

LAW OFFICE

THE HENDERSON LAW FIRM, P.C.

Carson M. Henderson

ATTORNEY AND COUNSELOR AT LAW

109-B Oak Avenue
Greenwood, South Carolina 29646

Telephone: (864) 229-8000
Facsimile: (864) 229-8001

February 22, 2019

Hon. Daniel E. Shearouse
Clerk of Court
S.C. Supreme Court
1231 Gervais Street
P.O. Box 11330
Columbia, S.C. 29211

RECEIVED

FEB 26 2019

S.C. SUPREME COURT

Re: Marvin Molique Watson (#371663) v. State of South Carolina
Laurens C/A No. 2017-CP-30-667

Dear Clerk Shearouse:

Please file the enclosed Notice of Appeal and Proof of Service and return clocked copies of both documents to me in the enclosed envelope provided for your convenience. Also enclosed is Circuit Judge Brian M. Gibbons' Order of Dismissal dated January 14, 2019.

My email address is carson@carsonhendersonlawfirm.com.

Thank you for your assistance and cooperation in this matter.

#1

Cordially yours,

THE HENDERSON LAW FIRM, P.C.


Carson M. Henderson

CMH/lhc

Enclosures as indicated

Cc: Janell Gregory, Esquire
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

S.C. Commission on Indigent Defense
Appellate Division
1330 Lady Street, Suite 401
Columbia, S.C. 29201

Marvin Moliqye Watson (#371663)
McCormick Correctional Institution
386 Redemption Way
McCormick, S.C. 29899

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FEB 26 2019

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM LAURENS COUNTY
Court of Common Pleas

Brian M. Gibbons, Presiding Circuit Judge – Laurens County

C/A No. 2017-CP-30-667

MARVIN MOLIQUE WATSON (#371663),

Appellant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

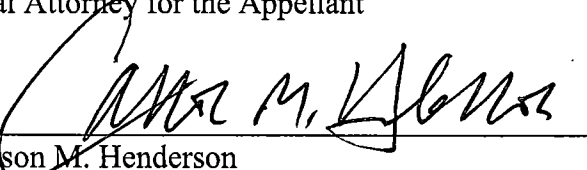
NOTICE OF APPEAL

Bryantavious Murray appeals the Order of Dismissal issued by the Honorable Brian M. Gibbons on January 14, 2019. This matter was heard in Greenwood County on October 15, 2018. The Appellant's trial counsel received the Order of Dismissal from the Office of the Attorney General on Thursday, January 31, 2019.

THE HENDERSON LAW FIRM, P.C.

Trial Attorney for the Appellant

By:


Carson M. Henderson
109-B Oak Avenue
Greenwood, S.C. 29646
Phone: (864) 229-8000
Fax: (864) 229-8001

Greenwood, South Carolina

February 22, 2019

Other Counsel of Record:

Janell Gregory, Esquire
S.C. Attorney General's Office
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Columbia, S.C. 29211

S.C. Commission on Indigent Defense
Appellate Division
1330 Lady Street, Suite 401
Columbia, S.C. 29201

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM LAURENS COUNTY
Court of Common Pleas

Brian M. Gibbons, Presiding Circuit Judge – Laurens County

C/A No. 2017-CP-30-667

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FEB 26 2019

MARVIN MOLIQUE WATSON (#371663),

S.C. SUPREME COURT

Appellant,

v.

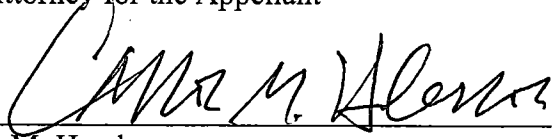
STATE OF SOUTH CAROLINA,

Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the Respondent, State of South Carolina, by depositing a copy of it in the United States Mail, postage prepaid, on February 22, 2019, addressed to its attorney of record, Janell Gregory, Esquire, S.C. Attorney General's Office, P.O. Box 11549, Columbia, S.C. 29211, with a copy also being mailed to S.C. Commission on Indigent Defense, Appellate Division, 1330 Lady Street, Suite 401, Columbia, S.C. 29201.

THE HENDERSON LAW FIRM, P.C.
Trial Attorney for the Appellant

By: 

Carson M. Henderson
109-B Oak Avenue
Greenwood, S.C. 29646
Phone: (864) 229-8000
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Greenwood, South Carolina

February 22, 2019

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ALAN WILSON
ATTORNEY GENERAL

January 29, 2019

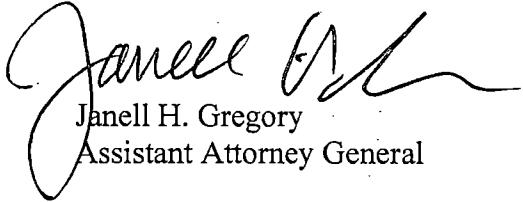
Carson M. Henderson, Esquire
The Henderson Law Firm, PC
109-B Oak Avenue
Greenwood, South Carolina 29646

Re: Marvin Molique Watson, #371663 v. State of South Carolina
2017-CP-30-667

Dear Mr. Henderson:

Enclosed please find a copy of the signed and filed **Order of Dismissal** in the above mentioned post-conviction relief case. With this letter, we are closing our file in this matter.

Sincerely,


Janell H. Gregory
Assistant Attorney General

JHG/clw
Enclosure(s)

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

MARVIN MOLIQUE WATSON, #371663,

Applicant,

v.

STATE OF SOUTH CAROLINA,


Respondent.

CERTIFICATE OF SERVICE

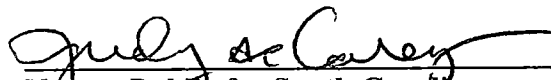
The undersigned hereby certifies that a true copy of the **Order of Dismissal** has been served upon the applicant by mailing one (1) copy in the United States mail, postage prepaid, addressed to:

**Carson M. Henderson, Esquire
The Henderson Law Firm, PC
109-B Oak Avenue
Greenwood, South Carolina 29646**

This 29th day of January, 2019.


CARLOTTA L. WEAVER
Legal Assistant for Respondent

SWORN to before me this 29th day of January, 2019.


Notary Public for South Carolina
My Commission Expires: 5/14/2024

STATE OF SOUTH CAROLINA)
COUNTY OF LAURENS)

IN THE COURT OF COMMON PLEAS
FOR THE EIGHTH JUDICIAL CIRCUIT

2017-CP-30-667

Marvin Watson, #371663,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

ORDER OF DISMISSAL

LAURENS COUNTY
CLERK OF COURT
2019 JAN 23 AM 9:38
LYNN W. LANCASTER

This matter comes before the Court by way of an application for post-conviction relief filed on August 14, 2017, by Marvin Watson (“Applicant”). The State (“Respondent”) filed a Return on October 19, 2017, requesting an evidentiary hearing. An evidentiary hearing into the matter was convened on October 15, 2018, at the Greenwood County Courthouse. Applicant was present at the hearing and represented by Carson Henderson, 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, Chelsea McNeil of the Eighth Circuit Public Defender’s Office, (“Counsel”) also testified. 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 Laurens County Clerk of Court’s order of commitment. During the October 2015 term, the Laurens County Grand Jury indicted Applicant for murder (2015-GS-30-1681) and possession of a firearm during the commission of a violent crime (2015-

A TRUE COPY OF ORIGINAL

Lynn W. Lancaster
Lynn W. Lancaster
Laurens County CCCP & GS



GS-30-1682). Counsel represented Applicant. Assistant Solicitor Warren Mowry of the Eighth Circuit Solicitor's Office prosecuted the case.

On March 2, 2017, Applicant appeared with Counsel before the Honorable Frank R. Addy, Jr. and pled guilty as indicted. Judge Addy sentenced Applicant to forty years imprisonment on the murder charge and five years for the firearm charge. Applicant did not appeal his guilty plea.

II. SUMMARY OF FACTS

On August 16, 2015, David Anderson ("Victim") drove to the Corner Mart store on Highway 76 in Clinton around 1430 hours to fill his truck up with gas and get drinks for him and his wife. (GP Tr. 11.) Based on security footage at the store, Victim makes a couple of trips inside the store to purchase gas and other items. (GP Tr. 11.) Shortly after Victim's arrival, Applicant's vehicle pulls up on the opposite side of gas pump island from Victim's truck. (GP Tr. 12.) The security footage shows Victim and Applicant did not exchange communication or even acknowledge each other prior to the incident. (GP Tr. 12.) Applicant's co-defendant later told officers Victim "smiled a polite greeting to her." (GP Tr. 12.) Victim gets into his truck and begins to drive off, but he stopped and got out to secure his gas lid. (GP Tr. 12.) At that time, Applicant got out of the passenger side of the vehicle and without any justification, excuse, or prelude shot Victim twice. (GP Tr. 12.) Victim died as a result of his injuries as one of the bullets went into his chest wounding his heart and both lungs. (GP Tr. 12.) Applicant got back into the vehicle and immediately fled the scene. (GP Tr. 12.)

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 fail to object to court remark, cause conflict."



b. "Court made remark during sentence was prejudice."

An evidentiary hearing was held on October 15, 2018, Applicant informed this Court he intended to proceed on the following grounds for relief:

1. Ineffective Assistance of Counsel
 - a. Counsel failed to file an appeal.
 - b. Counsel failed to object to remarks made by Judge Addy during the plea hearing.

IV. TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

Applicant's Testimony

During the evidentiary hearing, Applicant testified on his own behalf. Applicant testified he met with Counsel two or three times while he was in jail. Applicant testified Counsel failed to file an appeal. Applicant testified he was not sure if he wrote Counsel asking for an appeal, but he believes he told Counsel he wanted an appeal at the courthouse after the plea hearing. Applicant testified he should have taken his case to trial. Applicant testified the State offered him a twenty-five year plea for voluntary manslaughter, but he turned it down two or three times. Applicant testified Counsel attempted to get the offer back but the State refused. Applicant testified his plea was an open plea without sentence negotiations or recommendations. Applicant testified Counsel spoke to Judge Addy prior to the plea hearing and Judge Addy said he would not give Applicant more than forty years. Applicant testified he was emotional at the time of the plea hearing and so was Counsel. Applicant testified he was concerned about Judge Addy's comments during the plea hearing. Applicant testified he believes it was harsh for Judge Addy to say Victim's family wanted him to die in prison.

Applicant testified the evidence against him is bogus because the guy on the video had braids and he has always had shorter hair. Applicant testified the video shows a totally different person. Applicant testified he reviewed discovery with Counsel and gave her possible defenses.



Applicant testified Counsel had an investigator, but he did not trust him. Applicant testified he believed the investigator was working against him. Applicant testified he is not sure if his alibi defense was investigated or if the leads he provided to Counsel were investigated. Applicant testified he was only evaluated one time and believes he should have been evaluated twice. Applicant testified Counsel told him she would take his case to trial and he would have been comfortable going to trial until Counsel started reviewing evidence with him. Applicant testified he wish he had gone to trial and received a life sentence so he could challenge it now.

Applicant testified he recalled telling Judge Addy he was satisfied with Counsel. Applicant testified he did not have any issues with Counsel and he just wants to get a new trial so he can get less than forty years. Applicant testified he cannot do forty years because he has kids. Applicant testified he is not trying to die in jail. Applicant testified he recalled writing an apology letter to Victim's family.

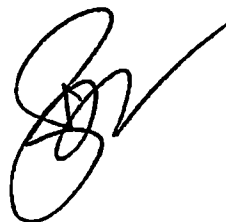
Counsel's Testimony

Counsel also testified at the post-conviction relief hearing. Counsel testified she has been practicing law since 2011 and was appointed to represent Applicant in this case. Counsel testified prior being assigned this case another attorney, Tom Adducci, had the case and, once she inherited it, she met with Adducci and Applicant together. Counsel testified she started from scratch and reviewed all discovery, charges, and constitutional rights with Applicant. Counsel testified she met with Applicant five times and all meetings lasted between two and four hours. Counsel testified during one of the meetings she explained the difference between a negotiated sentence, recommended sentence, and a straight up plea. Counsel testified the State had set Applicant's trial for a date certain in April 2018. Counsel testified Applicant was evaluated and was found competent but low functioning, so she would usually talked to him in sixth grade terms.

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Counsel testified she did investigate Applicant's case. Counsel testified she discussed Applicant's version of the facts and Applicant went back and forth with her and Adducci as to whether he was the person in the video or not. Counsel testified Applicant's co-defendant was his girlfriend, who was eight months pregnant at the time of the incident, and she provided a statement to law enforcement against Applicant. Counsel testified Applicant attempted to provide an alibi, but then said he was the man on the video, so he did not have an alibi. Counsel testified she interviewed witnesses, friends, and family members and all admitted Applicant was with his girlfriend at the time of the incident. Counsel testified the people she interviewed said the car in the gas station video was Applicant's girlfriend's car. Counsel testified Applicant made jail calls in this case and during those calls Applicant placed himself at the scene of the murder. Counsel testified she had Applicant listen to the phone calls with her.

Counsel testified Applicant was going to plead guilty in December 2016, but Applicant changed his mind and backed out. Counsel testified she got the case in January 2017 and talked to the State and had the case on track for trial. Counsel testified she believes Applicant's relationship with Adducci had broken down and that is why Applicant backed out of the plea. Counsel testified she never saw any paperwork for a twenty-five year plea offer. Counsel testified this was always a murder case and the State never made an offer for a lesser offense. Counsel testified Applicant did not want to die in prison and wanted to see if Counsel could get a cap of forty years. Counsel testified the State was willing to hold a phone conference with Judge Addy to see if he would go along with a cap of forty years. Counsel testified during the phone conference, Judge Addy agreed he would not give Applicant more than forty years if he pled guilty. Counsel testified Judge Addy honored the forty year agreement at the plea hearing.

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Counsel testified Judge Addy is known for giving "life and a lecture," and is known to make harsh comments. Counsel testified Judge Addy called Applicant a monster and said if Applicant dies in prison, he deserves it. Counsel testified the comments were harsh, but not legally objectionable. Counsel testified she asked Judge Addy for less than forty years, but explained to Applicant prior to the plea hearing that he should expect to get forty years. Counsel testified Applicant never asked for an appeal. Counsel testified she never received a letter asking her to appeal his case. Counsel testified she did not see any meritorious grounds for an appeal. Counsel testified everyone was emotional during the plea hearing because the facts of the case were really terrible. Counsel testified Applicant wrote an apology letter to Victim's family, which was presented during the hearing. Counsel testified after the plea hearing Applicant hugged her and thanked her for everything. Counsel testified Judge Addy would have denied any motion to reconsider Applicant's sentence.

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

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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 on any of his allegations 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 file an appeal

Applicant alleges Counsel was ineffective for failing to file an appeal. Through post-conviction relief, an applicant can assert he is entitled to a belated review of direct appeal issues pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974), by asserting his counsel failed to file a direct appeal on his behalf when requested. When the question is whether counsel was ineffective in failing to file a direct appeal from a conviction and sentence, the United States Supreme Court has held that counsel has a constitutionally-imposed duty to consult with a defendant about an appeal when there is reason to think either: (1) that a rational defendant would want to appeal (for example, because there are non-frivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores-Ortega, 528 U.S. 470 (2000). There is no constitutional obligation necessitating plea counsel inform a criminal defendant of his right to appeal, following a guilty plea. Weathers v. State, 319 S.C. 59, 459 S.E.2d 838 (1995); See also Simuel v. State, 390 S.C. 267, 270 n. 1, 701 S.E.2d 738, 739 n. 1 (2010) (reaffirming the standard attorneys shall meet for appealing from guilty pleas following the United States Supreme Court decision of Roe v. Flores-Ortega, 528 U.S. 470, (2000)).

This Court finds credible Counsel's testimony that Applicant did not ask her to file an appeal. This Court also finds credible Counsel's testimony that she did not see any meritorious grounds to appeal Applicant's guilty plea. This Court finds Counsel was not deficient in failing to appeal Applicant's guilty plea as Applicant has failed to show either condition under Roe existed.

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Therefore, Applicant has failed to meet his burden and this allegation must be denied and dismissed with prejudice.

Counsel failed to object to the comments made by Judge Addy during the plea hearing

Applicant asserts counsel was ineffective for failing to object to comments made by Judge Addy during the plea hearing. Applicant testified Judge Addy made harsh and improper comments about him during the plea hearing. Applicant failed to testify that he would have proceed to trial but for Judge Addy's comments. Counsel testified Judge Addy is known to give "life and a lecture" to defendants. Counsel testified the comments were harsh, but not legally objectionable. Counsel also testified she had a phone conference with Judge Addy and the State regarding Applicant's plea, and during that phone conversation Judge Addy agreed not to sentence Applicant to more than forty years. Counsel testified, even though Judge Addy made harsh comments, he honored the forty year maximum sentence for Applicant.

This Court finds credible Counsel's testimony that Judge Addy's comments were not legally objectionable. This Court also finds Applicant has failed to show how he was prejudiced by Judge Addy's comments since Judge Addy did not exceed the forty year cap when he sentenced Applicant. This Court finds Applicant has failed to meet his burden to show how Counsel was deficient or how he was prejudiced by Counsel's representation. Therefore, this allegation 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.

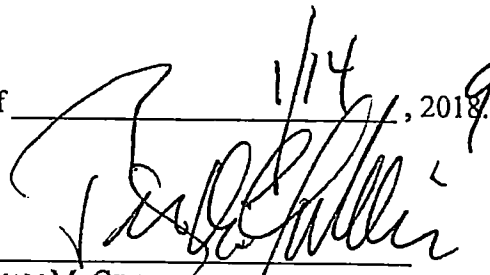
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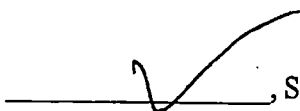
The Court notes Applicant must file and serve a notice of appeal within thirty days from post-conviction relief counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant 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.

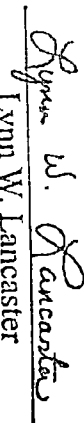
IT IS THEREFORE ORDERED THAT:

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 _____, 2018.


BRIAN M. GIBBONS
Presiding Judge
Eighth Judicial Circuit

, South Carolina

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Lynn W. Lancaster
Laurens County CCCP & GS



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Hon. Daniel E. Shearouse
Clerk of Court
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