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Arthur K. Aiken

A. Bea Hightower

July 17, 2019

The Honorable Daniel E. Shearouse, Clerk
South Carolina Supreme Court
PO Box 11330
Columbia, SC 29211

RECEIVED

JUL 19 2019

Re: Jalen T. Badger v. State of South Carolina
Civil Action No.: 2017-CP-02-02593

S.C. SUPREME COURT

Dear Mr. Shearouse:

I am appointed counsel for the Applicant, Jalen T. Badger, in the above captioned post-conviction relief case. I have enclosed an original and one (1) copy of a Notice of Appeal for this case. Please file the original and return the file stamped copy to me in the enclosed SASE.

By copy of this letter with the filing enclosed, I have filed the filing with the Clerk of the Aiken County Court of Common Pleas. I have also served the filing on the Office of the Attorney General for South Carolina. Please call with any questions.

Thank you for your help

Sincerely,



Arthur K. Aiken

art@aikenandhightower.com

cc: Clerk, Aiken County Court of Common Pleas (w/enclosures)
Office of the Attorney General for South Carolina (w/enclosures)
Jalen T. Badger (w/enclosures)

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

J. Cordell Maddox, Jr., Circuit Court Judge

Case No. 2017-CP-02-02593

RECEIVED

JUL 19 2019

S.C. SUPREME COURT

Jalen T. Badger.....Applicant/Appellant

v.

State of South Carolina.....Respondent/Respondent

NOTICE OF APPEAL

This is a post-conviction relief case. Appellant appeals from the Order of Dismissal filed on June 17, 2019 in this case. Appellant received written notice of the Order of Dismissal by email on June 17, 2019. A copy of the Order of Dismissal appealed from is attached.

July 17, 2019



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ATTORNEYS FOR APPELLANT

OTHER COUNSEL OF RECORD:

Office of the Attorney General of the State of South Carolina
Assistant Attorney General Janell H. Gregory
PO Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

JUL 19 2019

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

S.C. SUPREME COURT

J. Cordell Maddox, Jr., Circuit Court Judge

Case No. 2017-CP-02-02593

Jalen T. Badger.....Applicant/Appellant

v.

State of South Carolina.....Respondent/Respondent

PROOF OF SERVICE AND FILING

I certify that, on July 17, 2019, I served and filed the Notice of Appeal in the above
appeal by mailing copies of those filings to the following:

Office of the Attorney General for South Carolina
Assistant Attorney General Janell H. Gregory
PO Box 11549
Columbia, SC 29211

and

The Honorable Robert J. Harte
Aiken County Clerk of Court
109 Park Ave., SE
Aiken, SC 29801

SIGNATURE ON THE FOLLOWING PAGE



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ATTORNEYS FOR APPELLANT

Columbia, SC
July 17, 2019

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

2017-CP-02-02593

Jalen T. Badger, #371146,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

ORDER OF DISMISSAL

FILED 10-17 20 19 12:30
Robert J. White
C.C.P. & G.S.
Shadell Parks
Deputy Clerk
SP

This matter comes before the Court by way of an application for post-conviction relief filed on October 30, 2017, by Jalen T. Badger (Applicant) and later amended through counsel on August 13, 2018. The State (Respondent) filed a Return on July 9, 2018, requesting an evidentiary hearing. An evidentiary hearing into the matter was convened on May 14, 2019, at the Aiken County Courthouse. Applicant was present at the hearing and represented by Arthur K. Aiken, 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. Assistant Public Defender Charles David Hayes of the Second Circuit Public Defender's Office (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.

PROCEDURAL HISTORY

The records before this Court establish Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Aiken County Clerk of Court's order of commitment. During its September 2016 term, the Aiken County Grand Jury indicted Applicant for two counts of first-degree burglary (2016-GS-02-01895, 01892), carjacking (2016-GS-02-01886), and armed robbery (2016-GS-02-01885). Counsel represented Applicant on the charges. Assistant Solicitor

Robert Wilder Harte of the Second Circuit Solicitor's Office prosecuted the case. On November 14, 2016, Applicant pled guilty as indicted to all four charges before the Honorable R. Lawton McIntosh. Pursuant to a negotiated sentence, Judge McIntosh sentenced Applicant to imprisonment for concurrent terms of seventeen years on each charge with credit for one-hundred and eighty-eight days.

Applicant filed a timely notice of appeal. On January 27, 2017, the South Carolina Court of Appeals dismissed the appeal for failure to provide a sufficient explanation as required by Rule 203(d)(1)(B)(iv) of the South Carolina Appellate Court Rules. The remittitur was issued on February 16, 2017.

SUMMARY OF FACTS

First-Degree Burglary

On March 29, 2016, officers responded to a residence on Stone Pass Drive in Graniteville. (GP Tr. 11.) The homeowner reported when he returned home from work he discovered the back door to his house was open and the doorframe was kicked in and shattered. (GP Tr. 11.) Footprints were visible in the backyard. (GP Tr. 11.) The homeowner noted numerous items had been taken from his residence including a 40-caliber Taurus firearm and a 22 LR short-barreled revolver. (GP Tr. 11.) The investigation into this burglary stalled as there was no fingerprint or DNA evidence located at the scene. (GP Tr. 12.)

On April 14, 2016, officers responded to another residence on Stone Pass Drive where forced entry was also made through the rear door. (GP Tr. 12.) The homeowner reported numerous items were taken from the residence including a 20-gauge shotgun. (GP Tr. 12.) Again, no fingerprints or DNA were located at the scene and the investigation stalled. (GP Tr. 12.)

Applicant was eventually connected to both burglaries because he was wearing a GPS ankle monitor as a condition of his Department of Juvenile Justice probation. (GP Tr. 13.) The

physical GPS location showed Applicant was inside the residence of both burglaries at the time they occurred. (GP Tr. 13.)

Carjacking and Armed Robbery

On May 3, 2016, officers responded to the Sage Creek subdivision to a report of an armed robbery. (GP Tr. 12.) Upon arrival, officers spoke with two callers who stated they heard screaming outside and a juvenile witnessed a woman being dragged out of a Toyota Corolla. (GP Tr. 13.) The juvenile reported what he observed to his mother and they got in their vehicle and drove around the neighborhood. (GP Tr. 13.) They eventually located the vehicle and Megan Williams (Victim) inside. (GP Tr. 13.) Victim had sustained a laceration on her head and a "pretty serious beating." (GP Tr. 13.) Victim was transported to the hospital. (GP Tr. 13.) Another witness came forward and explained she observed a male with a gun in his hand assaulting Victim in the street. (GP Tr. 13.)

Prior to the carjacking and robbery, Victim was Facebook messaging and texting Applicant's older brother. (GP Tr. 14.) During the investigation, it was revealed that Victim was going to sell Applicant and his older brother marijuana. (GP Tr. 14.) During the transaction, Applicant was armed with a weapon and put it to the back of Victim's head and stated, "Drive or I'll kill you." (GP Tr. 14.) Victim attempted to get away and Applicant pistol whipped her numerous times. (GP Tr. 14.) Victim was held in the car by her hair and Applicant drove the car away from their initial location. (GP Tr. 14.) Applicant and his brother continued to assault Victim before walking back to their residence on Red Rock Way. (GP Tr. 15.) Victim was able to pick out Applicant's brother from a photo line-up without hesitation. (GP Tr. 15.) Victim was 70% sure of her identification of Applicant- the suspect with the gun – when she picked him out of a photo line-up. (GP Tr. 15.) Officers were able to recover a fingerprint of Applicant and his brother inside Victim's vehicle. (GP Tr. 15.) Additionally, Applicant also had the GPS monitor on at the

time of this incident and it confirmed he was in the location of the carjacking and assault at the time it occurred. (GP Tr. 13.)

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 was sixteen at the time and Counsel failed to explain his charges and the time he was facing.

On August 13, 2018, Applicant, through counsel, amended his application to allege the following:

2) Ineffective Assistance of counsel:

- a) Counsel did not investigate Applicant's case.
- b) Counsel did not discuss potential defenses with Applicant.

3) Involuntary Guilty Plea

- a) Counsel did not prepare Applicant's case for trial, and Applicant was left with no choice but to plead guilty.
- b) Applicant's guilty plea was not made with or based on advice of competent counsel.
- c) Applicant's guilty plea was not intelligently made.
- d) Counsel never discussed the advantages and disadvantages of a trial versus the advantages and disadvantages of a plea with Applicant so that Applicant could make an informed choice of whether to enter a plea or try his case.

On May 14, 2019, an evidentiary hearing was convened. Applicant proceeded with the hearing on all of the allegations set forth in his application and amended application.

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).

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 trial transcript, Applicant’s appellate records, 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.

Applicant was sixteen at the time and Counsel failed to explain his charges and the time he was facing.

Applicant alleges Counsel was ineffective for failing to explain the charges Applicant was facing and his potential sentences. Applicant testified Counsel told him the elements of his charges, but he did not understand the conversation and told Counsel he did not understand. Applicant testified Counsel only explained that he could get life without the possibility of parole. Applicant testified Counsel told him he would get life without parole if he did not take the plea offer.

Counsel testified he explained to Applicant his charges and the potential sentence he could face on each charge. Counsel testified he reviewed Applicant's constitutional rights with him as well. Counsel testified he believes Applicant understood those conversations and Applicant never told him he did not understand something they discussed.

Upon review of this record, it is clear Applicant was also informed of his charges and possible sentences by the plea judge prior to entering his guilty plea. (GP Tr. 5.) Additionally, Applicant's sentence was negotiated and that was also explained to Applicant by the plea judge prior to proceeding with his guilty plea. (GP Tr. 5.)

This Court finds Counsel's testimony with respect to this allegation very credible, whereas Applicant's testimony is not credible. This Court finds Applicant has failed to establish how Counsel was deficient for failing to explain Applicant's charges and potential sentences as Counsel testified he did explain to Applicant his charges and possible sentences and believes Applicant

understood those conversations. Additionally, Applicant has failed to establish any resulting prejudice from any alleged deficiency as Applicant was clearly aware of his charges and negotiated sentence prior to entering his guilty plea. Based on the forgoing, Applicant has failed to meet his burden set forth in Strickland and this allegation must be denied and dismissed with prejudice.

Counsel did not investigate Applicant's case. Counsel did not discuss potential defenses with Applicant.

Applicant alleges Counsel was constitutionally ineffective for failing to investigate his case and discuss potential defenses with him prior to his guilty plea. Applicant testified he did not discuss taking his case to trial with Counsel. Applicant testified trial was never presented as an option. Applicant testified Counsel never discussed any potential defenses with him.

Counsel testified he made a motion for and obtained discovery in Applicant's case. Counsel testified Applicant told him he did the burglaries by himself and admitted to planning and robbing Victim. Counsel testified he told Applicant he can go to trial but that the video of the assault and the GPS ankle monitor evidence were pretty damning for his case. Counsel testified Applicant did not have any defenses for his actions. Counsel testified he explained to Applicant his right to a jury trial. Counsel testified Applicant's mother got involved and Applicant then refused to cooperate and meet with Counsel. Counsel testified the State was talking about seeking life without the possibility of parole and, had it not been for Applicant's young age, he believes the State would have pursued that sentence at trial.

This Court addressed Applicant during the hearing to explain the authority of this Court was limited to putting Applicant back to where he was prior to entering his guilty plea. This Court made it clear to Applicant that he could still face a life sentence if his post-conviction relief application is granted. Applicant indicated he understood and wanted to proceed with his post-conviction relief hearing.

This Court finds Counsel's testimony with respect to these allegations very credible whereas Applicant's testimony is not credible. This Court finds Applicant has failed to establish how Counsel was deficient as Counsel obtained discovery in his case, reviewed it with Applicant, and did not see any credible defenses available for Applicant. Additionally, Applicant has failed to establish any resulting prejudice from the alleged deficiency. Based on the forgoing, Applicant has failed to meet his burden set forth in Strickland and these allegations must be denied and dismissed with prejudice.

Involuntary Guilty Plea

Counsel did not prepare Applicant's case for trial, and Applicant was left with no choice but to plead guilty. Applicant's guilty plea was not made with or based on advice of competent counsel. Applicant's guilty plea was not intelligently made. Counsel never discussed the advantages and disadvantages of a trial versus the advantages and disadvantages of a plea with Applicant so that Applicant could make an informed choice of whether to enter a plea or try his case.

Applicant alleges Counsel did not prepare his case for trial and was, therefore, forced to enter a guilty plea. Applicant alleges his guilty plea was not intelligently entered into because his decision to enter his plea was based on incompetent advice from Counsel. Applicant testified Counsel never discussed going to trial with Applicant and that trial was never presented to him as an option. Applicant testified he only took the plea because he did not want to get life without the possibility of parole. Applicant testified he told the judge he was satisfied with Counsel because he was upset at his sentence.

Counsel testified he went over Applicant's constitutional rights multiple times. Counsel testified he told Applicant he could go to trial or plead guilty. Counsel testified when Applicant's mother got involved Applicant became uncooperative, which made his job difficult. Counsel testified Applicant did not have any defenses and the evidence against him was strong. Counsel testified Applicant never told him he did not understand their conversations. Counsel testified he discussed the advantages and disadvantages of going to trial with Applicant and believes Applicant

would have received a higher sentence if he had proceeded to trial. Counsel testified he believed – and still believes – it was in Applicant’s best interest to plead guilty. Counsel testified he attempted to negotiate a better offer from the State as they were threatening to seek a life without parole sentence. Counsel testified, because of Applicant’s age, he does not think the State would have sought life, but could have sought a de facto life sentence at trial. Counsel testified he got the State down to seventeen years and that was their final offer. Counsel testified he would have taken Applicant’s case to trial had Applicant wanted to proceed to trial.

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. In order 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 involuntary. The records before this Court, and particularly

the transcript of Applicant's plea proceeding, show 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. This Court finds Applicant knew the charges he was facing and understood the plea he was entering, including the negotiated sentence of seventeen years. This Court also finds Applicant was properly and fully advised of his constitutional rights and knowingly and voluntarily waived those rights to accept a favorable negotiated plea based on the advice of competent Counsel.

Therefore, this Court finds Applicant had a full understanding of the consequences of his plea and the charges against him, and the plea court correctly found Applicant's plea was freely, voluntarily, and intelligently made. Based on these findings, Applicant's allegations regarding his plea being involuntary are denied and dismissed with prejudice.

CONCLUSION

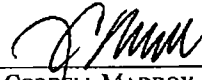
Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

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), SCRCP, 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:

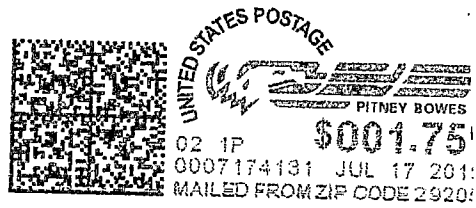
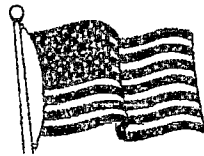
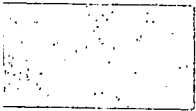
1. The application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant will remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 12th day of June, 2019.



J. CORDELL MADDOX, JR.
Presiding Judge
Second Judicial Circuit

Anderson, South Carolina



The Honorable Daniel E. Shearouse, Clerk