



WALLER LAW GROUP

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SEP 17 2018

S.C. SUPREME COURT

September 13, 2018

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


Re: Darrell Griffin vs. State of South Carolina
C/A No: 2016-CP-40-01065

Dear Mr. Shearouse:

Please find enclosed one (1) original and one (1) copy each of Applicant's Notice of Appeal and Certificate of Service in the above referenced case. I would appreciate you filing the original and returning the clocked copies in the enclosed envelope.

I was appointed to represent Mr. Griffin in this matter and am also enclosing a copy of the Order of Dismissal. If you have any questions, please do not hesitate to ask. My telephone number is 803-520-7278.

Sincerely,



Jonathan D. Waller

Cc: Lindsey A. McCallister, South Carolina Office of Attorney General

Enclosures

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Paul M. Burch, Jr., Circuit Court Judge

2016-CP-40-01065

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SEP 17 2018

S.C. SUPREME COURT

Darrell Griffin, #363902

Appellant,

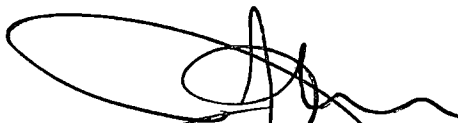
v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Darrell Griffin, #363902, appeals the Order of Dismissal denying his Application for Post-Conviction Relief filed August 31, 2018, issued by the Honorable Paul M. Burch, Jr., Presiding Judge, Fifth Judicial Circuit.



Jonathan D. Waller

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ATTORNEY FOR PETITIONER

September 13, 2018

Other Counsel of Record:

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STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

SEP 17 2018

APPEAL FROM RICHLAND COUNTY
Paul M. Burch, Jr., Circuit Court Judge

S.C. SUPREME COURT

2016-CP-40-01065

Darrell Griffin, #363902

Appellant,

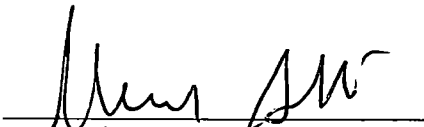
v.

STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the Appellant's Notice of Appeal in the above-entitled case has been served upon opposing counsel, Lindsey A. McCallister, Assistant Attorney General, by mailing in an envelope properly addressed with postage prepaid on this day, to her office located at P.O. Box 11549, Columbia, SC 29211.


M. David Scott

September 13, 2018

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

2016-CP-40-01065

Darrell Griffin,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

ORDER OF DISMISSAL

RICHLAND COUNTY
FILED
2018 AUG 31 PM 2:40
JEANETTE W. HARRISON
C.C.P. & O.S.

This matter is before this Court by way of an application for post-conviction relief (PCR) filed February 20, 2016. The State made its return on May 2, 2016. A hearing was convened at the Richland County Courthouse on August 31, 2017. Applicant was present and represented by Jonathan Waller, Esquire. The State was represented by Jessica Kinard of the Office of the South Carolina Attorney General.

This Court heard testimony from Applicant and two of his lawyers, Alicia Goode, Esquire, and Tracy Pinnock, Esquire. This Court also had before it the transcript of Applicant's guilty plea hearing, the Clerk of Court's records regarding the subject convictions, and the Applicant's records from the Department of Corrections.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Aiken County Clerk of Court. Applicant was indicted during the October 2012 and January 2015 terms of the Richland County grand jury for murder, desecration or destruction of human remains, and arson in the third degree. Applicant was represented by Alicia Goode, Esquire. Tracy Pinnock, Esquire, and Lucas Hawks, Esquire.

Applicant proceeded to trial but during the course of trial decided to plead guilty to all three charges before the Honorable D. Craig Brown. Judge Brown sentenced Applicant to thirty years' imprisonment. Applicant did not appeal his guilty plea and sentence.

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 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 their 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 (1985).

Ineffective Assistance of Counsel and Involuntary Plea

Applicant alleges his plea was rendered involuntary by ineffective assistance of counsel. The burden of proof is on the applicant in a PCR proceeding to prove the allegations in his application. Bell v. State, 321 S.C. 238, 467 S.E.2d 926 (1996); Rule 71.1(e), SCRPC.

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1996). In order to prove prejudice, an applicant must show that but for counsel's errors, there is a reasonable probability the result at trial would have been different. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Id. Where trial counsel articulates a valid reason for employing certain trial strategy, such conduct

should not be deemed ineffective assistance of counsel. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1995); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). With respect to guilty plea counsel, an applicant must show a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would insist on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985); Stalk v. State, 383 S.C. 559, 681 S.E.2d 592 (2009); Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (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, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, the PCR court should consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

Prior Conviction

Applicant alleges his lawyers were ineffective because they advised him that a prior conviction for attempted murder could be to impeach his testimony, and this factored into his decision to plead guilty. He claims counsel was ineffective for giving this advice because the conviction was more than ten years old.

Goode testified she was concerned that Applicant might open the door to prior bad act testimony. Goode testified she was concerned the State would be able to admit other instances of Applicant's violence against women, specifically choking, as a common scheme or plan. She testified, "It was more than just the conviction." Goode testified she was concerned this type of testimony would undermine Applicant's accident defense. Goode testified she relayed her concerns to Applicant, as well as her concerns that the State's case would become much stronger when it entered cause of death evidence.

This Court finds counsel's performance was not deficient. Counsel explained her opinion about the strength of the State's case and the risks of trial. The strengths and weaknesses of the State's case were known to Applicant and he chose to plead guilty to minimize the severity of his punishment. This allegation is denied.

Unanimous Verdict

Applicant claims his lawyers told him that in order to be acquitted, all twelve jurors would have to agree he was not guilty. Pinnock testified she went through a "trial rundown" with Applicant explaining trial procedure, but did not recall specifically everything they discussed. The Court finds Applicant's testimony not credible. The plea judge instructed Applicant that if he exercised his right to a jury trial, the jury would have to find him unanimously guilty beyond a reasonable doubt. The Court finds Applicant has failed to meet his burden showing his lawyers were ineffective in this regard.

Mandatory Minimum Sentence

Applicant claims he was unaware that a murder conviction would make him ineligible for parole. Pinnock testified she believed Applicant understood the sentence he was agreeing to, and that Applicant understood he would face life without parole if convicted. Goode testified she discussed the penalties with Applicant, but couldn't say for sure whether Applicant was aware that a murder sentence must be served day for day. The plea court instructed Applicant that because of his plea to murder, he could "count on doing day for day." Applicant told the court that he understood. Furthermore, Applicant told the plea court he had spoken with his lawyers as long as he needed, understood their conversations, and did not need any more time with them. He further told the court he was pleading guilty freely and voluntarily, and had not been coerced to do so.

When asked how she thought the trial was going after the first two days, Goode responded "not good." Goode testified she thought the State had done damage by introducing evidence of Applicant's dishonesty to law enforcement. Goode testified it was Applicant's idea to ask if the State would bring back its plea offer of a negotiated thirty year sentence in exchange for a plea to murder only. Goode approached the prosecutor who agreed to offer thirty years in exchange for a plea to all three charges. Goode testified she believed it was in Applicant's interest to accept the offer, which he did. Goode testified the decision to plead guilty was Applicant's. This Court finds Counsel's testimony on this claim highly credible. This Court finds Applicant's testimony lacks credibility. This Court finds that Applicant has failed to meet his burden showing his lawyers were ineffective or that his plea was involuntary.

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 advises the parties that in order to secure the appropriate appellate review, notice of appeal must be served and filed within thirty (30) days after receipt by counsel of notice of entry of this order. See Rules 203 and 243 of the South Carolina Appellate Court Rules. This Court notes that post-conviction relief counsel must advise an applicant of the right to seek appellate review of a post-conviction relief order. State v. Bray, 366 S.C. 137, 620 S.E.2d 743 (2005). Also, pursuant to Austin v. State, 305 S.C. 453, 409 S.E. 2d 395 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRPC, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on an applicant's

behalf.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

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


Paul M. Burch, Jr.
Presiding Judge
Fifth Judicial Circuit


Chata Full, South Carolina

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