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June 11, 2018

RECEIVED

JUN 18 2018

The Honorable Daniel E. Shearhouse
Clerk, Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

S.C. SUPREME COURT

RE: Fredrick Mosley, Jr. v. State of South Carolina, Case No.: 2016-CP-18-1612

Dear Mr. Shearhouse:

Enclosed for filing is the Notice of Appeal (original and clocked copy) in the above Post Conviction Relief (PCR) case. Also enclosed are the following:

- (1) Proof of service of the Notice of Appeal on the respondent;
- (2) The Order of Dismissal &
- (3) A Request for Representation on Appeal.

The Applicant-Appellant was represented by me as an indigent pursuant to my contract with the South Carolina Commission on Indigent Defense (SCCID) to handle PCR cases. By copy of this letter, I am forwarding a duplicate set of documents to the SCCID.

The Request for Representation on Appeal and the Affidavit in Support thereof are signed by me as attorney for Applicant-Appellant. If you need anything further, do not hesitate to contact me. Thank you for your time and attention to this matter.

Sincerely,

Rodney D. Davis
South Carolina Bar #: 12396
101 Meeting Street, 5th Floor
Charleston, SC 29401
(843) 882-5065
Davis@LowcountryLawOffice.com

CC: Megan Jameson
Senior Assistant Deputy Attorney General

Paula Murdoch
Appellate Division, SCCID

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Kristi Harrington, Circuit Court Judge

RECEIVED

JUN 18 2018

S.C. SUPREME COURT

Case No.: 2016-CP-18-1612

Fredrick Mosley, Jr.,

Appellant,

v.

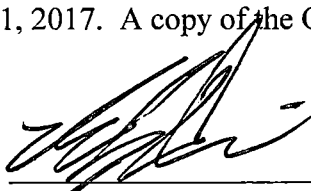
State of South Carolina,

Respondent.

NOTICE OF APPEAL

Fredrick Mosley, Jr. appeals the denial of his Post Conviction Relief application in this case. The Application for relief was denied, following an evidentiary hearing before the Honorable Kristi Harrington on December 11, 2017. A copy of the Order was received by counsel on May 14, 2018.

June 11, 2018



Rodney D. Davis
101 Meeting Street, 5th Floor
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Attorney for Appellant

Other Counsel of Record:
Megan Jameson, Senior Assistant Deputy Attorney General
Office of the Attorney General, State of South Carolina
P.O. Box 11549
Columbia, SC 29211-1549
Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Kristi Harrington, Circuit Court Judge

Case No.: 2016-CP-18-1612

Fredrick Mosley, Jr.,

Appellant,

v.

State of South Carolina,

Respondent.

Kristi Harrington
CLERK OF COURT
DORCHESTER COUNTY

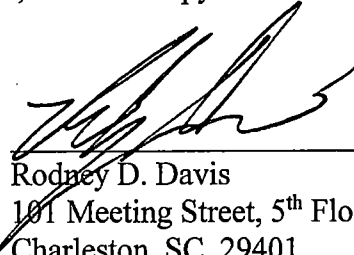
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June 11, 2018


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Megan Jameson, Senior Assistant Deputy Attorney General
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Columbia, SC 29211-1549
Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Kristi Harrington, Circuit Court Judge

Case No.: 2016-CP-18-1612

Fredrick Mosley, Jr.,

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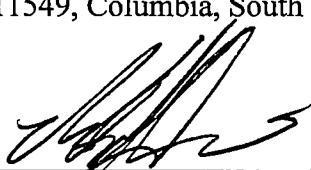
State of South Carolina,

Respondent.


PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the State by mailing a copy of it to the address of record, Megan Jameson, P.O. Box 11549, Columbia, South Carolina 29211-1549, on 6/11, 2018.

6/11, 2018


Rodney D. Davis
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Attorney for Appellant

Other Counsel of Record:
Megan Jameson, Senior Assistant Deputy Attorney General
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P.O. Box 11549
Columbia, SC 29211-1549
Attorney for Respondent


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CERTIFIED COPY
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA)
 COUNTY OF DORCHESTER)
)
 Fredrick B. Mosley, Jr. #359640)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 THE FIRST JUDICIAL CIRCUIT

Case No. 2016-CP-18-1612

ORDER OF DISMISSAL

CERTIFIED COPY
 2018 MAY 11 AM 9:11:5
 Clerk of Court
 DORCHESTER COUNTY

The above-captioned matter is before the court based on a post-conviction relief (PCR) application filed by Fredrick Mosley, Jr., on August 11, 2016. This Court convened an evidentiary hearing into this matter on December 11, 2017 at the Dorchester County Courthouse. Applicant was present at the hearing and represented by Rodney Davis, Esquire. Ruston W. Neely, Esquire, of the South Carolina Attorney General’s Office, represented Respondent. Applicant’s plea counsel was John Loy (Counsel), Esquire, who was present and testified. This Court had the opportunity to listen to the testimony of Applicant and Counsel. This Court had before it the records of the Dorchester County Clerk of Court regarding the subject conviction, the guilty plea transcript, Applicant’s records from the South Carolina Department of Corrections, and the pleadings in this matter.

I. PROCEDURAL HISTORY

In October 2014, the Dorchester County Grand Jury indicted Applicant¹ for unlawful carrying of a pistol, (2014-GS-18-0506), trafficking in cocaine, 10-28 grams, first offense (2014-GS-18-0507), and possession of a weapon during the commission of a violent crime (2014-GS-18-0508). Kyle L. Ward, Esquire, and Donald N. Sorenson, Esquire, of the Solicitor’s office

¹ Applicant’s name is spelled “Frederick” on the indictment, arrest warrants, and sentencing sheets, and is spelled “Fredrick,” on his application and in the SCDC records.

prosecuted the case. On September 14, 2015, Applicant pleaded guilty as indicted to trafficking cocaine and possession of a weapon during the commission of a violent crime before the Honorable Edgar W. Dickson. The indictment for unlawful carrying of a pistol was *nol prossed*. Judge Dickson sentenced Applicant to imprisonment for concurrent terms of five years each for trafficking cocaine and possession of a weapon during the commission of a violent crime. Applicant did not appeal his conviction or sentence.

The facts underlying the charges are as follows: On April 11, Applicant was a passenger in a vehicle that was pulled over during a traffic stop. Tr. 14, l. 25 – 15, ll. 1 - 17. The officers conducting the traffic stop asked the Applicant if he had any weapons, to which Applicant informed the officers “he had a strap on him” and lifted his shirt, revealing a .38 revolver in his lap. Id. at 15:19-21. When asked if he was in possession of any other illegal items, he informed the officers he had cocaine in his pocket. Id. at 15:24-16:1. The officers found a bag that was later determined to contain 10.97 grams of cocaine base.

II. ALLEGATIONS

In his PCR application, Applicant alleged he is being held unlawfully for the following reasons:

1. “Ineffective Assistance of Counsel,” in that:
 - a. Counsel failed “to inform me that a trafficking, first, 10-28 grams (charge) is a non-violent offense;”
2. “Involuntary Plea;”
3. “Illegal Sentence,” in that
 - a. “Trial judge was without jurisdiction to sentence me for poss. (of) a firearm during commission of violent crime being that trafficking first, 28 or less is nonviolent.”

At the evidentiary hearing, Applicant withdrew the above allegation #3 and modified allegations #1 and #2 to allege Counsel failed to inform Applicant the charges were violent and he would be required to serve all five years of his sentence. Applicant alleged his plea was

involuntary because he did not understand the collateral consequences of his guilty plea and would not have pleaded guilty if he had known he was pleading to a violent offense and would be required to serve five years' incarceration.

III. SUMMARY OF TESTIMONY

Applicant testified Counsel met with him three times in total and he was given a copy of his discovery. Applicant claimed Counsel did not review the discovery with him or go over the elements of the offenses to which he pleaded. Applicant alleged if he had known the charge he was pleading to was violent and he would be required to serve all five years of his sentence he would not have pleaded guilty. Applicant admitted he illegally had a gun in his waistband, he had the crack cocaine in his pocket, and identified the crack cocaine when he gave it to the arresting officer. Applicant also admitted the plea judge went over the violent and serious nature of the charges to which he pleaded.

Counsel testified he was prepared to argue the legality of the traffic stop. Counsel testified he went over the elements in layman's terms and discussed the serious and violent repercussions with Applicant. Counsel testified the Court would have had to believe both officers were lying to find the traffic stop invalid and it was unlikely the court would do so.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court reviewed the record in its entirety, listened to the testimony given, and heard the arguments presented at the evidentiary hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. This Court finds Counsel's testimony was credible and persuasive and Applicant's testimony lacked credibility. Therefore, this Court dismisses Applicant's application for the reasons set out below:

A. Ineffective Assistance of Plea Counsel

This Court finds the record fully supports the knowing and voluntary nature of Applicant's guilty plea. 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). “A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel’s representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Thus, an applicant must show both error and prejudice to win relief in a PCR proceeding.” Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001).

The court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. The transcript reflects the guilty plea was knowingly and voluntarily entered with a full understanding of the charges and consequences of the plea. Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant’s right to contest the validity of such a plea is usually, but not invariably, foreclosed. See Blackledge v. Allison, 431 U.S. 63, 73-74 (1977). Statements made during a guilty plea should be considered

conclusively, unless an Applicant presents valid reasons why he should be allowed to depart from the truth of his statements. See Crawford v. U.S., 519 F.2d 347, 350 (4th Cir. 1975) (overruled on other grounds by U.S. v. Whitley, 759 F.2d 327 (4th Cir.1985)). Applicant presented no reasons to show that he should be allowed to depart from the truth of the statements he made during his guilty plea hearing. For the reasons set out below, this Court finds the record and credible testimony support Applicant had a full understanding of the charges and consequences of his guilty plea:

Involuntary Guilty Plea

Applicant asserts his guilty plea was entered involuntarily as the result of ineffective assistance of counsel. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the Applicant had a full understanding of the consequences of his plea and the charges against him. See Boykin, 395 U.S. at 243. In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. See Harris v. Leeke, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984).

The transcript reflects the guilty plea was knowingly and voluntarily entered with a full understanding of the charges and consequences of the plea. Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. See Blackledge, 431 U.S. at 73-74. Statements made during a guilty plea should be considered conclusively, unless an Applicant presents valid reasons why he should be allowed to depart from the truth of his statements. See Crawford, 519 F.2d at 350. Applicant presented no reasons to show that he should be allowed to depart from the truth of the statements he made during his guilty plea hearing.

An applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness, and there is a reasonable probability, but for trial counsel's errors, he would not have pleaded guilty, but would have insisted on going to trial instead. See Roscoe, 345 S.C. at 20, 546 S.E.2d at 419. Given the Applicant's burden of proof and the analysis to be applied to this claim, the Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it will be treated as such.

An applicant's knowing and voluntary waiver of statutory or constitutional rights 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." Roddy, 339 S.C. at 34, 528 S.E.2d at 421. "[T]he voluntariness of a guilty plea is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing." Dalton, 376 S.C. at 138, 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." Id. at 137-38, 654 S.E.2d at 874.

Having reviewed the pleadings, considered the applicable law, and reflected upon the plea transcript and testimony provided at the evidentiary hearing, this Court denies Applicant's request for post-conviction relief. "The imposition of a sentence may have a number of collateral consequences, however, and a plea of guilty is not rendered involuntary in a constitutional sense if the defendant is *not* informed of the collateral consequences. Parole eligibility typically is a collateral consequence of sentencing about which a defendant need not be specifically advised before entering a guilty plea." Brown v. State, 306 S.C. 381, 382-83, 412 S.E.2d 399, 400 (1991)

(internal citations omitted). “Because the consequences of a violent crime are collateral, Smith's guilty plea is not rendered involuntary due to counsel's failure to inform him of the consequences of a violent crime conviction.” Smith v. State, 329 S.C. 280, 286, 494 S.E.2d 626, 629 (1997). Therefore, if Counsel had failed to advise Applicant of the collateral consequences of pleading to a violent offense it would not render Applicant’s plea involuntary. Here, however, Counsel credibly testified he went over the collateral consequences of the plea with Applicant. This Court finds Applicant was properly advised of all the consequences of his plea by his attorney and the plea judge.

This Court finds Applicant’s assertion he did not understand the consequences of his plea lacks credibility. This Court finds Applicant has failed to prove his plea was involuntary, unknowing, or unintelligent. Therefore, this Court finds Applicant has failed to prove Counsel was deficient or he was prejudiced by any alleged deficiency of Counsel. Accordingly, this Court denies and dismisses this allegation.

IV. CONCLUSION


Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations 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 notes Applicant must file and serve a notice of appeal within thirty (30) days from receipt 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), SCRPC, provides that if Applicant wishes to seek appellate review, his post-conviction relief attorney must serve and file a notice of appeal on Applicant's behalf. Applicant and his attorney are 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 must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 23rd day of April, 2018



KRISTIN L. HARRINGTON
Presiding Judge
1st Judicial Circuit

Charleston, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)
)
FREDRICK MOSLEY, JR.,)
Applicant.)
)
-versus-)
)
STATE OF SOUTH CAROLINA,)
)
Respondent.)

IN THE SUPREME COURT OF SOUTH CAROLINA

Case No.: 2016-CP-18-1612

REQUEST FOR REPRESENTATION ON APPEAL

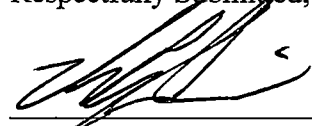
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DORCHESTER COUNTY
SOUTH CAROLINA

On behalf of the request of the above-named Applicant, to be represented by the South Carolina Commission of Indigent Defense, Appellate Division (SCCID), the undersigned attorney would show unto this Honorable Court that:

1. He is the attorney for the Applicant-Appellant in the above captioned case. The Applicant-Appellant was in custody during and taken into custody immediately following the Post Conviction Relief (PCR) hearing and was not available to personally sign this request;
2. The Applicant-Appellant was represented by the undersigned attorney as an indigent, pursuant to a contract with the SCCID;
3. The Applicant-Appellant has been informed that he may request assistance from the SCCID Appellate Division in perfecting his appeal;
4. A timely Notice of Intent to Appeal has been filed on the Applicant-Appellant's behalf;
5. The Applicant-Appellant has been informed that nothing requires SCCID Appellate Division to pursue this appeal unless that office's Chief Attorney is satisfied that there is arguable merit to this appeal and that he cannot afford to hire an attorney.

At this time, the Applicant-Appellant requests the aid of the SCCID Appellate Division in perfecting his appeal to the South Carolina Court of Appeals.

Respectfully Submitted,




Rodney D. Davis
South Carolina Bar #: 12396

6/11, 2018
Charleston, South Carolina.

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

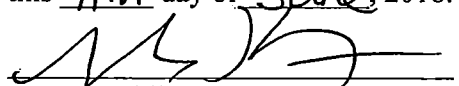
VERIFICATION

PERSONALLY appeared before me, Rodney D. Davis, being first duly sworn, deposes and says that he has read the foregoing *Request for Representation on Appeal* on behalf of Fredrick Mosley, Jr. and the same is true of his knowledge except those matters alleged on information and belief, and as to those matters, he believes them to be true.



Rodney D. Davis
South Carolina Bar #: 12396

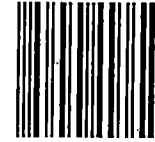
SWORN to and subscribed to me
this 11th day of June, 2018.



Notary Public for South Carolina
My Commission expires 4/4/28



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29211

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~~Rodney D. Davis
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Charleston, SC 29401~~

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Clerk, Supreme Court of South Carolina
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