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October 11, 2018

RECEIVED

OCT 12 2018

S.C. SUPREME COURT

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

Re: **Shannon DeVante Cooper, SCDC #350524 v. State of South Carolina**
Appeal of Case No. 2016-CP-26-4435

Dear Mr. Shearouse:

Enclosed for filing is a Notice of Appeal in the above referenced case. Also enclosed is a certificate of service and a copy of the original court orders that are being challenged on appeal.

Please let me know if you have any questions or concerns regarding this matter.

Yours sincerely

J. Taylor Bell

cc: Johnny E. James Jr., Asst. A.G.
Office of Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

Shannon D. Cooper, SCDC #350524
Lee Correctional Institution
990 Wisacky Highway
Bishopville, South Carolina 29010

Renee Elvis
Horry County Clerk of Court
Post Office Box 677
Conway, South Carolina 29528

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Larry B. Hyman, Circuit Court Judge

Case No. 2016-CP-26-4435

RECEIVED

OCT 12 2018

S.C. SUPREME COURT

Shannon DeVante Cooper, Appellant,
SCDC #350524,

v.

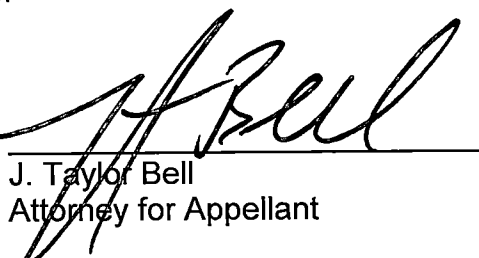
State of South Carolina, Respondent.

NOTICE OF APPEAL

Shannon DeVante Cooper hereby appeals from the Order of Dismissal filed July 20, 2018, and Order Denying Applicant's Motion for Reconsideration of the Honorable Larry B. Hyman presiding judge for the 15th Judicial Circuit, filed September 10, 2018 in the matter of Shannon DeVante Cooper v. State of South Carolina, Case No. 2016-CP-26-4435. Counsel for Appellant received notice of entry of Order Denying Applicant's Motion for Reconsideration on October 5, 2018.

Other Counsel of Record:
Johnny E. James, Jr.
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

October 11, 2018



J. Taylor Bell
Attorney for Appellant

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THE STATE OF SOUTH CAROLINA
In the Supreme Court

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OCT 12 2018

APPEAL FROM HORRY COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Larry B. Hyman, Circuit Court Judge

Case No. 2016-CP-26-4435

Shannon DeVante Cooper
SCDC #350524,

Appellant,

v.

State of South Carolina,

Respondent.

PROOF OF SERVICE

I certify that on this 11th day of October 2018, a copy of the Notice of Appeal with Orders being appealed from were served on all Counsel for Record by depositing said copy in the U.S. Mail, with sufficient first class postage, addressed as listed below:

Johnny E. James, Jr.
Officer of the Attorney General
Post Office Box 11549
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October 11, 2018

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY)	
Shannon DeVante Cooper,)	Case No.: 2016-CP-26-04435
S.C.D.C. No. 350524,)	
)	
Applicant,)	
)	ORDER OF DISMISSAL
v.)	
)	
State of South Carolina,)	
)	
Respondent.)	
_____)	

2018 JUL 20 PM 1:35
 REBECCA ELVIN
 CLERK OF COURT
 HORRY COUNTY, SC

This matter comes before the Court by way of an application for post-conviction relief filed by Shannon DeVante Cooper (“Applicant”) on July 1, 2016. Respondent made its return on or about July 27, 2017. The Court convened an evidentiary hearing into the matter on Friday, May 25, 2018, at the Horry County Courthouse in Conway, South Carolina. Applicant was present at the hearing and represented by J. Taylor Bell, Esq. Johnny Ellis James Jr., of the South Carolina Attorney General’s Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant’s plea counsel, J. Eric Fox, Esq. (“Counsel”) also testified. The Court had before it Applicant’s records from the South Carolina Department of Corrections, a copy of the original pre-trial hearing and plea transcripts, the records of the Horry County Clerk of Court regarding the subject convictions, Applicant’s direct appeal records, and the pleadings. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. Applicant was indicted at the November 2013 term of the Horry County Grand Jury for burglary, first degree (2013-GS-26-04759).

Applicant was further indicted at the January 2015 term for armed robbery (2015-GS-26-00860). J. Eric Fox, Esq. represented Applicant, and Thomas G. Terrell, III, Esq., of the Fifteenth Circuit Solicitor's Office, prosecuted the case. On April 20, 2015, Applicant pled guilty as indicted. The Honorable Benjamin H. Culbertson sentenced Applicant to imprisonment for concurrent terms of 22 years on each charge.

Applicant filed a timely notice of appeal. By order filed July 1, 2015, the South Carolina Court of Appeals dismissed Applicant's appeal for failing to provide a sufficient explanation for appeal. The Remittitur was issued on July 20, 2015.

Present Application

In his post-conviction relief application, as amended by filing on March 28, 2018, Applicant alleges he is being held unlawfully for the following reasons (excerpted):

1. Ineffective assistance of plea counsel, in that:
 - a. "Plea Counsel failed to timely communicate Applicant of formal plea offer prior to the lapse/expiration of formal plea offer."
 - b. "Plea Counsel failed to conduct a reasonable investigation, retain experts for independent test, and/or request potentially exculpatory evidence from the State. Specifically[:]"
 - i. "Plea Counsel failed to request, test, and/or investigate DNA/fingerprint evidence on two long guns and a big screen television claimed to be goods taken during the robbery and located by law enforcement during a search of suspect's apartment located at 6100 Frontage Road, #402, Myrtle Beach, South Carolina 29577;"
 - ii. "Plea Counsel failed to request, test, and/or investigate DNA/fingerprint evidence on the victim's purse collected by law enforcement from incident location: 4685 Southland Drive, Longs, South Carolina 29568;"
 - iii. "Plea Counsel failed to request, test, and/or investigate DNA/fingerprint evidence on points of entry/exit of victim's residence and incident location: 4685 Southland Drive, Longs, South Carolina 29568;"

- iv. "Plea Counsel failed to request, test, and/or investigate DNA evidence on white restraints used on victim and collected by law enforcement from incident location: 4685 Southland Drive, Longs, South Carolina 29568;"
- v. "(5) Plea Counsel failed to request, test, and/or investigate DNA evidence on blue bandana from suspects collected by law enforcement from the incident location: 4685 Southland Drive, Longs, South Carolina 29568."

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the records submitted to it by the parties and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented.

A. Ineffective Assistance of Counsel

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she 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." Butler at 442, 334 S.E.2d 441 (quoting Strickland v. Washington, 466 U.S. 668, 686 (1984)). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Id.

"[C]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Butler at 442, 334 S.E.2d 441 (quoting Strickland at 690). The applicant must overcome this presumption to

receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989). “Judicial scrutiny of counsel’s performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel’s assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel’s defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable.” Strickland, 466 U.S. at 689; Edwards v. State, 392 S.C. 449, 456-57, 710 S.E.2d 60, 64 (2011). “[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel.” Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under professional norms.” Cherry at 117, 386 S.E.2d at 625 (citing Strickland at 688). 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 at 117-18, 386 S.E.2d at 625 (citing Strickland at 694). With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel’s alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. Strickland at 696. A court need not first determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to

dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. at 696-97.

1. Failure to Communicate Plea Offer

Applicant alleges Counsel was ineffective by failing to timely communicate a plea offer. Failure on the part of counsel to convey a plea offer to his or her client defendant constitutes deficient performance. Davie v. State, 381 S.C. 601, 609, 675 S.E.2d 416, 420 (2009) (abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018)). An applicant alleging deficient performance for failure to convey a plea offer must also show actual prejudice—that he or she would have accepted the State’s proposed plea bargain and that he or she would have benefited from the offer. Id., 381 S.C. at 613, 675 S.E.2d at 422.

Certain facts are uncontested between the parties. On January 9, 2014, Applicant was transferred to Turbeville Correctional Institute in the custody of the South Carolina Department of Corrections. By letter dated the same day, the State sent Counsel a letter extending an offer to Applicant to plead guilty to kidnapping in exchange for a sentence of 13 years. That letter provided an expiration date of February 28, 2014. Counsel thereafter forwarded a copy of that letter and offer to an apartment at 4853 Meadowsweet Drive, Myrtle Beach, SC on January 16, 2014, while Applicant was incarcerated.

Applicant testified he never received Counsel’s letter and that he did not learn of the offer until he returned to local detention in Horry County in July 2014. Applicant asserted he told Counsel he wanted to accept the offer, though it was expired.

Counsel testified he sent the letter to the address they had on file and that he had not been aware Applicant was in Turbeville. Counsel recalled speaking with the solicitor during a roll call, at which time the solicitor informed Counsel orally that the offer was still open, despite the

expiration date in the letter. Counsel confirmed he met with Applicant after he was transferred back to Horry County in July 2014 and discussed the plea offer with him at that time—Applicant rejected the offer. Counsel testified that after a motion for reduction in bond was denied in October 2014, Applicant offered to plead guilty in exchange for a five year sentence; the solicitor rejected the proposal, but indicated the 13 year offer was still open. Counsel recalled Applicant offered to plead in exchange for a 10 year sentence when they met in March 2015, but the solicitor rejected that proposal as well. Counsel testified Applicant was still unwilling to accept a 13 year sentence in April 2015.

On cross-examination, Counsel testified he did not receive notice that Applicant's prior "youthful offender" sentence was revoked and that Applicant did not inform him of the revocation; as a result, he did not learn Applicant was no longer in the local detention center until January 2014. Counsel learned of Applicant's incarceration in Turbeville from the solicitor when Applicant failed to appear for court. Applicant admitted he sent the letter to the wrong location and that he didn't get the contact information on file in the public defender's office updated. As to the expiration date, Counsel explained the Fifteenth Circuit Solicitor's Office is typically more flexible with offer expirations than the written letters indicate, but that he leaves the deadlines in letters to clients in order to encourage them to timely communicate. Counsel further explained the practice in the circuit is that plea offers typically expire once a case is placed on the trial roster. When asked why he did not return the offer letter to the State indicating Applicant's rejection, Counsel replied he does not do so in order to avoid boxing his client in. When asked why he sought to reinstate the plea offer despite Applicant's repeated rejections, Counsel testified he wanted to keep Applicant's options open as long as possible. Confronted with the possibility that the solicitor could have dishonored the oral extension on the

plea offer, Counsel noted the State could have withdrawn the written plea offer before the expiration, and further offered that dishonoring an offer or agreement would have damaged the solicitor's reputation in the circuit and trust in future dealings. Counsel firmly expressed his belief the solicitor would not have unfairly reneged on the offer. Applicant finally pled guilty after one of the other co-defendants indicated a desire to plead guilty.

The Court finds no ineffectiveness on the part of Counsel. The Court finds Counsel's testimony broadly credible and Applicant's testimony not credible—the plea offer was kept open by the State after the written expiration date, communicated to Applicant by Counsel orally, and repeatedly rejected. Because this Court finds Applicant could have and did not accept the State's plea offer, Applicant cannot meet his burden under Davie. Applicant's speculation that the State could have dishonestly reneged on the oral extension on the plea offer is just that, speculation, and the only evidence before this Court as to the likelihood of such a double-turn is Counsel's articulated judgment that such duplicity would not have occurred had Applicant accepted the offer. Accordingly, Applicant has failed to meet his burden, and his request for relief by way of this allegation is **DENIED**.

2. Failure to Investigate DNA or Fingerprint Evidence

Applicant alleges Counsel was ineffective by failing to investigate DNA or fingerprint evidence potentially available in five different instances. In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. Harris v. State, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)). Furthermore, an applicant must also present evidence to show how the

discoverable matters or defenses would have resulted in a different outcome. Id. (citing Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

No fingerprint or DNA evidence was presented at the evidentiary hearing. Furthermore, Counsel articulated his strategic reasoning that he did not wish to have the evidence tested and accidentally harm his client. Counsel testified that although he could have had the evidence tested without production of a report, he would have had to check it out of custody from the State, such that the absence of a report would be conspicuous.

The Court finds no deficiency on the part of Counsel, nor prejudice therefrom. First, Applicant did not introduce any evidence of fingerprint or DNA examination, such that the Court is left with only mere speculation as to what, if anything, such analysis would have revealed. Second, Counsel articulated a valid strategic consideration in his desire to not inadvertently develop the case against Applicant by investigating evidence that may well have proven to be inculpatory. Accordingly, Applicant cannot meet his burden, and his request for relief by way of this allegation is **DENIED**.

III. CONCLUSION


Based on all the foregoing, this Court finds and concludes that 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 notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel 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 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCR provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 17 day of July, 2018.


LARRY B. HYMAN, JR.
Presiding Judge
Fifteenth Judicial Circuit

Conway, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
Shannon DeVante Cooper,)
S.C.D.C. No. 350524,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Case No.: 2016-CP-26-04435

**ORDER DENYING APPLICANT'S
MOTION FOR RECONSIDERATION**

2018 SEP 10 PM 1:04
HORRY COUNTY
CLERK OF COURT
HORRY COUNTY, SC

This matter comes before the Court by way of a motion for reconsideration filed by Shannon DeVante Cooper (“Applicant”) on August 1, 2018. The Court finds as follows:

I.

This matter originally came before the Court by way of an application for post-conviction relief filed on July 1, 2016. Respondent made its return on or about July 27, 2017. The Court convened an evidentiary hearing into the matter on Friday, May 25, 2018, at the Horry County Courthouse in Conway, South Carolina. Applicant was present at the hearing and represented by J. Taylor Bell, Esq. Johnny Ellis James Jr., of the South Carolina Attorney General’s Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant’s plea counsel, J. Eric Fox, Esq., also testified. After reviewing the record, and hearing testimony and arguments of counsels, this Court denied relief and directed Respondent to submit a proposed order to that effect. Respondent submitted a proposed order on or about June 25, 2018, which was thereafter adopted by this Court on July 17, 2018, and filed July 20, 2018.

II.

In his motion, Applicant asks the Court to reconsider its ruling pursuant to Rule 59(e), SCRPC. This Court has thoroughly reviewed the arguments presented by Applicant in his motion, as well as the order subject to the motion. This Court finds that the motion must be denied. The Court's Order of Dismissal contains the required findings of fact and conclusions of law necessary to dispense with Applicant's allegations as required by S.C. Code Ann. § 17-27-80 and Rule 52(a), SCRPC; see also McCray v. State, 305 S.C. 329, 408 S.E.2d 241 (1991).

As to Applicant's first argument for reconsideration, that the plea offer at issue was not communicated to Applicant before its expiry, the Court finds the argument is not distinguishable from that offered at the evidentiary hearing and was considered, acknowledged, and fully addressed in the Order of Dismissal.

Applicant's second argument for reconsideration is that the Court failed to provide a basis for its credibility determination that Counsel was broadly credible and Applicant's testimony was not credible. The Court finds Counsel's testimony credible because it was consistent with the undersigned's experience in and observation of judicial matters in the circuit, conceded Counsel's original error about which Applicant vociferously protests, was thorough and concise in detail as to the course of Counsel's representation, and because of the comfortable, unwavering, consistent, and forthright character of Counsel's testimony. This Court perceives no basis for discrediting Counsel. This Court observed Counsel closely and, in its capacity as the finder of fact, finds Counsel's testimony eminently credible. Conversely, Applicant's limited testimony as to his desire for the plea offer was self-serving, inconsistent with the undersigned's experience in and observation of judicial matters in the circuit, and his testimony was generally presented in a character and manner unconvincing to this fact-finder.

Ample evidence exists to support this Court's findings as set forth in the Order of Dismissal and this Court reaffirms them.

Applicant's third argument for reconsideration attempts to offer a basis for discrediting Counsel—namely that he sought to re-open the plea offer. Counsel's effort to keep Applicant's options for resolution open and available is not a sign of dishonesty on his part, or an inconsistency in his testimony, but reflects the zealous effort of extraordinarily competent representation. A good attorney keeps his client's options varied and available. Indeed, the failure of a defense counsel to seek alternative dispositions not immediately favored by his client, but which may prove to be desirable as the investigation develops, may in some circumstances be a basis for finding ineffectiveness. The wisdom of Counsel's efforts is proven by the facts in this very case, where despite Applicant's repeated refusals to take the offer, he eventually changed his mind and desired it—only too late.

Applicant's fourth argument is very simply that of cumulative error. Cumulative error is not a doctrine yet adopted under South Carolina law. See Green v. State, 351 S.C. 184, 197, 569 S.E.2d 318, 324 (2002) (“Whether the cumulation of several errors, which by themselves are not prejudicial, would warrant relief is an unsettled question in South Carolina.”); see also Lorenzen v. State, 376 S.C. 521, 657 S.E.2d 771 (2008) (reversing a grant of PCR on cumulative error because no evidence supported a finding of deficiency).

The overwhelming majority of “errors” raised now by Applicant as a basis for cumulative error relief, in addition to the claim for cumulative error relief itself, were not raised to this Court in either the original application or in subsequent amendment proceeded upon at the evidentiary hearing, but constitute entirely new and unrelated claims that this Court respectfully declines to independently address and analyze. Mangal v. State, 421 S.C. 85, 805 S.E.2d 568 (2017)


(affirming the PCR court's discretion in refusing to address claims not properly pled). As to the various instances of alleged failure to test evidence, as explained in the Order of Dismissal, Applicant introduced *no evidence* to show what, if anything, such testing would have revealed, and as such cannot prevail upon those allegations. The only error left to hypothetically consider in a cumulative error analysis is that Counsel initially sent the offer to the wrong address, and even if cumulative error were to be the law in this State, in no circumstance could the alleged prejudice from a single instance of error be relied upon for cumulative relief. And to be clear, this Court's finding is not that Applicant was subjected to *some* prejudice—rather, this Court's finding is of *no* prejudice. Zero multiplied by any number remains zero.

The sum total of Counsel's performance in this matter is precisely that which reflects a wealth of experience and competence in criminal matters in this State, whether considered in its discrete elements or in its whole, and this Court reaffirms its findings in the Order of Dismissal.

III. CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any reason to alter, amend, or vacate its Order of Dismissal filed July 20, 2018. Accordingly, Applicant's Motion for Reconsideration is **DENIED**.

AND IT IS SO ORDERED this 4th day of SEPTEMBER, 2018.



LARRY B. HYMAN, JR.
Presiding Judge
Fifteenth Judicial Circuit

Conway, South Carolina