where the application alleges ineffective assistance of counsel as a ground for relief, 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. 441, 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. Petitioner 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. First, Petitioner must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its “reasonableness under professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced Petitioner 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.

V. 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 further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. § 17-27-80 (1985).

INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant alleges Plea Counsel was ineffective in his representation of him. This Court finds that Applicant has not carried his burden of proof. The Court finds no deficiency on the part of counsel, nor prejudice therefrom. Plea Counsel did everything he could for Applicant, and did a good job negotiating off the potential LWOP sentence and reducing Applicant's exposure to it. In regard to Applicant's claim that Plea Counsel failed to investigate, this Court finds Plea Counsel's testimony to be credible regarding his reasoning for not conducting any investigation of the witnesses. This Court further finds Plea Counsel's testimony regarding Applicant's competency to be very credible. Moreover, the letter written by Applicant shows that he was indeed competent and coherent at the time of his plea, and is evidence that he very much wanted the plea offer. In addition, Applicant was not under any mental health care at the time of his plea.

Based upon this Court's observations of Applicant at the hearing and the near total inconsistency of his testimony with any other part of the record before this Court, the Court finds Applicant's testimony not credible. Conversely, the Court finds Counsel's testimony credible. Applicant knowingly, willingly, and voluntarily pled guilty with full awareness of the case against him. Accordingly, Applicant's request for relief by way of this allegation is **DENIED**.

III. CONCLUSION

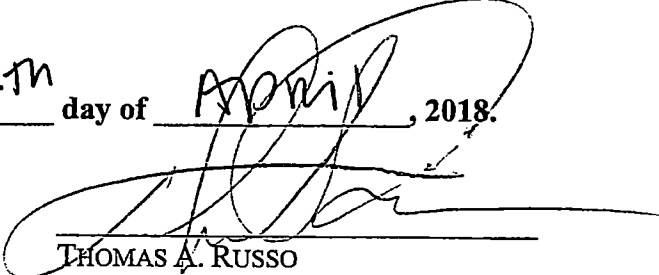
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

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 4th day of April, 2018.


THOMAS A. RUSSO
Presiding Judge
Ninth Judicial Circuit

Florence, South Carolina



ALAN WILSON
ATTORNEY GENERAL

April 9, 2018

The Honorable Julie J. Armstrong
Charleston Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401-2210

Re: **Bill Boyd Booker, #225462 v. State of South Carolina**
2017-CP-10-0280

Dear Ms. Armstrong:

Enclosed please find the original **Order of Dismissal** signed by the Honorable Thomas A. Russo, 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.

Sincerely,

Rasheeda Cleveland
Assistant Attorney General

RC/jaj



 **RESNICK & LOUIS, P.C.**
ATTORNEYS AT LAW

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Clerk of South Carolina Supreme Court
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