



RECEIVED

JAN 28 2019

S.C. SUPREME COURT

January 25, 2019

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

Re: Christopher Antwan Cooper v State of South Carolina
C/A No: 2017-CP-21-02181

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. Cooper 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

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM FLORENCE COUNTY
George M McFaddin, Jr., Circuit Court Judge

2017-CP-21-02181

RECEIVED

JAN 28 2019

S.C. SUPREME COURT

Christopher Antwan Cooper #351838,

Appellant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Christopher Antwan Cooper #351838, appeals the Order of Dismissal denying his Application for Post-Conviction Relief filed January 11, 2019, issued by the Honorable George M. McFaddin, Jr., Presiding Judge, Twelfth Judicial Circuit.



Jonathan D. Waller
Waller Law Group
SC Bar No.: 76290
1116 Blanding Street
Suite 2B
Columbia, SC 29201
803-520-7278 (phone)
jonathan@wallergroupsc.com
ATTORNEY FOR PETITIONER

January 25, 2019

Other Counsel of Record:
Lindsey A. McCallister, Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3319

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM FLORENCE COUNTY
George M. McFaddin, Jr., Circuit Court Judge

2017-CP-21-02181

RECEIVED

JAN 28 2019

S.C. SUPREME COURT

Christopher Antwan Cooper #351838,

Appellant,

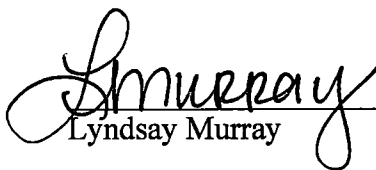
v.

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.


Lyndsay Murray

January 25, 2019

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

FILED

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2017CP2102181

Christopher Antwan Cooper 2019 JAN 11 AM 11: 21 South Carolina State Of
DORIS POULOS O'HARA

PLAINTIFF(S) CCCP & GS DEFENDANT(S)
Submitted by: FLORENCE COUNTY, SC Attorney for: Plaintiff Defendant
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON): Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON): Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- STAYED DUE TO BANKRUPTCY
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
 Affirmed; Reversed; Remanded; Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

Judge Code

1/11/2019 Date

For Clerk of Court Office Use Only

This judgment was entered on January 11, 2019, and a copy mailed first class or placed in the appropriate attorney's box on January 11, 2019, to attorneys of record or to parties (when appearing pro se) as follows:

CERTIFIED A TRUE COPY
DORIS POULOS O'HARA
CLERK OF COURT, C.P. & G.S.
FLORENCE COUNTY, S.C.

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

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

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Doris P. O'Hara
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), SCRCF.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

Christopher Cooper, #351838,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT

C.A. No. 2017-CP-21-2181

ORDER OF DISMISSAL

2019 JAN 11 AM 10:44
DORIS POULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

FILED

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed by Christopher Cooper (Applicant) on August 11, 2017. Respondent made its Return and Partial Motion to Dismiss on December 7, 2017. An evidentiary hearing into the matter was convened on April 3, 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. Marshall S. Weaver, Esquire, Applicant's plea counsel, was also called to testify. This Court also had before it a copy of the records of the Florence County Clerk of Court, records from the South Carolina Department of Corrections, the application, Respondent's Return, and the plea transcript.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. In June 2016, the Florence County Grand Jury indicted Applicant for one count of first-degree burglary (2016-GS-21-0798),



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

two counts of receiving stolen goods (-0799, -800), and three counts of financial transaction card fraud (-0801, -0802).¹ Marshall Weaver (Counsel), Esquire, represented Applicant. Deputy Solicitor John Jupertinger, Esquire, prosecuted the case on behalf of the State. On August 12, 2017, Applicant pleaded guilty to the lesser included offense of second-degree burglary (violent) before the Honorable D. Craig Brown. The remaining charges were dismissed *nolle prosequi*. Pursuant to a negotiated sentence, Judge Brown sentenced Applicant to imprisonment for thirteen years. Applicant did not appeal his conviction or sentence.

SUMMARY OF FACTS ADDUCED AT GUILTY PLEA

Charles Smith (Smith) went to his son Carl's home around noon on January 15, 2016, to walk Carl's dog, Toby, while Carl was at work. Tr. pp. 12-13. As Smith walked up the driveway, he noticed a car idling in the carport, parked with the truck facing the rear door of the house. Tr. p. 13. Smith then rang the doorbell thinking his son had visitors. Tr. p. 13. When no one answered the door, Smith unlocked the deadbolt, and let himself inside. Tr. p. 13. Upon entering the home, Smith saw four or five guns on the kitchen table and in the living room – three air rifles, a McHenry rifle, and a shotgun. Tr. p. 13. Smith picked up the shotgun and walked toward the master bedroom, where he noticed the lights were on, but no one was there. Tr. pp. 13-14.

As Smith returned to the living room, he could see the back door had been kicked in, as the deadbolt was still engaged, but the door casing had been destroyed. Tr. p. 14. Smith was still standing in the living room when Applicant and his codefendant walked into the home. Tr. p. 14.

¹ Applicant also pleaded guilty shoplifting – third or subsequent offense (2016-GS-21-0068) and was sentenced to time-served. Applicant does not challenge that conviction in this PCR application.

Smith pointed the shotgun at them, told them to get out, and they fled. Tr. p. 14. Smith later identified both Applicant and his codefendant from a photo lineup. Tr. p. 14. Smith also told investigators Applicant was wearing a ball cap, which was recovered at the scene. Tr. p. 14. The hat was submitted to SLED for DNA analysis, which matched Applicant along with two other unknown individuals. Tr. pp. 14-15.

As Applicant and his codefendant fled out the back door, Smith ran to the front and took down the license plate number of the car. Tr. p. 15. The tag was traced to Applicant's girlfriend. Tr. p. 15. Applicant's girlfriend was prepared to testify he dropped her off at work and took the car that day. Tr. p. 15. Applicant was located at her home the next day. Tr. p. 15. There, investigators also discovered a stolen pistol belonging to Carl, and iPad with a serial number matching that provided by Carl, and an iPod containing Carl's family photos. Tr. p. 15.

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, in that:
 - a. Applicant received "less than 30 minutes total consultation" with counsel.
2. Prosecutorial Misconduct/Brady violation
 - a. "My discovery did not include a chain of custody re: the DNA."
3. Grand Jury process was unconstitutional, in that:
 - a. "It is my understanding the GJ indicts about 99% with zero oversight."



SUMMARY OF TESTIMONY

Applicant testified he was arrested on charges of credit card fraud, receiving stolen goods, possession of a firearm, and first-degree burglary, which stemmed from separate incidents. According to Applicant, he was already in jail on the fraud and receiving stolen goods charges when he was charged with the burglary. Applicant testified he was appointed the same attorney to represent him on all charges, which was originally Hank Anderson. However, Applicant moved for Mr. Anderson to be relieved and was eventually appointed Counsel for the remainder of the case. Applicant testified he and Counsel met three times, and they discussed the case and the possible sentences Applicant was facing. However, Applicant felt the lawyers involved did not have his best interests at heart, and the State refused to lower its offer of thirteen years because doing so would make Mr. Anderson look bad.

Applicant further testified he discussed his version of events with Counsel, telling Counsel he was present at the scene of the robbery but did not know what was going to happen and did not enter the house. According to Applicant, he was driving, with his codefendant in the front passenger seat, to a house to meet "two white guys." Applicant testified he thought they were moving guns for someone in the house, and he thought they knew people in the house. Applicant testified he told Counsel he never went in the house. Applicant testified he went to the back door, saw the door kicked in, and yelled for his codefendant, who came running out. According to Applicant, the codefendant hit Applicant's head as the codefendant ran out of the house, knocking off Applicant's hat.



Applicant testified he and Counsel did not fully discuss the State's burden of proof, specifically the issue of criminal intent. Applicant testified they just talked about the fact that he did not enter the house. Applicant further testified he and Counsel did not discuss the concepts of "hand of one, hand of all," mere presence, or intent. However, on cross-examination, Applicant conceded the court questioned him as to whether he understood the concept of "hand of one, hand of all," and Applicant told the court he understood, he was present at the scene, and he knew what was going to happen. Applicant testified he did not think he had any defense to the charges at the time he entered the plea and still did not know if he had a defense. Applicant testified Counsel told him one of the victims had seen Applicant in the house, and Counsel could question the victim on that issue, but it was not a strong defense. According to Applicant, he felt he could "beat" these charges, but Counsel and Applicant's mother advised him to plead guilty.

Counsel testified he was appointed on March 31, 2017 after Mr. Anderson was relieved. Counsel testified he had been practicing law for nine years, with approximately thirty percent of practice in criminal litigation. Counsel testified he met with Applicant three times at the detention center and then extensively on the day of the plea.

Counsel testified he had an in-depth meeting with Applicant on April 5, 2017, at which time they reviewed the investigative report, the photo lineup identification of Applicant by the victim, the evidence tracing the car to Applicant's girlfriend, and the various items of evidence recovered from the girlfriend's home. According to Counsel, Applicant's girlfriend would have testified at trial he dropped her off that day and took the car. Counsel testified he had another meeting with Applicant on June 1, 2017, by which time SLED had completed DNA testing on the



hat recovered from the scene, and the DNA matched Applicant. Counsel testified, at this meeting, he and Applicant discussed the options for going to trial, as well as the concept of "hand of one, hand of all." According to Counsel, Applicant was "hung up on" his claim that he did not enter the house, but Counsel testified he felt Applicant understood the concept by the day of the plea.

Counsel testified he met with Applicant again on June 9, 2017. At that meeting, Counsel and Applicant again reviewed all of the discovery and the elements of the charges. Specifically, Counsel testified he and Applicant talked about the victim eyewitness, the DNA, and the items found at the girlfriend's house. Counsel testified he and Applicant also discussed violent/non-violent offenses and sentencing at this meeting. Finally, Counsel testified he met with Applicant for approximately thirty to forty-five minutes immediately prior to entering the guilty plea. Counsel explained Applicant wanted the solicitor to reduce the negotiated offer, but the State refused. Counsel testified it was Applicant's decision not to go to trial, and he felt Applicant understood the negotiated plea.

Counsel testified Applicant's story changed as they received more evidence, and he and Applicant discussed Applicant's version of the facts at length. Counsel testified the trial date he was given was more than a week in advance (June 19, 2017), and although he did not have any notes reflecting trial preparation, he had reviewed the discovery and possible defenses. Counsel testified he would have attacked the significance of the hat, and he would not have called any witnesses other than Applicant. Counsel further testified he and Applicant discussed Applicant's original version of the facts involving the two other men, but Counsel explained that version

changed and was not a defense. Counsel also testified he was sure he and Applicant discussed a “mere presence” defense as part of the “hand of one, hand of all” discussion.

Finally, Counsel testified he was aware of Facebook messages sent by Applicant’s codefendant to Applicant’s family offering to “take the rap” if someone would put money on his account. Counsel testified he did not follow up on that, but he would have if Applicant had decided to proceed to trial. Counsel also explained although the DNA testing at SLED was slow, he received the results in time for Applicant to make an informed decision about what to do. Counsel testified the DNA was not necessary because Applicant never denied wearing the hat, but if it had come back without Applicant’s DNA on it, it could have ruled Applicant out as the person the victim saw.

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. This Court finds Counsel’s testimony on these issues to be credible, while also finding Applicant’s testimony was not credible. 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, 386 S.E.2d at 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.” Id. at 117-18, 386 S.E.2d at 625. 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 he would not have pleaded 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).

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. U.S., 519 F.2d 347 (4th Cir. 1975) overruled on other grounds by U.S. 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 met with Applicant numerous times and took extensive notes regarding those meetings. Counsel's notes reflect he and Applicant discussed Applicant's version of the facts, the elements of the charges and the State's burden of proof, possible defenses, and Applicant's option to proceed with a trial or enter a guilty plea. This Court finds Counsel had a plan for trial had Applicant wished to pursue that course of action.

This Court has also reviewed the transcript and finds the plea colloquy is determinative as to all of Applicant's issues. The plea colloquy was thorough, and the plea court gave Applicant ample opportunity to discuss any issues or questions Applicant had during the plea with Counsel. This Court also finds the decision to plead guilty was freely and voluntarily made. During the guilty plea, Applicant testified he understood the plea was negotiated for a thirteen year sentence, he was entering into the agreement freely and voluntarily, and he wished the judge to accept it. See Tr. pp. 10, 11, 21, 26. Applicant also testified during the plea he was satisfied with the services of his attorney and had enough to discuss the case with Counsel. See Tr. pp. 10-11. Admissions



“made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements.” Id. (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)).

This Court finds Applicant failed to present any such reason in this case.

Accordingly, these allegations are denied and dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Counsel was not deficient in any manner, nor was Applicant prejudiced by Counsel’s representation. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty days from PCR counsel’s receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel’s assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant’s behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.



IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED.

[Handwritten signature]
2018

[Handwritten signature]

GEORGE M. McFADDIN, JR.
Presiding Circuit Court Judge
Twelfth Judicial Circuit

2019 JAN 11 AM 10:44
DORIS POULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

FILED

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