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S.C. SUPREME COURT

November 13, 2018

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

Re: Charles J. Davis vs. State of South Carolina
C/A No: 2015-CP-21-0578

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. Davis 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

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1116 Blanding Street, Suite 2B
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STATE OF SOUTH CAROLINA
In The Supreme Court

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NOV 21 2018

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

S.C. SUPREME COURT

2015-CP-21-0578

Charles J. Davis, # 326311,

Appellant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Charles J. Davis, # 326311, appeals the Order of Dismissal denying his Application for Post-Conviction Relief filed October 18, 2018, issued by the Honorable Michael G. Nettles, Presiding Judge, Twelfth Judicial Circuit.



Jonathan D. Waller

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ATTORNEY FOR PETITIONER

November 19, 2018

Other Counsel of Record:

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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

2015-CP-21-0578

Charles J. Davis, # 326311,

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.


Christopher Leventis

November 19, 2018

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT

Charles J. Davis, #326311,)

C.A. No. 2015-CP-21-0578)

Applicant,)

ORDER OF DISMISSAL)

v.)

State of South Carolina,)

Respondent.)

DORIS POULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

2018 OCT 18 AM 11:13

FILED

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed by Charles J. Davis (Applicant) on February 23, 2015. Respondent made its Return and Motion for a More Definite Statement on December 19, 2017. An evidentiary hearing into the matter was convened on January 31, 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. Karen Parrott, 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, Applicant's appellate records, 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 October 2013, the Florence County Grand Jury indicted Applicant in two separate, multi-count indictments for armed robbery, first-degree burglary, attempted murder, and possession of a weapon during commission of a

violent crime (2013-GS-21-1091, -1345). The charges arose from two separate, unrelated incidents. In case -1091, Applicant and several codefendants attempted to rob a local drug dealer. The second case was a gang-related hit on a witness who was preparing to testify against a ranking gang member. Karen Parrot, Esquire, (Counsel) represented Applicant. Deputy Solicitor John C. Jcperntinger, Esquire, prosecuted the case on behalf of the State. On June 9, 2014, Applicant pleaded guilty to attempted murder from indictment -1345 before the Honorable William H. Seals, Jr. Pursuant to the State's recommendation of a cap of twenty-five years, Judge Seals sentenced Applicant to imprisonment for twenty-four years. The remaining charges from both indictments were dismissed in return for his guilty plea.

Applicant filed a timely notice of appeal. The South Carolina Court of Appeals dismissed Applicant's appeal for failure to provide sufficient explanation as required by Rule 203, SCACR, by order filed December 17, 2014. The remittitur was returned to the circuit court on January 6, 2015.

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
2. Involuntary Guilty Plea, in that:
 - a. "Guilty plea was misleading by counsel and neither voluntarily made."
 - b. "Defective Affidavit"

Applicant, through Counsel notified Respondent of additional allegations via email on January 23, 2018, in response to the State's Motion for a More Definite Statement. Applicant alleged:

1. As to representation rendered by Karen Parrott, Esquire:

- a. Counsel was ineffective for failing to conduct a complete investigation into the facts and circumstances surrounding Applicant's case, rendering Applicant's plea involuntary.
- b. Counsel was ineffective for failing to adequately prepare for trial, leading Applicant to involuntarily plead guilty just before trial as he was in fear of proceeding to trial with unprepared counsel.
- c. Counsel was ineffective for erroneously advising Applicant to plead guilty to charges that he could not have been convicted of at trial.
- d. Counsel was ineffective for failing to discuss potential defenses with Applicant.

At the evidentiary hearing, counsel for Applicant informed the Court he intended to proceed only on the amended allegations. Therefore, the extent the allegations in Applicant's original application raise separate issues not alleged in his more detailed statement submitted to Respondent on January 23, 2018, those allegations are hereby deemed abandoned and are denied and dismissed.

SUMMARY OF TESTIMONY

Applicant testified he was arrested on two distinct sets of charges, which were unrelated to each other. Applicant testified he was in jail for several months before he learned Counsel had been appointed to represent him in both cases. According to Applicant, he informed Counsel the statements set forth in the arrest warrant for the second set of charges were not true and directed Counsel to speak to Investigator Porter about it. Applicant testified he told Counsel he had not entered the residence or taken anything from it during the second attempted murder, but Counsel never indicated this could be a potential defense. Applicant testified Counsel never discussed the State's evidence with him and would only say he needed to plead guilty.

Applicant further testified Counsel conveyed a fifteen year offer to him, but he rejected it because he did not want to plead guilty to a crime – the armed robbery – he alleged had never occurred. Applicant testified Counsel visited him the Friday before trial was scheduled to begin,

and they had never discussed trial before that time. According to Applicant, Counsel advised him he had no chance of winning and could receive a life sentence plus 130 years. Applicant testified Counsel did not explain trial procedures to him, but instead presented him the plea offer of a cap of twenty-five years, which Applicant agreed to accept. Applicant testified he accepted the offer because he had lost faith he could win at trial, and Counsel told him she had many reasons that would convince the judge to sentence him to something less than twenty-five years. Applicant further testified he planned on going to trial and wanted to contest the burglary and armed robbery charges.

Applicant also testified Counsel did not have full discovery, even the Friday before trial began. However, Applicant acknowledged he did not give Counsel any witnesses or leads to investigate other than directing her to contact Investigator Porter about whether he had actually entered the home during the second attempted murder. On cross-examination, Applicant acknowledged he ultimately pleaded guilty only to the attempted murder charge, to which he admitted his involvement and cooperated with law enforcement. Applicant also acknowledged he told the plea judge he was satisfied with Counsel's representation and further sent her a letter after the plea thanking her for doing the best she could for him.

Counsel testified she was appointed to Applicant's case on June 12, 2013, and she sent an investigator to interview Applicant on June 19th. Counsel further testified the attempted murder to which Applicant ultimately pleaded guilty was a hit on a witness who was going to testify against a gang member. According to Counsel, Applicant admitted his involvement in this shooting to law enforcement and to the investigator sent from her office. Counsel further testified she first met personally with Applicant on July 19th, at which time she had not received discovery. Counsel

testified she sent discovery to Applicant on September 13th and October 1st, as the two cases were being investigated by different entities, so she did not receive everything at once. Counsel testified she sent Applicant everything she received except CDs containing statements because he was not able to play them in jail. Counsel further testified she met with Applicant when he was transported to court for various hearings in October 2013, January 2014, and March 2014, and at the jail to prepare for trial on June 6, 2014. Counsel testified Applicant's trial was scheduled to start on June 16, 2014.

Counsel explained the first offer from the State was for a negotiated sentence of fifteen years, concurrent, on one count of attempted murder and one count of armed robbery. According to Counsel, Applicant rejected the offer and informed Counsel he wanted to retain private counsel. Counsel testified the State withdrew the offer after Applicant rejected it, so she wrote Applicant a letter on May 5, 2014, laying out the charges against him, the possible sentences, and urging him to let her know if she should continue negotiations. Counsel testified Applicant responded to that letter saying he did not want to go to trial, but he felt fifteen years was "throwing his life away," and he directed her to try to obtain another plea offer.

Counsel further testified, after receiving Applicant's response, she contacted the solicitor on May 20 to request another offer. Counsel testified she asked for twenty years, but after speaking with the victim, the lowest the solicitor would agree to offer was twenty-five years as a negotiated sentence. Counsel testified she wrote another letter to Applicant the same day detailing her conversation with the solicitor and informing him the case would be set for trial in June if Applicant did not want to accept the offer. According to Counsel, in between the time of the first and second offers, the victim began cooperating with law enforcement and agreed to testify at trial

and was pushing for a significant sentence. Counsel testified she was able to convince the State to modify the offer to a cap of twenty-five years with dismissal of all charges except the attempted murder on June 4th. Counsel testified Investigator Porter was part of that final negotiation in addition to the solicitor, and they discussed the potential defense that Applicant had not made entry into the home. Counsel testified she wrote Applicant a letter explaining that offer on June 5, but she then decided to meet with Applicant in person on June 6 to convey the offer because she was concerned her letter would not be received timely.

Counsel further testified the attempted murder to which Applicant ultimately pleaded guilty was a hit on a witness who was going to testify against a gang member in a drug case. According to Counsel, Applicant admitted his involvement in this case to law enforcement and to the investigator sent from her office. Counsel testified Applicant did not give her anything to investigate other than talking to Investigator Porter. Counsel also testified Applicant indicated his willingness to cooperate and testify in other cases, and she contacted multiple members of law enforcement in order to prepare for mitigation. Counsel testified her defense to the attempted murder charge would have been duress as it was ordered by another gang member who would not have testified at trial. She testified Applicant always admitted to the shooting, and they discussed the pros and cons of using this defense. According to Counsel, she felt this was a robust case in terms of potential for mitigation because Applicant cooperated with law enforcement on multiple cases, and the officers were comfortable with a sentence of fifteen to twenty years, all of which was presented to the judge at the plea hearing.

Counsel testified Applicant never told her he wanted to go to trial, although she would have been prepared for one. According to Counsel, this was not a difficult case to prepare as there were

no forensics or expert witness, and she was aware of all potential witnesses for the state. Counsel testified it was solely Applicant's decision to plead guilty, and she filled out the plea checklist with him explaining the terms of the plea, which Applicant then signed on June 9, 2014.

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).

To find a guilty plea is voluntarily and knowingly entered into, the record must establish Applicant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984). Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, an applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63 (1977). Statements 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. Crawford v. United States, 519 F.2d 347 (4th Cir. 1975) overruled on other grounds by United States v. Whitley, 759 F.2d 327 (4th Cir. 1985).

This Court finds Applicant has failed to prove Counsel's performance was deficient in any way. Counsel and her investigator investigated to the extent Applicant directed and spoke with the law enforcement officer Applicant requested she contact. Counsel met with Applicant numerous times, reviewed discovery with him, and discussed potential defenses to these charges. This Court finds credible Counsel's testimony she discussed the possibility of a defense to the second armed robbery/burglary charges based on whether or not Applicant actually entered the home, and Counsel in fact used this argument during plea negotiations to obtain a more favorable offer for Applicant. Applicant directed Counsel to work out a plea agreement and to focus on mitigation, which Counsel did.

This Court also finds credible Counsel's explanation as to the series of offers made by the State and the circumstances surrounding each offer. This Court finds Applicant rejected the initial offer of fifteen years because he thought the sentence was too harsh and because he planned to hire

a private attorney, and the State withdrew that offer after he rejected it. However, as Counsel explained, the victim of the attempted murder thereafter began cooperating with law enforcement, and the Solicitor's Office was constrained by the victim's wishes when making further offers. Counsel testified she next conveyed a negotiated plea of twenty-five years to the armed robbery and the attempted murder, which Applicant rejected. Finally, Counsel testified she negotiated a plea only to the attempted murder charge with a cap of twenty-five years in order to allow her to make arguments in mitigation. This Court finds credible Counsel's testimony the investigator Applicant directed her to speak with was present during this negotiation, and she raised the issue of whether there was evidence in the armed robbery case to show Applicant had entered the home. Importantly, it was after this final negotiation with Porter present that the solicitor agreed to drop those charges.

Applicant testified he accepted this last offer only because he had given up hope he could succeed at trial with Counsel as his attorney, but this Court finds this testimony is not credible. Rather, this Court finds Applicant chose to plead guilty in order to avoid possibly being sentenced to life without parole plus 130 years and because the victim's cooperation with law enforcement changed the posture of the case. This Court finds applicant understood his rights and options, the charges against him, and his potential exposure. The Court further finds Counsel had plenty of time to prepare for trial had Applicant refused the plea offer, and she had reviewed discovery and spoken with law enforcement as Applicant directed.

Finally, this Court has also reviewed the transcript and finds the plea colloquy is determinative as to all of Applicant's issues, and the decision to plead guilty was freely and voluntarily made, as evidenced by the pre-plea checklist and affidavit Applicant executed with Counsel and the plea colloquy itself. Although Counsel's mitigation presentation did not work out

the way Applicant hoped, Applicant testified he wanted the armed robbery/burglary charges in the second case dismissed, which Counsel ultimately accomplished, and he pleaded guilty only to the attempted murder. During the guilty plea, Applicant testified he understood the agreement for the State to drop all the remaining charges and the recommendation of a cap of twenty-five years. See Tr. pp. 5-6. The plea judge also explained the possible sentencing range for each charge and Applicant's total possible sentence, and Applicant indicated he understood. See Tr. pp. 5-6. Applicant testified during the plea he was satisfied with Counsel's services and agreed she had done everything he asked of her. See Tr. pp. 6-7. 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

For all the foregoing reasons, 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.

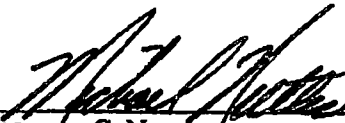
The Court notes Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right 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

Oct 18, 2018

2018 OCT 18 AM 11:14
BONIS FOULOS O'NEAL
CCCP & GS
FLORENCE COUNTY, SC

FILED



ALAN WILSON
ATTORNEY GENERAL

October 9, 2018

The Honorable Michael G. Nettles
Presiding Judge, Twelfth Judicial Circuit
South Carolina Circuit Court
180 North Irby Street, MSC-XX
Florence, South Carolina 29501

Re: Charles J. Davis, #326311 v. State of South Carolina
2015-CP-21-0578

Dear Judge Nettles:

Enclosed please find the State's original proposed **Order of Dismissal** in the above-captioned case. If this order meets your approval, please sign and forward to the Florence County Clerk of Court to be filed and served.

Sincerely,

Lindsey McCallister
Assistant Attorney General

LM/can
Enclosures

cc: Jonathan D. Waller, Esquire

DORIS PAULOS O'NEAL
CCCP # 65
FLORENCE COUNTY, SC

2018 OCT 18 AM 11:13

FILED

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

Samuel Leonard Key Rembert C. Dennis Building 1000
Assembly St. Columbia, SC 29201

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:

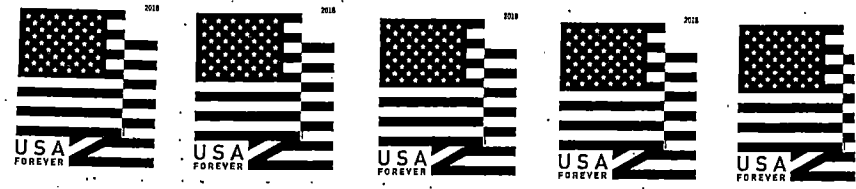
E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are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

>>
ER
JF—

116 Blanding Street, Suite 2B
Columbia, SC 29201



Daniel E. Shearouse
Clerk of Court
Supreme Court of South Carolina
Post Office Box 11330
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