



January 30, 2019

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

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FEB 01 2019

S.C. SUPREME COURT

Re: Patrick David Vaughn vs. State of South Carolina
C/A No: 2016-CP-33-0324

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. Vaughn 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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STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM MARION COUNTY
Michael G Nettles, Circuit Court Judge

2016-CP-33-0324

Patrick David Vaughn, # 360996,

Appellant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

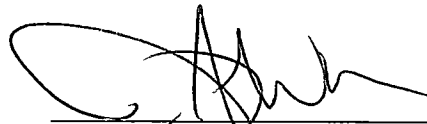
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S.C. SUPREME COURT

NOTICE OF APPEAL

Patrick David Vaughn, # 360996, appeals the Order of Dismissal denying his Application for Post-Conviction Relief filed January 16, 2019, issued by the Honorable Michael G. Nettles, Presiding Judge, Twelfth Judicial Circuit.



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ATTORNEY FOR PETITIONER

January 30, 2019

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STATE OF SOUTH CAROLINA
In The Supreme Court

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

2016-CP-33-0324

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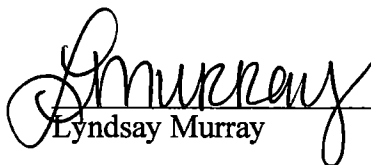
S.C. SUPREME COURT

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 30, 2019

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF MARION) TWELFTH JUDICIAL CIRCUIT

Patrick David Vaughn, #360996,) C.A. No. 2016-CP-33-0324

Applicant,)

ORDER OF DISMISSAL

v.)

State of South Carolina,)

Respondent.)

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed by Patrick David Vaughn (Applicant) on May 17, 2016. Respondent made its Return on February 3, 2017. An evidentiary hearing into the matter was convened on February 1, 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. Vick Meetze (Counsel), 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 Clerk of Court for Marion County. Applicant was indicted at the November 2014 term of the Marion County Grand Jury for one count of armed robbery, one count

of possession of a weapon by a convicted felon, and two counts of pointing and presenting a firearm (2014-GS-43-0402). The charges arose from the robbery of a drug store on Main Street in Marion, SC. There were several employees in the store at the time of the robbery, and the employees in a back room were able to call 911 as the robbery was in progress. Law enforcement arrived on the scene and saw a man matching the suspect's description, subsequently determined to be Applicant, run out the back door of the store. Applicant was apprehended in the back parking lot carrying a backpack containing a gun, a ski mask, and money.

Applicant was represented by Counsel on these charges. On August 5, 2015, Applicant appeared before the Honorable William H. Seals, Jr. and pleaded guilty as indicted to armed robbery pursuant to an agreement with the State for a negotiated sentence and dismissal of the remaining indictments. Judge Seals sentenced Applicant to the negotiated term of twenty years' imprisonment for armed robbery. Applicant did not appeal his plea or sentence.

ALLEGATIONS

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Conflict of Interest
 - a. "My lawyer and the judge knew the victims in my case."
2. Ineffective Assistance of Counsel
 - a. "There's no forensic evidence that connects me to the case."
3. Involuntary Guilty Plea
 - a. "My lawyer coerced me to take the plea when I wanted a jury trial."

On January 23, 2018, through PCR counsel, Applicant amended his original application to include the following allegations:

1. Counsel was ineffective for failing to provide or review an entire copy of Applicant's

Rule 5/Brady materials rendering his plea involuntary.

2. Counsel was ineffective for failing to conduct a complete investigation into the facts and circumstances surrounding Applicant's case, rendering Applicant's plea involuntary.
3. Counsel was ineffective for failing to discuss potential defenses with Applicant, rendering Applicant's plea involuntary.
4. Counsel was ineffective for failing to ensure Applicant had a complete understanding of the constitutional rights Applicant was waiving by pleading guilty.
5. Counsel was ineffective for failing to investigate the facts and circumstances surrounding Applicant's statements to law enforcement for [a] potential defense as a result of coercion by law enforcement.

At the hearing, PCR counsel indicated Applicant intended to go forward only on the allegations in his amended application. Therefore, this Court finds the allegations contained in the original application are waived and abandoned. Those allegations are hereby denied and dismissed with prejudice.

SUMMARY OF TESTIMONY

Applicant testified he was arrested on armed robbery and other related charges, and Counsel was appointed to represent him. Applicant testified he gave multiple statements to law enforcement. According to Applicant, his statement was not included in discovery materials, and he has never seen it. Applicant also testified he did not discuss his statement with Counsel, but Counsel told him he had video of the incident. Applicant testified Counsel told him the person on the video is not identifiable, but Applicant did not see the video before he pleaded guilty. Applicant testified he was not arrested in the parking lot of the store, but down the street.

Applicant also testified he had a previous YOA sentence which was revoked as a result of this arrest. According to Applicant, he was sent to Turbeville Correctional Institute as a result, and while he was there, three investigators visited him to ask questions and show him pictures. Applicant testified he was related to one of the investigators, but he never told Counsel that

information. He further testified he told Counsel about the visit and that he had given a statement, but he and Counsel never discussed the contents of the statement.

Applicant also testified he was not provided with a complete copy of items in discovery including DNA and witness statements. Applicant testified he told Counsel he had an alibi witness, but that person had moved out of state. Applicant further testified he and Counsel never discussed defenses because Counsel just pressured him to accept a plea. Finally, Applicant testified he and Counsel never discussed his constitutional rights and what he would be waiving by entering a plea. On cross-examination, Applicant testified he did not recall the judge going over constitutional rights with him during the plea colloquy. Applicant admitted he told the judge he was satisfied with Counsel's representation.

Counsel testified these charges arose from the robbery of a drug store. The store had a front and back entrance, and Applicant entered through the front door wearing a ski mask. Applicant pulled out a gun and demanded money from the employees. According to Counsel, some of the employees were in a back room and were able to call the police while Applicant was still in the store. Law enforcement responded to the scene in time to see a man matching the robber's description flee out the back door of the store. The man, later determined to be Applicant, was apprehended carrying a backpack. Inside the backpack, law enforcement found a gun, a ski mask, and money. Counsel testified Applicant gave a statement to law enforcement admitting to his involvement after his arrest.

Counsel testified the statement was taken by Katherine Barr and was video recorded, and Counsel reviewed the video. Counsel testified he saw no indication the statement was coerced or

involuntary. Counsel further testified he arranged to play the video for Applicant, but Applicant was not interested and did not want to hear the full statement. Counsel testified he was not aware of any written statement given by Applicant. Counsel agreed Applicant told him he had spoken to a different investigator, Investigator Graves, but Applicant did not say he gave a written statement nor that the conversation happened in Turbeville. Counsel testified he would have asked for a copy of the statement if he had known it existed. Counsel also testified he did not reach out to Investigator Graves because there was no evidence the conversation actually took place, and even if the statement(s) had been suppressed, there was still overwhelming evidence of Applicant's guilt.

Counsel further testified his paralegal sends discovery to clients as it is received, and he had a note in his file saying discovery had been sent to Applicant on April 15. Additionally, Counsel testified he reviewed Applicant's constitutional rights with him, as is his usual practice, and he believe Applicant understood his rights and the consequences of accepting a plea. Counsel testified he advised Applicant the plea was in his best interest, but it was ultimately Applicant's decision to enter into it.

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, 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 and reviewed discovery with him. The Court finds credible Counsel's assertion Counsel reviewed the videotaped statement and tried to play the video for Applicant, but Applicant did not want to see it. Further, Counsel's notes reflect Applicant was sent a copy of discovery on April 15.

Additionally, this Court finds credible Counsel's testimony there were no grounds for an argument the videotaped statement was involuntary. Although it is unclear what, if anything, was asked of Applicant at Turbeville, this Court finds even if that conversation might have led to the suppression of all statements, there was still overwhelming evidence of Applicant's guilt. Counsel

testified Applicant was found on the scene just minutes after the robbery had taken place, and the physical evidence recovered in his backpack linked him to the robbery. Further, the guilty plea waived Applicant's right to raise those potential issues or defenses.

Finally, this Court finds Counsel reviewed Applicant's constitutional rights, potential defenses, and penalties with him prior to the plea. Further, the transcript reflects the plea judge engaged in a detailed recitation of Applicant's constitutional rights, including the right to a jury trial and Applicant's right to remain silent, during the plea colloquy. Tr. pp. 2-3.

Accordingly, this Court finds Applicant has failed to meet his burden of proof as to deficiency or prejudice as to any of his allegations. Therefore, the application for post-conviction relief shall be denied and dismissed with prejudice.

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,

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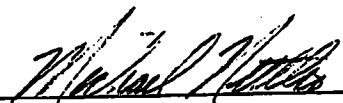
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PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

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.

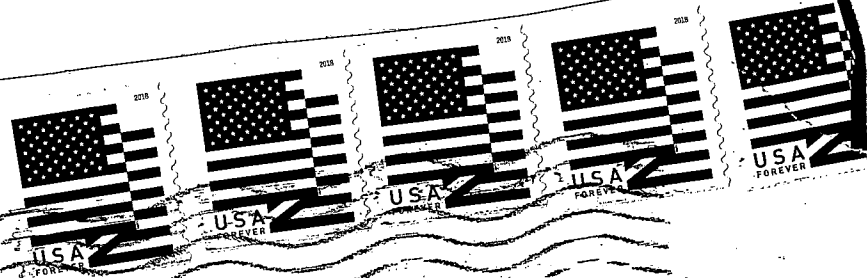
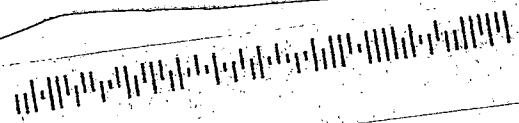


MICHAEL G. NETTLES
Presiding Circuit Court Judge
Twelfth Judicial Circuit

1-10-, 2019

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ER
JP



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WED 30 JAN 2019 PM

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