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April 20, 2018

RECEIVED
AT

APR 24 2018

S.C. SUPREME COURT

Via US Mail

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

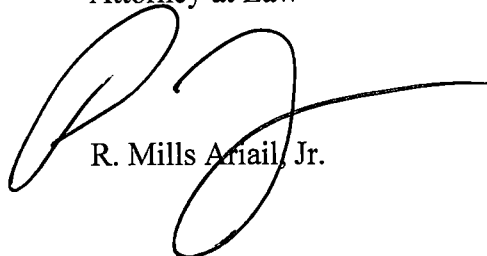
***Re: Notice of Intent to Appeal from Joseph C. Walker vs. State of South Carolina
C.A. No.: 2014-CP-23-3382***

Dear Mr. Shearouse:

On behalf of my client, enclosed for filing please find the Notice of Appeal and proof of service. I was Court Appointed in the above referenced matter, and I expect that appellate defense will handle the appeal and petition for certiorari. I have enclosed a copy of the Honorable Robin B. Stilwell's Order of Dismissal to be challenged on appeal. 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

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

RECEIVED

Robin B. Stilwell, Circuit Court Judge

APR 24 2018

Case No. 2014-CP-23-03382

S.C. SUPREME COURT

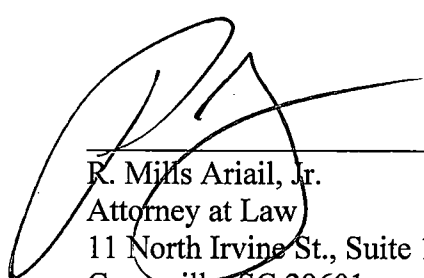
Joseph Christopher Walker,..... Appellant,

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 Joseph C. Walker

Greenville, South Carolina
April 20, 2018

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

APR 24 2018

S.C. SUPREME COURT

Robin B. Stilwell, Circuit Court Judge

Case No.2014-CP-23-03382

Joseph Christopher Walker,..... 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

Joseph C. Walker SCDC# 285497
Perry Correctional Institution
430 Oaklawn Road
Pelzer, South Carolina 29669

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)
 Joseph Christopher Walker, #285497)
 Applicant,)
 v.)
 State of South Carolina,)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 THIRTEENTH JUDICIAL CIRCUIT

2014-CP-23-3382

ORDER OF DISMISSAL

ENTERED COMPUTER

This matter comes before the Court by way of an application for post-conviction relief filed on June 17, 2014 by Joseph Christopher Walker (Applicant). Respondent made its original Return and Motion to Dismiss on or about August 15, 2014. Respondent filed an amended return on January 7, 2015.¹ 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 Arial 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. Lance Sheek, 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 Corrections. After reviewing the record and everything presented, this Court finds

¹ Respondent notes it submitted a return and motion to dismiss and proposed order of dismissal without prejudice on August 15, 2014. The chief administrative judge filed the order of dismissal on September 4, 2014 and Applicant filed a document in opposition on September 11, 2014. Applicant filed a notice of appeal at the South Carolina Supreme Court. By order dated November 19, 2014, the Supreme Court remanded the matter for Applicant's filing to be considered as a Rule 59(e), SCRPC motion. In the interest of judicial economy, Respondent conceded the propriety of Applicant's filing and acknowledged the initial return and motion to dismiss and proposed order of dismissal without prejudice were submitted in error as Applicant had a separate and distinct PCR action from this one filed with different charges.

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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 Jury indicted the Applicant at the May 2012 term of General Sessions for two counts of distribution of cocaine base within proximity of a school (2012-GS-23-1286, -1287), possession with intent to distribute cocaine base within proximity of a school (2012-GS-23-2002), murder (2012-GS-23-2020, count 1), and possession of a weapon during commission of a violent crime (2012-GS-23-2020, count 2). Lance Sheek, Esquire represented the Applicant. On June 6, 2013, the Applicant pled guilty to voluntary manslaughter and three counts of distribution of cocaine base within proximity of a school.² The Honorable D. Garrison Hill sentenced the Applicant to concurrent terms of 30 years for voluntary manslaughter and 10 years for each count of distribution of cocaine base within proximity of a school. The Applicant did not appeal.

ALLEGATIONS

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

1. Ineffective assistance of counsel.
 - a. "Applicant was not represented by counsel a[t] guilty plea proceedings."
 - b. "Applicant was not informed of right to appeal."

SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

Applicant's Testimony

Applicant testified Cassandra Gorton, Esquire was court appointed to represent him but

² Respondent notes the Applicant had been sentenced to life imprisonment without parole on April 2, 2013 for attempted murder (2011-GS-23-8458) after being convicted at trial.

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she was relieved and Plea Counsel was retained to represent him. Applicant testified Ms. Gorton was still helping him with his case even though Plea Counsel had been paid to represent him and that he was confused as to who represented him on the charges. He testified he wanted to go to trial on the murder charge but not the other charges. Applicant testified he only met with Plea Counsel four or five times. He testified the court should have told him he had two attorneys representing him at the same time. Applicant also testified Plea Counsel had been reprimanded by the South Carolina Supreme Court for being a bad lawyer.

Plea Counsel's Testimony

Plea Counsel testified he had been practicing law for twenty-five years and all of that time had been devoted to criminal law. Plea Counsel testified he met with Applicant several times and went over Applicant's discovery with him in his case. He testified he discussed Applicant's potential defenses and presented plea offers the State extended to Applicant. Plea Counsel testified the State would not separate Applicant's charges and allow him to plead to some and go to trial on the other. Plea Counsel testified Cassandra Gorton, Esquire represented Applicant on separate charges. Plea Counsel testified both Ms. Gorton and himself explained to Applicant that they represented him on different charges. Plea Counsel testified he did not remember Ms. Gorton giving Applicant any advice about the charges he represented Applicant on. Plea Counsel testified the murder charge was a defensible case but the drug case was not because Applicant was on camera committing the offense.

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.

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 and Applicant’s decision to plead guilty was made freely and voluntarily. 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

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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).

The 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.

Disciplinary Action

Applicant alleged at the PCR hearing he had proof that Plea Counsel was not a good lawyer as Plea Counsel had been reprimanded by the South Carolina Supreme Court. This Court finds any disciplinary action taken by the Supreme Court against Plea Counsel is not relevant to the Applicant's Post-Conviction Relief Application and is not evidence of any deficiency. As such this Court will not consider it. 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:

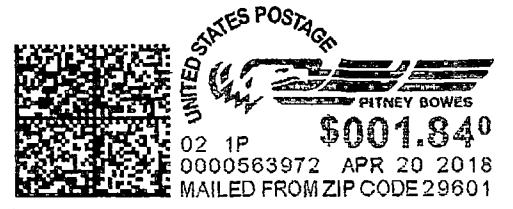
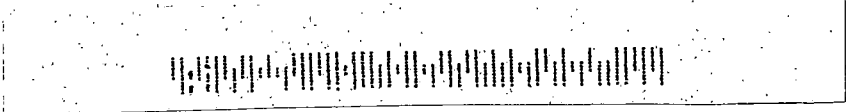
1. The application for Post-Conviction Relief is denied and dismissed with prejudice;
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

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



ROBIN B. STILWELL
Presiding Judge
Thirteenth Judicial Circuit

Greenville, South Carolina



R. MILLS ARIAIL, JR.



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