



RECEIVED

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

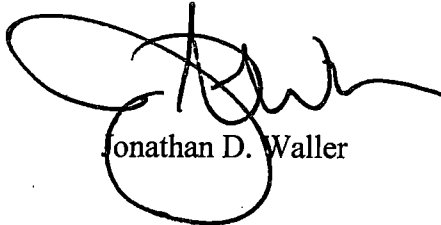
Re: Jeffery Allan Gray vs. State of South Carolina
C/A No: 2016-CP-21-00268

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. Gray 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

RECEIVED

OCT 02 2018

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

S.C. SUPREME COURT

2016-CP-21-00268

Jeffery Allan Gray, # 311734,

Appellant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Jeffery Allan Gray, # 311734, 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
SC Bar No.: 76290
1116 Blanding Street
Suite 2B
Columbia, SC 29201
803-520-7278 (phone)
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

RECEIVED

OCT 02 2018

S.C. SUPREME COURT

RECEIVED

OCT 02 2018

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In The Supreme Court

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

2016-CP-21-00268

Jeffery Allan Gray, # 311734,

Appellant,

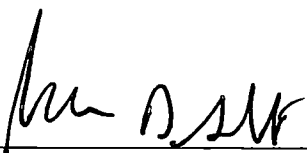
v.

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

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2016CP2100268

Jeffery Allan Gray 2018 SEP 19 PM 3:44 South Carolina State Of
DORIS PAULGS O'HARA

PLAINTIFF(S) OCCP & GS DEFENDANT(S)
Submitted by: FLORENCE COUNTY, SC 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 Paulgs 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), SCRCP.

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

Jeffrey Allan Gray, #311734,)
)
Applicant,)

C.A. No. 2016-CP-21-268

v.)

ORDER OF DISMISSAL

State of South Carolina,)
)
Respondent.)

DORIS POULOS O'HARA
COCOP & GS
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 Jeffrey Allan Gray (Applicant) on February 4, 2016. Respondent made its Return on January 17, 2017. An evidentiary hearing into the matter was convened on November 16, 2017, 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.

Prior to the hearing, Applicant moved this Court for a continuance in order to secure the testimony of his sister, whom he alleges could have provided him with an alibi for this crime. However, Applicant did not attempt to contact his sister prior to this hearing, and Counsel's attempts to contact the sister were unsuccessful. Therefore, this Court denied the continuance request, while allowing Applicant some leeway to testify as to what he believes his sister would say. At the hearing, Applicant testified on his own behalf. Emily Crayton, Applicant's plea counsel, testified on behalf of Respondent. This Court also had before it a copy of the records of

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

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 incarcerated with the South Carolina Department of Corrections pursuant to orders of commitment from the Florence County Clerk of Court. Applicant was indicted at the July 2014 term of the Florence County Grand Jury for one count of armed robbery (2014-GS-21-0994). The charges arose from the robbery of a convenience store owner, wherein Applicant and a codefendant followed the store owner home after closing time, hit him with a pistol, and stole money from him: Tr. p. 10. The store owner identified both Applicant and his codefendant because they frequently shopped in the store. Tr. p. 10. Applicant was represented on this charge by Emily Crayton, Esquire. John Holt, Esquire, prosecuted the case on behalf of the State. On September 9, 2015, Applicant pleaded guilty as indicted before the Honorable Steven H. John. Judge John sentenced Applicant to a term of imprisonment of ten years, pursuant to the State's recommendation. Applicant did not appeal his conviction or sentence.

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. "Failed to do the necessary pre-trial investigations that would have provided counsel with information and data to prepare an effective defense for the applicant."
 - b. "Failed to formulate an effective line of defense against the charges."

Applicant did not file any amendments and proceeded at the evidentiary hearing only on the

issue of whether Counsel rendered effective assistance in her investigation and development of an alibi defense.

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).

"[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)). Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result. Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). 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). Further, "[d]ecisions primarily involving trial strategy and tactics may be made by trial counsel. Examples of such decisions include 'which jurors to accept or strike, *which witnesses should be called on the defendant's behalf*, what evidence should be introduced, whether to object to the admission of evidence, [and] whether and how a witness should be cross-examined.'" Abney v. State, 408 S.C. 41, 48, 757 S.E.2d 544, 547 (Ct. App. 2014) (quoting Sexton v. French, 163 F.3d 874, 885 (4th Cir.1998)) (emphasis added).

Applicant testified he met with Counsel several times, and they talked in detail about the case and his version of events. According to Applicant, he told Counsel he had an alibi, and his mother, his sister, the sister's husband could verify he was living in Greenville at the time of the robbery. Applicant testified an investigator from Counsel's office interviewed his sister, but the investigator asked her about the incorrect timeframe. Applicant testified he asked Counsel to contact his sister again, but never received an answer as to whether any follow-up was done. Applicant further testified he never attempted to contact his sister himself while the charges were pending. Additionally, Applicant testified he asked Counsel about what he considered to be discrepancies in the factual narrative in the arrest warrant versus statements from witnesses, and she told him it did not matter.

According to Applicant, he decided to plead guilty despite allegedly having an alibi because he was afraid his codefendant would testify against him, and he was concerned about the possibility of receiving a thirty-year sentence if convicted at trial. Applicant testified he would not have pleaded guilty if he could have presented the alibi defense at trial. However, on cross-

examination, Applicant conceded he told the plea judge he was satisfied with Counsel and did not inform the plea court he had a defense to these charges.

Counsel testified she met with Applicant a total of thirteen times in person, plus they had eight phone calls. According to Counsel, she first met with Applicant on May 23, 2015, after receiving discovery from the State and reviewing the file. Counsel testified Applicant told her about his alibi at that meeting and gave her the names of his sister and her husband, whose home he allegedly moved into in Greenville around the time of the robbery. Counsel further testified Applicant gave her the name of an auto supply store where he claimed to have had a job interview on the day in question. Counsel testified she asked an investigator with her office, Mr. McKenzie, to verify Applicant's story, but the investigator was unable to do so. According to Counsel, she could not verify Applicant's presence in Greenville on the date of the robbery; the best she could do was several days before. Further, Counsel testified the man Mr. McKenzie spoke to at the auto store alleged Applicant had stolen items from the store on the day of his first interview there. Therefore, Counsel testified, she would not have subpoenaed any of these witnesses to testify had Applicant elected to proceed to trial because their testimony was not helpful to Applicant and did not establish an alibi.

Counsel testified she met with Applicant on July 1, 2015 to review the investigator's findings. She testified they again in August, and she explained the findings and implications a second time. According to Counsel, Applicant had no real response to her report that his witnesses were unable to verify his alibi. Counsel testified after the meeting in August, Applicant left her a voicemail saying he wanted to plead guilty. Counsel testified he was aware of the problems with

the witnesses and establishing an alibi at the time of the plea, and she had no reason to think his decision was involuntary.

This Court finds Applicant has failed to prove Counsel's performance was deficient in any way. Counsel investigated the existence of an alibi using an experienced investigator. Counsel met with Applicant numerous times, and took detailed notes of their meetings and phone calls. Counsel credibly explained the witnesses did not verify the alibi, and therefore, the witnesses were unhelpful to Applicant. Applicant did not have the witness present who he alleges can verify his alibi, and his speculation as to her testimony is insufficient to meet his burden of proof. Glover v. State, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995) (holding a PCR applicant must produce the witnesses at the PCR hearing or otherwise introduce the witnesses' testimony in a manner consistent with the rules of evidence in order to prove counsel was ineffective for failing to call an alibi witness.).

Further, this Court finds, even if a continuance of the evidentiary hearing had been granted for Applicant to secure his sister's testimony, the plea colloquy is determinative. Applicant was aware Counsel had been unable to verify his alibi prior to the plea, yet he informed the plea court he was satisfied with Counsel's services and was voluntarily giving up his right to a jury trial and present a defense. "A guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant; thus, a criminal inmate'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

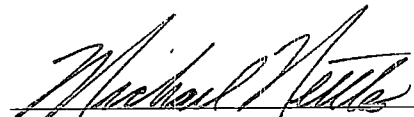
Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Counsel was not deficient in any manner, nor was Applicant prejudiced by counsel's representation. Therefore, 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), SCRCP, 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:

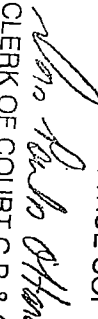
1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant shall be remanded to the custody of the Respondent.

AND IT IS SO ORDERED.


MICHAEL G. NETTLES
Presiding Circuit Court Judge
Twelfth Judicial Circuit

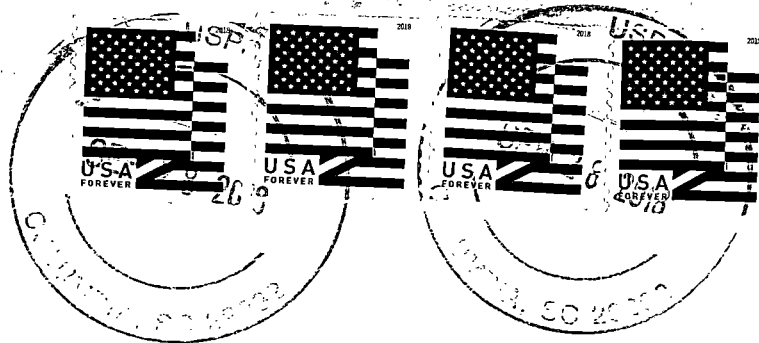
9-7, 2018

FILED
2018 SEP 19 PM 2:21
DORIS POLLOS O'HARA
S.C.P. & G.S.
FLORENCE COUNTY, SC

CERTIFIED: A TRUE COPY

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

W

WALLER LAW GROUP
1116 BLANDING STREET
SUITE 2B
COLUMBIA, SC 29201



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