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April 20, 2018

RECEIVED
APR 20 2018

Via US Mail

Daniel Shearouse
Clerk of Court
South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

S.C. SUPREME COURT

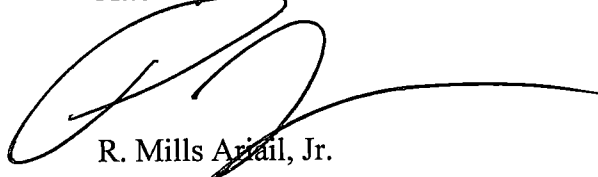
Re: *Notice of Intent to Appeal from Christopher Cobb vs. State of South Carolina*
C.A. No.: 2017-CP-23-3816

Dear Mr. Shearouse:

On behalf of my client, enclosed for filing please find the Notice of Appeal and proof of service. I have enclosed a copy of the Honorable Robin B. Stilwell's Order of Dismissal to be challenged on appeal. I was Court Appointed in the above referenced matter, and I expect that appellate defense will handle the appeal and petition for certiorari. By copy of this letter, I am also serving my client, counsel for the State of South Carolina, the South Carolina Commission of Indigent Defense - Appellate Defense Division and the Greenville County Clerk's Office.

Thank you for your assistance in this matter and if you have any questions, please feel free to contact me.

Sincerely,
LAW OFFICE OF R. MILLS ARIAIL, JR.
Attorney at Law



R. Mills Ariail, Jr.

RMAjr/dl
Enclosures (as stated)

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

APR 24 2018

S.C. SUPREME COURT

Robin B. Stilwell, Circuit Court Judge

Case No. 2017-CP-23-03816

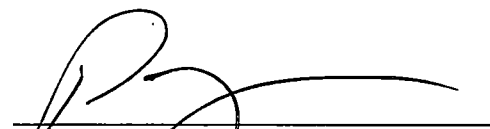
Christopher Javier Cobb,..... Appellant,

v.

State of South Carolina Respondent.

NOTICE OF APPEAL

Appellant appeals the Honorable Robin B. Stilwell's Order of Dismissal dismissing Appellant's application for post-conviction relief. On March 21, 2018, the Honorable Robin B. Stilwell signed an order dismissing Appellant's application for post-conviction relief with prejudice. Appellant, through counsel, received written notice of entry of this order on April 3, 2018. A copy of the Honorable Robin B. Stilwell's Order of Dismissal is attached.



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Attorney for Christopher Javire Cobb

Greenville, South Carolina
April 20, 2018

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Robin B. Stilwell, Circuit Court Judge
Case No. 2017-CP-23-03816

RECEIVED
AT
APR 24 2018

S.C. SUPREME COURT

Christopher Javier Cobb,..... Appellant,

v.

State of South Carolina Respondent.

CERTIFICATE OF SERVICE

I, Denise Tanner LaBeck, paralegal to R. Mills Ariail, Jr., do hereby certify that on this April 20, 2018, I served upon the below named Respondents copies of the **NOTICE OF APPEAL** by depositing copies of the same via U.S. Mail, postage prepaid, Registered Mail in an envelope addressed as set forth herein below:

DeShawn Mitchell, Esq.
Assistant Attorney General
PO Box 11549
Columbia, SC 29211
Attorney for the State of South Carolina

Greenville County Clerk's Office
Greenville County Courthouse
305 East North Street
Greenville, SC 29601

Christopher Javire Cobb SCDC# 370711
Allendale Correctional Institution
1057 Revolutionary Trail
Fairfax, South Carolina 29827

SC Commission of Indigent Defense
Division of Appellate Defense
PO Box 11433
Columbia, SC 29211-1433

Denise Tanner LaBeck
Denise Tanner LaBeck

April 20, 2018

STATE OF SOUTH CAROLINA)
 COUNTY OF GREENVILLE)
 Christopher Javier Cobb, #370711,)
 Applicant,)
 v.)
 State of South Carolina,)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 THIRTEENTH JUDICIAL CIRCUIT

2017-CP-23-3816

ORDER OF DISMISSAL

ENTERED COMPUTER

FILED
 2017 OCT 11 10:00 AM
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This matter comes before the Court by way of an application for post-conviction relief filed on June 13, 2017 by Christopher Javier Cobb (Applicant). Respondent made its Return on or about October 11, 2017. An evidentiary hearing into the matter was convened on December 11, 2017, at the Greenville County Courthouse in Greenville, South Carolina. Applicant was present and represented by R. Mills Ariail Jr, 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 C. Carlyle Steele, Esquire also testified. 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 Correction. 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 orders of commitment of the Greenville County Clerk of Court. In September of 2014, the

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Greenville County Grand Jury indicted Applicant for murder and possession of a weapon during the commission of a violent crime (2014-GS-23-8215). Carlyle Steele, Esquire, represented Applicant. Assistant Solicitor Katryna Salisbury, Esquire, prosecuted the case. On April 4, 2016, Applicant pled guilty to assault and battery of a high and aggravated nature (ABHAN) before the Honorable Edward W. Miller. Sentencing was deferred. On December 6, 2016, Applicant was sentenced by the Honorable Petty H. Gravely to ten years imprisonment which was suspended upon the service of four years and three years' probation. Applicant did not appeal his conviction or sentence.

FACTUAL HISTORY

On December 18, 2012 just before nine in the evening, officers with Greenville County Sheriff's Office responded to a report of shots fired at Highland Square Apartments, which is on Pine Creek Court Extension in Greenville County. In the course of the investigation the police discovered more than twenty shell casings at the scene that were determined to have been from at least four different firearms. The investigation revealed Applicant and his co-defendants, approached other defendants, and a conflict escalated. Many of those involved in the conflict were armed with firearms and at some point shots were fired by several participants. The victim was seated in a car near the site of the conflict and was struck in the left temple and killed almost instantly as a result of that gunshot. One of Applicant's co-defendant was initially charged with the victim's murder and after speaking with other witnesses law enforcement elected to charge other participants in the crime including Applicant based on the fact that those defendants initiated and escalated the conflict. Plea Tr. 7-8.

ALLEGATIONS

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

1. Prosecutor misconduct
2. Ineffective Assistance of Plea Counsel
 - a. Applicant was not indicted for ABHAN, nor does documentation show where he waived an indictment.
 - b. No subject matter jurisdiction.

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 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.

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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 (Cl. 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)).

Applicant testified he met with Plea Counsel numerous times and reviewed his discovery with Plea Counsel. Applicant also testified Plea Counsel went over with him the elements of the crimes he was charged with and the potential sentences. He testified initially he wanted to go to trial but ended up pleading because his attorney told him he could go home if he pled guilty. Applicant testified Plea Counsel never told him he would not get any jail time but Plea Counsel

knew he was innocent and convinced him to plead guilty.

Plea Counsel testified he had been practicing law for forty three years and a large part of that time had been devoted to criminal law. Plea Counsel testified he met with Applicant numerous times and explained the charges Applicant was facing as well as the sentences for those charges. Plea Counsel testified they had a good defense if the case went to trial but also explained to Applicant the risk of going to trial. Plea Counsel testified he rode around the crime scene several times and subpoenaed several witnesses to testify at trial if Applicant had chosen to proceed with a trial. Plea Counsel testified he never promised Applicant he would not get any jail time.

After careful review of the entire record, including the testimony presented at the evidentiary hearings, based on the standard discussed above, this Court finds Applicant has failed to carry his burden in this action regarding any of his allegations of ineffective assistance of counsel or any other constitutional deprivations entitling him to post-conviction relief. Applicant also failed to prove he was prejudiced by the alleged deficiencies. Below are this Court's specific finding regarding Applicant's allegation of ineffective assistance of counsel:

This Court finds Counsel provided effective assistance in this case and Applicant's decision to plead guilty was made freely and voluntarily. This Court further finds the record reflects Applicant's plea was entered freely, voluntarily, knowingly, and intelligently. Counsel is a trial practitioner who has extensive 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 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. 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.

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Subject Matter Jurisdiction

Applicant also alleges ineffective assistance of counsel in his application in that the plea court did not have subject matter jurisdiction to hear his plea as he was not indicted for ABHAN nor did he waive presentment to the grand jury. An Applicant may challenge the subject matter jurisdiction of the trial court and such a claim is one that may be raised at any time. See Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001), overruled in part by Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). However, "[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters." Gentry, 363 S.C. at 101, 610 S.E.2d at 499. See also S.C. Const. Art. V, § 7. Thus, Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. Applicant was indicted by the Greenville County Grand Jury for murder and possession of a weapon during the commission of a violent crime. The indictments allege that criminal offenses occurred in Greenville County. Applicant was prosecuted for these charges in Greenville County Court of General Sessions. While Applicant is correct that he was charged with murder and ABHAN is not a lesser included offense of murder nor did he waive presentment for this charge, Applicant received the plea deal he bargained for. This Court finds Plea Counsel was not deficient for challenging Applicant's guilty plea to ABHAN and that Applicant can show no prejudice as he sufficiently lowered the exposure he was facing for murder (30 years to life) by pleading guilty and receiving **only four years**. Accordingly, Applicant has failed to present any facts or evidence that the convictions he challenges in this application are in a class over which the circuit court does not have the authority to preside. Therefore, this allegation is dismissed with prejudice.

Prosecutorial Misconduct

Applicant alleged in his application prosecutorial misconduct. Applicant did not present any evidence on this allegation at the PCR hearing. Accordingly, this Court finds Applicant failed to prove there was any evidence of prosecutorial misconduct. Accordingly, this Court denies and dismisses this allegation.

Furthermore, to the extent Applicant is claiming prosecutorial misconduct has been discovered post-trial, and could not have been discovered, in the exercise of due diligence, prior to trial, in evaluating post-trial Brady¹ claims, the applicant must show (1) the prosecution suppressed evidence, (2) the evidence would have been favorable to the accused, and (3) the suppressed evidence is material. United States v. Wolf, 839 F.2d 1387 (10th Cir. 1988). The Brady disclosure rule requires the prosecution to provide to the defendant any evidence in the prosecution's possession that may be favorable to the accused and material to guilt or punishment. State v. Kennerly, 331 S.C. 442, 452, 503 S.E.2d 214, 220 (Ct. App. 1998) (citing Brady v. Maryland, 373 U.S. 83, 87, 83 S.Ct. 1194 (1963)). Favorable evidence includes both exculpatory evidence and evidence which may be used for impeachment. United States v. Bagley, 473 U.S. 667, 676, 105 S.Ct. 3375 (1985).

"Impeachment or exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993). "A 'reasonable probability' of a different result is accordingly shown when the government's evidentiary suppression 'undermines confidence in the outcome of the trial.'" Bagley, 473 U.S. at 678, 105 S.Ct. at 3381. A Brady violation does not warrant reversal if the evidence is merely cumulative or impeaching. See Clark, 315 S.C. 385. Applicant has failed to show the State withheld any

¹ Brady v. Maryland, 373 U.S. 83, 87, 83 S.Ct. 1194 (1963).

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evidence that would have produced a different outcome at his trial. Accordingly, this Court denies and dismisses this allegation.

CONCLUSION

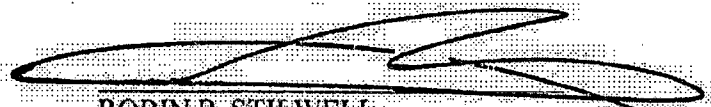
Based on all the foregoing, this Court finds and concludes that Applicant has not established any violations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

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), SCRPC. Refer to Rule 243 of the South Carolina Appellate Court Rules for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

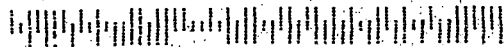
1. The application for Post-Conviction Relief is denied and dismissed with prejudice;
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 21st day of March, 2018.



ROBIN B. STILWELL
Presiding Judge
Thirteenth Judicial Circuit

Greenville, South Carolina



R. MILLS ARIAIL, JR.

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