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THE ALLEN LAW FIRM, P.A.

April 25, 2018

The Supreme Court of South Carolina
ATTN: Daniel Shearouse, Clerk of Court
PO Box 11330
Columbia, SC 29211

Re: Notice of Intent to Appeal from:
David L. Adams, #271989, v. State of South Carolina;
Case Number: 2015-CP-32-03207

Dear Sir or Madam:

I was Court Appointed, and I expect appellate defense will probably handle the appeal. Enclosed please find a Notice of Appeal along with a Proof of Service and a copy of the Order being appealed. Also enclosed is a copy which I respectfully ask you to stamp as "Received" and return to me in the enclosed stamped envelope.

Thank you for your assistance.

Sincerely:

David K. Allen, Esq.

DKA/idi
Enclosures

cc: Mr. David Adams
Sherrie Butterbaugh, Esq.

THE SOUTH CAROLINA SUPREME COURT

ORIGINAL

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

J. Cordell Maddox, Jr., Circuit Court Judge

Case No.
(2015-CP-32-03207)

David L. Adams,.....Appellant

v.

State of South Carolina, ...Respondent.

NOTICE OF INTENT TO APPEAL

Appellant appeals the Order of Dismissal denying his Application for Post-Conviction Relief filed April 6, 2018, sent by the S.C. Attorney General's Office on April 12, 2018 and received by Counsel on April 16, 2018. Appellant hereby files and serves this Notice of Intent to Appeal by regular mail today, April 25, 2018.

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ORIGINAL

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	IN THE COURT OF COMMON PLEAS FOR THE ELEVENTH JUDICIAL CIRCUIT
David L. Adams, #271989, Applicant, v. State of South Carolina, Respondent.	2015-CP-32-03207 **ORDER OF DISMISSAL**

FILED
2018 APR -6 AM 11:03
LISA H. COMER
CLERK OF COURT
LEXINGTON SC

This matter comes before the Court by way of a post-conviction relief (PCR) application filed September 15, 2015. An evidentiary hearing into the matter was convened on December 11, 2017. Applicant was present and represented by David Allen. Respondent was represented by Sherrie Butterbaugh of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections. Applicant was indicted in June 2014 by a Lexington County grand jury for second-degree criminal sexual conduct with a minor. (2014-GS-32-1759). Robert Madsen represented applicant. On May 4, 2015, applicant pled guilty as indicted before the Honorable W. Jeffery Young and Judge Young sentenced applicant to eighteen years' imprisonment.

Applicant timely filed a notice of appeal. In an order filed July 9, 2015, the Court of Appeals dismissed the appeal for failure to provide a sufficient explanation as required by Rule 203(d)(1)(B)(iv) of the South Carolina Appellate Court Rules. The remittitur was issued on July 27, 2015.

ALLEGATIONS

In his application, applicant alleges he is being held in custody unlawfully for the

following reasons:

1. Involuntary guilty plea
2. Ineffective assistance of counsel, specifically:
    a. "Counsel failed to conduct any meaningful pre-trial investigation"
3. Denial of due process of law in violation of the 4th Amendment
    a. "No search warrant or consent form was provided in DNA blood testing"
4. "Plaintiff was denied due process of law by the state's failure to provide Brady"
    a. "State failed to provide medical records of the victim in discovery motion"

Prior to the evidentiary hearing, applicant, through counsel, informed the Court he would proceed only on claims one and two. *See* Rule 71.1(e), SCRCP (providing the burden of proof is on the applicant to prove his allegations by a preponderance of the evidence).

GUILTY PLEA TRANSCRIPT

Also before the hearing, respondent informed the Court the transcript from the guilty plea was no longer available and the plea hearing needed to be reconstructed.[1] Respondent presented testimony from Laura Suzanne Mayes, who prosecuted the case, and plea counsel Robert Madsen, who were both present at applicant's plea hearing. Applicant's PCR counsel cross-examined the witnesses.

Ms. Mayes and Mr. Madsen testified to their recollection of the plea hearing, and both stated the plea judge went over the elements of the indicted charge and the possible sentence applicant faced, as well as the constitutional rights applicant waived by pleading guilty. Specifically, Ms. Mayes testified she recalled details about the plea because the parties were scheduled to proceed to trial on the morning of the plea, but applicant instead chose to plead guilty. Ms. Mayes stated applicant made a clear waiver of his rights and she recalled it was an

[1] By letter dated June 14, 2016, the court reporter stated the transcript did not exist because her car was broken into and her equipment was stolen, including her laptop containing files which held applicant's guilty plea transcript from May 4, 2015.

ordinary plea colloquy. Mr. Madsen testified he went over the elements of the charge, possible sentence and collateral consequences, and other constitutional rights with applicant at their initial meeting so applicant was aware of and understood those considerations going into the plea hearing. Mr. Madsen stated further he specifically recalled the plea judge asking applicant if he understood the rights he waived by pleading guilty. Mr. Madsen testified applicant made a valid waiver. Mr. Madsen stated he would have stopped the plea hearing had he believed applicant did not understand something, or if something out of the ordinary occurred.

Both attorneys testified the plea judge found applicant's plea was freely, knowingly, and voluntarily entered.

After testimony was presented, this Court found that the guilty plea record had been reconstructed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety, including the reconstructed guilty plea hearing, the Lexington County Clerk of Court records, applicant's South Carolina Department of Corrections records, and the PCR application. The Court further had the opportunity to observe the witnesses presented at the evidentiary hearing, closely pass upon their credibility, and weigh their testimony accordingly. Pursuant to S.C. Code Ann. §17-27-80, the Court makes the following findings of fact and conclusions of law based upon all of the probative evidence presented.

First, as a matter of general impression, this Court finds plea counsel's testimony is credible and persuasive on all matters, while also finding applicant's testimony and assertions lack credibility. These credibility findings have been applied to the Court's findings set forth below.

INVOLUNTARY GUILTY PLEA

Applicant first argues his plea was involuntary. This Court finds otherwise and concludes applicant's plea was entered freely, voluntarily, and intelligently. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. *Boykin v. Alabama*, 395 U.S. 238, 242-44 (1969). A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record. *Roddy v. State*, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing *State v. Ray*, 310 S.C. 431, 427 S.E.2d 171 (1993)). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual and an inmate's right to contest the validity of such a plea is usually foreclosed. *Dalton v. State*, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Blackledge v. Allison*, 431 U.S. 63 (1977)). Representations of the defendant, counsel, and the solicitor, as well as any findings made by the plea judge, "constitute a formidable barrier in any subsequent collateral proceedings." *Blackledge*, 431 U.S. at 73-74.

Applicant claims his plea was given involuntarily because he did not know what rights he was waiving during the guilty plea hearing, and he only pled guilty because of the poor representation of plea counsel. This Court finds applicant's contention incredible and finds he failed to meet his burden of demonstrating his plea was anything other than valid and entered into freely and voluntarily. *See Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (holding an applicant bears the burden of proving the claims in his application); *see also Boykin*, 395 U.S. at 242-44 (holding a guilty plea will be found knowing and voluntary if the record establishes the defendant had a full understanding of the consequences of his plea and the charges against him).

This Court specifically finds the reconstructed plea hearing belies applicant's claim. Both the solicitor and plea counsel credibly testified they recalled details of the plea colloquy because they worked to prepare for a trial up until the morning applicant chose to accept a plea offer rather than proceed with jury selection. This Court finds very credible counsels' testimony that the plea judge covered all of the crucial factors during the colloquy and applicant made a valid waiver of his rights. Each attorney testified they recalled applicant admitted his guilt following the State's recitation of the facts, and each further recalled the plea judge asked applicant if he wished to waive his right to a jury trial, his right to confront his accuser, and his right to remain silent, and applicant voluntarily waived those rights. Moreover, plea counsel acknowledged applicant was not promised anything for his plea, was not threatened, and was not under the influence of drugs or alcohol the day he pled guilty. The Court notes both counsels are experienced trial attorneys who would have stopped the guilty plea hearing and objected or corrected the record had there been any constitutional right not waived, error made, or concern about whether applicant understood the proceeding against him. This Court finds applicant understood the charge he faced, the maximum sentence he could receive, any collateral consequences, and applicant was fully informed of the nature and consequences of his plea as required.

The reconstructed record reflects applicant fully admitted his guilt to the plea court. "A guilty plea constitutes a waiver of nonjurisdictional defects and claims of violations of constitutional rights." *Jamison v. State*, 410 S.C. 456, 467, 765 S.E.2d 123, 129 (2014) (citing *State v. Rice*, 401 S.C. 330, 331-32, 737 S.E.2d 485, 485-86 (2013)). Therefore, this Court finds the plea judge correctly found applicant's plea was freely, voluntary, and intelligently made. This allegation must be denied and dismissed with prejudice.

INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant alleges plea counsel was ineffective in failing to conduct an adequate pre-trial investigation. During his testimony, applicant stated counsel failed to contact all the witnesses he suggested, failed to fully investigate an issue related to the search warrant for applicant's DNA, and did not hire an expert to look into the DNA match. Further, applicant testified he only met with the private investigator hired by counsel for a few minutes, but acknowledged he met with counsel five or six times. Applicant stated there was a breakdown of the relationship between him and counsel, he requested counsel be relieved, and he filed a grievance against counsel. However, on cross-examination, applicant admitted he discussed the case and evidence with counsel, including possible defenses. Moreover, applicant acknowledged he changed his version of events at least twice.

Plea counsel testified he met with applicant at least eleven times, reviewed all discovery materials, and developed a trial strategy. Counsel stated he and applicant discussed their strategy for months based on the evidence the State had against applicant and counsel determined what motions and arguments he would make at trial. However, it was not until just before the scheduled trial date that applicant changed his version of events again and counsel had to change his strategy. Counsel also testified he requested and received funding for a DNA expert who reviewed the report which determined applicant's DNA matched the child's DNA, but it was counsel's opinion the expert would not be helpful at trial. Counsel also stated he received funding to hire a private investigator who interviewed witnesses, including family members and the victim, and some of them could have testified at trial, had applicant not chosen to plead guilty.

This Court finds applicant's allegation that plea counsel failed to conduct a sufficient pre-

trial investigation to be meritless. 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, 686 (1984). Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Id.* at 668. An 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).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. *Id.* at 117, 386 S.E.2d at 625. Courts measure an attorney's performance by its "reasonableness under prevailing professional norms." *Id.* at 117, 386 S.E.2d at 625 (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." *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty pleas, 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).

This Court finds plea counsel's testimony more credible than applicant's testimony. This Court finds counsel was thoroughly prepared to take applicant's case to trial as he was preparing the case and developing a defense strategy until the day applicant pled guilty. Counsel's testimony regarding his pre-trial work, including funding requests and interviews, indicates a thorough knowledge of the facts of applicant's case and an understanding of the State's evidence against applicant. To establish counsel was inadequately prepared, an applicant must present

evidence of what counsel could have discovered or what other defense could have been pursued had counsel been more fully prepared. *Jackson v. State*, 329 S.C. 345, 354, 495 S.E.2d 768, 772 (1998). Applicant failed to produce any evidence at the PCR hearing to show what counsel should have, but did not investigate, and therefore cannot prove any resulting prejudice. Applicant cannot meet either prong of the *Strickland* test. Accordingly, this allegation is denied and dismissed.

ALL OTHER ALLEGATIONS

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this order, the Court finds applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the applicant has abandoned any such allegations.

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 his plea was involuntary or that counsel's performance was unreasonable under prevailing professional norms. *See Butler*, 286 S.C. at 442, 334 S.E.2d at 814 (holding an applicant bears the burden of proving the claims in his application). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes applicant must file and serve a notice of appeal within thirty 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, 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), SCRCP, provides if the applicant wishes to seek appellate

review, post-conviction relief counsel must serve and file a Notice of Appeal on the 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
Eleventh Judicial Circuit

Anderson, South Carolina

THE SOUTH CAROLINA SUPREME COURT

ORIGINAL

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

J. Cordell Maddox, Jr., Circuit Court Judge

Case No.
(2015-CP-32-03207)

David L. Adams,.....Appellant

v.

State of South Carolina, ...Respondent.

PROOF OF SERVICE

I certify that the foregoing Notice of Appeal was served on the persons listed below by placing same in the U.S. Mail postage prepaid this day, April 25, 2018.

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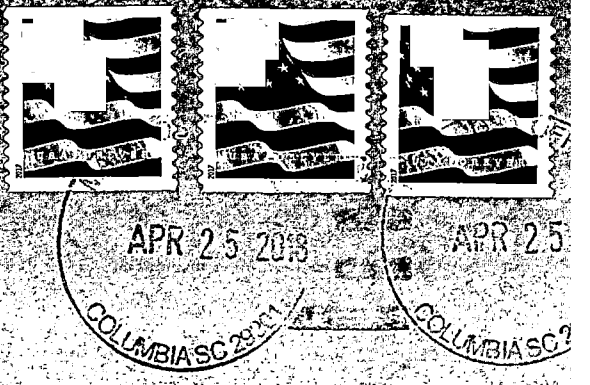

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