THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
L. Casey Manning, Circuit Court Judge

Case No: 2006-CP-40-0346

Corey Edmond.....Petitioner.

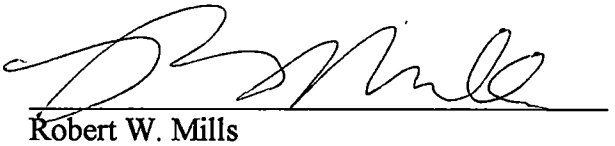
v.

State of South Carolina.....Respondent.

NOTICE OF APPEAL

Corey Edmond appeals the orders of the Honorable L. Casey Manning dated August 4, 2016 and June 21, 2018. Attorney for Appellant received written notice of entry of the final order on June 25, 2018 by email.

July 20, 2018



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PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the State of South Carolina by depositing a copy of it in the United States Mail, postage prepaid, on July 20, 2018, addressed to the attorney of record, Lindsey Ann McCallister, Office of the Attorney General, P.O. Box 11549, Columbia, South Carolina 29211-1549

July 20, 2018

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STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT
Corey Edmond, #217657, Applicant, v. State of South Carolina, Respondent.	Case No. 2006-CP-40-0346 **ORDER OF DISMISSAL**

This matter comes before the Court by way of an Application for Post-Conviction Relief filed January 18, 2006. Respondent made its Return on June 13, 2007. The Court convened an evidentiary hearing into the matter on July 15, 2014, at the Richland County Courthouse. Applicant was present at the hearing and represented by Robert W. Mills, Esquire. J. Croom Hunter, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant also presented testimony from Dr. Geoffrey McKee and Angela Riles. Applicant's trial counsel, April Sampson, Esquire, testified for Respondent. The Court had before it a copy of the transcript, the records of the Richland County Clerk of Court regarding the subject convictions. Applicant's records from the South Carolina Department of Corrections, and the pleadings in this matter. The Court finds as follows:

I. PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. The Applicant was indicted at the December 2003 term of the Richland County Grand Jury for carjacking with bodily injury (2003-GS-40-6963) and armed robbery (2003-GS-40-6962). Applicant was represented by April Sampson, Esquire. On April 11, 2005, the Applicant pled guilty as indicted. Applicant was sentenced by the

Honorable James W. Johnson, Jr., to confinement for a period of twenty-five (25) years for each indictment, to be served concurrently. The Applicant did not appeal his conviction or sentence.

II. ALLEGATIONS

At the PCR hearing, Applicant proceeded with the following allegations:

1. Involuntary guilty plea:
   A. Counsel failed to prepare Applicant for his plea;
   B. Counsel promised Applicant he would receive a ten year sentence.
2. Ineffective assistance of counsel:
   A. Counsel failed to request a Blair hearing;

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the evidentiary hearing. The Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court finds Counsel's testimony credible and Applicant's testimony not credible. The 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). Furthermore, this Court finds that Applicant abandoned all allegations except for those specifically addressed below.

A. Involuntary Guilty Plea

In post-conviction relief 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) (citing Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993); Hyman v. State, 278 S.C. 501, 299 S.E.2d 330 (1983); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993)). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345

S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citing Hill v. Lockhart, 474 U.S. 52; Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000); Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000); Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994)). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. at 56. Furthermore, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant. Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63 (1977)). 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 (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)).

1. Failure to prepare Applicant for his plea

Applicant testified at his PCR hearing that plea counsel did not thoroughly prepare him for his guilty plea. This Court finds Applicant's testimony to be not credible. The plea colloquy is clear; the plea judge went over Applicant's right to trial as well as Applicant's potential exposure as a result of pleading guilty. Furthermore, Applicant told the plea judge he understood the potential sentence he was facing. Applicant specifically told the plea judge he did not wish to have a jury trial, and he wanted to give up that right and enter a plea of guilty. Additionally, plea counsel testified she went over all of those things with Applicant prior to his guilty plea. This Court has no reason to doubt plea counsel's testimony and finds it totally credible. Applicant is merely unhappy with the decision he made to plead guilty. The record and testimony before this Court leave no doubt Applicant was fully aware of his right to a jury trial and the consequences of his guilty plea. Applicant no doubt decided to plead guilty to avoid a potentially higher sentence if found guilty at trial. As this Court can find no

evidence Applicant's plea was not entered freely, knowingly, and voluntarily, the allegation is without merit and must be denied.

2. Promise of a ten year sentence

Applicant alleges his guilty plea was involuntarily entered because Counsel promised him he would receive a ten year sentence. This Court finds this allegation is without merit. At the PCR hearing, Applicant testified that immediately prior to his plea, Ms. Sampson promised him he would only receive a ten year sentence if he pled guilty. Applicant also presented testimony from Angela Riles, his common law wife, that Ms. Sampson informed them prior to the plea that Applicant would only receive a ten year sentence if he pled guilty. Respondent then presented testimony from Ms. Sampson. Ms. Sampson testified she did not believe a trial was in Applicant's best interest because he confessed to the police. Ms. Sampson testified that Applicant wanted to plead guilty in exchange for a ten year sentence, and she indicated she would try to get him ten years, but she never promised Applicant or any member of his family that he would receive a ten year sentence. Ms. Sampson testified that she had prepared Applicant's case for trial, and the day he pled guilty was initially scheduled for pretrial motions. She testified that Applicant decided that day he wanted to plead guilty, rather than go to trial because he thought he would lose at trial. Ms. Sampson reiterated that she never told Applicant he would get ten years by pleading guilty.

This Court has had the opportunity to observe each witness's testimony and finds Applicant's testimony, as well as Ms. Riles' testimony, not credible. Conversely, this Court finds Ms. Sampson's testimony entirely credible. Given these credibility determinations, as well as this Court's familiarity with Ms. Sampson's ethical practices and legal abilities, this Court finds Applicant's allegation is without merit and must be denied.

B. <u>Ineffective Assistance of Counsel</u>

In this post-conviction relief action, 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) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of trial counsel as a ground for relief, Applicant must prove trial 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." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether trial counsel provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The Court strongly presumes trial counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). 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 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, Applicant must prove trial counsel's performance was deficient. Id. Under this prong, the Court measures trial counsel's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, trial counsel's deficient performance must have prejudiced 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. at 117-18, 386 S.E.2d at 625.

As a general matter, this Court finds Applicant has failed to show Counsel's performance fell below an objective standard of reasonableness. Counsel's testimony indicated she was extremely familiar with the facts of Applicant's case. This Court finds Counsel met with Applicant an adequate

number of times and was familiar with the discovery materials. Counsel indicated she explained Applicant's constitutional rights, and she explained the differences between going to trial and entering a guilty plea. As such, Counsel's testimony indicated his performance was well within the range required under the law. This Court finds no reason to believe Counsel's testimony was not credible. Accordingly, this Court finds Applicant's allegations are without merit.

1. Failure to request a Blair hearing

Applicant argues Counsel was ineffective for failing to request a Blair hearing on the day of his plea in order to determine whether he was competent to enter the plea. This Court finds this allegation to be without merit. At the PCR hearing, Applicant presented testimony from Dr. Geoffrey McKee. Dr. McKee testified he has been a board certified forensic psychologist for twenty eight years. Dr. McKee testified he met with Applicant six times prior to his plea, with the last meeting on November 19, 2004. He testified he also reviewed all of Applicant's medical records prior to the plea. Dr. McKee testified that his findings from his meetings with Applicant indicated that Applicant was competent to stand trial as of November 2004. Dr. McKee testified Applicant was diagnosed with bipolar psychoaffective disorder and was on a host of medications. Dr. McKee testified he prepared a report dated December 4, 2004 outlining his findings, which was admitted as Applicant's Exhibit 1 at the PCR hearing. Dr. McKee testified that his findings indicated Applicant was competent to stand trial so long as he was taking his medications. He further testified that if Applicant did not take his medications, he could possibly be found not competent. Dr. McKee testified his report did not indicate Counsel needed to have Applicant re-evaluated prior to his plea.

On cross-examination by the State, Dr. McKee explained the differences between a psychologist and a psychiatrist, with one of the principal differences being that psychiatrists are medical doctors who can prescribe medications; whereas psychologists do not have the training,

expertise, or licensing required to prescribe medications. Dr. McKee also testified he did not have any indication or reason to believe any changes affecting Applicant's competency occurred between his last meeting with Applicant on November 19, 2004, when he was found competent, and his plea in April 2005. Dr. McKee acknowledged he had no way to tell whether Applicant was taking his medications on a regular basis. On questioning by the Court, Dr. McKee once again reiterated that his opinion was that Applicant would be competent to enter his plea if he was taking his medications.

Applicant was evaluated by Dr. McKee prior to the PCR hearing and found competent to proceed. Applicant testified that while he indicated to the plea judge that he had taken his medications, that testimony was not entirely accurate. Applicant testified at the PCR hearing that prior to his guilty plea, he had only taken some of his medications. On cross-examination, Applicant admitted he told the plea judge that he had taken his medication, and it helped him understand what was going on at the time of his plea. Applicant insisted his testimony to the plea judge was not entirely accurate.

Plea Counsel, April Sampson, testified she wanted to have Applicant evaluated because she had concerns about his mental state. Sampson testified she initially attempted to have Applicant evaluated by Dr. Donna Schwartz-Watts, but due to time constraints and her inability to get Applicant an appointment with Dr. Schwartz-Watts, she had him evaluated by Dr. McKee. Sampson testified Applicant met with Dr. McKee a number of times prior to his plea. Sampson testified that on the day of Applicant's plea she had no concerns with his mental competency. She testified she had been in constant contact with both the medical doctor who was treating Applicant and Applicant's wife, and she had no concerns that Applicant was not taking his medications as prescribed. Sampson also testified that she spoke with Dr. McKee prior to Applicant's plea, and Dr. McKee indicated his belief to her that Applicant was still competent to enter his plea. Additionally, Sampson testified the doctor at the facility where Applicant was incarcerated at the time of his plea indicated Applicant was taking his

medication regularly. Sampson testified that because she had no indication Applicant was not competent at the time of his plea she had no reason to have him evaluated again.

This Court has reviewed the applicable testimony and exhibits, as well as the record of Applicant's plea and finds Applicant's allegation that he received ineffective assistance of counsel due to Plea Counsel's failure to request a Blair hearing prior to his plea to be meritless. In determining if counsel is ineffective for failing to request a competency hearing, an applicant must show that a reasonable probability exists that he would be found incompetent at the time of his trial or plea. Jeter v. State, 308 S.C. 230, 417 S.E2d 594 (1992). Counsel may reasonably rely on his own perceptions in deciding if a client is competent to stand trial. Id. Initially, this Court finds Plea Counsel's testimony credible and Applicant's testimony not credible. This Court also finds Dr. McKee's testimony credible. The only evidence presented by Applicant that he was not competent to enter his plea was his own self-serving testimony that he was not truthful with the plea judge when he told him he was taking his medications. Such testimony leaves this court with the age old question of whether Applicant was being truthful at the PCR hearing or at the plea, since his conflicting testimony indicates he lied at one of the proceedings. Because testimony from both Dr. McKee and Ms. Sampson indicates neither had any reason to believe Applicant was not taking his medication as prescribed at the time of his plea, this Court must reach the conclusion that Applicant was not truthful at the PCR hearing. Additionally, this Court finds Ms. Sampson reasonably relied on her own judgment to determine Applicant was competent to enter his plea. Accordingly, this Court must find Applicant's allegation without merit.

C. 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, the Court finds Applicant has abandoned any such

allegations.

IV. 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. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The 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), SCRCP, 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 4 day of August, 2016.

L. CASEY MANNING
Presiding Judge
Fifth Judicial Circuit

Columbia, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT
Corey Edmond, #217657, Applicant, v. State of South Carolina, Respondent.	Case No. 2006-CP-40-0346 **ORDER DENYING APPLICANT'S MOTION TO ALTER OR AMEND JUDGMENT**

This matter comes before the Court by way of Applicant's "Motion to Alter Judgement Pursuant to SCRCP 59(e)." Respondent made its Return to this motion requesting it be denied and dismissed.

This Court's Order of Dismissal denying and dismissing Applicant's post-conviction relief application was filed on August 8, 2016. Based upon careful reconsideration of all the evidence in this case and upon full consideration of Applicant's motion and Respondent's return, this Court is not persuaded to alter or amend the judgment. This Court further finds that oral argument would not aid in the reconsideration of the original judgment. Therefore, this Court finds that the original Order of Dismissal shall stand as it was written.

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

L. Casey Manning
Presiding Judge
Fifth Judicial Circuit

Aiken, South Carolina