

RICHEY AND RICHEY
ATTORNEYS AT LAW

A PROFESSIONAL ASSOCIATION

RODNEY W. RICHEY
LOLA S. RICHEY

POST OFFICE BOX 10916
GREENVILLE, SOUTH CAROLINA 29603

(864) 467-0503
(864) 467-0646 FAX

RECEIVED

FEB 05 2019

S.C. SUPREME COURT

January 28, 2019

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

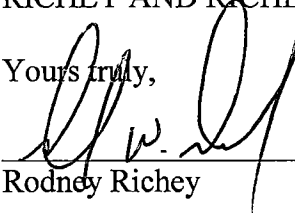
RE: Michael F. Wiggleton vs. The State of South Carolina
Case No: 2017-CP-42-1250

Dear Mr. Shearouse:

Please find enclosed a Notice of Appeal and an affidavit of service for the same. Also, I have enclosed a copy of the Order from which the appeal is taken. Please clock and file the copies and return them to me. Thank you for your help and if you should have any questions please feel free to call me.

RICHEY AND RICHEY, P.A.

Yours truly,



Rodney Richey

RWR/
Enclosures
cc: Jordan Cox, Esquire

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas
HONORABLE J. MARK HAYES, II
2017-CP-42-1250

RECEIVED

FEB 05 2019

S.C. SUPREME COURT

MICHAEL F. WIGGLETON, SCDC# 167168

APPELLANT,

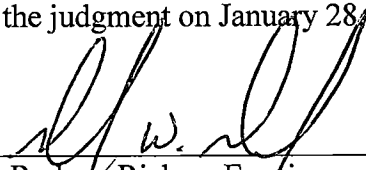
vs.

STATE OF SOUTH CAROLINA,

RESPONDENT.

NOTICE OF APPEAL

Michael F. Wiggleton appeals the denial of his Post Conviction Relief. The Post Conviction Relief Action was heard and denied by the Honorable J. Mark Hayes, II, Circuit Judge on November 7, 2018 an Order issued on January 25, 2019 and filed on January 25, 2019. The Appellant received notice of the judgment on January 28, 2019.



Rodney Richey, Esquire
Attorney for the Appellant
33 Market Point Drive
Post Office Box 10916
Greenville, SC 29603
(864) 467-0503
(864) 467-0646 fax

Other Counsel of Record:
Jordan A. Cox, Esquire
Office of Attorney General State of SC
Post Office Box 11549
Columbia, SC 29211-1549

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

APPEAL FROM SPARTANBURG COUNTY FEB 05 2019

Court of Common Pleas

S.C. SUPREME COURT

HONORABLE J. MARK HAYES, II

2017-CP-42-1250

MICHAEL F. WIGGLETON, SCDC# 167168

APPELLANT,

vs.

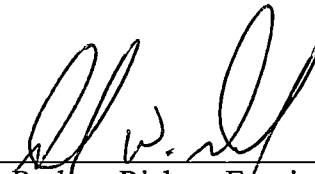
STATE OF SOUTH CAROLINA,

RESPONDENT.

AFFIDAVIT OF SERVICE

I certify that I have served the Notice of Appeal on the State of South Carolina by depositing copy of it in the United States Mail, postage prepaid, on January 28, 2019, addressed to their attorney of record, Jordan Cox, Esquire Office of Attorney General State of South Carolina, Post Office Box 11549, Columbia, SC 29211-1549.

Dated: January 28, 2019



Rodney Richey, Esquire
Attorney for the Appellant
33 Market Point Drive
Post Office Box 10916
Greenville, SC 29603
(864) 467-0503
(864) 467-0646 fax

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Michael F. Wiggleton, #167168
Applicant,

v.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT

Case No. 2017-CP-42-1250

**AMENDED ORDER OF
DISMISSAL**


This matter comes before the Court by way of an application for post-conviction relief filed on April 11, 2017, by Mr. Michael F. Wiggleton (Applicant). Respondent made its Return on or about November 1, 2017, requesting an evidentiary hearing. An evidentiary hearing into the matter was convened on November 7, 2018, at the Spartanburg County Courthouse in Spartanburg, South Carolina.

2018 JAN 25 AM 1:59
CLERK OF COURT
SPARTANBURG COUNTY
SOUTH CAROLINA

Applicant was present and represented by Rodney W. Richey, Esquire. Respondent was represented by Jordan A. Cox, Esquire, of the South Carolina Attorney General's Office. At the evidentiary hearing, Applicant testified on his own behalf. Respondent called Ryan F. McCarty, Esquire, ("Counsel") as a witness at the hearing. 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 the application.

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of confinement of the Spartanburg County Clerk of Court. In December 2013, the Spartanburg County Grand Jury indicted Applicant for possession with intent to distribute ("PWID") cocaine within one-half mile of a school (2013-GS-42-5669). Applicant was subsequently indicted in January 2014 for trafficking cocaine, 10-28

1 

grams (2014-GS-42-0249), trafficking cocaine, 400 grams or more, and possession of a weapon during the commission of a violent crime (2014-GS-42-0248 count I and II). John B. White, Jr. and Ryan F. McCarty, Esquires, represented Applicant. Deputy Assistant Solicitor Derrick B. Balsa of the Seventh Circuit Solicitor's Office represented the State.

On October 21, 2016, Applicant pleaded guilty as indicted to PWID and trafficking, 10-28 grams, before the Honorable J. Derham Cole. Pursuant to a negotiated sentence, Judge Cole sentence Applicant to imprisonment for consecutive terms of twelve years for trafficking cocaine and thirty months' home detention for possession with intent to distribute cocaine. The State dismissed the remaining charges. Applicant did not appeal his guilty plea or sentence.

FACTUAL HISTORY

On or about June 28, 2013, Applicant was driving a vehicle in the area of Arch Street and Howard Street, within the city limits of Spartanburg, South Carolina. While on patrol, officers with the Spartanburg City Police Department observed Applicant fail to use a turn signal while making a left turn. Officers paced the speed of Applicant's vehicle as traveling forty-five miles per hour in a thirty mph zone. Officers initiated a traffic stop at this time.

Applicant was observed as attempting to hide something under the driver's seat and officers removed him from the vehicle in response. Applicant was subsequently searched and narcotics were discovered in Applicant's pocket. It was later determined the narcotics amounted to 13-73 grams of cocaine. The stop occurred within a half-mile of Woodland Heights Elementary School in Spartanburg County, South Carolina.

ALLEGATIONS

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

2 JFV

SPARTANBURG COUNTY
CLERK OF COURT
2019 JAN 25 PM 1:54

1. Ineffective Assistance of Counsel
 - a. "Counsel did not import to the Applicant an understanding of the law on the relation of the facts."
 - b. "Counsel failed to articulate 4th Amendment violation"
 - c. "Counsel did not familiarize himself with the facts of the case."
 - d. "Coerced into pleading guilty"
 - e. "Counsel failed to take me to trial"

SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

Applicant

At the evidentiary hearing, Applicant testified on his own behalf. Applicant testified that he was represented by Mr. McCarty following his arrest. Applicant testified that the police told many lies throughout the process and that he informed his attorney of the many lies. Applicant testified that he was unaware that he would have been able to challenge the search of his person by law enforcement. Applicant testified that he wished to challenge the traffic stop and subsequent search by law enforcement, indicating that it was a violation of the 4th Amendment. Applicant testified that he wanted to go to trial and informed Counsel "hundreds of times" of this desire. Applicant testified that Counsel did not explain the law of his case.

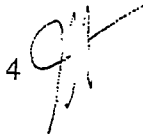
Applicant testified that he remembered being placed under oath during his guilty plea proceeding. Applicant testified that he told the judge he had plenty of time to talk to his lawyer about his case and time to think about his decision to enter a guilty plea. Applicant testified that he told the judge he did not have a defense to his charges during his guilty plea proceeding. Applicant testified that he informed the judge he had not been pressured in any fashion to enter a guilty plea, during his plea proceeding. Applicant testified that he did not believe Counsel was prepared for trial. Applicant testified that Counsel failed to inform him he would be able to appeal his guilty plea.

Counsel

Mr. Ryan F. McCarty testified on behalf of Respondent. Counsel testified that he has practiced law for over ten years. Counsel testified that a majority of his career has focused on criminal law, both prosecution and defense. Counsel testified that his firm was retained to represent Applicant in July 2003. Counsel testified that Applicant did not indicate he wanted to go to trial and wanted a plea deal. Counsel testified that he met with Applicant on several occasions to discuss his case and possible defenses. Counsel testified that he informed Applicant of the likely success of those defenses. Counsel testified that his law partner met with Applicant on several occasions and these meetings were documented in the defense file. Counsel testified that after failing to appear for a bond revocation hearing, a bench warrant was issued for Applicant's arrest. Counsel testified that Applicant was not found until August 5, 2014, nearly a year after the bench warrant was issued.

Counsel testified he had Applicant acknowledge and sign each plea offer from the State. Counsel testified that through a typed letter, Applicant was informed of each offer from the State, the possible ramifications of the guilty plea, and of his firm's specific legal advice pertaining to the State's offer. These letters were presented as evidence during the PCR hearing. Applicant's signed each of these letters. Counsel testified that prior to each guilty plea, his firm's practice is to provide each client with an "Advisement of Rights" document. Counsel testified that he provided this to Applicant and thoroughly reviewed each item listed. This form was presented during the PCR hearing. The documents provided by Counsel were marked as "State's Exhibit 1."

Counsel testified that based on his experience, Applicant did not have a viable defense to the charges he eventually pleaded guilty to. Counsel testified that he believed a possible defense to the trafficking charges existed, but this would have no effect for the PWID charges. Counsel

4 

2019 JUN 25 PM 1:50
CLERK OF SUPERIOR COURT
JULIA M. COOPER

did not believe a possible defense existed to the initial traffic stop and subsequent search of Applicant.


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 had the opportunity to observe the witnesses presented at the hearing, and can weigh their testimony and credibility accordingly. These credibility findings have been applied to the Court's findings and conclusions set forth below. Below are the findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2017).

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, 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. 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 that 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 trial counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove that

5 

2019 JUN 25 11 59 AM
CLERK OF COURT
SOUTH CAROLINA

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 at 688). 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. With respect to guilty plea counsel, an applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

After careful review of the entire record, including the testimony presented at the evidentiary hearing, based on the standard discussed above, this Court finds Applicant ~~has~~ failed to carry his burden of proof and has not established any ineffectiveness of counsel. Below are the findings in regards to each specific allegation of ineffective assistance of counsel raised by Applicant:

"Counsel did not impart the Applicant an understanding of the law on the relation of the facts"

Applicant alleges Counsel did not explain the facts of his case of how the law applied to his case. This Court Applicant has failed to meet his burden of proof. The allegation is contrary to Applicant's testimony during his guilty plea proceeding. During this proceeding, Applicant informed the Court he had enough time to talk with his attorneys concerning his case, his attorneys reviewed the indictments and charges against him, and he understood the possible sentence his was facing. Applicant further informed the Court that he did not have a defense to his charges.

This Court finds Counsel's testimony on this allegation to be credible. Counsel testified that not only was Applicant explained every legal aspect of his charges, Applicant signed and


6

acknowledged the legal advice provided by Counsel in letter form. Applicant has failed to meet his burden of proof. This allegation is denied and dismissed with prejudice.

"Counsel failed to articulate 4th Amendment Violation"

Applicant alleges Counsel rendered ineffective assistance of counsel, because Counsel did not explain how the search of law enforcement violated his 4th amendment rights. Applicant alleges that if he had known he would have a possible defense of the traffic stop and subsequent search, he would not have pleaded guilty. Applicant has failed to show Counsel rendered deficient performance. Applicant testified that the search of his person by law enforcement following his traffic stop was a violation of 4th amendment rights, but failed to show why it was a violation. Counsel testified that although he believed Applicant had a viable challenge to the later search of his home, there was no legal challenge to the initial stop and frisk of Applicant by law enforcement. This Court finds Counsel's testimony on this allegation credible.

Assuming, arguendo, Applicant was unaware that he could have challenged the search after the traffic stop and his lack of said knowledge was the fault of his lawyers, no showing has been made that such a challenge would have been successful in excluding the evidence. Therefore, Applicant has not successfully established the prejudicial element necessary for ineffective assistance of counsel. Applicant has failed to meet his burden of proof. The allegation is denied and dismissed with prejudice.

"Counsel did not familiarize himself with the facts of the case"

Applicant alleges Counsel did not familiarize himself with the facts of the case. This Court finds Applicant has failed to meet his burden of proof. Counsel testified that he represented Applicant for three years, meeting with Applicant on several occasions. Counsel testified as to the facts surrounding Applicant's case, as well as the possible defenses Applicant had. Counsel

7


2009 JAN 25 PM 1:59
CLERK OF COURT

appeared credible during his testimony and of his knowledge of Applicant's case. Furthermore, the documents provided by Counsel detailed the facts surrounding Applicant's case and Counsel's detailed analysis of his legal advice for his charges. These documents were signed and acknowledged by Applicant, contemporaneously, during Counsel's representation. Applicant has failed to meet his burden of proof. The allegation is denied and dismissed with prejudice.

"Coerced into pleading guilty"

Applicant alleges that he was coerced into pleading guilty. This Court finds Applicant has failed to meet his burden of proof. Applicant failed to provide testimony as to how he was coerced into entering his guilty plea. Applicant testified that it was his decision to enter the guilty plea. Counsel testified that it was always Applicant's intent to enter a guilty plea. Counsel testified that had Applicant wished to proceed to trial, he would have. The documents provided by Counsel indicate Applicant's knowledge that he was giving up the right to a trial by pleading guilty. Applicant testified during his guilty plea proceeding that he was entering his guilty plea freely and voluntarily. Applicant further testified that he had not been pressured in any way to enter a guilty plea. This Court finds Counsel's testimony credible on this allegation. This Court finds the allegation is contrary to the record of this case, Counsel's credible testimony, as well as Applicant's own testimony during the guilty plea proceeding. Applicant has failed to meet his burden of proof. The allegation is denied and dismissed with prejudice.

"Counsel failed to take me to trial"

Applicant alleges Counsel was ineffective for failing to take him to trial on his charges. Applicant testified that he requested a trial from Counsel "hundreds of times." This Court finds Applicant has failed to meet his burden of proof. Applicant testified that it was his decision to enter his guilty plea and he did so freely. Counsel testified that if he had been instructed by Applicant to



2009 JAN 25 AM 1 58 9
COURT

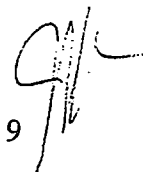
go to trial, he would have done so. Counsel explained that he believed Applicant would not have had a viable defense at trial for his charges. Counsel provided documentation showing Applicant acknowledged he would be waiving his right to a jury trial by entering his guilty plea. This Court finds Counsel's testimony to be credible on this allegation. Applicant made the decision to enter his guilty plea freely and voluntarily. Applicant was given an opportunity to proceed to trial, but did not indicate a desire to do so. Applicant has failed to meet his burden of proof. The allegation is denied and dismissed with prejudice.

"Failed to inform applicant of his right to appeal"

During the evidentiary hearing, Applicant alleged he was unaware of his right to appeal his guilty plea. Applicant alleges that he never spoke with Counsel regarding appealing the guilty plea decision. Applicant alleges that if he had known it was an option, he would have filed an appeal. Counsel testified that it is his normal practice to inform each client that they will have ten days to appeal a decision from the plea judge. Counsel testified that he spoke with Applicant about his right to appeal prior to the plea proceeding. Counsel testified that if Applicant had requested an appeal of his guilty plea, he would have filed one on Applicant's behalf. Counsel provided the Court with "Advisement of Rights Prior to Entering a Guilty Plea," a document signed and acknowledged by Applicant on the date of his guilty plea. Item 24 of this document provides, "I understand that I have the right to appeal any conviction and sentence, but I must do so within 10 days. I understand that my lawyer will help me file an appeal, if I so desire, but I must notify my lawyer of my desire to appeal with 8 days of my conviction." (emphasis original).

This Court finds Counsel's testimony credible on this issue. This Court finds the allegation contrary to the record, Counsel's testimony, Applicant's testimony during his guilty plea

9



2019 APR 27 PM 1:55
COURT

proceeding, and the "Advisement of Rights" form signed by Applicant. Applicant has failed to meet his burden of proof. The allegation is denied and dismissed with prejudice.

CONCLUSION

Based on all the foregoing, this Court finds Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, the allegations are denied and dismissed with prejudice.

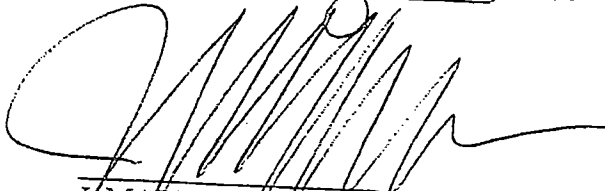
This Court notes Applicant must file and serve a notice of appeal within thirty days from the receipt of this Order by counsel of record to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides 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.

2019 JAN 25 PM 1:59
CLERK OF COURT
JUDICIAL BRANCH

IT IS THEREFORE ORDERED:

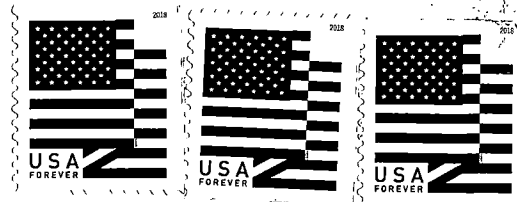
1. This application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the State.

AND IT IS SO ORDERED this 25th day of Jan, 2019.


J. MARK HAYES, II
Presiding Judge
Seventh Judicial Circuit

Spartanburg, South Carolina

RICHEY AND RICHEY, P.A.
Attorneys at Law
Post Office Box 10916
Greenville, SC 29603



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