

THE BOOZER LAW FIRM, LLC

Lance S. Boozer, Esq.*
*Also admitted in Florida

1419 Pendleton Street
Columbia, SC 29201

Telephone: 803-608-5543
Fax: 803-926-3463

Email: lsb@boozerlawfirm.com
Website: www.boozerlawfirm.com

November 15, 2018

RECEIVED

NOV 19 2018

S.C. SUPREME COURT

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

The Honorable James C. Campbell
Clerk, Sumter County
215 N. Harvin Street
Sumter, SC 29150

RE: Charles Singletary, #367755, v. State of South Carolina
2017-CP-43-571


Dear Mr. Shearouse and Mr. Campbell:

Enclosed for filing is a Notice of Appeal in the above-referenced case. Also enclosed are the following:

- (1) Proof of Service of the Notice of Appeal;
- (2) A copy of the Order which is to be challenged on appeal; and
- (3) Prior Order of Appointment of Counsel.

As I was appointed to represent Mr. Singletary in his PCR proceeding, I anticipate that the Office of Appellate Defense will represent Mr. Singletary in this appeal.

Yours very truly,



Lance S. Boozer

Enclosures

cc: Megan Jameson, AAG
Loriene French, OAD
Charles Singletary, #367755

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

The Honorable Kristi F. Curtis, Circuit Court Judge

RECEIVED

NOV 19 2018

S.C. SUPREME COURT

Case No. 2017-CP-43-0571

Charles Singletary, #367755,Petitioner,

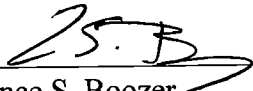
v.

State of South Carolina,.....Respondent.

NOTICE OF APPEAL

The Petitioner appeals the Honorable Kristi F. Curtis's Order dated October 18, 2018, denying post-conviction relief to the Petitioner. The Order was received by undersigned counsel on November 12, 2018. A copy of the Order on appeal is attached to this notice.

Respectfully submitted,


Lance S. Boozer
The Boozer Law Firm, LLC
1419 Pendleton Street
Columbia, SC 29201
Tele: 803-608-5543

November 15, 2018

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

RECEIVED

The Honorable Kristi F. Curtis, Circuit Court Judge

NOV 19 2018

S.C. SUPREME COURT

Case No. 2017-CP-43-0571

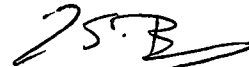
Charles Singletary, #367755,Petitioner,

v.

State of South Carolina,.....Respondent.

PROOF OF SERVICE

I, Lance S. Boozer, appointed attorney for Petitioner, certify that I have today served within Notice of Appeal upon the Respondent by depositing a copy of it in the United States Mail, postage prepaid, addressed to Assistant Attorney General Megan Jameson, P.O. Box 11549, Columbia, SC 29211. I further certify that all parties required by Rule to be served have been served this 15th day of November, 2018.



Lance S. Boozer
The Boozer Law Firm, LLC
1419 Pendleton Street
Columbia, SC 29201
Tele: 803-608-5543

he was no longer welcome to stay at his home, and he believed Applicant had stolen a pair of headphones from him. Tr. 8. When confronted about the stolen headphones, Applicant denied taking them and pulled a gun on Hodge. Tr. 8-9. Hodge backed off and left. Tr. 9. Later that night, Applicant returned to Hodge's home, where Hodge, his mother Margaret Charles, and a friend, Joshua Brown, were staying. Tr. 9-10. Hodge told Applicant he could stay the night because he knew he did not have another place to go. Tr. 10. Applicant, Hodge, and Brown all went to sleep in the same room, and Ms. Charles slept in another room. Tr. 10. Early the next morning, Applicant attacked all three victims. Tr. 10. Brown was shot in the head and killed. Tr. 11. Hodge was shot in the head, but survived, and was the basis of the attempted murder charge. Tr. 11. Ms. Charles chased Applicant through the house after the shots and Applicant hit her in the head with his handgun, resulting in serious injury and a hearing problem, which was the basis of the assault and battery charge. Tr. 11. Applicant escaped through the bedroom window and was eventually apprehended by law enforcement. Tr. 11.

Applicant was indicted by the August 2014 term of the Sumter County Grand Jury for murder, attempted murder, second degree assault and battery, and possession of a weapon during the commission of a violent crime (2014-GS-43-0714). Applicant was represented by Calvin Hastie, Esquire. Assistant Solicitor John P. Meadors, Esquire, prosecuted the case. On April 12, 2016, Applicant pled guilty as indicted to murder, attempted murder, and second-degree assault and battery. The weapons charge was dismissed in exchange for his guilty plea. The Honorable W. Jeffrey Young sentenced Applicant pursuant to a negotiated sentence to imprisonment for forty years for murder, thirty years for attempted murder, and three years for assault and battery to run concurrently. Applicant did not appeal his guilty plea or sentence.

II. ALLEGATIONS

In his current application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Plea Counsel
 - a. Failure to properly prepare and investigate
 - b. Failure to ensure that plea was knowingly and voluntarily entered
 - c. Failure to properly address issues involving mental health
2. Involuntary Guilty Plea¹

III. SUMMARY OF RELEVANT TESTIMONY PRESENTED

Applicant's testimony

At the evidentiary hearing, Applicant testified his mother hired Plea Counsel to represent him on his charges one year after he was incarcerated, and he ended up pleading guilty on April 12, 2016. He stated Plea Counsel persuaded him to plead guilty in the middle of trial, and they had already picked a jury. Applicant testified he never discussed trial strategy with Plea Counsel, but he wanted to tell the truth. He stated his sister and family influenced him to take the plea deal. He stated they thought he might be able to get parole in 20 years, so he pled guilty.

Applicant testified Plea Counsel should have gotten a continuance to get more information on his mental health. He testified he was treated in school for an illness and he took special needs classes. He stated he was not formally treated for his mental illness until he was in the county jail and they evaluated and diagnosed him with schizophrenia. He stated he took the medicine he is taking now and also advanced medicine at the guilty plea. He stated he does not remember the guilty plea, but he only remembers signing his name on the sentencing sheet.

¹ During the evidentiary hearing, testimony came up about Plea Counsel's failure to investigate or call alibi witnesses. This Court allowed Applicant to hold the record open for thirty days to supplement the record with additional testimony from these alibi witnesses. However, counsel for Applicant later informed the Court that he would not be submitting additional testimony.

Applicant stated he should have told the plea judge he was on mental health medication at the guilty plea, but he did not understand at the time what he meant.

Applicant testified that Plea Counsel's father died while he represented him, and he thinks this threw him off and affected his representation. He testified Plea Counsel told him they were trying to get a five year to ten year sentence. He stated he had two alibi witnesses to testify that he was at home during the crime, but Plea Counsel did not call them as witnesses. Applicant testified he was not aware of the alibi witnesses at the time of the trial, but he told Plea Counsel about them, and he investigated them. He stated Plea Counsel read their written statements and told Applicant that they might not be necessary, and that Plea Counsel knew about these witnesses and chose not to use them. He stated his sister would have testified that he was home the whole time. Applicant testified that he reviewed mental health records with Plea Counsel. He stated Plea Counsel knew about his mental illness before he met him.

Trial Counsel's testimony

At the evidentiary hearing, Trial Counsel testified that he had many discussions with Applicant about trial, but it was very clear that Applicant did not want to go to trial. He stated Applicant would ask him if he thought they could "beat this," and Plea Counsel would explain the facts and told him he would represent him to the best of his ability if he chose to go to trial. Plea Counsel testified there was no doubt Applicant was in the house during the crime. He stated multiple witnesses saw him in the house and would testify to this at trial. He stated Applicant did not want a trial. Plea Counsel testified that he probably should have had Applicant evaluated again, and he wanted to get the best deal he could get. He stated Applicant was looking at ten or twenty years, but when the Solicitor spoke to the victims, the victims did not think forty years was enough, so he knew he would probably not get ten or twenty.

Plea Counsel testified that Applicant clearly said on the record that he knew what he was doing, and he had no question about his competency. He testified that forty years was a long time for Applicant to serve, but the evidence against him was strong, even overwhelming, and there was no doubt about who shot and cut the victims. Plea Counsel testified he was not aware that Applicant was on medication at the time of the plea or had a mental illness. He stated they had no alibi defense, and Applicant never told him that he was at his sister's house at the time of the crime—he had not heard this story until today at the PCR hearing. He stated he was not familiar with the names of the alleged alibi witnesses Applicant's mentioned at the PCR hearing. Plea Counsel testified that, if Applicant had told him about these witnesses, he would have investigated them. He did not recall any written statements from these witnesses. Plea Counsel stated that Applicant's claims that he was not at the crime scene or that he was completely innocent ^{are (KC)} and completely new to him.

IV. APPLICABLE LAW

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "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. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant must

overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). 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. With respect to guilty pleas, the applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985).

V. 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 post-conviction relief 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 (1985).

INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant alleges Plea Counsel was ineffective in his representation surrounding his guilty plea. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. See Al-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (1999) (citing Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517,

520 (1993)). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the applicant 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) (citations omitted). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985).

After considering the testimony, judging the credibility of the witnesses, and reviewing the materials presented to the court, this Court finds Applicant has failed to meet his burden in proving Plea Counsel was ineffective in any regard. Plea Counsel credibly testified there was no indication that Applicant suffered from a mental illness, and he was unaware that he was on medication on the day of the plea. Regardless, Applicant testified at the guilty plea that he was not on medication and that he understood what he was doing, so Plea Counsel did not have reason to question his competency or the voluntariness of his plea.

This Court finds credible Plea Counsel's testimony that Applicant did not want a trial, but wanted to plead guilty and admit his guilt. Plea Counsel credibly testified Applicant never told him about an alibi defense or potential alibi witnesses, and there was no question, according to Applicant and the evidence the State intended to present, that Applicant was in the house during the crime. This Court finds Plea Counsel was not ineffective for failing to investigate any potential witnesses or Applicant's mental illness, and Applicant has failed to present any credible evidence that Plea Counsel could have discovered further evidence that would have changed his decision to plead guilty or would have caused a trial to result in a not-guilty verdict.

This Court finds Plea Counsel's representation and advice was reasonable under the circumstances and nothing he did was outside the scope of reasonable professional norms. Plea Counsel fully represented his client and advised him based on his best interests and what Applicant told him he wanted, which was to plead guilty. Accordingly, Applicant has failed to prove that Plea Counsel was deficient or that he would have gone to trial but for these deficiencies, and post-conviction relief is denied.

INVOLUNTARY GUILTY PLEA

Applicant alleges his guilty plea was not given freely and voluntarily. This Court finds otherwise and concludes Applicant's plea was entered freely and voluntarily. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709, 23 L.Ed.2d 274 (1969). 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 court and defendant, between 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)). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Cl. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 97 S. Ct. 1621, 52 L.Ed.2d 136 (1977)). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. United States, 519 F.2d 347 (4th Cir.1975).

Applicant alleges he was coerced into pleading guilty because of his mental illness and the medications he was taking during the guilty plea. This Court finds this testimony to be not credible. Plea Counsel credibly testified that Applicant admitted his guilt to him and wanted to plead guilty rather than go to trial. Applicant failed to prove that he did not understand his guilty plea because of his illness or his medication.

At the guilty plea, the plea court asked Applicant if he was under the influence of alcohol or drugs that day, and Applicant responded "No, sir." Tr. 5, line 3-9. The plea court asked "Are you taking any medications that would cloud your judgment?" Applicant asked him, "Sir?" and the court repeated, "Are you taking any medications that would cloud your judgment?" Applicant responded "No, sir." Tr. 5, line 10-15. The court asked if Applicant was aware of any physical, emotional, or nervous condition that would keep him from understanding what was happening that day, and, after conferring with Plea Counsel, Applicant responded "No, sir." Tr. 5, line 16-22. Applicant went on to testify that he understood and wished to waive his constitutional rights and that he was, in fact, guilty of the crimes in question.

Notably the South Carolina Supreme Court has held "[a] guilty plea represents a break in the chain of events which has preceded it in the criminal process." Id. (citations omitted). "When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea." Id. (citing Rice, 401 S.C. at 332, 737 S.E.2d at 486). This Court finds Applicant has not presented any credible evidence that he should be allowed to depart from the truth of the statements he presented to the plea court. Therefore, this Court finds the plea court correctly found Applicant's

plea was freely, voluntary, and intelligently made. Accordingly, this allegation must be denied and dismissed.

VI. CONCLUSION

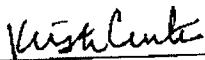
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of appeal within thirty 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 post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant 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 is denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 18th day of October, 2018.



KRISTI CURTIS
Presiding Judge
Third Judicial Circuit

Sunter _____, South Carolina

THE BOOZER LAW FIRM, LLC

1419 Pendleton Street
Columbia, SC 29201



The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211