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RECEIVED

AUG 08 2019

S.C. SUPREME COURT

August 5, 2019

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

Re.: Sims v. State
2016-CP-20-0250

Dear Mr. Shearouse:

Please find enclosed copies of the Notice of Appeal and Certificate of Service along with a filed copy of the Order being appealed on the above referenced case. Please note that I have also enclosed copies of the same to be mailed back to me in the also enclosed self-addressed stamped envelope. I have asked SCCID to handle this appeal for me. Thank you and please contact me with any additional questions or concerns.

Sincerely Yours,

Nathan Sheldon
The Law Office of Nathan J. Sheldon

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM FAIRFIELD COUNTY
Court of Common Pleas

AUG 08 2019

S.C. SUPREME COURT

Paul M. Burch, Circuit Court Judge

Case No. 2016-CP-20-0250

State of South Carolina,

Respondent,

v.

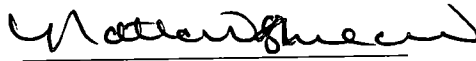
Randevious Hi-Keem Sims,

Appellant.

NOTICE OF APPEAL

Randevious Sims appeals the order of the Honorable Paul M. Burch dated July 11, 2019 denying his request for post-conviction relief. Appellant received written notice of entry of this order on July 26, 2019.

August 5, 2019



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THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM FAIRFIELD COUNTY
Court of Common Pleas

Paul M. Burch, Circuit Court Judge

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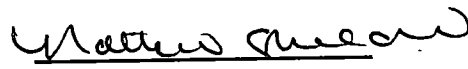
Randevious Hi-Keem Sims,

Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Samuel L. Key with the Attorney General's Office by depositing a copy of it in the United States Mail, postage prepaid, on August 5, 2019 mailed to Post Office Box 11549, Columbia, South Carolina 29211-1549.

August 5, 2019



Nathan Sheldon
331 E. Main St., Suite 200
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803-909-9343
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RECEIVED

AUG 08 2019

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA)
COUNTY OF FAIRFIELD)
Randevious Hi-Keem Sims, #364413,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE SIXTH JUDICIAL CIRCUIT

2016-CP-20-0250

ORDER OF DISMISSAL

2019 JUN 18 AM 9:37
FAIRFIELD COUNTY
CLERK OF COURT
JUDITH M. DAVIS

The matter before the Court is an action for post-conviction relief (PCR) commenced by Randevious Sims (Applicant) on July 12, 2016. The State submitted its return and motion to dismiss on November 22, 2016. Applicant amended his PCR application on December 28, 2016, alleging ineffective assistance of counsel.

An evidentiary hearing convened January 22, 2019, at the Lancaster County Courthouse before the undersigned. Applicant was present and represented by Nathan J. Sheldon, Esquire. Assistant Attorney General Samuel L. Key represented the State. Applicant testified on his own behalf at the hearing. Charles Verner, Esquire, and Tyree D. Lee, Esquire, also testified at the hearing. After hearing the testimony at the PCR hearing and a full review of the record, the Court finds, as explained below, Applicant's allegations are without merit, denies relief, and dismisses the action with prejudice.

I. FACTS & PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Fairfield County Clerk of Court. Applicant was indicted by the October 2011 term of the Fairfield County Grand Jury for murder (2011-GS-20-409), attempted

armed robbery (2011-GS-20-411), and first-degree burglary (2011-GS-20-412). Applicant was represented by Tyree Lee, Esquire, on his Fairfield County charges.

Applicant's Fairfield County charges stem from a single incident that occurred on July 23, 2011. That night, Applicant and seven co-defendants burglarized, robbed, shot, and killed Leon Wright in Wright's home. (Plea Tr. 36-42). Applicant was arrested in connection to Wright's murder, but was subsequently released on bond.

Applicant was then indicted by the January 2015 term of the Newberry County Grand Jury for common law robbery (2015-GS-36-0026), and unlawful possession of a firearm (2015-GS-36-0029). Applicant was subsequently indicted at the May 2015 term of the Newberry County Grand Jury for possession of contraband (2015-GS-36-0187). Charles Verner, Esquire, represented Applicant on his Newberry County charges.

Applicant's Newberry County charges stem from three separate incidents. First, Applicant's common law robbery charge stems from an incident that occurred on October 22, 2013. Applicant and two other men, all armed, robbed J.W. Bookman outside of Bookman's house. (Plea Tr. 34-35). Then, on October 26, 2014, Sims was a passenger in a car stopped at a highway patrol check-point in Newberry County. The officers smelled marijuana coming from the car, and everyone exited the vehicle. Applicant had two outstanding bench warrants—one from the Newberry County common law robbery charge, and the other from the Fairfield County charges. Applicant was arrested and found in possession of a stolen pistol. (Plea Tr. 35). Finally, on February 9, 2015, Applicant was found in possession of marijuana at the Newberry County jail. (Plea Tr. 36).

On June 15, 2015, Applicant waived venue of his Newberry County charges and pleaded guilty in Fairfield County to the lesser-included offense of voluntary manslaughter on the

Fairfield County murder charge, and as indicted on all other Fairfield and Newberry County charges before the Honorable Diane Schafer Goodstein. Applicant pleaded guilty pursuant to a negotiated sentencing cap of thirty-years' imprisonment. Judge Goodstein accepted Applicant's guilty plea and sentenced him to concurrent terms of imprisonment of thirty years for voluntary manslaughter, thirty years for first-degree burglary, fifteen years for attempted armed robbery, fifteen years for common law robbery, one year for the weapons charge, and one year for possession of contraband. Applicant did not appeal his guilty plea or sentence.

II. ISSUES

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

1. The plea court abused its discretion by sentencing Applicant to an excessive amount of time;
 - a. Sentencing to thirty years for involuntary manslaughter;
2. Insufficient Evidence;
3. Involuntary Guilty Plea; and
4. Never a waiver from family court because Applicant was sixteen-years' old when he committed the crimes charged, and was nineteen-years' old when pleaded and sentenced.

At the PCR hearing, Applicant, through PCR counsel, amended his allegations as follows:

1. Ineffective assistance of counsel for:
 - a. Failing to explain how pleading guilty to the Newberry County charges would impact the Fairfield County charges; and
 - b. Failing to explain the potential pitfalls of pleading guilty to Applicant.

To the extent the allegations set forth in Applicant's original application can be construed as separate grounds for relief from the grounds stated at the PCR hearing, this Court finds those claims were voluntarily waived and abandoned, and those claims are therefore denied and dismissed with prejudice.

III. PCR HEARING TESTIMONY

Applicant's Testimony

Applicant testified on his behalf at the PCR hearing and stated he was currently twenty-four years' old serving a thirty-year sentence. Applicant testified he understood that if he is granted relief, all of his original charges are reinstated, and he could possibly end up receiving a life without parole (LWOP) sentence. Applicant testified he still wished to proceed with his PCR action.

Applicant testified Lee was appointed to represent him on his Fairfield County charges, and he was granted a bond on those charges. However, while out on bond for his Fairfield County charges, he was arrested for the Newberry County charges. Applicant testified he was not granted a bond for his Newberry County charges, and he remained in the Newberry County jail until he pleaded guilty. Applicant stated Verner was appointed to represent him on his Newberry County charges.

Applicant recalled meeting with Lee many times to discuss his Fairfield County charges, and he recalled Lee reviewing all the discovery with him. Applicant testified he chose to waive venue and plead to all of the charges at one time because Lee told him he was more likely to receive concurrent sentences if he pleaded to all charges at the same time. Lee advised Applicant that Applicant risked having all of his charges run consecutively if he did not plead to all charges at the same time. Applicant testified he understood he was pleading to an open plea of fifteen to thirty years, and he understood he could receive a thirty year sentence. However, Applicant claimed he was told the Newberry County charges would not be brought up during the plea hearing, even though he was also pleading guilty to the Newberry County charges.

Applicant testified he never spoke with Verner about his Newberry County charges, and he never saw the evidence against him on those charges. Applicant testified he pleaded guilty so his sentences would run concurrent, and he felt as though pleading was his best option. However, Applicant thought his Newberry County charges would never be brought up during the plea hearing.

On cross-examination, Applicant admitted he knew he was pleading guilty to the Newberry County charges, he just did not know the plea court would consider them how it did during sentencing. Applicant testified the plea court did not like him getting arrested with a weapon while he was out on bond. Applicant testified if he had known the Newberry County charges would be brought up the way they were during the plea hearing, he would have chosen to go to trial on those charges.

Verner's Testimony

Verner testified he was the public defender appointed to represent Applicant on the Newberry County charges. Verner recalled meeting with Applicant one time regarding Applicant's Newberry County charges and testified he and Applicant went through all the discovery on those charges. Verner testified he told Applicant not to worry about the Newberry County charges until Applicant's Fairfield County charges were resolved because the Fairfield County charges were more serious. Verner recalled speaking to Lee by telephone, and Lee told Verner Applicant's Fairfield County charges were on the trial docket; however, the State offered for Applicant to plead to the Newberry County charges along with the Fairfield County charges. Verner testified he understood, from Lee, the State's offer was for the Newberry County charges to run concurrent with the Fairfield County charges.

Lee's Testimony

Lee testified he was appointed in 2011 to represent Applicant on the Fairfield County charges. Lee testified he approached Verner about dealing with both the Fairfield and Newberry County charges together because Applicant was young and, if convicted of the Fairfield County charges, then the Newberry County common law robbery would be Applicant's second strike under the LWOP statute. Lee testified he made this suggestion in an attempt to limit Applicant's exposure to LWOP because if Applicant pleaded to the charges the same day, then it would only count as one strike on his record.

Lee testified Applicant felt he could "beat" his Newberry County charges, but Applicant was concerned about serving life in prison. Lee testified he explained to Applicant that if Applicant was convicted of the Newberry County charges after he was convicted of the Fairfield County charges, then Applicant would be subject to LWOP. Lee testified avoiding LWOP was Applicant's biggest concern.

IV. DISCUSSION

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.

The issue before the Court is whether Applicant's plea was the result of ineffective assistance of counsel rendering his guilty plea unknowing and involuntary. Specifically, Applicant alleges plea counsel was ineffective for failing to explain how pleading guilty to the Newberry County charges would impact the Fairfield County charges, and failing to explain the

potential pitfalls of pleading guilty to all the charges at the same time. For the reasons discussed below, the Court disagrees.

To establish ineffective assistance of counsel, the PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687–88 (1984); *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989).

The 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.” *North Carolina v. Alford*, 400 U.S. 25, 31 (1970). “[A] defendant entering a guilty plea must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived.” *Pittman v. State*, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999). “The test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases.” *Watson v. State*, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985). To prove prejudice, the applicant must show a reasonable probability he would not have pleaded guilty and would have insisted on going to trial absent plea counsel's alleged deficiency. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985).

1. Prejudice

As an initial matter, the Court finds Applicant has failed to show any prejudice resulted from either Lee or Verner's allegedly deficient representation. As mentioned above, Applicant testified he chose to waive venue and plead to all of the charges at one time because Lee told him he was more likely to receive concurrent sentences if he pleaded to all charges at the same time. Applicant testified Lee advised him he risked having all of his charges run consecutively if he

did not plead to all charges at the same time. Importantly, Applicant testified he understood he could receive anywhere from fifteen to thirty years for his charges, and he understood he could receive a thirty year sentence. Applicant testified he felt his best option was to plead guilty so his sentences would run concurrent.

The Court finds credible Applicant's specific testimony referenced immediately above. Applicant knew when pleading he could receive between fifteen and thirty years' imprisonment for pleading to all the charges at the same time. However, the Court finds not credible Applicant's testimony he was told the Newberry County charges would not be brought up during the plea hearing, even though he admitted he knew he was pleading to those charges. Applicant is clearly unhappy he was sentenced to the maximum of his negotiated sentencing cap; however, as he admitted, he knew he could receive a thirty-year sentence. Therefore, the Court finds and concludes Applicant has failed to meet his burden regarding prejudice.

2. Deficient Performance

Applicant alleges Lee and Verner were ineffective for failing to explain how pleading guilty to the Newberry County charges would impact the Fairfield County charges and failing to explain the potential pitfalls of pleading guilty to Applicant. The Court disagrees.

"[A] defendant entering a guilty plea must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." *Pittman*, 337 S.C. at 599, 524 S.E.2d at 624. "The test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases." *Watson*, 287 S.C. at 357, 338 S.E.2d at 637.

Lee credibly testified he approached Verner about dealing with the Fairfield County and Newberry County charges together because Applicant pleading to all charges at the same time

meant Applicant was only subject to one strike appearing on his record. Additionally, Lee credibly testified he devised this approach to keep Applicant from being exposed to LWOP.

Verner recalled meeting with and reviewing the Newberry County discovery with Applicant. Verner testified he told Applicant the Fairfield County charges, which included murder and first-degree burglary, were much more serious than the Newberry County charges. Finally, Verner told Applicant the Fairfield charges would be handled first, as those charges were more serious, before anything happened with the Newberry County charges.

The Court finds reasonable both Lee and Verner's representation of Applicant. Clearly, Applicant's Fairfield County charges were more serious than his Newberry Charges; therefore, it was reasonable for Verner to advise Applicant to dispose of those charges first. Further, from Lee's credible testimony, he reviewed the discovery of all the charges with Applicant and advised Applicant of the sentences Applicant faced if he went to trial on his charges separately. Applicant knew the rights he was waiving by pleading guilty and was reminded of those rights by the plea court. *See Wolfe v. State*, 326 S.C. 158, 164, 485 S.E.2d 367, 370 (1997) (stating any possible misconceptions due to counsel's alleged deficiencies can be cured by the plea court's colloquy). Finally, Applicant's own testimony was he knew the exposure he faced if he proceeded to trial on the charges, which is why he chose to plead guilty so the charges would run concurrent as negotiated. Lee also credibly testified Applicant's main concern was the LWOP implications, which contributed to Applicant wanting to plead to all the charges at the same time.

Based on the foregoing, the Court finds Lee and Verner were not ineffective. Therefore, relief is denied, and the allegations are dismissed with prejudice.

V. CONCLUSION

The Court finds both Lee's and Verner's representation were neither deficient nor prejudicial. Applicant pleaded guilty pursuant to the advice of both counselors. Applicant knew the meaning and consequences of pleading guilty to the charges and voluntarily chose to do so. Therefore, based on the foregoing, the Court denies relief on all allegations and dismisses this PCR action 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 pursuant to Rule 203, SCACR. Applicant has the right to appellate counsel's assistance in seeking review of the denial of PCR. *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). Rule 71.1(g), SCRCR, 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 appropriate procedures for appeal.

THEREFORE:

1. The Court denies relief and dismisses the action with prejudice; and
2. Applicant shall be remanded to the custody of the State.

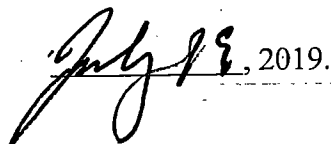
AND IT IS SO ORDERED.

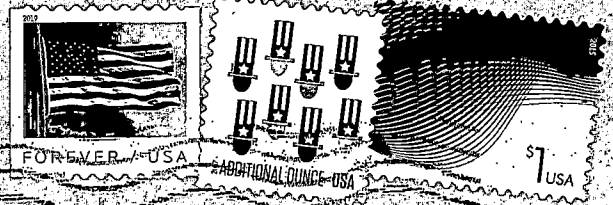
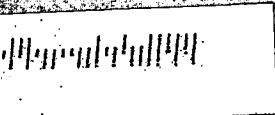


PAUL M. BURCH
Presiding Judge
Sixth Judicial Circuit



, South Carolina

 July 19, 2019.



Charlotte P&DC NC 282
MON 05 AUG 2019 AM

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

aldon