



February 5, 2019

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

RECEIVED

FEB 07 2019

S.C. SUPREME COURT

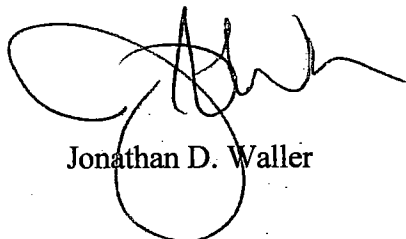
Re: Johnny Ray Walker, Jr. vs. State of South Carolina
C/A No: 2018-CP-33-00261

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. Walker 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: Samuel L. Key, South Carolina Office of Attorney General

Enclosures

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STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM MARION COUNTY
D. Craig Brown, Circuit Court Judge S.C. SUPREME COURT

2018-CP-33-00261

Johnny Ray Walker, # 372580,

Appellant,

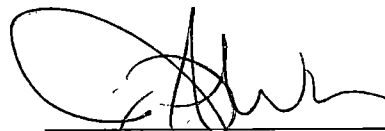
v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Johnny Ray Walker, # 372580, appeals the Order of Dismissal denying his Application for Post-Conviction Relief filed January 7, 2019, issued by the Honorable D. Craig Brown, Presiding Judge, Twelfth Judicial Circuit.



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ATTORNEY FOR PETITIONER

February 5, 2019

Other Counsel of Record:
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STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM MARION COUNTY
D. Craig Brown, Circuit Court Judge

2018-CP-33-00261

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FEB 07 2019

S.C. SUPREME COURT

Johnny Ray Walker, # 372580,

Appellant,

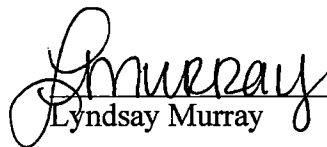
v.

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, Samuel L. Key, 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

February 5, 2019

STATE OF SOUTH CAROLINA)
COUNTY OF MARION)
)
)
Johnny Ray Walker Jr., # 372580,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
IN THE TWELFTH JUDICIAL CIRCUIT

Case No.: 2018-CP-33-0261

ORDER OF DISMISSAL

FILED
2019 JAN -7 PM 12:08
MARION COUNTY SC
CLERK OF COURT

The matter before the Court is an action for post-conviction relief (PCR) commenced by Johnny Ray Walker Jr. April 9, 2018. In his PCR application, Walker alleged ineffective assistance of counsel and attacked the knowing and voluntary nature of his guilty plea. Specifically, he alleged plea counsel was ineffective for: (1) failure to investigate; (2) failure to provide discovery materials; and (3) having a conflict of interest.

The Court held an evidentiary hearing on November 7, 2018. During the hearing, the issue of whether plea counsel was ineffective for failure to communicate arose. The Court finds Walker's allegations to be without merit and concludes plea counsel was not ineffective. Therefore, the Court denies relief and dismisses this action with prejudice.

I. FACTS & PROCEDURAL HISTORY

Johnny Ray Walker Jr. is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Marion County Clerk of Court. Walker was indicted in May 2016 for felony driving under the influence (DUI) involving death, and felony DUI involving great bodily injury (2016-GS-33-0249). Walker's charges stem from a traffic accident that occurred July 9, 2015. (Tr. 6-9).

Walker was driving a Ford Mustang convertible to Myrtle Beach for the weekend. (Tr. 6). The Mustang's top was down. (Tr. 7). Two friends accompanied Walker—Jerry Lee Norris in the

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front seat, and Christopher Deuvner in the back seat. (Tr. 6). Walker was driving drunk. (Tr. 10). His passengers were also drunk. (Tr. 9). Walker swerved into oncoming traffic and hit another car head-on. Rayneisha Eaddy was driving the other car. (Tr. 6-7). A third car subsequently rear-ended the Mustang, sending all cars involved in different directions. (Tr. 7). As a result of the collision: Deuvner was ejected from the backseat and landed in an adjacent field unharmed; Eaddy and Walker suffered severe injuries; and Norris died on impact. (Tr. 7-9). The third vehicle's occupants were unharmed. (Tr. 9). Walker was charged with felony DUI involving death, and felony DUI involving great bodily injury.

Plea Hearing

Walker pled guilty May 12, 2017, as indicted, before Judge Michael G. Nettles (plea court). Henry M. Anderson (plea counsel) represented Walker. After the State recited the factual basis for the plea, the plea court asked Walker if the facts were true. (Tr. 10). Walker responded:

The third car hit the passenger side of the Mustang. You could tell that by looking at the pictures. There's - - there's been three - - three different reports of how this accident happened and, at first, it wasn't my fault. The second one, it was that - - it was said that I swerved into the other lane and the car went in my lane and I went back in my lane and they went back in their lane and then I apparently swerved back into them.

(Tr. 10). The plea court then asked:

Q: [I]s it true that you had had a significant amount to drink that night?

A: Yes, sir.

Q: All right. Are you - - with those clarifications about there being some confusion about where the collision actually took place, do you agree that you're guilty of driving under the influence with great bodily injury?

A: Yes, sir.

Q: Are you guilty of felony driving under the influence resulting in death?

A: Yes, sir.

(Tr. 10). Walker then affirmed he was waiving any defense regarding the incident by pleading

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guilty, and he stated, "I'll take the full responsibility. I know better[.]" (Tr. 10-11). Thereafter, the plea court accepted Walker's guilty plea. (Tr. 13-14).

The plea court sentenced Walker, as negotiated, to concurrent terms of imprisonment of twelve years for felony DUI involving great bodily injury, and eight years for felony DUI involving death. Walker did not appeal.

Walker commenced this PCR action on April 9, 2018. In his PCR application, Walker alleged ineffective assistance of counsel and attacked the knowing and voluntary nature of his guilty plea. Specifically, he alleged plea counsel was ineffective for: (1) failure to thoroughly investigate the case; (2) failure to allow Walker to review the discovery materials; and (3) having a conflict of interest with the solicitor prosecuting the case. The Court held an evidentiary hearing on these issues November 7, 2018. Walker was present at the hearing, and represented by Jonathan Waller. Assistant Attorney General Samuel Key represented the State.

PCR Hearing

At the outset of the hearing, Walker moved for PCR counsel to be relieved, and requested for another attorney to be appointed to represent him. Walker was placed under oath for a colloquy. After the colloquy, the Court denied the motion to relieve PCR counsel, and the hearing proceeded on the merits. Walker and plea counsel testified at the hearing.

Walker testified he was arrested for felony DUI involving death because his passenger died, and felony DUI involving great bodily injury because of the injuries sustained by the driver of the other car. Walker stated that because of the injuries he sustained during the accident, he was in the hospital for an extensive period of time. Walker stated he was arrested after he was released from the hospital, but was released on bond shortly thereafter. Walker stated plea counsel was appointed to represent him on the felony DUI charges. Walker stated he only saw plea counsel on the days he appeared in court. Walker stated the only information plea counsel provided regarding the case was

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that the Solicitor's Office had requested blood work from the hospital.

Walker testified that he spoke with plea counsel the week before the case was scheduled for trial. Walker stated that during this discussion plea counsel told him, if he was convicted at trial, he would get the maximum sentence of twenty-five years. Walker stated that after this discussion, he asked plea counsel to enter into plea negotiations. Walker stated he met with plea counsel the day of his guilty plea, and asked plea counsel to show him the discovery materials. He stated plea counsel reacted to this question by tossing some disks on a table and stating "there's your discovery." Walker stated that during this meeting, right before his guilty plea, the solicitor entered the room and offered a five year plea deal. Walker stated he ultimately pled guilty because he did not feel plea counsel was prepared for trial, and because of the solicitor's representation that he would get five years for pleading guilty.

Finally, Walker stated that he did not want his case overturned. Walker stated he did not want a new plea offer, or to go to trial. Walker stated he could not remember how the accident occurred, and he wanted to be able to review all of the discovery materials to see if he caused his friend's death. On cross, Walker recalled being placed under oath at the plea hearing. He also recalled the plea court's colloquy. Walker recalled waiving his constitutional rights and any defenses by pleading guilty.

Plea counsel testified that he was appointed to represent Walker. Plea counsel's notes reflected he met with Walker in March and July of 2016, and again in May of 2017. Plea counsel also stated that he spoke with Walker over the phone three or four times to discuss the case. Plea counsel explained he did not meet with Walker face-to-face often because Walker was released on bond and lived in North Carolina. Plea counsel testified that he received discovery materials in the case, and part of discovery was an accident reconstruction report on disks. He stated that he printed off the contents of the disks, and reviewed the discovery materials with Walker. Plea counsel also

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stated that Walker could not recall the events leading up to the crash. Plea counsel stated that during one phone conversation, Walker informed him to enter into plea negotiations with the State. Plea counsel stated Walker told him he would plead to a five year offer.

Plea counsel stated that at first, the State was having difficulty establishing the chain-of-custody for the blood work from the hospital, but was not willing to offer five years. Plea counsel stated that he started pushing the solicitor hard for a deal because of the chain-of-custody issue, but could not get a deal done. Plea counsel stated he was told the best deal the State could offer was to allow plea counsel to pick the plea judge, and the State would recommend the sentences to run concurrent. Plea counsel stated he told Walker it was either accept the State's offer or proceed to trial the following week. Plea counsel did not remember whether a five year plea offer was ever made, but he stated that if the State had offered five years, he would have urged Walker to take it.

Plea counsel testified he had sufficient time to prepare for trial. He stated that although he was not fully prepped when the offer was made, he would have been ready for trial when the case was called.

On cross, plea counsel was asked about the chain-of-custody issue. Plea counsel stated he was not sure if the State would get the bloodwork into evidence, but he understood that the State would offer the bloodwork as a record taken for medical purposes. Plea counsel stated he believed the State could have gotten the bloodwork into evidence. Finally, plea counsel stated he did not see a need for an accident reconstruction expert, and that he would have been prepared if the case had gone to trial.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The issue before the Court is whether Walker's guilty plea was the result of ineffective assistance of counsel. To establish ineffective assistance of counsel, the PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant

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sustained prejudice as a result of counsel's deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984); *Cherry v. State*, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). "The test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases." *Watson v. State*, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985).

In the context of a guilty plea, a defendant who entered a plea on the advice of counsel may only attack the voluntary and intelligent nature of the plea. *Roscoe v. State*, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). To prove prejudice, the applicant must show a reasonable probability he would not have pled guilty and would have insisted on going to trial absent plea counsel's alleged deficiency. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985).

As an initial matter, Walker failed to show he was prejudiced by any alleged deficiency. At the PCR hearing, Walker never testified he would not have pled guilty. On the contrary, Walker testified that he did not want his convictions overturned, did not want a new plea deal, and did not want a trial. The Court finds this testimony by Walker to be credible. As such, the Court must deny relief and dismiss the action with prejudice because a grant of relief is not the remedy Walker seeks. However, the Court will address the merits of all of Walker's allegations of ineffective assistance of counsel as recently ordered by our Supreme Court. *See Robin Gray Reese v. State*, S.C. Sup. Ct. Order dated Oct. 18, 2018 (Shearouse Adv. Sh. No. 42 at 9).

The Court finds Walker pled guilty pursuant to the advice of plea counsel. This finding is based on the testimony presented at the PCR hearing; therefore, the issue before the Court is whether the plea was knowingly and voluntarily entered. *See Roscoe*, 345 S.C. at 20, 546 S.E.2d at 419.

In his PCR application, Walker asserted plea counsel was ineffective for: failure to investigate, failure to show him the discovery materials, and having a conflict of interest. Walker presented no evidence to support his conflict of interest claim; therefore, the Court denies relief and

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dismisses this allegation with prejudice. However, testimony presented at the PCR hearing did raise the issue of whether plea counsel was ineffective for failure to communicate all plea offers. Because this issue arose during the hearing, the Court addresses the issue accordingly.

The Court will first address whether plea counsel was ineffective for failure to investigate. To establish counsel failed to adequately prepare for trial, the applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel more fully prepared. *Jackson v. State*, 329 S.C. 345, 495 S.E.2d 768 (1998).

Walker asserts plea counsel was deficient because if plea counsel had properly investigated the case, he would have discovered the need to secure an expert witness in accident reconstruction. Walker claimed he pled guilty because he did not think plea counsel was ready for trial. The Court finds plea counsel was not deficient for failure to investigate.

As mentioned above, plea counsel stated he would have been prepared for trial. Plea counsel further articulated a reasonable strategy that he was prepared to employ had the case proceeded to trial. Plea counsel stated he did not see a need for an accident reconstruction expert. Plea counsel is a veteran criminal defense attorney who is contracted as a part-time public defender. The Court finds it credible that plea counsel would have been ready for trial, and reasonable that plea counsel would not need an expert in accident reconstruction to be prepared. Plea counsel articulated he was prepared to attack the chain-of-custody of the blood work report taken from the hospital. The Court finds this strategy reasonable. The Court concludes plea counsel was not deficient for failing to secure an accident reconstruction expert. Plea counsel properly investigated the case, and Walker failed to show prejudice; therefore, plea counsel was not ineffective for failure to investigate.

Next, the Court addresses whether plea counsel was ineffective for failure to provide Walker discovery. The proper measure of performance is whether the attorney provided representation

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within the range of competence required in criminal cases. *Buller v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

Walker asserts plea counsel was deficient for failure to provide him with discovery. As summarized above, Walker testified that plea counsel never reviewed discovery with him, and only met with him when he would appear in court. Plea counsel testified that he received the discovery materials as usual, in pieces as the State's case progressed, and reviewed the discovery materials with Walker upon receipt. Plea counsel stated he received the accident reconstruction reports on disks, and printed the reports off of the disks to review with Walker. Plea counsel stated he reviewed the reports with Walker either in person, or over the phone. The Court finds plea counsel credible on this issue. While plea counsel may not have given Walker copies of all the discovery materials, plea counsel reviewed all the materials with Walker. This practice is reasonable under prevailing professional norms. Plea counsel credibly stated he reviewed all discovery with Walker; therefore he was not deficient. Plea counsel was not ineffective for failure to provide discovery.

Finally, the Court addresses whether plea counsel was ineffective for failure to communicate. Generally, plea counsel must convey all offers made by the State. *Davie v. State*, 381 S.C. 601, 610–11, 675 S.E.2d 416, 421 (2009) (abrogated on other grounds by *Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018) (clarifying the proper standard of review in PCR cases, and listing all cases that previously applied the incorrect standard of review)). However, the applicant must provide some evidence, even self-serving testimony, to establish prejudice. *Id.* at 613–14, 675 S.E.2d at 422–23.

Walker claimed the solicitor prosecuting the case conveyed a five year plea offer immediately before the plea hearing. Plea counsel had no recollection of a five year offer ever being made; however, plea counsel stated that had a five year deal been offered, he would have strongly urged Walker to take the deal. The Court finds Walker is not credible on this issue. The Court finds it

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credible that had a five year offer actually been made, plea counsel would have conveyed the offer to Walker. Based on the testimony presented at trial, the Court finds a five year plea offer was never made; therefore, plea counsel was not deficient for failure to communicate the five year plea offer. The Court concludes plea counsel was not ineffective for failure to communicate.

III. CONCLUSION

The Court finds plea counsel's representation was neither deficient nor prejudicial. Walker pled guilty pursuant to the advice of plea counsel, and counsel reasonably investigated the case before so advising. Walker knew the meaning and consequences of pleading guilty to the charges, and was advised of all plea offers. Walker failed to show he was prejudiced by any alleged deficiency, as he admitted at the hearing he did not wish for his conviction to be overturned. **THEREFORE**, the Court denies relief and dismisses the action with prejudice.



D. CRAIG BROWN
Presiding Judge
Twelfth Judicial Circuit

Flourence, South Carolina

Jan
December 4, 2018.

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P 979

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

JOHNNY WALKER, JR., #372580,

Applicant,

v.

STATE OF SOUTH CAROLINA,


Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Order of Dismissal has been served upon the applicant by mailing one (1) copy in the United States mail, postage prepaid, addressed to:

Jonathan D Waller
Waller Law Group, LLC
1116 Blanding Street
Suite 2B
Columbia, South Carolina 29201

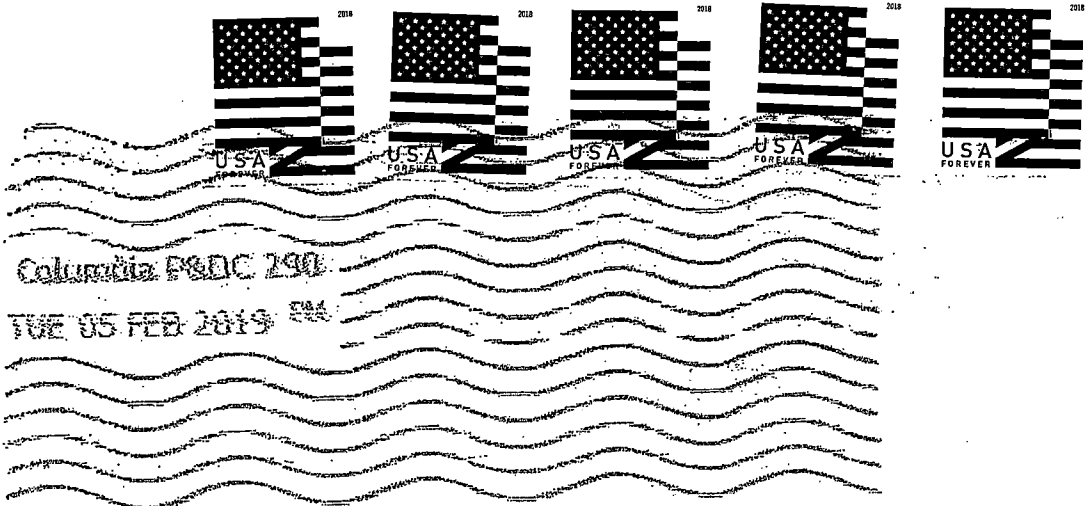
This 31st day of January, 2019.


Carmen Nord
Legal Assistant for Respondent

SWORN to before me this 31st day of January, 2019.


Notary Public for South Carolina

My Commission Expires: 5/20/2025



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