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JUL 31 2019

S.C. SUPREME COURT

July 29, 2019

Daniel E. Shearouse
Clerk of Court
Supreme Court of South Carolina
Post Office Box 11330
Columbia, SC 29211

Re: Janoblin M.B. Brown vs. State of South Carolina
C/A No: 2017-CP-40-06899

Dear Mr. Shearouse:

Please find enclosed one (1) original and one (1) copy each of Applicant's Notice of Appeal and Certificate of Service in the above referenced case. I would appreciate you filing the original and returning the clocked copies in the enclosed envelope.

I was appointed to represent Mr. Brown in this matter and am also enclosing a copy of the Order of Dismissal. If you have any questions, please do not hesitate to ask. My telephone number is 803-520-7278.

Sincerely,

Jonathan D. Waller

Cc: Lindsey A. McCallister, South Carolina Office of Attorney General

Enclosures

STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

JUL 31 2019

APPEAL FROM RICHLAND COUNTY
DeAndrea G. Benjamin, Circuit Court Judge

S.C. SUPREME COURT

2017-CP-40-06899

Janoblin M. B. Brown, # 360259,

Appellant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Janoblin M. B. Brown, # 360259, appeals the Order of Dismissal denying his Application for Post-Conviction Relief filed July 25, 2019, issued by the Honorable DeAndrea G. Benjamin, Presiding Judge, Fifth Judicial Circuit.



Jonathan D. Waller

Waller Law Group
SC Bar No.: 76290
1116 Blanding Street
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Columbia, SC 29201
803-520-7278 (phone)
jonathan@wallergroupsc.com
ATTORNEY FOR PETITIONER

July 29, 2019

Other Counsel of Record:
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Columbia, SC 29211
(803) 734-3319

STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM RICHLAND COUNTY
DeAndrea G. Benjamin, Circuit Court Judge

S.C. SUPREME COURT

2017-CP-40-06899

Janoblin M. B. Brown, # 360259,

Appellant,

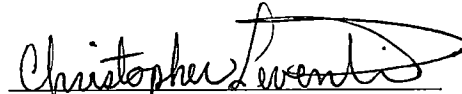
v.

STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the Appellant's Notice of Appeal in the above-entitled case has been served upon opposing counsel, Lindsey A. McCallister, Assistant Attorney General, by mailing in an envelope properly addressed with postage prepaid on this day, to her office located at P.O. Box 11549, Columbia, SC 29211.


Christopher Leventis

July 29, 2019

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

CASE NUMBER: 2017CP4006899

Janoblin Brown #360259

State Of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : Plaintiff Defendant or Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried and heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** Affirmed; Reversed; Remanded; Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.
Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 25 July 2019 to attorneys of record or to parties (when appearing pro se) as follows:

Jonathan D Waller

Lindsey Ann McCallister

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court

Jeanette W. McBride

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Janoblin M. Bracy-Brown, #360259,)
Applicant,)

C.A. No. 2017-CP-40-06899

ORDER OF DISMISSAL

v.)

State of South Carolina,)
Respondent.)

RICHLAND COUNTY
FILED
2019 JUL 25 AM 8:50
JEANETTE W. MORRIS
C.C.P., G.S., 28C.1

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed by Janoblin M. Bracy-Brown (Applicant) on November 9, 2017. Respondent made its Return on February 28, 2018. An evidentiary hearing into the matter was convened on July 17, 2018, at the Richland County Courthouse before the undersigned. Jonathan D. Waller, Esquire, represented Applicant. Assistant Attorney General Lindsey A. McCallister represented Respondent.

At the hearing, Applicant testified on his own behalf. Jennifer C. Davis, Esquire, Applicant's plea counsel, was also called to testify. This Court also had before it a copy of the records of the Richland County Clerk of Court, records from the South Carolina Department of Corrections, Applicant's appellate records, the application, Respondent's Return, and the guilty plea and sentencing transcripts. 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 for relief.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. In January of 2012, the Richland County Grand Jury indicted Applicant for one count of first-degree assault and battery (2012-GS-40-00347), two counts of armed robbery (2012-GS-40-00345, -00350), attempted armed robbery (2012-GS-40-00356), two counts of attempted murder (2012-GS-40-00357, -00358), and two counts of possession of a weapon during the commission of a violent crime (2012-GS-40-00346, -00348). The charges stem from incidents occurring between June 24 and July 2, 2011, wherein Applicant and a codefendant forcibly entered taxi cabs with a gun. They attempted to rob one driver and successfully robbed others. On two occasions, the drivers were struck with either the gun itself or bullets fired from it. Applicant was identified in photos lineups and by personal items left in the vehicles. Sent. Tr. 9.

Applicant was initially represented on these charges by James D. Cooper, III, Esquire. Assistant Solicitor Dolly Garfield prosecuted the case. On March 14, 2013, Applicant appeared before the Honorable G. Thomas Cooper and pleaded guilty to attempted armed robbery, armed robbery, and three counts of first-degree assault and battery.¹ In exchange for the plea, the State dismissed one count of armed robbery and two counts of possession of a weapon during the commission of a violent crime. Judge Cooper accepted the guilty plea and deferred sentencing at the parties' request to allow for Applicant's cooperation in the prosecution of his codefendant. On

¹ As part of the plea agreement, the State reduced the two attempted murder charges to the lesser-included first-degree assault and battery.

June 4, 2014, Applicant appeared before the Honorable Letitia H. Verdin for sentencing. Jennifer C. Davis (Counsel), Esquire, represented Applicant at sentencing, as Mr. Cooper had passed away. The State explained Applicant's cooperation in its case against his codefendant and recommended a concurrent sentence. Judge Verdin sentenced Applicant to sixteen years' imprisonment. Counsel filed a motion to reconsider the sentence on June 11, 2014, which Judge Verdin denied by written order dated July 8, 2014, after a hearing.

Applicant filed a timely notice of appeal. Taylor D. Gilliam, Esquire, of the South Carolina Commission on Indigent Defense - Office of Appellate Defense, perfected the appeal by filing of a brief pursuant to Anders v. California.² The sole question raised was whether the trial court erred in denying Applicant's motion for reconsideration where the State's position at sentencing was different than Applicant expected. The South Carolina Court of Appeals affirmed Applicant's conviction. State v. Brown, Op. No. 2017-UP-372 (S.C. Ct. App. filed October 11, 2017). The remittitur issued on October 27, 2017.

ALLEGATIONS

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, in that:
 - a. "Plea counsel failed [*sic*] to keep the plea agreement were [*sic*] plea agreement receive [*sic*] was not right."

² 386 U.S. 738 (1967).

SUMMARY OF TESTIMONY

Applicant testified Cooper represented him at the guilty plea, but Counsel represented him at sentencing because Cooper died. Applicant testified there was approximately a year between his guilty plea and the sentencing hearing. According to Applicant, he expected to receive ten-to-twelve years if he pleaded guilty and cooperated with the State. Applicant testified he understood the minimum sentence he could receive was ten years, and that is what he expected to receive. Applicant testified an investigator conveyed the ten-year offer to him. Applicant explained he ultimately did not testify against his codefendant because the codefendant also pleaded guilty, but he was prepared to do so and gave the State a four-page statement. Applicant testified he told Counsel his understanding of the agreement was that he would receive a ten-year sentence. He testified he spoke to Counsel after sentencing, and they discussed filing a motion to reconsider. Applicant testified they discussed the reasons for reconsideration to include in the motion.

Applicant conceded the sentencing sheets did not reflect a ten-to-twelve-year offer or recommendation, and he explained he had to cooperate with the State first. Applicant also agreed that although he realized the solicitor did not inform the plea court of the alleged deal, he did not tell the sentencing court of his understanding of the agreement when he spoke at the sentencing hearing. Applicant further conceded the solicitor informed the sentencing court he had cooperated with the State, but Applicant testified her presentation was not as strong as he anticipated.

Counsel testified she assumed representation of Applicant in January 2014 and reviewed the file. According to Counsel, the file did not contain any notes from Cooper regarding a plea offer, nor was there any written documentation of an offer in the file. Counsel testified Applicant

informed her he believed he would receive a ten-year sentence, and she was aware sentencing had been deferred pending Applicant's cooperation against the codefendant. Counsel testified Applicant told her an investigator offered him the ten-year sentence, but according to Counsel, there was no documentation in the file to substantiate Applicant's claim. Counsel testified she understood the State would not make a recommendation for sentencing, and no one ever talked about a ten-year offer except Applicant.

Counsel testified she spoke to the solicitor after the hearing to explain she and Applicant felt the State had downplayed Applicant's cooperation. According to Counsel, the solicitor offered to go back in front of Judge Verdin to clarify the record. However, the judge had already left the courthouse, so Counsel filed a motion for reconsideration instead.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the record and heard the testimony at the PCR hearing. This Court has observed the witnesses presented at the evidentiary hearing, judged their credibility, and weighed their testimony accordingly in its discussion below. Set forth below are findings of fact and conclusions of law as required by section 17-27-80 of the South Carolina Code.

Applicant alleges he received ineffective assistance of counsel. In a post-conviction relief action, the 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). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant 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." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286

S.C. at 443, 334 S.E.2d at 814. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 689. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Id. (quoting 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." Id. at 117-18, 386 S.E.2d at 625. When there has been a guilty plea, the applicant must prove counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

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. 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. Strickland, 466 U.S. 668.

For the reasons stated below, the Court denies relief and dismisses the allegation with prejudice.

Breach of plea agreement

Applicant alleges Counsel was ineffective for failing to object when the State breached the plea agreement by failing to recommend a ten-year sentence. This Court disagrees and finds the plea and sentencing transcripts are dispositive as to this issue. The Court finds the record clearly establishes Applicant pleaded guilty freely and voluntarily, and the State did not violate its agreement with Applicant.

“[I]t is the prerogative of any person to waive his rights, confess, and plead guilty, under judicially defined safeguards, which are adequately enforced.” Reed v. Becka, 333 S.C. 676, 685, 511 S.E.2d 396, 401 (Ct. App. 1999). However, a defendant has no constitutional right to plea bargain, nor is a trial judge required to accept a plea. Id. Nonetheless, once a defendant enters a guilty plea and the plea is accepted by the court, due process requires the plea bargain be honored. Id. at 686, 511 S.E.2d at 401. To find a guilty plea is voluntarily and knowingly entered into, the record must establish Applicant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

The plea transcript reflects no agreement was made between Applicant and the State at the time the plea was entered except to defer sentencing pending Applicant's cooperation in the State's case against the codefendant. Tr. pp. 2, 9. Applicant testified there was no agreement with the State at the time of the guilty plea, which is corroborated by the plea colloquy wherein he affirmed no one had promised him anything in order to influence him to plead guilty. Tr. p. 9. At sentencing, however, the solicitor informed the court of Applicant's cooperation and recommended a concurrent sentence. Sent. Tr. pp. 4, 9-10. Applicant spoke directly to the sentencing judge and did not mention any agreement with the State, although he testified during the evidentiary hearing he realized the solicitor had not informed the plea court of the purported agreement. Sent. Tr. pp. 14-16. Further, even though Applicant, through Counsel, filed a motion for reconsideration of his sentence, Applicant never alleged he was promised a ten-year sentence. Instead, the motion was based on the fact Applicant believed the State downplayed the extent of his cooperation.

Accordingly, this Court finds Counsel's representation of Applicant was not deficient, nor was Applicant prejudiced by Counsel's representation. The plea transcript reflects the State relayed Applicant's cooperation to the sentencing court and did not make any recommendation except for concurrent sentences. Applicant testified he heard the solicitor explain this was the only agreement with Applicant, and even though Applicant directly addressed the sentencing judge, he never mentioned a ten-year agreement or told the court he believed the State was not upholding its promise to him. This Court finds the State honored the only agreement it made with Applicant – to inform the court of his cooperation and to ask for a concurrent sentence. See, e.g., Jordan v. State, 297 S.C. 52, 374 S.E.2d 683 (1988) (finding the solicitor breached the plea agreement by opposing a probationary sentence after agreeing to neither oppose or recommend probation); State

v. Rikard, 371 S.C. 295, 638 S.E.2d 72 (Ct. App. 2006) (finding solicitor did not breach plea agreement by asking for maximum sentence during “straight up” guilty plea). Further, although Applicant filed a motion for reconsideration, the only ground presented was Applicant’s assertion the State did not fully convey the extent of his cooperation. This Court therefore finds Counsel was not deficient because there was no basis for an objection to the State’s recitation of the plea agreement, nor was Applicant prejudiced because he received the benefit of the bargain he actually struck – the State dismissed multiple charges, informed the court of his cooperation, and recommended concurrent sentences. Therefore, this Court denies relief and dismisses this allegation with prejudice.

CONCLUSION

Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief. Counsel was not deficient in any manner, nor was Applicant prejudiced by Counsel’s representation. Therefore, this application for post-conviction relief is denied and dismissed with prejudice.


Applicant must file and serve a notice of appeal within thirty days from PCR counsel’s receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR (providing the appropriate procedure to perfect an appeal). 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. Further, Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant’s behalf. Applicant is directed to Rule 243, SCACR, for the appropriate procedures for appealing a judgment in a PCR action.

IT IS THEREFORE ORDERED:

1. the Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant shall be remanded to the custody of Respondent.

AND IT IS SO ORDERED.

7-8, 2019



DEANDREA G. BENJAMIN
Presiding Circuit Court Judge
Fifth Judicial Circuit



ALAN WILSON
ATTORNEY GENERAL

July 19, 2019

The Honorable Jeanette W. McBride
Richland County Clerk of Court
Post Office Box 2766
Columbia, South Carolina 29202

Re: Janoblin M. Bracy-Brown, #360259 v. State of South Carolina
2017-CP-40-06899

Dear Ms. McBride:

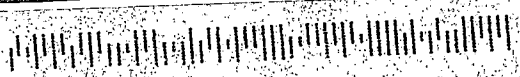
Enclosed please find the original **Order of Dismissal**, signed by the Honorable DeAndrea G. Brown, in the above-captioned case for filing in your office. Please forward a **time stamped copy** back to our office for our file.

Sincerely,

Lindsey A. McCallister
Assistant Attorney General

LAM/kk
Enclosure(s)

cc: Jonathan D. Waller, Esquire



1116 Blanding Street, Suite 2B
Columbia, SC 29201

LER
GROUP

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