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December 2, 2018

Clerk of Court
Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

Re: Isaac Williams 365231 v State, 2017-CP-10-6227

Dear Clerk Shearouse:

Please find the enclosed Notice of Appeal, Proof of Service, and Order of Dismissal in the above Charleston County PCR action. Please return a clocked copy of the Notice of Appeal and Proof of Service in the enclosed SASE.

Should you have any additional questions please do not hesitate to contact my office.

With best regards, I am,

James K Falk

Thank you for your assistance.

Cc:
Benjamin Limbaugh, Esq
Isaac Williams, 365231
Charleston County Circuit Court Clerk

THE STATE OF SOUTH CAROLINA

In The Supreme Court

RECEIVED

DEC 07 2018

S.C. SUPREME COURT

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas

Honorable Michael G. Nettles, Circuit Judge

Case No.: 2017-CP-10-6227

Isaac Williams 365231.....PETITIONER

V.

State of South Carolina.....RESPONDENT

NOTICE OF APPEAL

The Petitioner Isaac Williams appeals the Honorable Michael G Nettles' November 6, 2018 Order of Dismissal. Undersigned counsel received notice of entry of the order on November 20, 2018. A copy of the order on appeal is attached hereto.

James K Falk
Falk Law Firm
PO Box 1058
Charleston, SC 29402

December 2, 2018

Benjamin Limbaugh, Esq.
Office of S.C. Attorney General
PO Box 11549
Columbia, SC 29211-1549

Clerk of Court- Charleston CP
100 Broad Street
Charleston, SC 29401

THE STATE OF SOUTH CAROLINA

In The Supreme Court

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DEC 07 2018

S.C. SUPREME COURT

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas

Honorable Michael G Nettles, Circuit Judge

Case No.: 2017-CP-10-6227

Isaac Williams, 365231.....PETITIONER

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CERTIFICATE OF SERVICE

I, James Falk, certify that I have today served the within notice of appeal upon the Respondent by depositing a copy of it in the U.S. Mail, postage prepaid, addressed to its attorney of record, Benjamin Limbaugh Esq. Office of the S.C. Attorney General, PO Box 11549, Columbia, SC 29211-1549. I further certify that all parties required by Rule to be served have been served this December 3, 2018.

James K Falk
Falk Law Firm
PO Box 1058
Charleston, SC 29402

cc
AG
AT
EJ
SOL

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Isaac Williams, #365231,
Applicant,

v.
State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

2017-CP-10-6227

ORDER OF DISMISSAL

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed December 7, 2017 by Isaac Williams ("Applicant"). The State (Respondent) made its Return on February 6, 2018, requesting an evidentiary hearing be held. An evidentiary hearing into the matter was convened on October 2, 2018, at the Charleston County Courthouse before the Honorable Michael G. Nettles. Applicant was present at the hearing and was represented by James K. Falk. Assistant Attorney General Benjamin Limbaugh of the South Carolina Attorney General's Office represented Respondent.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. Applicant was indicted at the December 2013 term of the Charleston County Grand Jury for murder (2013-GS-10-07413) and kidnapping (2013-GS-10-07411). On July 10, 2015, before the Honorable Kristi Harrington, Applicant pled guilty as indicted to murder. The kidnapping charge was nolle prossed. Applicant was represented by Adam Mlynarczyk, Esquire. Ninth Circuit Solicitor Scarlett A. Wilson, prosecuted the case. On August 26, 2015, Judge Harrington sentenced Applicant to imprisonment for forty years. Applicant was to be given credit for time served.

Applicant appealed and Kathrine H. Hudgins, Esquire, Appellate Defender for the South Carolina Commission on Indigent Defense, perfected the appeal. The South Carolina Court of Appeals dismissed the appeal pursuant to Anders v. California, 386 U.S. 738 (1967), inn an unpublished opinion on April 1, 2017. State v. Williams, 2017-UP-186 (S.C. Ct. App. filed May 3, 2017). The remittitur was returned to the circuit court on May 31, 2017.

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. "Hill v. Lockhart"
2. Involuntary guilty plea.
    a. "Boykin v. Alabama"
3. Lack of subject-matter jurisdiction.
    a. "Brown v. State"

Attached to this Return and incorporated by reference are the records of the Charleston County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, Applicant's appellate records, and the post-conviction relief application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

At the evidentiary hearing, Applicant testified on his own behalf. Respondent presented the testimony of plea counsel, Adam Mlynarczyk (hereinafter "Counsel"). This Court also had before it a copy of Applicant's plea transcript, the records of the Charleston County Clerk of Court, and Applicant's appellate records.

Counsel's Testimony

Counsel testified that he was appointed as Applicant's counsel early in the process. Counsel testified that he filed Rule 5 and Brady motions and received voluminous amounts of

discovery. He explained that there was approximately 1100-1200 pages of documents, photographs, and videos. He stated that he spent over three hundred and forty hours investigating this case. He proceeded to elaborate on the amount of evidence the State had against Applicant. Counsel testified that the truck where the murder occurred was in evidence, there was video of Applicant being picked up by the shooter prior to the incident, video of Applicant being dropped off at work in the truck after the incident, video of Applicant running back to the truck with rags, text messages from Applicant's phone, and the evidence produced from Applicant's proffer.

Counsel testified that he spent a significant amount of time investigating this case and probably met with this Applicant more than any other client he has ever had. Counsel explained that he discussed with Applicant the State's theory of the case, that the text messages discovered on Applicant's phone could show that he knew a crime was going to be committed in the truck when he was picked up. Counsel discussed numerous times with the Applicant that this was a hand of one hand of all scenario and that even if he did not pull the trigger he could be convicted of murder. Counsel stated multiple times that the optics of the case and the level of evidence the State had against his client were what weighed heavily into the decision to plead guilty.

Counsel testified that the Applicant had not been in trouble before and expressed the desire to speak with the solicitor's office. Counsel explained at that point he agreed with Applicant's decision to proffer, but warned him that if he agreed to proffer he needed to be absolutely truthful with any and all information he provided. Counsel also explained to Applicant that if the solicitor's office deemed him to be untruthful at any point they could pull the plug on the proffer and use all information he provided against him at trial. He also testified that he spoke to Applicant about going to trial before the decision to proffer was made. Counsel's advice was that there were no benefits of going to trial and that the only thing that would benefit from the

publicity was his business. He testified that they spoke a lot about trying to get a thirty to forty year offer and if they did they would jump on it.

Counsel testified that ultimately it was the Applicant's decision to proffer with the solicitor's office. He explained to the Applicant that there were no promises in exchange for the proffer, but also that he understood the solicitor's office would do whatever they could do for him at the sentencing if he cooperated. He testified that there were three or four proffer sessions with the solicitor's office and that the Applicant kept providing contradicting information. Counsel testified that at one point during the proffer the Applicant told him he was finally going to tell the entire truth, but did not consult with counsel as to what exactly that meant. Counsel then explained that the Applicant proceeded to tell the solicitors that the plan the whole time was to go and kill the victim, but that he was told it was a murder for hire in which they were going to kill the victim for helping to put the shooter's father in prison. The solicitors ended the proffer at that point as the Applicant's story had changed significantly from the beginning in which he stated he knew nothing about what was going to happen when he got in the car that day. Counsel stated that the combination of the videos, texts, and the surprise proffer statement were large hurdles that would be very difficult to overcome.

Counsel testified that he specifically recalled discussing hand of one hand of all and mere presence with the Applicant. Counsel testified that he went over the elements of hand of one hand of all with the Applicant, as that was the theory the State intended to pursue. Counsel testified that he routinely spoke to the Applicant's family about the plea and that they were very involved in the process. Counsel testified that he does not remember pressuring the family into pressuring the Applicant to accept the plea. Counsel testified that he evaluates the risks of going to trial, assesses those risks, then has a discussion with his clients about what his advice would

be using his past professional experience. Counsel also testified that he did not believe that Applicant's family was in disagreement about the decision to plead being the best course of action.

Counsel testified that ultimately he believed that pleading guilty was Applicant's best strategy in this case. He stated that forty years in prison was a long time, but Applicant would still have a chance of getting out. He stated that his strategy was to try and give Applicant a chance to see freedom again one day, pleading guilty was the best chance of doing that. However, he stated that it was ultimately Applicant's decision to plead guilty.

Applicant's Testimony

Direct Examination

Applicant testified that he told counsel that wanted to go to trial even though he lied during the proffer. He stated that counsel told him that it was not a good decision to go to trial after he lied to the State, because they could now use all of that evidence against him at trial. He stated that counsel told him a plea would be better, but that he did not want to plead to murder because he did not kill anybody. Applicant testified that his mother and stepbrother spoke with counsel and visited him in jail to try to convince him to plead guilty. He stated that they told him to take the plea if he ever wanted to see daylight again. He stated that he tried to tell them that he did not want to take the plea, but they were persistent and just agreed so everyone would shut up about it.

Applicant testified that the State did not think that he was the triggerman. He stated that counsel never went over with him the theory of hand of one hand of all. He stated that the State was using bits and pieces of the proffer against him and that they didn't want to believe what he

was saying. He testified that counsel convinced him that proffering was the best idea. He also stated that his statement concerning the "murder for hire" scenario was a hoax or a joke.

Applicant testified that he wanted to appeal his guilty plea and that he could not accept thirty to forty years. He stated that receiving a forty year sentence was essentially the same as receiving a life sentence. He stated that counsel did advise him of his right to appeal, but that he did not explain what issues he could appeal.

Cross-Examination

Applicant testified that he remembered the waiving his constitutional rights at his plea and that counsel had gone over those rights with him beforehand. He stated that he understood that his potential sentence was thirty years to life. He stated that he remembered agreeing that there were no promises made in exchange for him agreeing to plead guilty. He stated he might have said that he was satisfied with counsel's representation, but does not recall saying that he had not complaints. He stated that he paused before he agreed with the facts as stated by the solicitor because he was not the shooter, but he agreed with them once it was explained that he was being charged under an accomplice liability theory. He stated that he apologized at his sentencing and that he took responsibility for his actions. Finally, he stated that it was not his decision to plead guilty and that he did not remember court asking if he was there freely and voluntarily.

Re-Direct

Applicant testified that he was not satisfied with counsel's representation of him. He stated that he learned about the Alford plea and would've have taken an Alford plea. He stated that he did not think he was guilty, but was coerced to plead guilty. Finally, he stated that counsel told him how to answer the court's questions during the colloquy at his plea.

APPLICABLE LAW

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; 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.

Applicant also asserts his plea was involuntary. In PCR cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citations omitted). An

applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56 (1985). Further, "[t]hat a guilty plea must be intelligently made is not a requirement that all advice offered by the defendant's lawyer withstand retrospective examination in a post-conviction hearing." McMann v. Richardson, 397 U.S. 759, 770 (1970). Rather, "whether a plea of guilty is unintelligent . . . depends as an initial matter, not on whether a court would retrospectively consider counsel's advice to be right or wrong, but on whether that advice was within the range of competence demanded of attorneys in criminal cases." Id. at 771.

The record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Dalton v. State, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Boykin v. Alabama, 395 U.S. 238, 242 (1969)). A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between the court and defendant, between the court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). Further, "[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 usually, but not invariably, foreclosed. Dalton, at 137–38, 654 S.E.2d at 874 (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Therefore, 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)). "In considering an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing." Id. at 138–39, 654 S.E.2d at 874 (citing Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997)).

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 Trial Counsel was ineffective in his representation before and during his trial. This Court finds Applicant has failed to meet his burden of proving any of his allegations and that Trial Counsel was not ineffective in any of his actions or inactions. Applicant made a general ineffective assistance of counsel allegation and the court addresses that claim as follows:

This Court finds that trial counsel did a very good job preparing for this case and that the three hundred and forty plus hours of preparatory work he testified to is a significant amount. There was testimony presented that there were over twelve hundred documents in discovery and that counsel reviewed the discovery with the Applicant. Counsel and Applicant both testified that

counsel visited with Applicant numerous times to review the voluminous discovery. This Court finds counsel's testimony that he spent more time with this client than any other quite compelling and credible as to the amount of work he did on this case. This Court finds counsel's testimony that the evidence was overwhelming against Applicant to be credible and that he used that in his decision to advice Applicant to plead guilty. This Court specifically finds the video evidence, texts, and the evidence Applicant provided during his proffers to be particularly of worry if this case would have gone to trial.

This Court finds that Applicant's testimony concerning his willingness to take an Alford[1] plea does not provide any basis for an ineffective assistance of counsel claim, as an Alford Plea would not have been applicable in this case. An Alford Plea applies in cases where the defendant proclaims his innocence, but admits that there is overwhelming evidence to establish his guilt if the case were to go to trial.

This standard does not apply in this case, as Applicant admits he was in the car and that he knew a violent crime was going to be committed. This Court takes specific notice of the plea transcript as being dispositive on this issue. The Applicant initially took exception to pleading guilty to murder, but then agreed with the facts when it was explained to him again that he was being charged under an accomplice liability theory. This Court finds counsel's testimony credible where he stated that he went over "hand of one hand of all" with the Applicant multiple times. This Court finds that Applicant admitted he knew a violent crime was to be committed in the car and therefore made no claim of actual innocence that would provide a basis for an Alford Plea.

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[1] "Nor can we perceive any material difference between a plea that refuses to admit commission of the criminal act and a plea containing a protestation of innocence when, as in the instant case, a defendant intelligently concludes that his interests require entry of a guilty plea and the record before the judge contains strong evidence of actual guilt." North Carolina v. Alford, 400 U.S. 25, 37 (U.S. 1970).

Based on these reasons, this Court finds Trial Counsel was not ineffective on this ground and this allegation is denied and dismissed with prejudice.

Applicant alleges that his guilty plea was involuntary because he was coerced into taking it by his family and by counsel. This Court finds that Applicant freely and voluntarily entered his guilty plea and that his allegation is without merit. This Court finds the plea transcript to be dispositive in deciding that Applicant knowingly and voluntarily accepted the guilty. The plea Court asked Applicant if he was being forced to plead guilty, if he was entering into the plea freely, and if he was entering into the plea voluntarily. Applicant's answer to all of these questions was, "Yes, ma'am." (Tr. p. 10, 22-25; p. 11, 1-4). Counsel's testimony that he did not coerce Applicant into taking the plea, nor did he tell Applicant's family to coerce him into taking the plea was credible. This Court finds that Applicant was not coerced into taking the guilty plea, he did so voluntarily and with the proper advice of counsel.

Based on these reasons, this Court finds Trial Counsel was not ineffective on this ground and this allegation is denied and dismissed with prejudice.

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

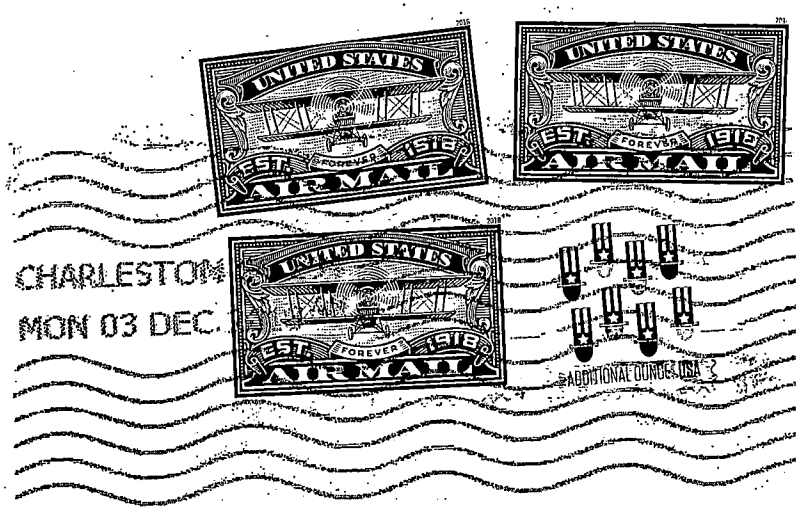
2. Applicant must be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 6 day of June, 2018.

MICHAEL G. NETTLES
Presiding Judge
Ninth Judicial Circuit

_____, South Carolina

FALK LAW FIRM
PO Box 1058
Charleston, SC 29402



Clerk of Court
Supreme Court of South Carolina