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RECEIVED

APR 05 2019

S.C. SUPREME COURT

April 2, 2019

Daniel Shearouse, Clerk
The Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

Re.: Walls v. State
2017-CP-46-3357

Dear Clerk Shearouse:

Please find enclosed the Order Dismissing Applicant's PCR, Notice of Appeal and Proof of Service on the above referenced case. Please file the originals and mail the filed copies back to me in the also enclosed self-addressed stamped envelope. Please note that I have requested that Appellate Defense take over this appeal. Thank you and please contact me with any additional questions or concerns.

Sincerely Yours,

Nathan Sheldon
The Law Office of Nathan J. Sheldon

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM YORK COUNTY
Court of Common Pleas

Thomas A. Russo, Circuit Court Judge

Case No. 2017-CP-46-03357

State of South Carolina, Respondent,

v.

Javonte Antonio Walls, Appellant.

NOTICE OF APPEAL

Javonte Antonio Walls appeals the order of the Honorable Thomas A. Russo dated February 22, 2019 denying his request for post-conviction relief. Appellant received written notice of entry of this order on April 2, 2019.

April 2, 2019



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THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM YORK COUNTY
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Thomas A. Russo, Circuit Court Judge

Case No. 2017-CP-46-03357

State of South Carolina,

Respondent,

v.


Javonte Antonio Walls,

Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Janell Gregory with the Attorney General's Office by depositing a copy of it in the United States Mail, postage prepaid, on April 2, 2019 mailed to Post Office Box 11549, Columbia, South Carolina 29211-1549.

April 2, 2019



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RECEIVED
APR 05 2019
S.C. SUPREME COURT

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)
))
Javonte Antonio Walls, #374056,)
))
Applicant,)
))
v.)
))
State of South Carolina,)
))
Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE SIXTEENTH JUDICIAL CIRCUIT
2017-CP-46-3357

ORDER OF DISMISSAL

FILED-RECEIVED
2019 APR -2 AM 9:58
DAVID HAMILTON
C.C.C.P. & GS
YORK COUNTY, SC

This matter comes before the Court by way of an application for post-conviction relief filed on November 13, 2017, by Javonte Walls (Applicant). The State (Respondent) filed a Return on March 15, 2018, requesting an evidentiary hearing. An evidentiary hearing into the matter was convened on January 29, 2019, at the Moss Justice Center. Applicant was present at the hearing and represented by Nathan J. Sheldon, 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. Applicant’s grandmother, Patrician Hemphill, also testified on Applicant’s behalf. Geoffrey Mark Dunn, Esquire (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 York County Clerk of Court’s order of commitment. During the June 2017 term, the York County Grand Jury indicted Applicant for armed robbery (2017-GS-46-2309) and criminal conspiracy (2017-GS-46-2312). Counsel represented Applicant. Assistant Solicitor Matthew Shelton of the Sixteenth Circuit Solicitor’s Office prosecuted the case.

Applicant appeared before the Honorable John C. Hayes, III and pled guilty to attempted armed robbery and criminal conspiracy. The State dismissed two kidnapping charges as part of the plea agreement. Sentencing was deferred until August 21, 2017, due to a death in Applicant's family. Although Applicant came to court on August 21st, he did not stay for sentencing. A bench warrant was issued at that time and Applicant was later arrested. The State withdrew their recommended six – eight year sentencing range, and, on September 21, 2017, Applicant was sentenced to nine years imprisonment for attempted armed robbery, and a concurrent five years for criminal conspiracy. Applicant did not appeal his guilty plea or sentence.

II. SUMMARY OF FACTS

On November 2, 2016, Applicant and his two co-defendants parked on the road and walked through the woods to the Catawba Express on Highway 5 in York County. (GP Tr. 10.) Applicant's co-defendants entered the store armed with a handgun while Applicant stayed at the door. (GP Tr. 10.) Two of the employees were held at gunpoint and ushered into the back of the building. (GP Tr. 10.) The co-defendants cleaned out the cash registers and stole a number of cigarettes. (GP Tr. 10.) One of the victims heard Applicant make a noise as if communicating to his co-defendants that it was time to go. (GP Tr. 10.) Applicant and his co-defendants fled the scene through the woods and left the area in Applicant's vehicle. (GP Tr. 10.) The co-defendants confessed to their involvement in the incident and implicated each other as well as Applicant. (GP Tr. 10.) Both co-defendants were prepared to testify against Applicant had he proceeded to trial. (GP Tr. 10.) The State would have tried Applicant under the accomplice liability theory had Applicant proceeded to trial. (GP Tr. 11.)

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. Applicant did not know his rights
2. Involuntary Guilty Plea
 - a. Counsel failed to explain the plea to Applicant

An evidentiary hearing was held on January 29, 2019, Applicant informed this Court he intended to proceed on the grounds enumerated in his application.

IV. TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

Applicant's Testimony

During the evidentiary hearing, Applicant testified on his own behalf. Applicant testified he understands all post-conviction relief can do is undo his plea and allow Applicant to start over. Applicant testified he had an "alright" relationship with Counsel. Applicant testified Counsel went over discovery with him, but he did so kind of late. Applicant testified Counsel told him it was not a good idea to go to trial. Applicant testified Counsel told him about a three-year YOA sentence, and he rejected that offer because Counsel told him he could get him a one-year YOA. Applicant testified Counsel said Applicant was the least culpable because he was the lookout man. Applicant testified he rejected the YOA plea offer because he thought he could get a lesser sentence. Applicant testified he pled guilty a month later and did not know the sentence range was six – eight years. Applicant testified the State took the three-year YOA off the table after he rejected that offer.

Applicant testified he left court, which is why he did not get the six – eight year range. Applicant testified he told Counsel he was scared of the six-eight year range, and Counsel said he

was going to call the solicitor to see if he could get a better offer. Applicant testified he left court expecting Counsel to call him and tell him when to come back, but Counsel never called him.

On cross-examination, Applicant testified he did voluntarily plead guilty, but he did not know what was going on. Applicant testified he did not recall signing the plea waiver form at the time of his plea. Applicant testified he wants a new trial on all of his charges.

Patricia Hemphill's Testimony

Ms. Hemphill testified she was present at a meeting with Counsel and Applicant. Ms. Hemphill testified during that meeting Counsel told Applicant what the charges were against him and that he could get Applicant a one year YOA. On cross-examination, Ms. Hemphill testified she was not present during all of the meetings between Applicant and Counsel.

Counsel's Testimony

Counsel also testified at the post-conviction relief hearing. Counsel testified he has been practicing law since 2004 and half of his practice is dedicated to criminal law. Counsel testified he was appointed to represent Applicant on December 21, 2016. Counsel testified he met with Applicant between three and five times prior to his guilty plea. Counsel testified one of the co-defendant's left behind fingerprints and that subject implicated Applicant in the incident. Counsel testified he filed discovery and Rule 5 motions and reviewed discovery with Applicant. Counsel testified Applicant never gave Counsel a different version of the facts. Counsel testified he reviewed Applicant's constitutional rights with him prior to his plea.

Counsel testified he approached the solicitor regarding a plea deal on Applicant's behalf. Counsel testified the State offered Applicant a three-year YOA sentence, and he communicated that plea offer to Applicant. Counsel testified Applicant rejected that offer, and the State was not going to provide Applicant another plea deal. Counsel testified the week before Applicant's plea,

he drove over to meet with Solicitor Kevin Brackett to request a plea deal, but he was unavailable. Counsel testified he emailed Solicitor Brackett asking for another plea offer in this case. Counsel testified that is when the State offered Applicant the six-eight year range. Counsel testified he fully expected Applicant to get six years based on the sentences of Applicant's co-defendants. Counsel testified Applicant's grandmother died over the weekend, and the State allowed Applicant to plea on Monday and defer sentence for a month due to the family death. Counsel testified Applicant was told if he did not show up for his deferred sentencing date, the six-eight year range would be off the table.

Counsel testified Applicant showed up to court on the date of his sentencing but was annoyed that his name was not on the trial docket and that he had to sign new sentencing sheets. Counsel testified around 9:30 A.M. Applicant asked Counsel if he could go buy cigarettes, and Counsel said "yes." Counsel testified Applicant never returned to the courthouse. Counsel testified he was prepared to take Applicant's case to trial and had already drafted a motion in limine in preparation for trial.

On cross-examination, Counsel testified the State's initial offer was a three-year YOA and Applicant rejected it on the record. Counsel testified the offer was for a burglary second (violent) and that a one-year YOA was not possible because of Applicant's charges. Counsel testified he may not have explained to Applicant the technicalities of how a YOA can go from one to three years. Counsel testified he went over discovery with Applicant. Counsel testified he told Applicant about the YOA offer and explained the offer would not get any better. Counsel testified he met with Applicant and his grandmother at one point. Counsel testified he attempted to call Applicant prior to the plea, but his voicemail was full. Counsel testified he sent letters to Applicant indicating when he needed to show up for court.

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 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. 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 review Applicant's constitutional rights

Applicant alleges Counsel was ineffective for failing to review his rights with him prior to his guilty plea. This Court finds this allegation meritless. This Court finds credible Counsel's testimony that he reviewed Applicant's constitutional rights with him prior to the plea hearing. Additionally, the transcript reflects the plea judge engaged in a detailed recitation of Applicant's constitutional rights, including the right to a jury trial and Applicant's right to remain silent, during the plea colloquy. (GP Tr. 8-9.) This Court also reviewed the plea waiver form, which was initialed and signed by Applicant and Counsel. The plea waiver form provides the details of the

plea agreement, which includes a review of the constitutional rights Applicant would be waiving by entering his guilty plea.

Accordingly, this Court finds Applicant has failed to meet his burden of proof as to deficiency or prejudice as to this allegation. Therefore, this allegation must be denied and dismissed with prejudice.

Involuntary Guilty Plea

Counsel failed to explain the plea to Applicant

Applicant alleges his plea was not knowingly entered into because Counsel did not explain the plea agreement to him. This Court finds Applicant's guilty plea was freely and voluntarily made. In evaluating issues concerning guilty pleas, this Court will consider the entire record, including the transcript of the guilty plea proceeding and the evidence presented at the post-conviction relief hearing. Roddy v. State, 339 S.C. 29, 528 S.E.2d 418 (2000). Voluntariness of a guilty plea is not merely determined by an examination of a specific inquiry by the plea court alone but rather is determined by the record of both the guilty plea proceeding and the post-conviction relief hearing. Id. To find a guilty plea was knowingly and voluntarily entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238 (1969). Further, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant; thus, an applicant's right to contest the validity of such a plea is usually foreclosed. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Therefore, admissions "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." Id. (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975)); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

This Court finds this allegation is without merit, and Applicant has failed to carry his burden of proving his guilty plea was involuntarily made. The records before this Court, and particularly the transcript of Applicant's plea proceeding, show that Applicant engaged in a thorough colloquy with the court before electing to forgo his constitutional rights and knowingly, voluntarily, and intelligently enter a plea of guilty. Applicant also initialed and signed a plea waiver form, which provides the details of his plea agreement, including his charges, negotiated sentence, and constitutional rights. The Court finds credible Counsel's testimony that he reviewed with Applicant the terms of the plea, and that the negotiated range of six to eight years would be withdrawn if Applicant failed to show up for the deferred sentencing hearing. However, even if Counsel had failed to explain the plea agreement, this Court finds that any such alleged deficiency was cured by the plea court's colloquy.

Applicant was sworn during the plea hearing and told the plea court he wished to plead guilty. The plea transcript shows the plea court fully explained to Applicant the charges against him, his constitutional rights, and the consequences that Applicant would face if he failed to attend his deferred sentencing hearing. (GP Tr. 5-12.) Applicant further agreed with the facts of the case presented by the State during the plea hearing. (GP Tr. 11.) Accordingly, the Court finds Applicant's allegation that his guilty plea was not knowingly and voluntarily entered to be without merit and, consequently, this allegation is denied and dismissed with prejudice.

VII. CONCLUSION

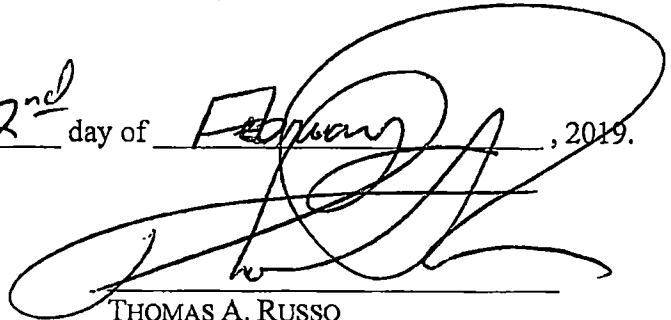
Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty days from 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:

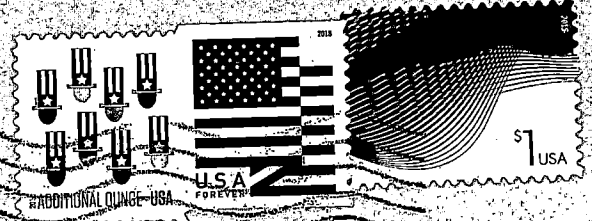
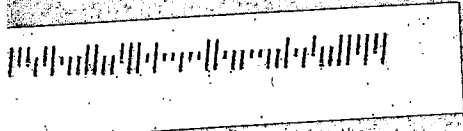
1. The application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant will remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 22nd day of February, 2019.



THOMAS A. RUSSO
Presiding Judge
Sixteenth Judicial Circuit

Florence, South Carolina



Charlotte F&DC NC 283
TUE 02 APR 2019 6M

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