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April 3, 2019

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

RECEIVED
APR 08 2019
S.C. SUPREME COURT

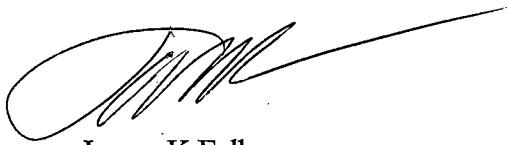
Re: Quantae Priest 364893 v State, 2016-CP-22- 0017

Dear Clerk Shearouse:

Please find the enclosed Notice of Appeal, Proof of Service, in the above Georgetown County PCR action. Please return a clocked copy of the Notice of Appeal and Proof of Service in the enclosed SASE.

Should you have any additional questions please do not hesitate to contact my office.

With best regards, I am,



James K Falk

Thank you for your assistance.

Cc:

Johnny James Jr., Esq
Quantae Priest 364893
Georgetown County Circuit Court Clerk

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

APR 08 2019

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas
Honorable Kristi F Curtis, Circuit Judge

S.C. SUPREME COURT

Case No.: 2016-CP-22-00017

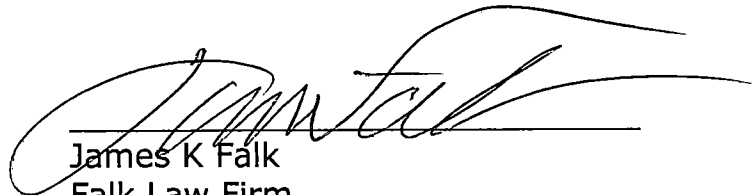
Quantae Priest 364893.....PETITIONER

V.

State of South Carolina.....RESPONDENT

NOTICE OF APPEAL

The Petitioner Quantae Priest appeals the Honorable Kristi F. Curtis' March 25, 2019 Order of Dismissal. Undersigned counsel received notice of entry of the order on April 2, 2019. A copy of the order on appeal is attached hereto.



James K Falk
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Charleston, SC 29402

April 3, 2019

Johnny James Jr., Esq.
Office of S.C. Attorney General
PO Box 11549
Columbia, SC 29211-1549

Clerk of Court- Georgetown
PO Drawer 479
Georgetown, SC 29442

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Honorable Kristi F. Curtis, Circuit Judge

RECEIVED

APR 08 2019

S.C. SUPREME COURT

Case No.: 2016-CP-22-0017

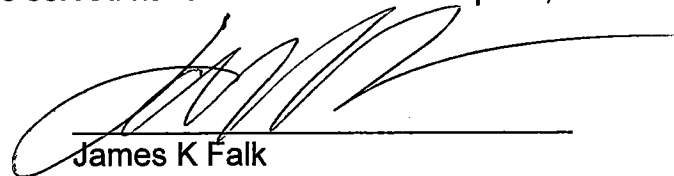
Quantae Priest 364893.....PETITIONER

V.

State of South Carolina.....RESPONDENT

CERTIFICATE OF SERVICE

I, James Falk, certify that I have today served the within notice of appeal upon the Respondent by depositing a copy of it in the U.S. Mail, postage prepaid, addressed to its attorney of record, Johnny James, Jr. Esq. Office of the S.C. Attorney General, PO Box 11549, Columbia, SC 29211-1549 and the Georgetown County Clerk of Court. I further certify that all parties required by Rule to be served have been served this April 3, 2019.



James K Falk
Falk Law Firm
PO Box 1058
Charleston, SC 29402

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN) FOR THE FIFTEENTH JUDICIAL CIRCUIT
))
Quantae Priest,) Case No.: 2016-CP-22-00017
S.C.D.C. No. 364893,))
))
Applicant,))
)) **ORDER OF DISMISSAL**
v.))
))
State of South Carolina,))
))
Respondent.))
_____))

FILED
GEORGETOWN COUNTY, SC
2019 APR -2 PM 4:35
ALMA Y. WHITE
CLERK OF COURT

This matter comes before the Court by way of an application for post-conviction relief filed by Quantae Priest (“Applicant”) on January 7, 2016. Respondent made its return on or about January 20, 2017. The Court convened an evidentiary hearing into the matter on Thursday, November 29, 2018, at the Horry County Government & Justice Center in Conway, South Carolina. Applicant was present at the hearing and represented by James K. Falk, Esq. Johnny Ellis James Jr., of the South Carolina Attorney General’s Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant’s trial and plea counsel, Ronald W. Hazzard, Esq. (“Counsel”) also testified. The Court had before it Applicant’s records from the South Carolina Department of Corrections, a copy of the original trial and plea transcripts, the records of the Georgetown County Clerk of Court regarding the subject convictions, and the pleadings. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Georgetown County Clerk of Court. Applicant was indicted at the October 2013 term of the Georgetown County Grand Jury for kidnapping (2013-GS-22-00972), armed

robbery (2013-GS-22-00973), and burglary, first degree (2013-GS-22-00975).¹ Ronald W. Hazzard, Esq. represented Applicant, and Alicia A. Richardson, Esq. of the Fifteenth Circuit Solicitor's Office, prosecuted the case. On July 27, 2015, Applicant proceeded to trial before the Honorable Benjamin H. Culbertson and a jury. However, on July 29, 2015, after substantial testimony had been given, Applicant pled guilty as indicted for kidnapping and armed robbery, and to the lesser-included offense of burglary, second degree, violent. Upon recommendation by the State that Applicant be sentenced to a concurrent total of 20 years' incarceration, Judge Culbertson sentenced Applicant to imprisonment for concurrent terms of 18 years for kidnapping, 18 years for armed robbery, and 15 years for burglary, second degree, violent. Applicant did not appeal his plea or sentence.

Present Application

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

1. "Alibi witnesses not allowed to testify"
 - a. "Alibi witnesses 'still' will testify on my behalf."
2. "Ineffective assistance of counsel"
 - a. "Counsel lied to make me plea guilty"
3. "Invalid guilty plea"
 - a. "Told I would receive less time then received for plea"

By and through counsel, Applicant amended the application by filing on November 13, 2018, to raise the following additional grounds for relief:

1. "Trial counsel provided ineffective assistance of counsel by coercing Applicant into allocuting to his charges as opposed to recommending that he plea pursuant to North Carolina v. Alford."²

¹ Applicant was additionally indicted for unlawful possession of a pistol (2013-GS-22-00968), possession of a weapon during the commission of a violent crime (2013-GS-22-00969), criminal conspiracy (2013-GS-22-00970), grand larceny, value \$10,000 or more (2013-GS-22-00971), and assault and battery, first degree (2013-GS-22-00974). These charges were dismissed *nolle prosequi* as part of Applicant's plea.

² 400 U.S. 25 (1970).

2. "Trial counsel provided ineffective assistance of counsel by failing to secure the presence of Applicant's alibi witnesses."
3. "Trial counsel provided ineffective assistance by failing to challenge the probable cause determination which lead to Applicant's arrest."
4. "Applicant's guilty plea was involuntary because it was the direct result of trial counsel's inaccurate advice and ineffective trial preparation."

Applicant requests relief as follows:

- "To receive the plea I was told I will receive or to be granted a new trial."

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed 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 records submitted to it by the parties and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented.

A. Ineffective Assistance of Counsel & Involuntary Guilty Plea

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she must prove "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." Butler, 286 S.C. at 442, 334 S.E.2d 441 (quoting Strickland v. Washington, 466 U.S. 668, 686 (1984)). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Id.

"[C]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Butler, 286 S.C. at 442, 334 S.E.2d at 814 (quoting Strickland, 466 U.S. at 690). The applicant must overcome this

presumption to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989). “Judicial scrutiny of counsel’s performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel’s assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel’s defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable.” Strickland, 466 U.S. at 689; Edwards v. State, 392 S.C. 449, 456-57, 710 S.E.2d 60, 64 (2011). “[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel.” Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 688). Second, counsel’s deficient performance must have prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 694). With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel’s alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. Strickland, 466 U.S. at 696. A court need not first determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is

easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Id. at 696-97.

1. Counsel Lied, Coerced Applicant Into Guilty Plea

Applicant alleges Counsel lied in order to make him plead guilty, told him he would be sentenced to less time than the sentence actually imposed, and coerced him into a full allocution instead of recommending he enter an Alford plea.³ “The longstanding test for determining the validity of a guilty plea is whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant.” Gustine v. State, 325 S.C. 123, 127, 480 S.E.2d 444, 446 (1997) (quoting Hill at 56). “All that is required to knowingly and voluntarily enter a plea of guilty is that a defendant have a full understanding of the consequences of his plea and of the charges against him.” Id., 325 S.C. at 128, 480 S.E.2d at 446 (citing Simpson v. State, 317 S.C. 506, 455 S.E.2d 175 (1995)).

As noted in the procedural history, Applicant initially proceeded to trial but, on the dawn of the third day, resolved to plead guilty. The State informed the court of its recommendation of a twenty year cap in sentencing Applicant, and explained Applicant would make an allocution as part of the plea. (Plea Tr. 3, ll. 11-15). The court informed Applicant that although the State had made its recommendation, the court was not bound by that recommendation, and could sentence him to a cumulative total of seventy-five years if it so chose, which Applicant confirmed he understood. (Plea Tr. 7, ll. 4-12). The court also informed Applicant of the mandatory minimum sentence of ten years for armed robbery. (Plea Tr. 7, ll. 13-16). Knowing the maximum and minimum sentence, along with the collateral consequences, Applicant pled guilty. (Plea Tr. 8-9). Applicant gave a full allocution prior to being sentenced: Applicant took responsibility for

³ The Court here addresses the second and third allegations presented in the original application, as well as the first and fourth allegations presented in the amended application.

committing the crime alongside Daquarius Holmes and Marcus Lambert, and apologized to Victim, the court, and to Applicant's family. (Plea Tr. 21-22).

At the evidentiary hearing, Counsel testified he was appointed to represent Applicant, at which time Applicant had many other charges already pending. On February 25, 2013, Counsel received an offer of a fifteen year sentence. Counsel doubted there was ever an offer for ten years, primarily because Applicant continued to accumulate new charges while he was out on bond. Counsel recalled the case was set for trial, but that on the morning of the third day of trial, Applicant finally decided he wanted to plead guilty. Counsel testified both he and Applicant knew that Applicant's co-defendants, Lambert and Holmes, were going to testify against him at trial. Counsel testified the theory of defense was that Applicant was picked up by Lambert and Holmes at some place and time between when Victim escaped his kidnappers and the high speed chase that ultimately ensued and ended in their capture, such that Applicant was not actually involved in the crime. Counsel testified his understanding of Lambert prior to and during trial was that (1) Lambert gave a statement inculcating all three persons, including Applicant, (2) Lambert also wrote a letter claiming only he was responsible for the crime, and (3) Lambert was eager to testify against Applicant at trial. Counsel could not recall ever discussing the possibility of an Alford plea with Applicant. Counsel noted Applicant rejected all of the offers extended prior to trial, despite a potential sentencing exposure well beyond the length of his natural life.

On cross-examination, Counsel thoroughly explained the underlying facts of the case. Returning to the State's plea offer, Counsel explained he received an offer of ten to fifteen years, and that Applicant initially accepted the offer with the understanding that he would have to admit guilt, only to later decide he would not take the deal. Counsel testified he met with Applicant thirty to forty times, and that at no point did he tell Applicant he had to plea. Counsel denied ever

lying to Applicant. On re-direct, Counsel acknowledged Applicant was not visible on surveillance video recovered from the Kangaroo gas station where Victim escaped.

Applicant testified he met with Counsel three times, including once on the day of trial. Applicant recalled the theory of defense was alibi, and that he pled guilty after Counsel informed him the alibi witnesses were not subpoenaed and did not show up for trial. Applicant claimed Counsel told him he had to plead, told him the offer was for between ten and fifteen years, and told him he could get less if he gave a full allocution. Applicant asserted he was told of the offer during the trial and that pleading was not otherwise on his mind. Applicant testified Counsel walked him through the allocution. Applicant testified he did not know he would get sentenced to eighteen years. Applicant claimed he had believed Lambert and Holmes would exonerate him.

Called again to the stand by the State, Counsel denied ever telling Applicant the alibi witnesses simply failed to appear. Counsel recalled that on July 29, 2015, he arrived at the courthouse and was informed by detention officers that Applicant wished to speak with him. Counsel met with Applicant and told him Holmes would not be a credible witness. Applicant then indicated he wanted to plead guilty. Counsel met with the prosecutor and Judge Culbertson in chambers, and the State offered a sentencing cap of twenty years. Judge Culbertson indicated his satisfaction with the proposal. Counsel met with Applicant's family, who indicated their own agreement with the offer. Counsel then again met with Applicant and discussed the offer. Counsel testified he did not tell Applicant what to say. Counsel denied Applicant ever asked for an appeal.

The Court finds no deficiency on the part of Counsel, nor any prejudice from the deficiencies alleged. The Court finds Counsel's testimony wholly credible, and Applicant's testimony largely not credible. The Court perceives no credible evidence of any lies by Counsel to Applicant, no affirmative misadvice as to the sentence Applicant could expect, and no actions

by Counsel to coerce Applicant into pleading guilty. The Court finds Counsel was thoroughly prepared for a trial on extremely unfavorable facts. The Court finds that Applicant of his own initiative informed Counsel of his desire to plead guilty on the morning of third day of trial. The Court finds Counsel properly instructed Applicant as to the consequences of pleading guilty, the sentence recommendation of the State of a twenty year cap, the total sentence exposure possible given the court's discretion, and the need for allocution. The Court finds no credible evidence that pleading pursuant to Alford in exchange for the same recommendation was ever available to Applicant. The Court finds that in addition to Counsel's explanation of the plea to Applicant, the plea court similarly instructed Applicant as to the recommendation of the State, and the total sentence exposure possible given the court's discretion. The Court finds Applicant knew he could be sentenced to a term of eighteen years imprisonment. The Court finds Applicant had a full understanding of the consequences of the plea and the charges against him, and was clearly aware of his alternative option of proceeding with his trial, already underway. As such, Applicant knowingly, intelligently, and voluntarily entered his guilty plea. Applicant has failed to meet his burden under either prong of Hill, and accordingly his request for relief by way of these allegations is **DENIED**.

2. Failure to Secure, Call Alibi Witnesses

Applicant alleges Counsel failed to secure and call witnesses to establish an alibi defense at trial.⁴ In order to prevail upon an alibi defense, a defendant must show that he or she was at another specified place at the time the crime was committed, thus making it impossible for him to have been at the scene of the crime. State v. Robbins, 275 S.C. 373, 375, 271 S.E.2d 319, 320 (1980) (quoting 21 Am.Jr.2d Criminal Law § 136). “[S]ince an alibi derives its potency as a

⁴ The Court here addresses the first allegation presented in the original application, as well as the second allegation presented in the amended application.

defense from the fact that it involves the physical impossibility of the accused's guilt, a purported alibi which leaves it possible for the accused to be the guilty person is no alibi at all." Id. "It is not enough for the accused to say that he was not at the scene and must therefore have been elsewhere." Id. "In order to support a claim that trial counsel was ineffective for failing to interview or call potential alibi witnesses, a PCR applicant must produce the witnesses at the PCR hearing or otherwise introduce the witnesses' testimony in a manner consistent with the rules of evidence." Glover v. State, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995).

At the evidentiary hearing, Counsel testified he intended to call whatever witnesses Applicant wished for him to call. Counsel explained that Applicant continually provided alibis to him, but that upon investigation, no witness would give the alibi Applicant sought. Counsel testified either he or the private investigator spoke to each of the proposed alibi witnesses, and that none of them checked out. In succession, Counsel listed individuals proposed by Applicant and noted they denied Applicant's recollection of events.

As noted in the prior section, Applicant testified he was told by Counsel that the alibi witnesses were not subpoenaed and did not show up for trial. Applicant testified to his version of events on the day of the crime: Applicant was in Georgetown when Lambert pulled up in the (unknownst to Applicant) stolen car and gave him a ride. Applicant testified he fell asleep in the back seat only to wake up in the middle of a high speed chase with law enforcement, with no means of escaping the vehicle.

Marcus Lambert testified on Applicant's behalf at the evidentiary hearing. Lambert testified Applicant was not with him during the burglary of Victim's house. Lambert admitted Applicant and Holmes were in the car at the end of the chase, but testified he had picked them up in Maryville, South Carolina subsequent to the burglary. Lambert testified he had been in

negotiations with the State prior to Applicant's trial, but that the negotiations fell through. On cross-examination, Lambert expressed he did not know why the plea negotiations fell through. Lambert testified in some greater detail that he picked up Applicant in Maryville right after stopping at the Kangaroo, then headed towards Charleston before going to his girlfriend's house in Georgetown around midnight in order to pick up a change of clothes. Lambert explained he stuck to rural roads, including state roads 41 and 51, in order to avoid unwanted attention, but was discovered and pursued by law enforcement in Johnsonville. Lambert noted he made it at least as far as Marion before wrecking the car. Lambert testified he reached out to Counsel to inform him he would testify in Applicant's favor, but later tried to work something out with the State.

Called again to the stand by the State, Counsel denied he told Applicant his alibi witnesses simply didn't show up. Counsel confirmed Lambert wrote him a letter, but explained that Counsel learned on January 23, 2014, that Lambert intended to recant the letter. On February 11, 2014, Counsel told Applicant that Lambert gave additional information to the State.

The Court finds no deficiency on the part of Counsel, nor any prejudice to Applicant from the deficiency alleged. The Court finds Counsel's testimony broadly credible. The Court finds little credible in the testimony of either Applicant or Lambert. The Court finds Counsel exhaustively investigated the alibi witnesses proposed by Applicant and found that they either contradicted Applicant's version of events or otherwise failed to provide information necessary to establish or support an alibi defense. The Court finds Counsel was aware of Lambert's letter exonerating Applicant, but that Lambert subsequently cooperated with the State to Applicant's detriment. The Court finds Counsel reasonably believed Lambert intended to cooperate with the State at the time of Applicant's trial, and puts no value in Lambert's assertions to the contrary after Applicant's trial. The Court accepts Counsel's testimony that he would have called witnesses as

demanded by Applicant, but for Applicant's choice to enter a plea of guilty on the third day of trial. Further, the Court finds that Lambert's testimony, even if it were considered credible, fails to show Applicant was at a specified location at the time of the crime, such that it is not sufficient to establish an alibi defense. The Court finds that in the absence of witnesses to place Applicant at specific locations during the entire span of time during which the crimes were committed, the Court is left with mere speculation as to what other purported alibi witnesses would have or could have testified to. For all of these reasons, the Court finds Applicant has failed to meet his burden of proof as to either prong of Hill, and accordingly his request for relief by way of these allegations is **DENIED**.

3. Failure to Challenge Probable Cause for Arrest

Applicant alleges Counsel failed to challenge the existence of probable cause for his initial arrest. "Probable cause for a warrantless arrest exists when the circumstances within the arresting officer's knowledge are sufficient to lead a reasonable person to believe that a crime has been committed by the person being arrested." State v. Baccus, 367 S.C. 41, 49, 625 S.E.2d 216, 220 (2006). "Whether probable cause exists depends upon the totality of the circumstances surrounding the information at the officer's disposal." Id.

The Court will not belabor this allegation. The uncontested facts are that Applicant was pulled from the wreckage of the Victim's stolen vehicle after a high speed chase down the highways of South Carolina. The officers had probable cause to arrest every person in that vehicle, and no valid basis to argue otherwise existed. Accordingly, Applicant cannot meet either prong of Hill by way of this allegation. The Court finds no deficiency on the part of Counsel, nor prejudice therefrom, and his request for relief is **DENIED**.

III. CONCLUSION

Based on all the foregoing, this Court finds and concludes that 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.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel 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), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

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

Kristi F. Curtis
KRISTI F. CURTIS
Presiding Judge
Fifteenth Judicial Circuit

Spartanburg, South Carolina