

NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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MAY 26 2015

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

SC SUPREME COURT

Hon. J.C. Nicholson Jr., Circuit Court Judge

Case No. 2013-CP-08-0385

Greg Taylor

Applicant

v.

State of South Carolina

Respondent

NOTICE OF APPEAL

Greg Taylor appeals the order of the Honorable J.C. Nicholson dated April 20, 2015.

Appellant received written notice of entry of this order on April 29, 2015. The Appellant is bringing this appeal challenging the Order of Dismissal in the post conviction relief ("PCR") action.

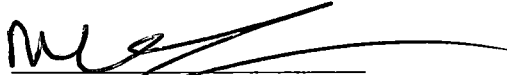
Specifically, the Appellant is challenging the finding that there were no constitutional violations when his plea counsel advised him that accepting a guilty plea, to possession of more than one ounce of marijuana, would not affect his ability to adjust status to that of a permanent resident in the United States. According to Padilla v. Kentucky, when deportation consequences are truly clear, "the duty to give correct advice is equally clear." Padilla v. Kentucky, 130 S.Ct. 1473, 1483 (2010). By pleading guilty to possession of more than an ounce of marijuana, the Appellant became permanently inadmissible from the United States. See INA §

212(a)(2)(A)(i)(II).

Additionally, the Appellant is challenging the holding of the PCR judge that that any deficiencies that were made by the plea counsel were cured by the plea judge when he informed the Appellant that because he had committed a crime he was subject to being removed from the country. The Appellant, however, asserts that this vague warning from the plea judge does not relieve plea counsel of his duties under Padilla. The Appellant was never informed that by pleading guilty, to possession of more than an ounce of marijuana, he would be permanently inadmissible to the United States and would no longer be able to adjust status under his family based petition. The Appellant asserts that if he had known the complete immigration consequences of pleading guilty, he would have insisted on going to trial. For these reasons, the Appellant files this Notice of Appeal with the Supreme Court of South Carolina.

I further certify that a request was made to order the post conviction relief hearing transcripts from the court reporter, for the Berkeley county Circuit Court, on May 22, 2015.

May 22, 2015


Mark J. Devine Esq.
507 Savannah Hwy.
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(864) 789-4586
Attorney for Appellant

Other Counsel of Record:
Ashleigh R. Wilson Esq.
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PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the State of South Carolina by mailing a copy of it with the United States Postal Service restricted delivery return receipt requested on May 22, 2015, addressed to the attorney of record, Ashleigh R. Wilson, P.O. Box 11549, Columbia, S.C. 29211.

May 22, 2015



Mark J. Devine
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MAY 26 2015

SC SUPREME COURT

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BERKELEY)
)
 Gregg Taylor,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 2013-CP-08-0385

2015 APR 24 PM 1:45
 FILED
 BERKELEY COUNTY, SC

ORDER OF DISMISSAL

Presiding Judge: The Honorable J.C. Nicholson Jr.
 Applicant's Attorney: Mark Devine, Esquire
 Respondent's Attorney: Ashleigh R. Wilson, Esquire
 Plea Counsel: Steve C. Davis, Esquire
 Date of Hearing: December 11, 2014
 Court Reporter: Joy C. Rueger

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed February 13, 2013. The Respondent made its Return on February 7, 2013. An evidentiary hearing into the matter was convened on December 11, 2014 at the Charleston County Courthouse. Shortly after the filing of this application, the Applicant was deported. He was not present at the hearing; however, he was represented at the hearing by Mark Devine, Esquire. Ashleigh R. Wilson, Esquire, of the South Carolina Attorney General's Office represented the Respondent.

The Applicant's plea counsel, Steve C. Davis, Esquire, testified at the hearing. Counsel for the Applicant submitted as an exhibit a sworn affidavit from the Applicant (Applicant's Exhibit 1). This Court had before it the guilty plea transcript, the records of the Berkeley County Clerk of Court, the PCR application, the Respondent's Return thereto, and the Applicant's Exhibit 1.

PROCEDURAL HISTORY

The Applicant was indicted at the March 2012 term of the Berkeley County Grand Jury for possession with intent to distribute marijuana (2012-GS-08-0363). The Applicant was represented by Steve C. Davis, Esquire. On December 17, 2012, the Applicant pled guilty to the lesser included offense of possession of marijuana less than one ounce- first offense. The Applicant was sentenced by the Honorable R. Markley Dennis to confinement for a period of six (6) months, provided upon the payment of a \$750 fine, the balance is suspended to one (1) year probation. The Applicant did not appeal his conviction or sentence.

The Applicant's sole claim is that counsel was ineffective for failing to advise him of the immigration consequences associated with pleading guilty.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon his or her credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Summary of the Testimony

Steve C. Davis, Esquire, was present and testified he has been a trial lawyer for the past thirty-two years. He testified he practices a good bit of criminal defense. He testified most of his clients are legal residents, but he has experience representing non-legal persons from Jamaica. He testified he was retained by the Applicant in February 2012.

Counsel testified the Applicant was originally charged with possession with intent to

distribute marijuana. He testified the Applicant gave a confession then sought a positive resolution to the charges. Counsel testified the Applicant ultimately pled guilty and was sentenced to one year probation terminated upon the payment of a fine. He testified the Applicant received a great deal based on the facts and the evidence.

Counsel testified he and the Applicant discussed the Applicant's immigration status. He testified the Applicant told him that he was not a U.S. citizen. Counsel testified the Applicant consulted with an immigration attorney and knew a lot about his status and the consequences of pleading guilty. Counsel testified he advised the Applicant that if he pled guilty he could face deportation. Counsel testified he advised the Court during the Applicant's guilty plea of his concerns regarding the Applicant's immigration status and PCR. He testified the Court also advised the Applicant of the consequences of pleading guilty. Counsel testified the Applicant's immigration status was a collateral issue and the plea offer the Applicant received was the best deal he could receive. He testified the Applicant was very aware of the immigration consequences of pleading guilty. Lastly, counsel testified he was able to effectively communicate with the Applicant throughout his representation.¹

Ineffective Assistance of Counsel

The Applicant alleges that he received ineffective assistance of counsel. In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged 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

¹ In lieu of the Applicant's live testimony, counsel for the Applicant submitted a "Sworn Affidavit of Gregg Taylor" as Applicant's Exhibit 1.

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. The applicant 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 to evaluate allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Id. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. 668). 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." Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243-44 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the

guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)). When a defendant pleads guilty on the advice of counsel, the plea may only be attacked through a claim of ineffective assistance of counsel. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2002) (citations omitted).

This Court finds counsel is a criminal practitioner who has extensive experience in the trial of serious offenses. The record reflects that Applicant's plea was entered freely, voluntarily, knowingly, and intelligently. The Applicant told the plea court that he was satisfied with his attorney and that no one had threatened him or promised him anything to plead guilty.

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds that Applicant's attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, 466 U.S. at 668; Butler, 286 S.C. 441, 334 S.E.2d 813. This Court further finds counsel adequately conferred with the Applicant, conducted a proper investigation, and provided thorough representation. This Court finds that counsel's representation did not fall below an objective standard of reasonableness.

This Court finds the Applicant has failed to carry his burden of proving counsel was ineffective for failing to advise the Applicant of the immigration consequences associated with pleading guilty. This Court finds counsel provided credible testimony. This Court also finds the "Sworn Affidavit of Gregg Taylor" submitted on behalf of the Applicant is not credible. This Court finds and the record reflects the Applicant was fully advised that he could face deportation as a result of pleading guilty.

In Padilla v. Kentucky, the United States Supreme Court held that where the law is not succinct and straightforward, a criminal defense attorney must advise a non-citizen client that pending criminal charges may carry a risk of adverse immigration consequences. 130 S.Ct. 1473 (2010). This Court finds counsel adequately complied with the Court's ruling in Padilla by advising the Applicant that he could face deportation as a result of pleading guilty. This Court finds counsel's performance was not deficient. This Court also finds any alleged deficiency by counsel regarding his advice to the Applicant on this issue was cured by the plea judge during his colloquy with the Applicant during his guilty plea. The record reflects the plea court advised the Applicant that pleading guilty could subject him to being removed from this country. The following exchange took place between the Court and the Applicant during the Applicant's guilty plea.

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The Court: It's nice to have a resident expert, someone who's here with a green card, but we've talked about it. It doesn't matter where you're legal or illegal. If you commit a crime, you're subject to being removed from this country. Do you understand that Mr. Taylor?

The Defendant: Yes, sir.

The Court: So what we're doing today could affect your right to remain here. Do you understand that?

The Defendant: Yes, sir.

The Court: Still want to go forward with the plea?

The Defendant: Yes, sir.

The Court: Okay. Are you sure?

The Defendant: Yes, Sir.


This Court finds that it is clear from the record the Applicant was fully aware of the effect his guilty plea could have on his immigration status. The Applicant has failed to carry his burden of

proving counsel was deficient in this regard. The Applicant has also failed to show that but for counsel's performance, the Applicant would not have pled guilty. This Court finds this allegation is wholly without merit and this application for post-conviction relief is denied and dismissed with prejudice.

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, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner, nor was the Applicant prejudiced by counsel's representation. Therefore, this application for PCR must be denied and dismissed with prejudice.

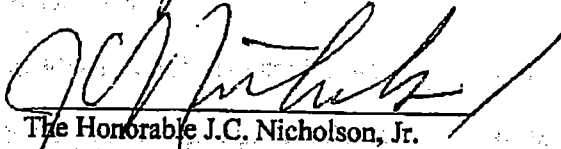
This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of written notice of entry of this Order to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely served and filed.

[Signature on the following page.]

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 20 day of April, 2015.



The Honorable J.C. Nicholson, Jr.
Presiding Judge
9th Judicial Circuit

CHARLESTON, South Carolina.

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY
IN THE COURT OF COMMON PLEAS

GREGG TAYLOR,

Applicant,

v.

STATE OF SOUTH CAROLINA,

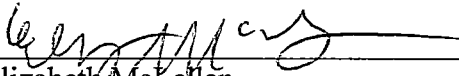
Respondent.

CERTIFICATE OF SERVICE


The undersigned hereby certifies that a true copy of the **Order of Dismissal** has been served upon the applicant by mailing one (1) copy in the United States mail, postage prepaid, addressed to:

Mark J. Devine, Esquire
The Law Office of Mark J. Devine
507 Savannah Hwy
Charleston, SC 29407

This 29th day of April, 2015.


Elizabeth McLellan
Legal Assistant for Respondent

SWORN to before me this 29th day April, 2015.


Notary Public for South Carolina.

My Commission Expires: 4/3/2024.

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CHARLESTON SC 29407



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