

RECEIVED

MAR 11 2019

S.C. SUPREME COURT

March 11, 2019

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

RE: John Hicks, #355602, vs. State of South Carolina
Appeal of Case No. 2018-CP-21-1904

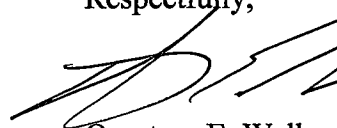
Dear Mr. Shearouse,

Enclosed for filing is a Notice of Appeal in the above referenced case. Also enclosed are a certificate of service and a copy of the original court order which is to be challenged on appeal. I would appreciate it if you could file the Notice of Appeal and mail a date-stamped copy back to me in the enclosed pre-stamped envelope.

By copy of this letter I am informing the Office of Appellate Defense of this Appeal. I was **appointed** to represent Mr. Hicks on his PCR.

Please let me know if you have any questions or concerns regarding this matter.

Respectfully,



Overture E. Walker

CC: Samuel L. Key
Assistant Attorney General
Post Office Box 11549
Columbia, South Carolina 29211-1549

John Hicks, SCDC # 355602
McCormick Correctional Institution
386 Redemption Way
McCormick, SC 29899

The Honorable Doris Poulos O'Hara
Florence County Clerk of Court
180 N. Irby Street
Florence, South Carolina 29501

Office of Appellate Defense
Chief Appellate Defender -- Robert Dudek
PO Box 11433
Columbia, SC 29211-1433

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

MAR 11 2019

S.C. SUPREME COURT

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

D. Craig Brown, Circuit Court Judge

Case No. 2018-CP-21-1904

John Hicks, SCDC # 355602, Appellant

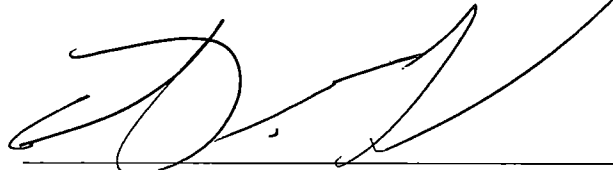
v.

State of South Carolina, Respondent.

NOTICE OF APPEAL

Applicant John Hicks hereby appeals from the Order of the Honorable D. Craig Brown presiding Judge for the 12th Judicial Circuit, filed February 12, 2019, and received by counsel for the Applicant on February 15, 2019, in the matter of John Hicks v. State of South Carolina, Case No. 2018-CP-21-1904.

March 11, 2019



Overture E. Walker
Attorney for Plaintiff

Stoney & Walker, LLC.
1527 Blanding Street
Columbia, SC 29201
Phone (803) 223-6934
Owalker&stoneywalkerlaw.com

Other Counsel of Record:
Assistant Attorney General, Samuel Key
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

RECEIVED

MAR 11 2019

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

D. Craig Brown., Circuit Court Judge

Case No. 2018-CP-21-1904

John Hicks, SCDC # 355602, Appellant

v.

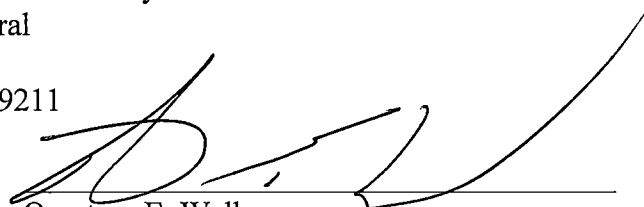
State of South Carolina, Respondent.

PROOF OF SERVICE

Personally appeared before me, Overture E. Walker, Esquire, who being duly sworn, deposes
and states:

Hee is the counsel of record for Applicant;
Service by hand delivery is proper in this instance; and
He has served the NOTICE OF APPEAL on the following party on March 11, 2019, by hand
delivery to:

Assistant Attorney General, Samuel Key
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211



Overture E. Walker
Attorney for Plaintiff

Stoney & Walker,LLC
1527 Blanding Street
Columbia, SC 29201
Phone (803) 223-6934
owalker@stoneywalkerlaw.com

Other Counsel of Record:
Assistant Attorney General, Samuel Key
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

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

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2018CP2101904

John Hicks
 2019 FEB 12 AM 9:02
 State Of South Carolina
 DORIS POULOS O'HARA

PLAINTIFF(S) CCCP & GS DEFENDANT(S)
 FLORENCE COUNTY, SC
 Submitted by: Attorney for: Plaintiff Defendant
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- ~~STAYED DUE TO BANKRUPTCY~~
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.
 Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

| Judgment in Favor of (List name(s) below) | Judgment Against (List name(s) below) | Judgment Amount To be Enrolled (List amount(s) below) |
|--|--|--|
| | | |
| | | |
| | | |

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

Judge Code

2/12/2019
 Date

For Clerk of Court Office Use Only

This judgment was entered on **February 12, 2019**, and a copy mailed first class or placed in the appropriate attorney's box **February 12, 2019**, to attorneys of record or to parties (when appearing pro se) as follows:

CERTIFIED, A TRUE COPY
 Clerk of Court C.P. & G.S.
 Florence County, S.C.
[Signature]

Overture E. Walker 1527 Blanding Street Columbia, SC
29201

Samuel Leonard Key Rembert C. Dennis Building 1000
Assembly Street Columbia, SC 29201

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Doris P. O'Hara

Court Reporter

Doris Poulos O'Hara - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)
 COUNTY OF FLORENCE)
)
)
 John Hicks, # 355602,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 IN THE TWELFTH JUDICIAL CIRCUIT

Case No: 2018-CP-21-1904

ORDER OF DISMISSAL

DORIS POULOS O'HARA
 C.C.P. & G.S.
 FLORENCE COUNTY, SC

2019 FEB 12 AM 8:50

FILED

The matter before the Court is an action for post-conviction relief (PCR). John Hicks commenced this PCR action July 16, 2018. Hicks alleged ineffective assistance of counsel and attacked the knowing and voluntary nature of his guilty plea.

The Court held an evidentiary hearing November 5, 2018, at the Florence County Courthouse before the undersigned. For the reasons discussed below, the Court finds Hicks's allegations to be without merit and concludes plea counsel was not ineffective. Therefore, the Court denies relief and dismisses the action with prejudice.

I. FACTS & PROCEDURAL HISTORY

John Hicks is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. Hicks was indicted at the August 2017 term of the Florence County Grand Jury for murder. (2017-GS-21-00953). Hicks was charged in connection to an incident that transpired over the late night / early morning hours November 18–19, 2016. (Tr. 8). Hicks walked into a bar, raised his gun, randomly selected a target, and fired one shot. The target was Richard Ennis. Ennis died. (Tr. 8–9).

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 P. 1/7/13*

CERTIFIED: A TRUE COPY
Doris Poulos O'Hara
 CLERK OF COURT C.P. & G.S.
 FLORENCE COUNTY, S.C.

On November 18, 2016, Hicks was partying with two friends. Roderick Commander (co-defendant) was with Hicks that night. That night, Hicks, Commander, and another friend frequented several social establishments. They began the night at a bar in Lynchburg. (Tr. 13).

The group was eventually kicked out of the Lynchburg bar, but they did not want their night to end. The group then went to a bar in Florence. The group was kicked out of the second bar because someone in the group had a weapon. Although they had just been kicked out of a second bar, Hicks and his friends did not want to stop partying. The group decided to try their luck at a third bar. At some point, Hicks and Commander both stated, "Someone is going to die tonight." (Tr. 14).

The group arrived at the third bar, BJ's Lounge, shortly before midnight. (Tr. 9). When Hicks arrived at BJ's Lounge, Ennis was playing pool inside. (Tr. 9). Hicks entered BJ's Lounge, fired one round from a pistol, and then ran out the back door. Hicks fled. His friends did not. (Tr. 15). Shortly thereafter, Investigator Thomas McFadden arrived on scene.

Once McFadden arrived at the scene, Hicks's friends directed him to a trail behind BJ's Lounge. McFadden walked the trail and stepped on a handgun. When he found the gun, it was jammed. (Tr. 15). Apparently, Commander provided the State with a written statement confessing to the crime; however, after further investigation, the State believed the confession originated with Hicks. (Tr. 17). Commander and the third member of the group cooperated with law enforcement. (Tr. 14, 17-18). Hicks turned himself in to law enforcement and was arrested December 1, 2016.

Hicks pled guilty March 19, 2018, to the lesser included offense of voluntary manslaughter before Judge Roger Henderson. Hicks retained Charles E. Johnson to represent him. Hicks's plea was entered without a sentence negotiation or recommendation.

At the plea hearing, the State recited the underlying facts for the record, and Hicks agreed the facts were accurate. Hicks stated at the plea hearing he was drunk and high at the time of the

incident. He told the plea court he was high on “[c]ocaine, pills, and marijuana” when the shooting occurred. (Tr. 20). He stated he did not know Ennis, and he was just shooting randomly. (Tr. 16, 18–19).

The State admitted it would struggle at trial establishing motive because Hicks shot Ennis at random. (Tr. 17). However, the State then explained, “Of course, we don’t have to [establish motive]. . . . But any experienced litigator is going to let you know [establishing motive is] important. We could not do that.” (Tr. 17). As for the written confession, the State’s theory at trial would have been that Hicks wrote the confession in an attempt to set up his co-defendant. (Tr. 17).

The plea court accepted Hicks’s guilty plea and sentenced him to the maximum—thirty years imprisonment. Hicks did not appeal his plea or sentence. Hicks commenced this PCR action July 16, 2018. Overture Walker represented Hicks at the PCR hearing. Assistant Attorney General Samuel Key represented the State.

II. ISSUES RAISED

Hicks alleges ineffective assistance of counsel and attacks the knowing and voluntary nature of his guilty plea. Specifically, Hicks alleges plea counsel was ineffective for:

1. Providing inadequate advice;
2. Advising Hicks he would get a life sentence if he went to trial when Hicks’s co-defendant wrote a confession;
3. Failure to preserve issues related to the admission of a list of disciplinary infractions; and
4. Failure to give adequate advice about the trial process.

III. PCR TESTIMONY

Hicks’s Testimony

Hicks testified at PCR as to his version of the events leading up to his guilty plea. According to Hicks, his mother retained plea counsel to represent him on the charges. He and plea counsel met

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to discuss the case a maximum of five times. Hicks alleged the first time he and plea counsel met, plea counsel stated he thought he could negotiate for a plea to accessory after the fact, and negotiate for bond to be set at \$100,000. Hicks and plea counsel met a month later, and plea counsel told him that plea counsel would negotiate for a plea to voluntary manslaughter with a fifteen year sentence. At some point, Hicks told plea counsel to contact Shaniqua Wright as a potential witness. Hicks conceded plea counsel reviewed some of the discovery with Hicks during their second meeting. However, Hicks testified he never saw any pictures of the investigative report, and he did not receive his own copy of discovery until after he pled guilty. According to Hicks, plea counsel told Hicks that physically giving Hicks a copy of the discovery would cause numerous problems in his case. Hicks stated plea counsel never reviewed the State's case and evidence with him.

Hicks testified he could no longer reach plea counsel to discuss the case after the second meeting. Hicks further testified the last time plea counsel met with Hicks before his plea, plea counsel told him the only offer was an open plea to voluntary manslaughter. Plea counsel told Hicks that if the case went to trial, they would lose, and Hicks would get a life sentence. Plea counsel told Hicks that if he took the plea, he would not receive a thirty year sentence. Plea counsel told Hicks to take the plea deal.

Hicks testified he felt plea counsel did not spend enough time on the case and did not know the case well enough to go to trial. Hicks stated he wanted to go to trial because he was not the shooter, he told plea counsel multiple times that he was not the shooter, and plea counsel knows the shooter was someone else. Once he received the discovery, after he pled guilty, Hicks discovered a confession note in the materials that was written by his co-defendant. Hicks testified plea counsel knew about the confession letter, but told Hicks it could not be used without hiring a handwriting expert witness.

Hicks alleged he told plea counsel he did not want to plead guilty, but plea counsel reiterated that if he went to trial he would receive a life sentence. Hicks felt plea counsel gave him a choice between a life sentence and pleading guilty. Hicks felt this was no choice at all. Hicks testified he pled guilty because he did not want to receive a life sentence. Plea counsel made the decision, not Hicks, to plead guilty. Plea counsel told Hicks what to say to the judge during sentencing. Hicks could not recall the colloquy with the plea court and could not recall what he said during sentencing.

Plea Counsel's Testimony

Plea counsel testified at the PCR hearing and stated that he had been an attorney for thirty-two years. Hicks's mother called plea counsel prior to Hicks turning himself into law enforcement. Hicks's mother called back after Hicks turned himself in and retained plea counsel to represent Hicks. Plea counsel met with Hicks within a week of Hicks turning himself in. At first, plea counsel had difficulty getting the discovery file because the investigation was not finished. During their first meeting, in March 2017, plea counsel advised Hicks of the charge against him and the elements of murder; however, plea counsel did not want to discuss too much about the facts of the case until he received the discovery file and saw what evidence the State had against Hicks. The focus of the initial meeting was on Hicks's bond hearing.

Plea counsel received the full discovery file in either June or July 2017. The discovery file was contained on a disk. Plea counsel printed all the material from the disk and then went to the jail to review the material with Hicks. Plea counsel recalled taking the investigative reports, witness statements, autopsy documents, and pictures of the crime scene to review with Hicks. Plea counsel spent around four to five hours at the jail going over the discovery with Hicks.

Plea counsel knew of the written confession letter because Investigator McFadden gave it to him. Plea counsel stated the letter had been passed through the jail, and there were multiple questions regarding who wrote the letter because the co-defendant denied writing it. Plea counsel spoke with Hicks about the letter shortly after receiving it.

Hicks told plea counsel of a potential alibi witness about a week before Hicks pled guilty. Plea counsel recalled the witness being a woman, but plea counsel was not able to locate her. Other than the one witness, Hicks did not offer any other witnesses or any evidence in mitigation.

As for possible defenses, there was not much plea counsel could have argued at trial. Hicks did not know the victim, there was no argument, and several witnesses, including the co-defendant and the driver of the car put him at the club. Plea counsel stated the only plausible argument he could have made was that Hicks was so intoxicated from drinking and using drugs, Hicks did not know what he was doing. However, the State had one of the bar owners who would have testified that Hicks was kicked out of that bar earlier in the night because he was drunk and saying, "Somebody is going to die tonight."

Importantly, plea counsel felt he could not put Hicks on the stand in his own defense because Hicks admitted to plea counsel that he was the shooter. Plea counsel fully explained the trial process and explained he could not ethically put Hicks on the stand in defense because Hicks told plea counsel he shot the victim. Because there were not any plausible defenses, plea counsel advised Hicks to plead guilty. Plea counsel negotiated hard to get the charge reduced from murder. If murder was the charge, because Hicks would have been exposed to thirty to life, plea counsel would have taken the case to trial. Plea counsel felt very strongly that if Hicks had been convicted of murder at trial, he would have received a life sentence. Plea counsel explained this to Hicks and advised him that thirty years in prison is much better than life. Plea counsel told Hicks he would try

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the case if Hicks wanted, and the decision was up to Hicks, but there was a very slim possibility of being successful at trial. Plea counsel did not force Hicks to plead guilty, but he made clear his recommendation to plead guilty.

Plea counsel asked for voluntary manslaughter to eliminate the possibility of a life sentence. The solicitor and the victim's family agreed to the plea deal. Plea counsel fully explained the circumstances and consequences of the guilty plea. Plea counsel never said the offer was fifteen years. Hicks may have asked plea counsel to see if he could get a fifteen year deal, and plea counsel may have taken that offer to the State; however, the State never made a fifteen year offer. If the State had made a fifteen year offer, plea counsel would have strongly urged Hicks to take the deal. Plea counsel may have mentioned the possibility of accessory after the fact to Hicks before he received the discovery file, but that possibility went away after plea counsel received the discovery file. Plea counsel explained to Hicks there was no guaranteed sentence if he pled guilty.

Plea counsel told Hicks what sentence he would receive was up to Hicks. Plea counsel explained the minimum and maximum Hicks could receive, and told him it was up to Hicks to convince the plea court to give him somewhere in between. Plea counsel told Hicks he would likely receive a sentence in the twenty to thirty year range. Hicks gave a convincing speech at sentencing and wrote a thoughtful letter, but it was not enough to convince the plea court. Hicks had two weeks to prepare his speech and letter and never informed plea counsel he did not want to go through with the plea. Hicks never indicated he did not want to accept the State's offer the day of the plea. Hicks's main concern was how many years he would receive, not whether he should plead guilty.

IV. DISCUSSION

The issue before the Court is whether Hicks'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 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).

Hicks and plea counsel agreed at the PCR hearing that Hicks pled guilty based on plea counsel's advice. The Court finds Hicks pled guilty pursuant to the advice of plea counsel; therefore the issue before the Court is whether Hicks's plea was knowing and voluntary. *See Roscoe, supra*.

1. Providing Inadequate Advice

Hicks alleges plea counsel was ineffective for providing inadequate advice. At the outset of the hearing, Hicks, through counsel, clarified the allegation was an attack on the knowing and voluntary nature of Hicks's guilty plea. Specifically, Hicks alleged he pled guilty because he believed he would receive a fifteen year sentence. For the reasons stated below, the Court finds plea counsel was not ineffective for providing inadequate advice.

"[A] defendant entering a guilty plea must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." *Pittman v. State*, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999). 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*, 474 U.S. at 59.

The Court finds plea counsel was not deficient for providing inadequate advice about the plea offer. The Court finds Hicks's testimony on this issue not credible. Specifically, the Court finds Hicks's assertion plea counsel promised Hicks a fifteen year sentence in exchange for his plea, and promised Hicks he would not receive a thirty year sentence, is not credible. The Court finds plea counsel's testimony on the issue to be credible.

From plea counsel's credible testimony at the PCR hearing, it is clear a fifteen year offer was never made by the State and never promised to Hicks. As mentioned above, plea counsel testified he explained the murder charge and the elements of murder to Hicks. Plea counsel explained he negotiated for a plea to voluntary manslaughter to eliminate the possibility of a life sentence. Plea counsel stated he may have suggested a plea deal to fifteen years to the State on behalf of Hicks, but the State immediately refused the suggestion. Further, plea counsel testified that had the State made a fifteen year offer, he would have strongly encouraged Hicks to take the deal. Based on plea counsel's testimony, the Court finds plea counsel was not deficient because plea counsel never promised Hicks he would receive a fifteen year sentence, and Hicks knew and understood the terms of the plea were an open sentencing range for voluntary manslaughter.

The Court further finds Hicks failed to meet his burden of establishing prejudice. As mentioned above, Hicks stated at the PCR hearing he pled guilty because he did not want to receive a life sentence. While the Court finds other portions of Hicks's testimony not credible, this statement is credible. By his own admission, Hicks pled guilty to voluntary manslaughter because he did not want to receive a life sentence. This is a valid consideration in entering a plea deal, and this Court

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finds Hicks made that determination freely and voluntarily. Hicks has not shown prejudice because he did not want to proceed to trial with a potential life sentence on the table.

The Court finds plea counsel was not ineffective for providing inadequate advice. Hicks failed to show plea counsel was deficient for providing inadequate advice, or show any prejudice resulting from the alleged inadequate advice. Therefore, the Court dismisses Hicks's first allegation with prejudice.

2. Advising Hicks that He Would Get a Life Sentence if He Went to Trial When Hicks's Co-defendant Wrote a Confession

Hicks alleges plea counsel was ineffective for advising Hicks he would receive a life-sentence if he went to trial when plea counsel knew Hicks's co-defendant wrote a confession. Specifically, Hicks claims plea counsel pressured him into pleading guilty by stating Hicks could either plead guilty to voluntary manslaughter or go to prison for the rest of his life. Hicks claims plea counsel should not have made this assertion because Hicks's co-defendant wrote a letter confessing to being the shooter. For the reasons stated below, the Court finds plea counsel was not ineffective for informing Hicks of the sentence he believed Hicks would receive if convicted at trial based upon his review of the evidence, including the purported written confession.

Plea counsel is not deficient for advising a defendant to plead guilty based on what counsel reasonably believes the sentence would be if the defendant were convicted at trial. *Bennett v. State*, 371 S.C. 198, 204–05, 638 S.E.2d 673, 676 (2006). Further, where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found deficient. *Roseboro v. State*, 317 S.C. 292, 454 S.E.2d 312 (1996). 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*, 474 U.S. at 59.

As discussed above, plea counsel stated he knew of the written confession before trial and discussed with Hicks, there were many issues with the written confession of the co-defendant, and Hicks told plea counsel he shot the victim. Plea counsel made a reasonable strategic decision not to base his defense strategy based on a questionably authentic jailhouse confession particularly when Hicks had confessed to being the shooter and could not take the stand in his own defense. As such, it was reasonable for plea counsel to advise Hicks he would get a life sentence if convicted at trial, based on his view of the evidence. Plea counsel may have strongly recommended Hicks to plead to voluntarily manslaughter; however, plea counsel testified that he left the ultimate decision whether or not to plead guilty to Hicks. Hicks receiving a sentence of life in prison was a real possibility because of the exposure he faced proceeding to trial on the murder charge.

As for prejudice, as set forth in the previous section, Hicks failed to establish prejudice because he stated he pled guilty to voluntary-manslaughter because he did not want to face life-imprisonment. Therefore, the Court finds there was no reasonable probability Hicks would have proceeded to trial.

Based on the foregoing, the Court finds plea counsel was not deficient in his representation of Hicks, and Hicks has not met his burden establishing prejudice. Accordingly, the Court finds plea counsel was not ineffective.

3. Failure to Preserve Issues Related to the Admission of a List of Disciplinary Infractions

Hicks presented no evidence in support of his allegation plea counsel was ineffective for failure to object during sentencing when the State presented a list of Hick's disciplinary infractions to the plea court. The Court finds Hicks waived this allegation; therefore, this allegation is denied and dismissed with prejudice.

4. Failure to give adequate advice about the trial process

Hicks alleges plea counsel was ineffective for failure to explain the trial process. The Court finds plea counsel is a trial practitioner who has extensive experience in the trial of serious offenses. Both plea counsel and Hicks conferred on numerous occasions. The Court finds credible plea counsel's testimony he discussed with Hicks the pending charges, the elements of the charges and what the State was required to prove, Hicks's constitutional rights, Hicks's version of the facts, and possible defenses or lack thereof. Further, the Court has reviewed the transcript and finds the record reflects Hicks's plea was entered freely, voluntarily, knowingly, and intelligently. The record also reflects Hicks told the plea court he was satisfied with plea counsel, and no one had threatened him or promised him anything to plead guilty. Therefore, this Court finds that plea counsel adequately advised Hicks of the trial process.

Even if plea counsel had not adequately advised Hicks of the trial process, the Court finds plea counsel's alleged deficiency was cured by the plea court. *See Wolfe v. State*, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997) (stating that plea counsel's deficient performance can be cured by the plea court's colloquy). The plea court thoroughly explained the trial process to Hicks during the plea hearing, and Hicks stated he understood what the plea court explained to him. (Tr. 6-8). Therefore, Hicks was not prejudiced by plea counsel's alleged deficiency of failing to explain the trial process.

Plea counsel explained the trial process to Hicks, and any alleged deficiency for failure to explain the trial process was cured by the plea court. Therefore, the Court finds plea counsel was not ineffective for failure to explain the trial process.

V. CONCLUSION

Based on all the foregoing, this Court finds and concludes Hicks has not established any constitutional violations or deprivations that would require this court to grant his application. The

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P. 12/7/13

Court finds plea counsel's representation was neither deficient nor prejudicial. Hicks pled guilty pursuant to the competent advice of plea counsel. The Court finds Hicks knew the meaning and consequences of pleading guilty to voluntary manslaughter and was fully aware of the mandatory maximum and minimum sentencing range. The Court further finds Hicks voluntarily pled guilty and was not threatened by plea counsel. His voluntariness is evinced by the plea transcript and testimony given at the PCR hearing.



The Court notes Hicks 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), Hicks has a right to appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCR, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Hicks's behalf. Hicks is directed to Rule 243, SCACR, for appropriate procedures for appeal.

THEREFORE:

1. The Court denies relief and dismisses the action with prejudice; and
2. Hicks shall be remanded to the custody of the State.


AND IT IS SO ORDERED.

February 11, 2019.


D. CRAIG BROWN
Presiding Judge
Twelfth Judicial Circuit


2019 FEB 12 AM 8:50
DORIS POULIS O'HARA
CCCP & GS
FLORENCE COUNTY, SC
South Carolina

FILED

CERTIFIED: A TRUE COPY

CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

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