

MAC | VANCE ATTORNEYS, LLC

January 28, 2019

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

RE: Shaquean N. Lewis, #370044 v. State of South Carolina
2017-CP-01-00145

Dear Mr. Shearouse:

Please find enclosed a Notice of Appeal along with the accompanying Order for the above-referenced matter. By way of this letter I am copying the Office of Appellate of Defense, as I was appointed to represent Mr. Lewis.

Best regards,

ASHLEY A. MCMAHAN
ATTORNEY AT LAW

AAM

cc: Shaquean N. Lewis
Janell H. Gregory, Asst. Attorney General
Abbeville County Clerk of Court
Office of Appellate Offense

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ABBEVILLE COUNTY
Court of Common Pleas

The Honorable Brian M. Gibbons, Circuit Court Judge

Case No. 2017-CP-01-00145

Shaquean N. Lewis, #370044, Petitioner,

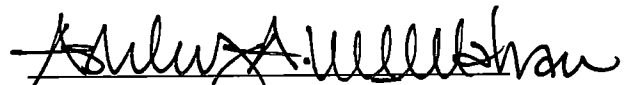
v.

State of South Carolina, Respondent.

NOTICE OF APPEAL

Applicant, Shaquean N. Lewis, appeals the order of the Honorable Brian M. Gibbons, dated January 14, 2019, and filed January 22, 2019.

Jan. 28th, 2019


ASHLEY A. MCMAHAN, ESQUIRE
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Opposing Counsel:
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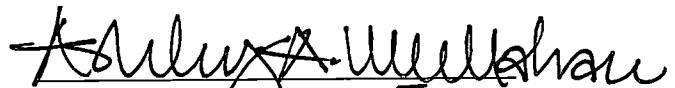
PROOF OF SERVICE

I, Ashley A. McMahan, certify that I have served the within Notice of Appeal on Respondent by depositing a copy of the same in the United States mail, postage prepaid, addressed to:

Janell H, Gregory, Asst, Attorney General
S.C. Attorney General's Office
PO Box 11549
Columbia, SC 29211-1549

I further certify that all parties required by Rule to be served have been served.

Jan. 28th, 2019


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STATE OF SOUTH CAROLINA)
COUNTY OF ABBEVILLE)

IN THE COURT OF COMMON PLEAS
FOR THE EIGHTH JUDICIAL CIRCUIT

2017-CP-01-145

Shaquean Newjean Lewis, #370044;)

Applicant,)

ORDER OF DISMISSAL

v.)

State of South Carolina,)

Respondent.)

FILED
STATE OF SOUTH CAROLINA
2019 JAN 22 AM 9:06
EMILY T. HARRIS
CLERK OF COURT

This matter comes before the Court by way of an application for post-conviction relief filed on May 24, 2017, by Shaquean Lewis (“Applicant”). The State (“Respondent”) filed a Return on December 15, 2017, requesting an evidentiary hearing. An evidentiary hearing into the matter was convened on October 17, 2018, at the Greenwood County Courthouse. Applicant was present at the hearing and represented by Ashley A. McMahan, Esquire. Assistant Attorney General Janell H. Gregory of the South Carolina Attorney General’s Office appeared on behalf of Respondent. At the hearing, Applicant testified on his own behalf. Plea counsel, Kami Granade, Esquire (“Counsel”) also testified via telephone. After a review of the record and all evidence presented, this Court finds Applicant has failed to meet his requisite burden of proof and denies this application.

I. PROCEDURAL HISTORY

The records before this Court establish Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Abbeville County Clerk of Court’s order of commitment. During the January 2016 term, the Abbeville County Grand Jury indicted Applicant for armed robbery (2016-GS-01-0078), possession of a weapon during the commission of a violent crime (2016-GS-01-0079), and unlawful possession of a weapon (2016-GS-01-0080). Counsel



represented Applicant. Deputy Solicitor Yates Brown of the Eighth Circuit Solicitor's Office prosecuted the case.

On October 3, 2016, Applicant appeared with Counsel before the Honorable Donald B. Hocker and pled guilty as indicted to armed robbery. Pursuant to negotiations between Applicant and the State, Judge Hocker sentenced Applicant to imprisonment for fifteen years and both firearm charges were dismissed. Applicant did not appeal his guilty plea.

II. SUMMARY OF FACTS

On September 10, 2015, officers were dispatched to a bank on East Savannah Street in reference to a bank robbery. (GP Tr. 6.) Two employees had just come to the bank to open it for the day, and one of the employees entered the bank first and the second employee followed shortly thereafter. (GP Tr. 6.) As the second employee comes to the side door of the bank, a man in a blue hoodie with his face masked and sunglasses on approaches her from behind. (GP Tr. 6.) The suspect has a pistol in his hand and follows her inside with the gun in her back. (GP Tr. 6.) The suspect demands money from the bank. (GP Tr. 6.) The employees are ordered to open the vault and give the suspect the money that is in their drawers, and they complied. (GP Tr. 6.) The suspects then puts the employees in the vault and shuts the door. (GP Tr. 6.) The incident is captured on video in the bank. (GP Tr. 7.)

The employees provide statements to law enforcement and indicate they recognized the voice of the suspect. (GP Tr. 7.) Both employees identify Applicant as the suspect. (GP Tr. 7.) Applicant was a customer of the bank and had been in the bank as recently as a week before the robbery. (GP Tr. 7.) The Greenwood County Sheriff's Bloodhound Tracking Team was able to swab the vault door to get a scent. (GP Tr. 7.) Blue, one of the bloodhounds, tracked from the bank up Savannah Street and alerted on a residence on Florence Street, which was not too far from



the bank. (GP Tr. 7.) The handler pulled the dog away believing the house was abandoned, but Blue went back to the door and, at that time, Applicant opened the door of the residence. (GP Tr. 7.) Applicant was cuffed at that time and a search warrant was executed on the residence. (GP Tr. 7.) During the search, officers located the blue hoodie and a black BB gun. (GP Tr. 7.) The employees said the BB gun was not the gun Applicant had during the robbery. (GP Tr. 7.)

III. ALLEGATIONS RAISED

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. "Counsel failed to investigate and prepare for trial"
 - b. "Counsel failed to advise me of all possible outcomes prompting me to plead guilty"
 - c. "Failure to communicate between counsel and client"

An evidentiary hearing was held on October 17, 2018. Applicant informed this Court he intended to proceed on the following grounds for relief:

1. Ineffective Assistance of Counsel
 - a. Counsel failed to investigate and prepare for trial;
 - b. Counsel failed to advise me of all possible outcomes prompting me to plead guilty;
 - c. Counsel failed to communicate with Applicant.

IV. TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

Applicant's Testimony

During the evidentiary hearing, Applicant testified on his own behalf. Applicant testified he was originally represented by Yasha Patel, Esquire. Applicant testified Patel handled his first bond hearing. Applicant testified Counsel then became his lawyer and he met with her three times at the jail. Applicant testified he had a lot of questions and Counsel never showed him anything. Applicant testified he did not know who robbed the bank and the employees did not know the race



of the suspect or who it was. Applicant testified the tracking dog did not go down Savannah Street and he discussed this with Counsel. Applicant testified the video only showed a person at the door of the bank with a gun, but there was no video of a person going to the vault. Applicant testified he was at the bank two weeks before the incident and questioned bank charges. Applicant testified he believed they are retaliating against him. Applicant testified he discussed that with Counsel. Applicant testified he asked Counsel to get the employee timecards. Applicant testified that SLED provided inconsistent statements. Applicant testified he had his grandmother's phone for three weeks and did not have a license. Applicant testified his mother tried to contact Counsel, but she was unable to reach her. Applicant testified Counsel talked to his sister instead. Applicant testified someone would have seen him at the time of the incident because a neighbor works third shift. Applicant testified Counsel told him all of the information he gave her made the State's case stronger. Applicant testified he could have gone to trial but he backed out at the last minute. Applicant testified he was between a rock and a hard place.

Counsel's Testimony

Counsel also testified at the post-conviction relief hearing. Counsel testified she has been practicing law since 2014 and was appointed to represent Applicant. Counsel testified she was his attorney for about two months prior to his plea and met with Applicant six times at the jail. Counsel testified she did most of the investigation on this case even though she was his second attorney. Counsel testified the facts of the case were that a man fitting Applicant's description robbed the bank and the teller's identified Applicant. Counsel testified she did not know if the tellers ever said the suspect's race in their description. Counsel testified witnesses reported seeing a black male with a hoodie on running through Falls. Counsel testified a tracking dog led officers to Applicant's trailer and the hoodie was in plain sight. Counsel testified she filed discovery and was

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satisfied with the State's response in this case. Counsel testified she went to the scene of the bank robbery and observed cameras, some were real and some were fake, and requested additional video. Counsel testified Applicant wanted her to talk to neighbors and gave her names of people in the neighborhood that would have been around at the time of the incident. Counsel testified he did not provide a lot of contact information for those people, but she tried to locate them. Counsel testified she went to the sheriff's office and reviewed the evidence against Applicant. Counsel testified Applicant made a call fifteen minutes after the incident and she had an expert standby to do a "phone dump," but she was not given the phone by Applicant's family. Counsel testified she did not think the phone would have been helpful because the phone call was on his mother's cell phone. Counsel testified Applicant claimed he did not do it initially, but as she got more into the timeline, he did not dispute any of the main facts.

Counsel testified she researched and prepared cross-examination for the K-9 officer regarding reliability of K-9 tracks. Counsel testified pre-trial motions are held the morning of trial and not before, so she would have questioned the reliability of the K-9 track at that time. Counsel testified the BB gun was found in the main house on the property, not Applicant's home. Counsel testified Applicant's home is curtilage of the main house. Counsel testified she would have questioned the law enforcement officers on where they found the gun as compared to where Applicant stayed on the property and she discussed this with Applicant.

Counsel testified the evidence against Applicant was strong. Counsel testified she would present the strongest facts and evidence on Applicant's behalf at trial, but told him it was not a slam dunk case for either side. Counsel testified she could have work with a few things at trial, but it was in Applicant's best interest to take the plea offer. Counsel testified she reviewed Applicant's constitutional rights with him before the day of the plea and again on the day of the

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plea. Counsel testified she does not know if Applicant had a previous offer before she became involved with the case. Counsel testified Applicant asked her to seek a plea deal and she approached the State about it and was initially offered twenty years. Counsel testified she asked for twelve years and the State countered with fifteen. Counsel testified Applicant agreed to the fifteen year plea deal. Counsel testified she discussed a trial with Applicant at length and it was his decision to plead guilty.

V. APPLICABLE LAW

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel 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.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order 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. Id. at 117, 300 S.C. 115. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any 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, 300 S.C. 115. With respect to guilty plea counsel, the applicant must show 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, 59 (1985).

VI. FINDINGS OF FACTS AND CONCLUSIONS OF LAW

This Court viewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the plea transcript, and Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Set forth below are the relevant findings of fact and conclusion of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

This Court finds Applicant has failed to meet his burden of proving he is entitled to post-conviction relief based on his allegation of ineffective assistance of counsel. Applicant has failed to prove both deficiency on the part of Counsel and any prejudice therefrom. Moreover, this Court notes the record reflects the knowing and voluntary nature of Applicant's guilty plea. Furthermore, after observing the witnesses and passing on their credibility, this court finds Counsel's testimony to be credible. By contrast, this Court finds Applicant's testimony lacks credibility.

Counsel failed to investigate Applicant's case and prepare for trial

Applicant alleges Counsel was ineffective for failing to investigate the leads he provided to Counsel and prepare his case for trial. "[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 (Cl. 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), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)).

This Court finds Counsel’s performance did not fall below the standard of professional norms. This Court finds credible Counsel’s testimony that she went to the bank, viewed the video of the incident, reviewed discovery provided by the State, and attempted to locate the potential witnesses provided by Applicant. This Court also finds credible Counsel’s testimony that she researched issues on K-9 tracking reliability in preparation for trial. This Court also finds credible Counsel’s testimony that she prepared cross-examination questions for law enforcement to attack the search of Applicant’s residence and the location of the BB gun officers recovered. This Court finds credible Counsel’s testimony that she discussed with Applicant the strengths and weaknesses of his case and was prepared to go to trial had Applicant requested.

This Court finds Counsel thoroughly investigated the facts and circumstances giving rise to Applicant’s charges, as well as possible defenses, and therefore Applicant has failed to establish deficiency of Counsel. As Applicant has failed to establish what additional investigation counsel should have performed as well as what benefit such investigation would have yielded, he has failed to establish prejudice. Therefore, this Court finds this allegation must be denied and dismissed with prejudice.

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Counsel failed to advise Applicant of all possible outcomes prompting him to plead guilty

Applicant alleges Counsel failed to advise him of all possible outcomes of his case, which prompted him to enter his guilty plea. However, this Court finds credible Counsel's testimony that she reviewed the strengths and weaknesses of the case with Applicant and told him the case was not a slam dunk for either side. This Court finds credible Counsel's testimony that she entered into plea negotiations after Applicant asked her to seek a plea offer from the State. This Court finds credible Counsel's testimony that she would have taken Applicant's case to trial and ultimately believed it was in Applicant's best interest to accept the fifteen year plea offer.

This Court finds Counsel adequately conferred with Applicant about his case, the possible outcome of trial, and the consequences of the plea offer. This Court finds Applicant's testimony less credible on this issue and finds this allegation is without merit. Therefore, this allegation is denied and dismissed with prejudice.

Counsel failed to communicate with Applicant

Applicant alleges Counsel failed to communicate with him during her representation. This Court finds this allegation is without merit. This Court finds credible Counsel's testimony that she represented Applicant for approximately two months prior to his plea and met with Applicant six times at the jail. This Court finds credible Counsel's testimony that she obtained discovery and reviewed it with Applicant. This Court finds credible Counsel's testimony that she reviewed Applicant's constitutional rights with him on two occasions. This Court finds credible Counsel's testimony that she discussed the strengths and weaknesses of Applicant's case.

This Court finds Counsel's performance was reasonable, diligent, and in accordance with professional norms. See Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Additionally, this Court finds Applicant has failed to meet his burden of establishing any resulting



prejudice from Counsel's representation. Therefore, this Court finds Applicant's allegation is without merit and must be denied and dismissed with prejudice.

VII. CONCLUSION

Based on the foregoing, the Court finds and concludes 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.

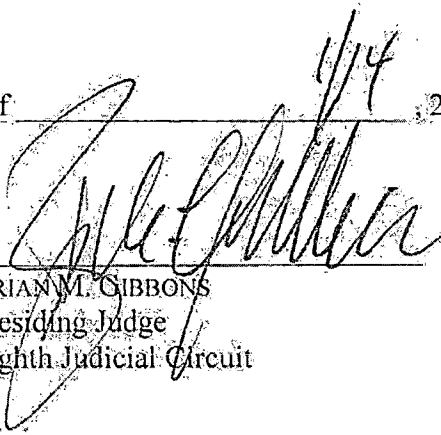
The Court notes Applicant must file and serve a notice of appeal within thirty days from post-conviction relief counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant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

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IT IS THEREFORE ORDERED THAT:

1. The application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant will remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this _____ day of _____, 2019.


BRIAN M. GIBBONS
Presiding Judge
Eighth Judicial Circuit


_____, South Carolina