

 **RESNICK & LOUIS, P.C.**
ATTORNEYS AT LAW

Christopher L. Murphy
Admitted in SC
cmurphy@rlattorneys.com

REPLY TO THE CHARLESTON OFFICE
146 Fairchild Street, Suite 130
Charleston, SC 29492
(843) 800-1187

July 10, 2019

VIA U.S. MAIL

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

RECEIVED
JUL 12 2019
S.C. SUPREME COURT

Re: *Rolando Aldama-Ocampo, SCDC No 377384 v. State of South Carolina*
Civil Action No.: 2018-CP-10-5115

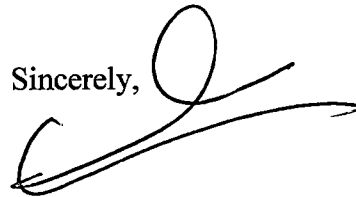
Dear Mr. Shearhouse:

Enclosed for filing, please find an original and two copies of Appellant's Notice of Appeal of the denial of his application for Post-Conviction Relief, and a Proof of Service regarding same. If you find everything in order, please file the original and return the clocked-in copies in the enclosed self-addressed envelope.

Please note, I was appointed to this and case and have copied the Office of Appellate Defense on this who will handle the appeal. Please call if you have any questions.

With kindest regards, I am

Sincerely,



Christopher L. Murphy, Esq.
For the Firm

CLM/jh

Enclosures

cc (w/ encls.): Mr. Rolando Aldama-Campo
Jacob A. Isenberg, Asst. AG
Robert M. Dudek, Esquire, Off of Appellate Defense
The Honorable Bentley Price
The Honorable Julie J. Armstrong, Clerk, 9th Jud. Cir.

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Bentley Price, Circuit Court Judge

Case No.: 2018-CP-10-5115

Rolando Aldama-Ocampo, SCDC No. 377384 Appellant

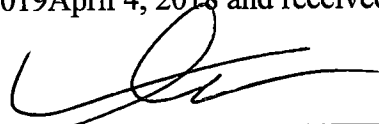
v.

State of South Carolina Respondent

NOTICE OF APPEAL

Appellant appeals the Court's denial of his application for post-conviction relief.
Attached is the order from the court dated June 14, 2019 April 4, 2018 and received July 9, 2019.

July 10, 2019



Christopher L. Murphy
Resnick & Louis, PC
234 Seven Farms Drive, Suite 128
Charleston, SC 29492
Phone & Fax: (843) 800-1187
Email: cmurphy@rlattorneys.com

Other Counsel of Record:

Jacob A. Isenberg
Asst. Attorney General
Rembert C. Dennis Building
PO Box 11549
Columbia, SC 29211-1549
Phone: (803) 734-3970
Fax: (803) 253-6283
jisenberg@scag.gov

Cc
AG
AT
GS
SOL

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

Rolando Aldama-Ocampo,)
S.C.D.C. No. 377384,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No.: 2018-CP-10-5115

ORDER OF DISMISSAL

FILED
2019 JUN 14 AM 10:14
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

This matter comes before the Court by way of an application for post-conviction relief filed by Rolando Aldama-Ocampo ("Applicant") on October 23, 2018. Respondent made its return on or about January 31, 2019. The Court convened an evidentiary hearing into the matter on May 20, 2019, at the Charleston County Courthouse in South Carolina. Applicant was present at the hearing and represented by Christopher Ocampo, Esq. Jacob A. Isenberg and Benjamin Limbaugh of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's plea counsel, Mark A. Peper, Esquire ("Counsel") also testified. The Court had before it Applicant's records from the South Carolina Department of Corrections, a copy of the original plea transcript, the records of the Charleston County Clerk of Court regarding the subject convictions, and the pleadings. The Court finds Applicant has not met his burden of establishing any constitutional deprivations or other grounds entitling him to relief and denies and dismisses the application with prejudice.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. In August 2017, Applicant was indicted by the Charleston County Grand Jury for murder, trafficking meth, and identity fraud. Assistant Solicitor Culver Kidd, IV prosecuted the case. On August 13, 2018, Applicant pled guilty to the lesser included offense of voluntary manslaughter before the Honorable R. Markley Dennis, Jr. Pursuant to a negotiated sentence, Judge Dennis sentenced Applicant to imprisonment for 30 years. Applicant did not appeal his conviction or sentence.

II. POST-CONVICTION RELIEF ALLEGATIONS

In his post-conviction relief application, Applicant originally alleged he was being held unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
2. Subject Matter Jurisdiction
3. Violation of constitutional rights

Applicant requests a new trial or a negotiated plea offer of fifteen years. At the evidentiary hearing, Applicant proceeded forward on ineffective assistance of counsel based upon the failure to communicate a plea offer and involuntary plea based upon the failure to understand the colloquy communicated by the court.

III. SUMMARIZATION OF TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

Applicant

Applicant testified on his own behalf at the evidentiary hearing. Applicant testified he did not understand the numerous letters Counsel sent over the course of his case. Applicant

testified he did not speak English. Applicant also testified he could not understand the Judge at his plea hearing. Applicant testified Counsel only met with him a couple of times. Applicant testified he would have accepted the initial plea offer when of fifteen years.

Applicant testified he learned a little bit of English in jail while trying to understand Counsel's letters. Applicant testified he is in the country illegally, and is aware he will be deported if released.

Counsel

Counsel testified on behalf of the Respondent at the evidentiary hearing. Counsel testified he represented Applicant for over two years. Counsel testified he hired a paralegal who spoke Spanish for the sole purpose of Applicant's case. Counsel further testified Applicant spoke good English, and there was never an issue with communication. Counsel also testified he sent every letter to Applicant in English and Spanish throughout the course of his representation.

Additionally, Counsel testified there was a fifteen year offer sent by the original Solicitor Applicant's case. Counsel testified the offer was based upon the Solicitor trying to wrap up cases before leaving the office. Counsel testified he requested approval from Applicant to accept this offer by letter. Counsel further testified to laying out a deadline in that letter before the offer's expiration. Counsel testified Applicant had not given him authority to accept the offer at the deadline. Furthermore, Counsel testified he later found out the Head Solicitor was not going to approve this fifteen year offer.

Counsel testified he later found out the next Solicitor assigned to this case made it clear the only formal offer would be thirty years. Counsel recalled the next Solicitor reviewing the evidence, and indicating his belief the offer was too lenient on Applicant. Counsel testified there was a large amount of physical evidence against Applicant from the scene where the body was

recovered, videos, and cell-phone tracking. Counsel testified this Solicitor was put on the case who offered thirty years. Thereafter, Counsel testified the Solicitor's office made it clear this was the only offer on the table unless they went to trial.

Counsel testified he had a thorough conversation with Applicant about accepting the offer of thirty years for manslaughter. Thereafter, Counsel testified he never believed Applicant did not understand their conversations. Additionally, Counsel testified Applicant appeared to have researched and studied the issues based upon his depth of knowledge on each subject. Furthermore, Counsel testified there was a Spanish translator present at Applicant's plea hearing to ensure he understood everything.

IV. 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

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRPC; 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. Failure to Communicate Initial Plea Offer

Applicant contends Counsel was deficient for failing to communicate the fifteen year plea offer. . "[A]s a general rule, defense counsel has the duty to communicate formal offers from the prosecution to accept a plea on terms and conditions that may be favorable to the accused." Missouri v. Frye, 566 U.S. 134, 145 (2012); see also Davie v. State, 381 S.C. 601, 609, 675 S.E.2d 416, 420 (2009) (adopting "rule that counsel's failure to convey a plea offer constitutes deficient performance"). When alleging plea counsel was deficient in his or her handling of a plea offer, an applicant "must demonstrate a reasonable probability that: (1) he 'would have accepted the earlier plea offer had [he] been afforded effective assistance of counsel;' (2) 'the plea would have been entered without the prosecution canceling it or the trial court refusing to accept it;' and (3) 'the end result of the criminal process would have been more favorable by reason of a plea to a lesser charge or a sentence of less prison time.'" Collins v. State, 422 S.C. 250, 262, 810 S.E.2d 871, 877 (2018) (citing Missouri v. Frye, 566 U.S. 134, 147 (2012)); see Lafler v. Cooper, 566 U.S. 156, 164 (2012) (stating "a defendant must show that but for the ineffective advice of counsel there is a reasonable probability that the plea offer would have been presented to the court (i.e., that the

defendant would have accepted the plea and the prosecution would not have withdrawn it in light of intervening circumstances), that the court would have accepted its terms, and that the conviction or sentence, or both, under the offer's terms would have been less severe than under the judgment and sentence that in fact were imposed"). If an applicant is able to meet the requirements set forth above, the appropriate relief is to require the State to re-extend the previous plea offer to Applicant. Lafler, 566 U.S. at 174. ("The correct remedy in these circumstances, however, is to order the State to reoffer the plea agreement.")

A) Evidence of Acceptance with Effective Counsel

Here, Counsel credibly testified he communicated the initial offer to Applicant. Counsel credibly testified he sent Applicant letters in English and Spanish there were no communication issues. The English and Spanish letter were both entered into the record at this PCR hearing. In that letter, Counsel communicated the deadline for acceptance of this plea offer was January 4, 2018. Applicant testified towards the belief he was entering into this agreement at the eventual hearing based upon that letter. However, Applicant did not present evidence or testimony to indicate he attempted to accept the offer before the deadline laid out in that letter. Furthermore, Counsel credibly recalled Applicant did not respond to his letter before that deadline. Therefore, this Court finds Applicant has not overcome the burden to prove he would have accepted the initial offer with effective counsel.

B) Evidence Solicitor Would Have Formally Offered

Here, Counsel credibly recalled the Head Solicitor relaying information the fifteen year offer would not have been approved. Furthermore, Counsel credibly assessed the only formal offer was thirty years. Finally, Counsel credibly testified the Solicitor who took the case over stated this would be the only offer after reviewing the evidence. On the other hand, Applicant testified

his belief that this was the offer entered at the plea hearing. However, a review of the plea hearing record clearly shows Applicant entered into a deal for thirty years. Therefore, Applicant has failed to overcome the burden to prove the Solicitor would have formally offered a fifteen year plea.¹

Accordingly, Applicant has not satisfied the burden to prove Counsel was ineffective based upon the failure to communicate a plea offer.

2. Involuntary Plea

Applicant alleges his guilty plea was involuntary based upon not misunderstanding the sentence he agreed to receive. To find a guilty plea voluntarily and knowingly, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Roddy v. State, 339 S.C. 29, 528 S.E.2d 418 (2000). Also, an applicant's statements during the plea hearing are considered "conclusive unless [he] presents valid reasons why he should be allowed to depart from the truth" of them. Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007). Finally, the plea colloquy can cure any alleged deficiency if counsel not properly advise an applicant about the consequences of accepting it. 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).

Here, Applicant testified his belief he entered into a fifteen year sentence. However, Counsel credibly testified Applicant had no difficulty understanding the English language while representing him. Counsel further credibly recalled having an interpreter in the courtroom at the plea hearing for Applicant's benefit. At the plea hearing, Applicant confirmed he understood English and knew the interpreter was there to assist with any language barriers. (Tr. 3, L. 19). Applicant testified he should be allowed to depart from this statement because he did not

¹ As a result, this Court declines to consider whether the end result of the criminal process would have been better than Applicant's current sentence and charges.

understand the sentence was going to be thirty years. However, Applicant confirmed to the court at the plea hearing he knew the negotiated sentence was for thirty years. (Tr. 4, L. 13). Furthermore, there is nothing in the record to indicate he did not understand the court or needed assistance at all. Therefore, this Court finds Applicant has failed to overcome the burden to prove his plea was involuntary based upon misunderstanding the terms of his negotiated sentence.

3. Subject Matter Jurisdiction

Applicant contends, without specificity, there was a subject matter jurisdiction violation during the course of his case. In South Carolina, circuit courts have subject matter jurisdiction to try criminal matters. State v. Gentry, 363 S.C. 93, 100, 610 S.E.2d 494, 498 (2005) (explaining subject matter jurisdiction is the power of a court to hear and determine cases of the general class to which the proceedings in question belong). The lack of subject matter jurisdiction may not be waived, even by consent of the parties. Id. Here, Applicant did not testify about specific subject matter jurisdiction issues. A review of the record reflect Applicant pled guilty in the Charleston County Court of General Session within the Ninth Circuit. Therefore, this Court finds Applicant has failed to overcome the burden to prove there was a lack of subject matter jurisdiction in his case.

IV. 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 remain in the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 14th day of June, 2019.


BENTLEY PRICE
Presiding Judge
Ninth Judicial Circuit

Charleston, South Carolina

THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED
JUL 12 2019

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Bentley Price, Circuit Court Judge

Case No.: 2018-CP-10-5115

Rolando Aldama-Ocampo, SCDC No. 377384 Appellant

v.

State of South Carolina Respondent

PROOF OF SERVICE

I certify that I have served APPELLANT'S NOTICE OF APPEAL by delivering a copy via U.S. Mail First-Class postage prepaid on the 10th day of July, 2019, on the following:

Jacob A. Isenberg, Esquire
Assistant Attorney General
SC Office of the Attorney General
PO Box 11549
Columbia, SC 29201

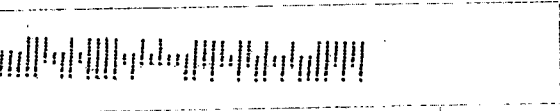
The Honorable Bentley Price
100 Broad Street, Suite 432
Charleston, SC 29401

The Honorable Julie J. Armstrong
Clerk of Court, Ninth Judicial Circuit
100 Broad Street, Suite 106
Charleston, SC 29401

Robert M. Dudek, Esquire
Office of Appellate Defense
PO Box 11433
Columbia, SC 29211-1433

Rolando Aldama-Ocampo, SCDC #377384
Lee Correctional Institution
990 Wisacky Highway
Bishopville, SC 29010





C & LOUIS, P.C.
ATTORNEYS AT LAW

**1000 Fairchild Street
Suite 130
Columbia, SC 29492**

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