R. MILLS ARIAIL, JR.
ATTORNEY AT LAW

11 NORTH IRVINE STREET, SUITE 11 • GREENVILLE, SC 29601
PHONE 864.232.9390 • FAX 864.232.9392 • E-MAIL MILLS@RMALAWOFFICE.COM

RECEIVED
MAY 15 2018
S.C. SUPREME COURT

May 10, 2018

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 Terrance Johnson v. State of South Carolina
C.A. No.: 2017-CP-39-1030

Dear Mr. Shearouse:

I was Court Appointed in the above referenced matter, and I expect that appellate defense will handle the appeal and petition for certiorari. On behalf of my client, enclosed for filing please find the Notice of Appeal and proof of service. I've enclosed a copy of the Honorable Frank R. Addy, Jr.'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 Pickens 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

RECEIVED
MAY 15 2018
S.C. SUPREME COURT

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

Frank R. Addy, Jr., Circuit Court Judge

Case No. 2017-CP-39-1030

Terrance Johnson,..... Appellant,

v.

State of South Carolina ..... Respondent.

NOTICE OF APPEAL

Appellant appeals the Honorable Frank R. Addy, Jr.'s Order of Dismissal dismissing Appellant's application for post-conviction relief. On May 8, 2018, the Honorable Frank R. Addy, Jr. 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 May 8, 2018. A copy of the Honorable Frank R. Addy, Jr.'s Order of Dismissal is attached.

R. Mills Ariail, Jr.
Attorney at Law
11 North Irvine St., Suite 11
Greenville, SC 29601
Telephone (864) 232-9390
Facsimile (864) 232-9392
Attorney for Terrance Johnson

Greenville, South Carolina
May 10, 2018

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

RECEIVED
MAY 15 2018
S.C. SUPREME COURT

Frank R. Addy, Jr., Circuit Court Judge

Case No.2017-CP-39-1030

Terrance Johnson,..... 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 May 10, 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 H. Mitchell, Esq.
Assistant Attorney General
PO Box 11549
Columbia, SC 29211

Pickens County Clerk's Office
Pickens County Courthouse
214 East Main Street
Pickens, SC 29671

Terrance Johnson SCDC# 326086
Ridgeland Correctional
5 Correctional Road
Ridgeland, SC 29936

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

Denise Tanner LaBeck
Denise Tanner LaBeck

May 10, 2018

STATE OF SOUTH CAROLINA COUNTY OF PICKENS 2018 MAY -8 P 4:01	IN THE COURT OF COMMON PLEAS FOR THE THIRTEENTH JUDICIAL CIRCUIT
Terrance Johnson, 326086 Applicant, v. State of South Carolina, Respondent.	2017-CP-39-1030 **ORDER OF DISMISSAL**

This matter comes before the Court by way of an application for post-conviction relief filed on August 30, 2017 by Terrance Johnson (Applicant). Respondent made its Return on or about January 16, 2018. An evidentiary hearing into the matter was convened on February 21, 2018, 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 Dorothy A. Manigault, Esquire also testified. This Court had before it a copy of the records of the Pickens 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 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 Pickens County Clerk of Court. In August of 2015, the Pickens

County Grand Jury indicted Applicant for attempted murder (2015-GS-39-641) and armed robbery (2015-GS-39-640). Dorothy Manigault, Esquire, represented Applicant. On April 6, 2016, plead guilty to attempted armed robbery and attempted murder before the Honorable J. Cordell Maddox Jr. Judge Maddox sentenced Applicant to twenty years imprisonment provided upon the service of eleven the balance would be suspended for five years' probation for the attempted armed robbery charge. On the attempted murder charge, Judge Maddox sentenced Applicant to eleven years imprisonment to run concurrent with the other charge. Applicant did not appeal his sentences or convictions.

FACTUAL HISTORY

On September 10, 2013, Applicant along with his brother and another co-defendant decided to go to the Plez U located within the Easley City limits of Pickens County. They parked in a trailer park right behind the Plez U, and the other co-defendant was driving the car. At that point both Applicant and his brother got out of the vehicle and went inside the Plez U. Inside working the register that day was the victim in this case. They went inside with masks on and bandanas. One of them was carrying a pistol and they also had pepper spray. There was a surveillance video which captured them immediately threatening the victim and asking her to go to a safe and give them money. A shot was fired over her head in the process. They also pepper sprayed her in her eyes, gathered up a few hundred dollars in cash as well as a bunch of cigarettes, made their way out of the store, got back to the car, and fled. An eyewitness saw them; the police were eventually called, and the eyewitness gave police a description of the vehicle. Easley police were able to find them shortly thereafter in the vehicle that matched the description. When police approached the vehicle, the other co-defendant sped off and a chase ensued. Eventually the vehicle wrecked, injuring all three occupants. They were arrested at the scene and taken to the hospital for

treatment. While in the hospital, Applicant and his brother were eventually able to escape and made their way to Louisiana where they were subsequently picked up a few months later by police. (GP. Tran. p. 9-10).

ALLEGATIONS

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

1. I was denied the right to trial
    a. I was told that I could not take one of my charges to trial without the other.
2. I was forced to take an unintelligent plea.
3. My lawyer failed to advise me of my options correctly.

SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTARY HEARING

Applicant's Testimony

Applicant testified he was initially represented by Caroline Horlbeck, Esquire but Plea Counsel took over his case. He testified neither attorney explained the elements of the crimes with which he was charged. Applicant testified he met with Plea Counsel twice, and she told him he could get thirty years for each charge if he went to trial. He testified Plea Counsel never helped him and told him he could not separate the charges which is why he ending up pleading guilty. Applicant testified he wanted to go to trial on the attempted murder charge, but Plea Counsel told him it was "all or nothing." He testified that he was not given enough time to prepare for trial and that he never saw the video of the incident.

Plea Counsel's Testimony

Plea Counsel testified she was appointed to represent Applicant on April 4, 2016. She testified Applicant's previous attorney, Caroline Horlbeck, became a probate judge and she took over the case after that. Plea Counsel testified she got Applicant's discovery and discussed it with him. She testified Applicant told her he would plead guilty if he got a good offer. Plea Counsel

testified that, when she received the order of appointment to represent Applicant, there was a plea offer of sixteen years. She testified she emailed back and forth with the Solicitor working the case in an effort to obtain a better offer for Applicant. Plea Counsel testified she met with Applicant on seven different occasions between April 2016 and August 2016. She testified that, during her seventh visit with Applicant, he wanted to take an open plea deal with a cap of twenty years and let the plea judge decide the sentence. Plea Counsel further testified Applicant and his brother robbed the store and stole money and cigarettes. After the robbery, a car chase ensured resulting in Applicant and his brother crashing their car. Plea Counsel testified Applicant was hospitalized but somehow managed to escape and flee to Louisiana. She testified Applicant was aware of the allegations against never requested to sever his charges. Plea Counsel testified she could not get the video of the incident to play for Applicant, but she did provide still shots of the video to Applicant.

On cross-examination, Plea Counsel testified she had been practicing law for over thirty-five years. She testified she met with Applicant eight times during her representation. Plea Counsel testified Applicant never mentioned he wanted to sever his charges, and if he had made such a request, she would have filed the appropriate motion.

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)).

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.

As an initial matter, at the call of the case, this Court was informed that Applicant wanted to have his PCR counsel R. Mills Ariail Jr., Esquire, relieved because he had represented Applicant's brother, Tevis C. Johnson, on Tevis Johnson's PCR (2017-CP-39-1002) which he withdrew earlier on February 21, 2018. Applicant indicated that he had been in conversation with an attorney from Orangeburg by the name of "Patricia H."[1] about representing him in this matter. Supposedly, Applicant's family was hoping to retain this attorney at some point in the future.

Upon a check of the South Carolina Bar online attorney listing, five lawyers had a name matching "Patricia H." but none of them practiced in Orangeburg. This Court read the names to Applicant, and he did not indicate that any of those names jogged his memory. This Court also inquired of Mr. Ariail as to whether he had any conflict in representing both brothers in their civil PCR actions. Mr. Ariail informed the Court that, having reviewed both cases, no ethical conflict arose from his representation of the Johnson brothers and that he was prepared to proceed. Accordingly, this Court denied Applicant's motion to relieve Mr. Ariail.

[1] Applicant maintained he could not recall the last name of the attorney.

Ineffective Assistance of Counsel

Applicant maintains that his Plea Counsel denied him a right to trial, forced him to take an ill-advised plea, and failed to advise him of his options. Put succinctly, this Court finds Applicant's allegations and testimony wholly incredible. This Court finds that, not only did Plea Counsel competently and adequately represent Applicant, in fact she did a fantastic job, an absolutely incredible job. The case against Applicant was about as strong as any this jurist has ever seen. Plea Counsel met with Applicant on multiple occasions, fully advised Applicant of all his rights, the ramifications of a plea, and the options available to him. Furthermore, this Court finds that the fact that Plea Counsel was able to achieve an eleven year active sentence for Applicant in light of his record, the aggravating nature of the charges, and his flight to Louisiana in an effort to escape the consequences of his actions was nothing less than miraculous.[2] In short, no factual basis exists for any of the allegations contained in Applicant's PCR; they are wholly spurious.

Moreover, this Court 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 extensively as to whether he understood those rights and wished to waive them. 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 that 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 proceedings, and Applicant indicated he understood all of the plea judge's questions and had answered them

[2] And I mean like Old Testament miraculous.

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.

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

IT IS THEREFORE ORDERED THAT:

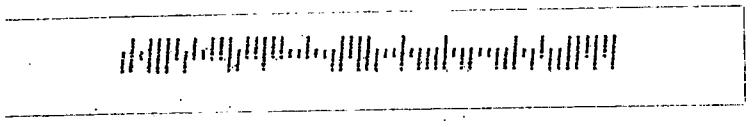
1. The application for Post-Conviction Relief is denied and dismissed with prejudice;

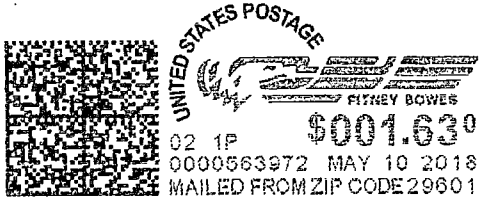
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

IT IS SO ORDERED this 8th day of May, 2018.

FRANK R. ADDY, JR.
Presiding Judge
Thirteenth Judicial Circuit

Greenwood, South Carolina





R. MILLS ARIAIL, JR.

11 NORTH IRVINE STREET, SUITE 11
GREENVILLE, SC 29601

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