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OCT 02 2018

S.C. SUPREME COURT

September 26, 2018

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

Re: Michael R. Fields, Jr. vs. State of South Carolina
C/A No: 2017-CP-21-0845

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. Fields 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

Waller Law Group
1116 Blanding Street, Suite 2B
Columbia, SC 29201

803-520-7278
www.wallerlawgroup.com
jonathan@wallergroupsc.com

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM FLORENCE COUNTY
Michael G. Nettles, Circuit Court Judge

2017-CP-21-0845

RECEIVED
OCT 02 2018
S.C. SUPREME COURT

Michael R. Fields, Jr., # 368754,

Appellant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Michael R. Fields, Jr., # 368754, appeals the Order of Dismissal denying his Application for Post-Conviction Relief filed September 19, 2018, issued by the Honorable Michael G. Nettles, Presiding Judge, Twelfth Judicial Circuit.



Jonathan D. Waller

Waller Law Group
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jonathan@wallergroupsc.com
ATTORNEY FOR PETITIONER

September 26, 2018

Other Counsel of Record:

Lindsey A. McCallister, Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3319

STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM FLORENCE COUNTY
Michael G. Nettles, Circuit Court Judge

S.C. SUPREME COURT

2017-CP-21-0845

Michael R. Fields, Jr., # 368754,

Appellant,

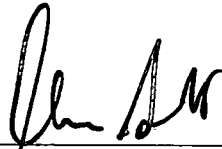
v.

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 27, 2018

FILED

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2017CP2100845

Michael Fields

South Carolina State Of

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: Plaintiff Defendant
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

| Judgment in Favor of (List name(s) below) | Judgment Against (List name(s) below) | Judgment Amount To be Enrolled (List amount(s) below) |
|----------------------------------------------|------------------------------------------|----------------------------------------------------------|
| | | |
| | | |
| | | |

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

Judge Code

9/19/2018
Date

For Clerk of Court Office Use Only

This judgment was entered on **September 19, 2018**, and a copy mailed first class or placed in the appropriate attorney's box on **September 20, 2018**, to attorneys of record or to parties (when appearing pro se) as follows:

CERTIFIED: A TRUE COPY
Doris Poulos O'Hara
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

Jonathan D Waller 1116 Blanding Street Suite 2B
Columbia, SC 29201

Lindsey Ann McCallister PO Box 11549 Columbia, SC
29211-1549

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Doris P O'Hara

Court Reporter

Doris Poulos O'Hara - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT

Michael R. Fields, #368754,)
)
Applicant,)

C.A. No. 2017-CP-21-0845

v.)

ORDER OF DISMISSAL

State of South Carolina,)
)
Respondent.)

DORIS PAULOS O'HARA
CLERK C.P. & G.S.
FLORENCE COUNTY, SC

2018 SEP 19 PM 2:21

FILED

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed by Michael R. Fields (Applicant) on March 29, 2017. Respondent made its Return and Partial Motion to Dismiss on November 9, 2017. An evidentiary hearing into the matter was convened on February 2, 2018, at the Florence County Courthouse before the undersigned. Jonathan Waller, Esquire, represented Applicant. Lindsey A. McCallister, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

At the hearing, Applicant testified on his own behalf. Daniel Jordan, Applicant's plea counsel, testified on behalf of Respondent. This Court also had before it a copy of the records of the Florence County Clerk of Court, records from the South Carolina Department of Corrections, the application, Respondent's Return, and the plea transcript.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. In March 2015, the Florence County Grand Jury indicted Applicant for attempted murder, first-degree burglary, strong-arm

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Doris Paulos O'Hara
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

robbery, and conspiracy (2015-GS-21-0286). Daniel Tindall Jordan, Esquire, represented Applicant. Frederick A. Hoefler, II, Esquire, of the Twelfth Circuit Solicitor's Office prosecuted the case on behalf of the State. On June 16, 2016, Applicant pleaded guilty to the lesser-included offenses of assault and battery of a high and aggravated nature (ABHAN) and second-degree burglary - non-violent before the Honorable Thomas A. Russo. In exchange for the guilty plea, the State dismissed the charges of strong-arm robbery and conspiracy. On June 24, 2016, Judge Russo sentenced Applicant to imprisonment for concurrent terms of fifteen years for ABHAN and ten years for second-degree burglary. Applicant did not appeal his convictions or sentences.

ALLEGATIONS

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

1. "Ineffective Assistance of Counsel"
 - a. "False information from counsel"
 - b. "Counsel told me I wouldn't get any more time than co-defendant"
2. "Misleading statements during sentencing"
 - a. "Prosecutor used persuasive statement"

On January 18, 2018, Applicant, through counsel, amended his application to add the following additional claims of ineffective assistance of counsel:

1. Failure "to properly investigate the facts and circumstances surrounding the allegations against Applicant, thus rendering Applicant's guilty plea unknowingly and involuntarily entered into."
2. Failure "to conduct adequate amount of meeting[s] with Applicant to review discovery so that Applicant would know the allegations against him, thus rendering Applicant's guilty plea unknowingly and involuntarily entered into."

At the beginning of the hearing, Applicant's counsel indicated he would proceed solely on the allegations in his amended application. Accordingly, this Court finds the allegations pleaded in

Applicant's original application have been abandoned, and they are hereby denied and dismissed with prejudice.

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 PCR 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. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

Applicant alleges he received ineffective assistance of counsel. 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, Applicant must prove "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 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 plea counsel. Id. at 117, 625. First, the applicant must prove 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, 466 U.S. at 688 (1984)). 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. 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 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).

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, 345 S.C. at 20, 546 S.E.2d at 419. 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, 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)). "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)).

Applicant testified he remained in jail after his arrest on these charges and never posted bond. Applicant testified he was represented by one other attorney before Counsel was assigned to his case. According to Applicant, Counsel never came to visit him at the jail while he was incarcerated prior to his guilty plea, and he only met with Counsel one time at court. He testified this was the only time he met with any attorney; he never met with the first attorney assigned to his case.

Applicant testified the only issue discussed at the meeting was the guilty plea. Applicant testified he and Counsel discussed the charges and possible penalties, but not any of the evidence,

the elements the State would have to prove, or possible defenses. Applicant testified he and his two codefendants all gave statements to law enforcement, and Applicant received copies of discovery in his case, but Counsel did not review any of the statements or other discovery with him. According to Applicant, the statements of his codefendants were the only evidence linking him to the crime.

Applicant further testified he never discussed the possibility of going to trial with Counsel, and Counsel did not mention it or explain that option to him. Applicant testified he wanted a trial, but he agreed to plead guilty because he “didn’t know too much,” and he was afraid of facing a potential sentence of thirty years to life at trial. According to Applicant, he believes Counsel should have explained the State’s evidence and possible defenses more thoroughly, so Applicant “could have had a chance at trial.” However, on cross-examination, Applicant acknowledged the plea judge informed him of his right to a trial, but Applicant told the court he wished to plead guilty. Further, Applicant acknowledged telling the plea court he was satisfied with Counsel’s services, had enough time to discuss his case with Counsel, and no one had coerced him or promised him anything in order to induce his guilty plea.

Counsel testified he was appointed to Applicant’s case in early 2014 and met with Applicant seven to eight times prior to the guilty plea. According to Counsel, Applicant’s case was listed on the trial roster at least three times. Counsel testified Applicant and his codefendants broke into a house and severely beat the homeowner in the course of robbing the home. Counsel further testified all three gave statements implicating each other, and Applicant’s statements did not deny his involvement. Counsel testified the core of Applicant’s statement always remained the same in that he admitted he and the codefendants went to the house together and arrived and

left in Applicant's car. According to Counsel, the only thing that changed in Applicant's statement was whether or not they were invited to the house and who went inside. Counsel testified he discussed discovery, including the statements, with Applicant, and Applicant never said he wanted a trial. Counsel further testified there was no basis to challenge Applicant's statements nor did he believe Applicant had any other meritorious defenses.

Counsel testified the female codefendant was the ringleader, and the solicitor's office wanted Applicant and the third codefendant to testify against her, which they both did. Counsel further testified the only agreement with the State was to reduce the charge in exchange for Applicant's testimony, which was the same offer made to the other testifying codefendant, and Applicant was informed the recommendation from the State hinged on the extent of his cooperation. According to Counsel, Applicant entered his guilty plea and sentencing was deferred until after he gave testimony at the female codefendant's trial. Counsel further testified he was present for Applicant's testimony during the codefendant's trial, and Applicant admitted he had gone inside the house at that time.

This Court finds Applicant has failed to prove Counsel's performance was deficient in any way. The Court finds Counsel's testimony on these issues to be credible, while also finding Applicant's testimony is not credible. Counsel testified he met with Applicant numerous times, and reviewed discovery, including Applicant's statement and those of his codefendants with Applicant. Counsel further testified there was no basis to challenge Applicant's statement, and in fact, Applicant's testimony against his codefendant admitted his own involvement in the crime. "[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of

the facts and circumstances of the case.” Walker v. State, 397 S.C. 226, 235, 723 S.E.2d 610, 615 (Ct. App. 2012) (reversed on other grounds by Walker v. State, 407 S.C. 400, 756 S.E.2d 144 (2014)). However, in any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel’s judgments.” Wiggins v. Smith, 539 U.S. 510, 521-22 (2003). Here, Applicant himself did not allege in his testimony before this Court his statement was involuntary; thus, there was no issue for Counsel to investigate. Counsel testified Applicant never indicated he wanted a trial, and the sole focus of the defense was cooperation with the State, which Applicant gave, and for which he received a reduction of two of his charges and the dismissal of another two.

Further, this Court finds Applicant’s plea was knowingly and voluntarily entered. 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)). 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). 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. 52, 56 (1985). “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)).

This Court finds the statements Applicant made during his guilty plea are determinative as to the issue of the voluntariness of the plea. Applicant informed the plea court he was satisfied with Counsel’s services, did not need any more time to speak to Counsel, and he acknowledged he was voluntarily giving up his right to a jury trial and present a defense. See Tr. pp. 6-8. “The general rule is that guilty pleas, freely and voluntarily entered, act as a waiver of all non-jurisdictional defects and defenses, including the claims of a violation of a constitutional right prior to the plea. Whetsell v. State, 276 S.C. 295, 297, 277 S.E.2d 891, 892 (1981) (citing Rivers v. Strickland, 264 S.C. 121, 213 S.E.2d 97 (1975); State v. Fuller, 254 S.C. 260, 174 S.E.2d 774 (1970), modified and vacated on other grounds, 408 U.S. 937 (1972)). “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 generally foreclosed. Dalton v. State, 376 S.C. 130, 137-38, 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. (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)). This Court finds Applicant failed to present any such reason in this case. Accordingly, these allegations are denied and dismissed.

CONCLUSION

Based on all 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.

Counsel was not deficient in any manner, nor was Applicant prejudiced by counsel's representation. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

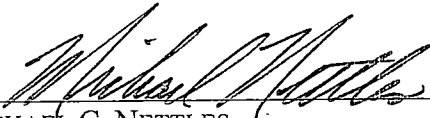
The Court notes Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCR, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED.

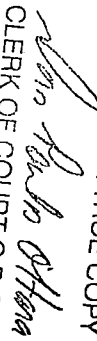
9-7, 2018


MICHAEL G. NETTLES
Presiding Circuit Court Judge
Twelfth Judicial Circuit

DORIS POULOS O'HARA
C.C.P. & G.S.
FLORENCE COUNTY, SC

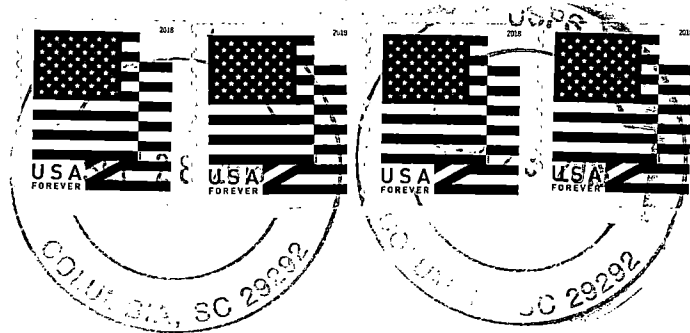
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CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

W

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