

FALK LAW FIRM, LLC.

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May 17, 2019

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

RECEIVED

MAY 20 2019

S.C. SUPREME COURT

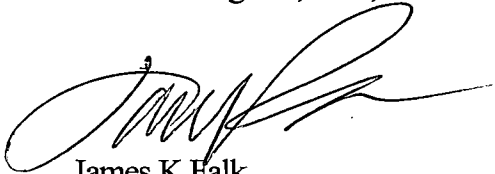
Re: SeanDrea Lamont Johnson v State, 2016-CP-25- 0225

Dear Clerk Shearouse:

Please find the enclosed Notice of Appeal, Proof of Service, in the above Hampton 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:

Benjamin Limbaugh, Esq

SeanDrea Johnson 318610

Hampron County Circuit Court Clerk

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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MAY 20 2019

APPEAL FROM HAMPTON COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Honorable Thomas A Russo, Circuit Judge

Case No.: 2016-CP-25-0225

SeanDrea Lamont Johnson 318610.....PETITIONER

V.

State of South Carolina.....RESPONDENT

NOTICE OF APPEAL

The Petitioner SeanDrea Johnson appeals the Honorable Thomas A Russo's Order of Dismissal. Undersigned counsel received notice of entry of the order on April 26, 2019. A copy of the order on appeal is attached hereto.



James K Falk
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May 17, 2019

Benjamin Limbaugh, Esq.
Office of S.C. Attorney General
PO Box 11549
Columbia, SC 29211-1549

Clerk of Court- Hampton CP
PO Box 7
Hampton, SC 29924-0007

THE STATE OF SOUTH CAROLINA

In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM HAMPTON COUNTY

Court of Common Pleas

Honorable Thomas A Russo, Circuit Judge

Case No.: 2016-CP-25-0225

SeanDre Lamont Johnson 318610.....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, Benjamin Limbaugh Esq. Office of the S.C. Attorney General, PO Box 11549, Columbia, SC 29211-1549 and the Hampton County Clerk of Court. I further certify that all parties required by Rule to be served have been served this March 17, 2019.



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for possession of less than one gram of cocaine base, first offense. All sentences were consecutive, with credit for time served. Applicant did not appeal his plea or sentence.

II. ALLEGATIONS

In his PCR application, Applicant alleged he is being held unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. "The other counsel told me that there weren't forensic nor ballistic to prove weapons was mine"
 - b. "My 14th and 5th amendment has been violated, and it's a conflict of interest to have him appointed to me"

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court reviewed the record in its entirety, listened to the testimony given, and heard the arguments presented at the evidentiary hearing. Moreover, this Court had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony accordingly. This Court finds Counsel's testimony was credible and persuasive and Applicant's testimony was not credible. This Court dismisses Applicant's application for the reasons set out below:

A. Ineffective Assistance of Plea Counsel

This Court finds the record fully supports the knowing and voluntary nature of Applicant's guilty plea. Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). "A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but

would have insisted on going to trial. Thus, an applicant must show both error and prejudice to win relief in a PCR proceeding.” Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001).

The court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. 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. 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 (1985).

Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant’s right to contest the validity of such a plea is usually, but not invariably, foreclosed. See Blackledge v. Allison, 431 U.S. 63, 73-74 (1977). Statements made during a guilty plea should be considered conclusively, unless an Applicant presents valid reasons why he should be allowed to depart from the truth of his statements. See Crawford v. U.S., 519 F.2d 347, 350 (4th Cir. 1975) (overruled on other grounds by U.S. v. Whitley, 759 F.2d 327 (4th Cir.1985)). Applicant presented no reasons to show that he should be allowed to depart from the truth of the statements he made during his guilty plea hearing. For the reasons set out below, this

Court finds the record and credible testimony support Applicant had a full understanding of the charges and consequences of his guilty plea:

1. Counsel did not advise Applicant that the forensic and ballistic reports tended to prove innocence.

Applicant asserts his guilty plea was entered involuntarily due to Counsel's failure to inform him of pertinent details of his discovery and case, namely that Applicant was told that his forensic and ballistic reports were favorable for his case. Applicant testified he met with Counsel twice and was shown the discovery, but not the forensic, ballistics, or fingerprint reports. Applicant also testified that he pleaded guilty because he weighed the potential sentence and decided that taking the plea deal was in his best interest. Counsel testified he met with Applicant numerous times, he had notes from meetings in April, May, July, twice in October, and twice in November. Counsel testified that there were no forensic, ballistics, or fingerprint report and he discussed that and the other applicable evidence with Applicant.

Accordingly, this Court finds Applicant failed to prove Counsel was deficient because there were no forensic or ballistic reports and Counsel discussed that with Applicant. Applicant also failed to prove he was prejudiced by Counsel's actions. Accordingly, this Court denies and dismisses this allegation.

2. Counsel had a conflict of interest due to Applicant's filed ODC complaint against Counsel.

Applicant asserts Counsel had a conflict of interest and, thus, rendered ineffective assistance of Counsel. Applicant testified he had filed a complaint against Counsel during Counsel's representation of him. Counsel testified Applicant filed the complaint because he believed it would result in a continuance of his trial. Counsel testified the complaint was dismissed and after further discussions with Applicant concerning his case, Applicant decided to plead guilty.

Accordingly, this Court finds Applicant failed to prove Counsel had a conflict of interest. This Court also finds Applicant failed to prove he was prejudiced by Counsel's actions. Accordingly, this Court denies and dismisses this allegation.

IV. CONCLUSION

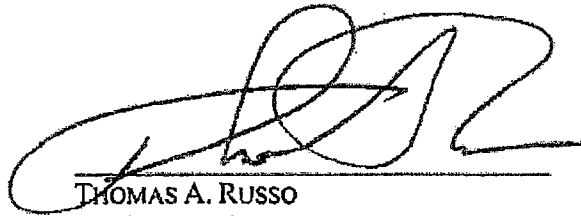
Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes Applicant must file and serve a notice of appeal within thirty (30) days from 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), SCRCP, provides that if Applicant wishes to seek appellate review, his post-conviction relief attorney must serve and file a notice of appeal on Applicant's behalf. Applicant and his attorney are 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 is remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 26th day of April, 2019.



THOMAS A. RUSSO
Presiding Judge
14th Judicial Circuit

 Florence , South Carolina

FALK LAW FIRM
PO Box 1058
Charleston, SC 29402

CHARLESTON SC 294

17 MAY 2011



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

29211-133030

