

Tommy A. Thomas

ATTORNEY AND COUNSELOR AT LAW

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September 25, 2019

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

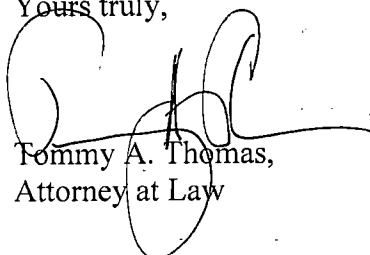
RE: Donald Hamilton Hill, Jr. v. State of South Carolina
Docket No.: 2012-CP-42-03735

Dear Mr. Shearouse:

Please be advised that I have been retained to represent Mr. Hill regarding the Appeal of his Post-Conviction Relief decision. Enclosed please find for filing an original and a copy of a Notice of Appeal as well as a Certificate of Service.

Kindly return the clocked copy to me in the enclosed envelope. Thank you and please feel free to contact me should you have any questions or require additional information.

Yours truly,


Tommy A. Thomas,
Attorney at Law

TAT/jem
cc: Johnny James, Esq.
Donald Hill, Jr. #341279

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SEP 30 2019

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions

J. Derham Cole, Circuit Court Judge

CASE NO.: 2012-CP-42-03735

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SEP 30 2019

S.C. SUPREME COURT

Donald Hamilton Hill, Jr. #341279..... Petitioner,

vs.

State of South Carolina,Respondent.

NOTICE OF APPEAL

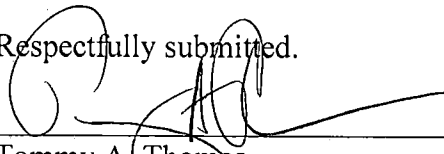
The Petitioner, Donald Hamilton Hill, Jr. appeals the Order of the Honorable J. Derham Cole, dated July 31, 2019. A Motion to Alter or Amend pursuant to Rule 59 (e) was timely filed and a Form 4 granting Petitioner's Motion to Alter or Amend was signed by Judge Cole on September 20, 2019 and file on September 23, 2019. Petitioner received written notice of entry of this order on September 23, 2019. The Court amended the original order to include the following:

"At the conclusion of the evidentiary hearing, the record was held open to allow Applicant to supplement the record with evidence of his relevant criminal history from the State of North Carolina which has been filed with the Court and considered by the Court in its decision.

The charges of Burglary to which Applicant pled guilty on June 14, 2010 were enhanced due to his prior criminal history from the State of North Carolina"

However after Amendment to the Court's Order, the Court still denied Post Conviction Relief.

Respectfully submitted.


Tommy A. Thomas
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September 25, 2019

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SEP 30 2019

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions

J. Derham Cole, Circuit Court Judge

Case No.: 2012-CP-42-03735

Donald Hamilton Hill, Jr.,..... Petitioner,

vs.

The State of South Carolina.....Respondent.

CERTIFICATE OF SERVICE

I, Jacquelyn E. Miller, secretary to Tommy A. Thomas, Attorney for the Petitioner,
hereby certify that I placed in the United States Mail, a copy of a Notice of Appeal with postage
prepaid and the return address clearly shown on said envelope to Johnny James, Esq. at:

Office of the Attorney General
Attention: Johnny James, Esq.
P.O. Box 11549
Columbia, SC 29211-1549



Jacquelyn E. Miller
Secretary to Tommy A. Thomas
Attorney for Appellant
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Irmo, SC 29063
(803) 732-5507

Irmo, SC
September 25, 2019

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
 Donald Hamilton HILL, Jr. SCDC #341279)
)
 Applicant,)
)
 -vs-)
)
 The STATE of South Carolina,)
)
 Respondent.)
)

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2012-CP-42-03735

**ORDER
 DENYING POST-CONVICTION RELIEF**

This matter came before the Court for hearing an application seeking post-conviction relief filed on September 5, 2012, by Mr. Donald Hamilton Hill, Jr. (Applicant). Respondent made its Return on or about November 12, 2012, requesting an evidentiary hearing. An evidentiary was convened on October 3, 2013, at the Spartanburg County Courthouse in Spartanburg, South Carolina.

Applicant was present and represented by Timothy A. Thomas, Esquire. Respondent was represented by Suzanne H. White, Esquire, of the South Carolina Attorney General's Office. At the evidentiary hearing, Applicant testified on his own behalf. Iris Hill, Applicant's mother and Applicant's trial counsel Lawrence W. Crane, Esquire, testified at the hearing. After reviewing the evidence and the record in its entirety, this Court finds Applicant has failed to prove by a preponderance of evidence that trial counsel was deficient in his representation and/or that the defendant has been prejudiced by counsel's performance. Applicant has also failed to prove that his guilty plea was not knowingly and voluntarily entered with knowledge of its consequences. The request for post-conviction relief is therefore denied and the application dismissed.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. During its June 2009 term, the Spartanburg County Grand Jury indicted Applicant for sixteen counts of Burglary, 1st Degree (2009-GS-42-3033166, 3175, 3186, 3188, 3190, 3191, and 3194). Applicant was represented by Lawrence W. Crane, Esquire (Counsel). Assistant Solicitor Zachary D. Ellis of the Seventh Judicial Circuit Solicitor's Office represented the State.

On June 14, 2010, Applicant pled guilty as indicted before Circuit Judge J. Mark Hayes II. The State recommended concurrent sentencing. Judge Hayes sentenced Applicant to thirty years in prison on each indictment with the sentences to run concurrently. Applicant filed a motion for reconsideration of his

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sentence, which was denied on January 26, 2012. Applicant filed a timely Notice of Appeal, but following Applicant's request to withdraw the appeal, the South Carolina Court of Appeals dismissed his appeal. The Remittitur was issued on June 12, 2012.

FACTUAL HISTORY

Applicant's guilty plea was the result of his commission of sixteen burglaries from October 27, 2008 to May 11, 2009. Applicant entered sixteen different dwellings in Spartanburg County without consent. In each incident, Applicant carried away or attempted to carry away items belonging to the respective owners. During the final burglary on May 11th, Applicant was involved in a physical struggle with the homeowner while holding a screwdriver, injuring the homeowner's hand. A sample of blood was collected from the home and matched the Applicant's DNA profile. On May 12, 2009, Applicant was arrested and confessed to the crimes.

During his guilty plea, it was revealed Applicant had six prior convictions in North Carolina for Burglary 2nd Degree and three prior convictions of Breaking and Entering and two prior convictions for Larceny. Two of the Burglary offenses occurred on December 11, 1992, two occurred on December 18, 1992, and two occurred on December 28, 1992. Applicant pled guilty to the six burglary charges in August, 1993.

ALLEGATIONS

In his application for post-conviction relief, Applicant alleges he is being held unlawfully for the following reasons:

1. Ineffective Assistance of Counsel; and
2. Involuntary Guilty Plea

Applicant requests relief in the form of a new trial.

SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

Applicant

Applicant testified that he turned himself in to the authorities and that he committed some crimes and "was trying to set himself straight." He testified that upon surrendering himself to police he confessed to the crimes. He testified he was originally charged with several counts of Burglary 2nd Degree and that he was never armed with a weapon and none of the victims were injured during any of the incidents.

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Applicant admitted to having a prior criminal history in North Carolina, having pled guilty to one proceeding to six counts of Burglary 2d Degree in August 1993.

Applicant testified that he retain Counsel and met with him four or five times to discuss preparing his case. Counsel attempted to get him into drug court, but most of their discussion was to prepare for a guilty plea. He stated that he never understood what he was indicted for, except that he was under the impression he was facing Burglary 2nd Degree, Larceny, and Assault and Battery With Intent to Kill charges. He further testified that he understood that he would be pleading guilty to the greater crime of Burglary 1st Degree on all counts, in exchange for the prosecution dropping the larceny and assault charges. Applicant testified that he believed he would be getting a concurrent sentence of no more than fifteen years. Applicant testified that he was willing to go along with the agreement, because they were enhancing his charges to Burglary 1st Degree. Applicant then testified he never understood his charges were being enhanced.

Applicant testified that he believed he was giving the State something by confessing. Applicant testified that he was acting in an effort to appease the victims and the court. Applicant testified that when he entered his guilty plea, he did not know his charges would be enhanced to Burglary, 1st Degree. Applicant testified that he was expecting to be sentenced to a maximum of fifteen years. Applicant testified that after he was sentenced to thirty years, Counsel filed a motion to reconsider his sentence, but it was denied.

Applicant testified that he always considered his prior convictions of Burglary, 2nd Degree, were one incident, because he received a consolidated sentence for all six counts. Applicant testified that his Counsel incorrectly enters his prior convictions as housebreakings. Applicant testified that it seemed Counsel informed the plea judge that the charges were properly enhanced because of Applicant's six prior convictions of burglary in North Carolina.

Applicant testified that he did not enter his guilty plea knowingly and intelligently, because he never knew of the possibility that his charges were improperly enhanced. Had he known that, he would not have entered a guilty plea.

Applicant was cross-examined by Respondent. During this portion of his testimony, Applicant admitted his prior convictions in North Carolina occurred on three separate dates. Applicant testified that the six separate incidents occurred on December 11th, 18th, and 28th, in 1992. Applicant testified that he was just what he thought he needed to happen to make the plea occur. Applicant testified that he understood the judge was not bound by a recommendation and he was facing fifteen to life in prison. Applicant testified that knowing the possible sentencing range, he still wanted to enter his guilty plea.

Iris Hill



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Applicant's mother Iris Hill also testified. She testified that she understood Applicant would be receiving a fifteen year sentence and would only serve five to eight years in prison. She testified that her understanding was based only on her conversations with Applicant.

Lawrence W. Crane, Esquire

Counsel testified that he was retained to represent Applicant in August 2009 to assist with the entry of a plea of guilty. He testified that from the beginning of his representation, it was always going to be a plea. He explained that, Applicant fully cooperated with law enforcement after his arrest, had surrendered himself and confessed to his crimes, Counsel had received complete discovery of Applicant's case, and he had discussed the case in great detail with Applicant.

Counsel further testified that the facts of the incidents themselves did not meet the requirements for Burglary 1st Degree but that Applicant's criminal history served to enhance the charges. He explained that he was aware of Applicant's criminal history but did not obtain actual police reports of the incidents. He stated that Applicant informed him he had been convicted of six counts of Burglary in North Carolina.

Counsel testified that at the time of Applicant's plea, Gordon¹ was still good law. Counsel testified that he was unaware of Bryant². Counsel testified since he was unaware of Bryant, he did not discuss the case with Applicant or a possible defense to the enhancement. Counsel testified that he believed Judge Hayes would sentence Applicant to fifteen years, but Applicant knew he was eligible for a life sentence. Counsel did not expect the thirty year sentence that Applicant received. Counsel testified that he filed a motion to reconsider Applicant's sentence within three days of sentencing.

Counsel testified that he never promised Applicant that he would receive a sentence of fifteen years. Counsel testified that the only recommendation from the State was that all sentences would run concurrent. Counsel testified that Judge Hayes agreed with the State's recommendation. Counsel testified that he studied Applicant's criminal background, discussed the criminal record with Applicant, and he conducted research on the requirements for enhancement to Burglary 1st Degree. Counsel testified that, as he understood the law at the time, Applicant's prior convictions for Burglary in North Carolina could serve to enhance the charges to Burglary, 1st Degree.

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

¹ State v. Gordon, 356 S.C. 143, 588 S.E.2d 105 (2003).

² Bryant v. State, 384 S.C. 525, 683 S.E.2d 280 (2009).

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This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has had the opportunity to observe the witnesses presented at the hearing, and can weigh their testimony and credibility accordingly. These credibility findings have been applied to the Court's findings and conclusions set forth below. Below are the findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2017).

Ineffective Assistance of Counsel

Applicant alleges Counsel provided ineffective assistance of counsel. Applicant alleges Counsel was deficient in not knowing Gordon was controlling and "it is very possible that all of [Applicant's] charges could not have been enhanced to Burglary, 1st."³

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, 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. 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 that 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 trial counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove that 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 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. With respect to guilty plea counsel, an 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).

After careful review of the entire record and based on the standard discussed above, this Court finds Applicant has failed to carry his burden of proof and has not established any ineffectiveness of counsel.

³ Applicant's letter to the Court, dated October 30, 2013.

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show ineffective assistance for failing to investigate, Applicant must present evidence to show what counsel could have discovered had he more fully investigated. Jackson v. State, 329 S.C. 345, 354, 495 S.E.2d 768, 772 (1998) (“Respondent failed to present any evidence of what counsel could have discovered or what other defenses respondent would have requested counsel pursue had counsel more fully prepared for the trial.”).

Applicant asserts that Gordon was the controlling law when it comes to his guilty plea and the enhancement of his charges. Applicant entered his guilty plea on June 14, 2010. Gordon was overruled by the South Carolina Supreme Court on September 14, 2009, nearly one year prior to Applicant’s guilty plea.⁴ At the time of Applicant’s conviction for Burglary, 1st Degree, Gordon was no longer the law. Applicant asserts Counsel was ineffective for failing to analyze his case under a law that was valid at the time of his arrest, but not at the time of his conviction. Failure to argue overturned precedent is not a ground for ineffective assistance of counsel. Applicant has failed to meet his burden of proof.

Applicant asserts that under Gordon, his prior convictions should not have been used to enhance his charges to Burglary, 1st Degree. In Gordon, the South Carolina Supreme Court held S.C. Code Ann. §§ 17-25-45 and 17-25-50 must be construed together when determining whether crimes committed at points close in time qualify for a recidivist sentence. Gordon at 151. This applies in cases where a defendant is eligible for a mandatory life sentence, under S.C. Code Ann. § 17-25-45(A). Since Applicant was not sentenced under S.C. Code Ann. § 17-25-45, Gordon is not applicable in the context of his case.

Applicant was sentenced to sixteen terms of thirty years, all to be served concurrently. Judge Hayes sentenced Applicant within the range allowed under the South Carolina burglary statute. S.C. Code Ann. § 16-11-311(B). Applicant was correctly sentenced under the statutory range for Burglary, 1st Degree, and was not sentenced under any recidivist statute. Gordon would not have applied, even if it was controlling authority. Therefore, Counsel was not deficient in failing to argue inapplicable law. Relief based upon this allegation is denied and dismissed with prejudice.

Involuntary Guilty Plea

A guilty plea is a solemn, judicial admission of the truth of the charges against an individual. Thus, a criminal inmate’s right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton v. State, 376 S.C. 130,137, 654 S.E. 2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63 (1977)). An applicant may attack the voluntary, knowing, and intelligent character of a guilty plea entered on advice of counsel by demonstrating that counsel’s representation was below an objective

⁴ State v. Bryant

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standard of reasonableness. Porter v. State, 368 S.C. 378, 629 S.E. 2d 353 (2006). To find a guilty plea is voluntarily and knowingly 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); Roddy v. State, 339 S.C. 29 (2000).

Applicant alleges his guilty plea was not knowingly and voluntarily made. Applicant also alleges his guilty plea was not made with a complete understanding of the nature of the charges and the inadequacies of the plea potential. Specifically, Applicant alleges he did not understand that there was a possibility that these charges may not have been enhanced to Burglary, 1st Degree. This Court finds the record supports Applicant's plea was made knowingly, voluntarily and upon the sound advice from Counsel.

Applicant confessed to committing all sixteen crimes he was charged with. Applicant testified that his conversations with Counsel regarding his case were mostly in preparation for a plea. Applicant testified that it was his understanding that he would be pleading guilty "to a greater crime, which was first degree burglary, on all counts." Applicant testified that it was his understanding that all of the sentences were going to run concurrently, but he would not receive more than fifteen years. Applicant testified that he pleaded guilty in exchange for the State dropping two additional charges against him. Applicant admitted to saying what he needed to make the plea happen. Applicant testified that he understood he could be sentenced from fifteen to life for Burglary, 1st Degree. Applicant testified that it was his decision to plead guilty.

The underlying facts to the crime are overwhelming to establish Applicant's guilt of the offenses to which he pled. Counsel appeared credible when testifying during the evidentiary hearing. The transcript of the plea hearing is thorough as to Applicant's understanding of his right to a trial and his willingness to forgo the trial and clearly establishes that his decision to plead guilty was knowingly and voluntarily made with knowledge of the consequences. Specifically, Applicant admits his understanding that he would be pleading guilty to sixteen counts of Burglary, 1st Degree and the range of sentencing that could be applied. Applicant has failed to meet his burden of proof. The request for relief based upon this allegation is denied and dismissed with prejudice.

CONCLUSION

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

This Court notes Applicant must file and serve a notice of appeal within thirty days from the receipt of this Order by counsel of record to secure the appropriate appellate review. See Rule 203, SCACR.

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Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRPC, provides if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. The request for relief is denied and the application is dismissed with prejudice;
and
2. Applicant shall remain in the custody of the State.

AND IT IS SO ORDERED this 31st day of July, 2019.



J. DERHAM COLE, Presiding Judge



South Carolina

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

JUDGMENT IN A CIVIL CASE - PCR

CASE NO. 2012-CP-42-03735

Donald Hamilton HILL, Jr. SCDC #341279

The STATE of South Carolina,

Applicant,

Respondent.

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 or 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

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 SPARTANBURG COUNTY
 AMY W. COX

IT IS ORDERED AND ADJUDGED: See attached order; Statement of Judgment of the Court:

This matter came before this court for an evidentiary hearing on an application for post-conviction relief filed pursuant to *South Carolina Code Annotated Section 17-27-20*. After an evidentiary hearing was held in this matter, relief was denied and the application dismissed by order filed July 31, 2019. Applicant filed a timely Rule 59 motion.

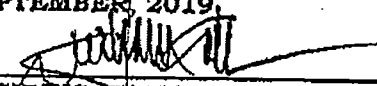
After a reconsideration of the matter this Court finds that the order shall be amended to include the following two paragraphs:

"At the conclusion of the evidentiary hearing, the record was held open to allow Applicant to supplement the record with evidence of his relevant criminal history from the State of North Carolina which has been filed with the court and considered by the Court in its decision."

"The charges of Burglary to which Applicant pled guilty on June 14, 2010 were enhanced due to his prior criminal history from the State of North Carolina."

To the extent stated, Applicant's **MOTION** to **ALTER** or **AMEND** is **GRANTED**.

Dated at Spartanburg, South Carolina, this 20th day of **SEPTEMBER, 2019**.




 PRESIDING JUDGE, J. Derham Cole

This judgment was entered on the 23 day of **SEPTEMBER, 2019** and a copy mailed first class this day of **SEPTEMBER, 2019** to attorneys of record or to parties (when appearing pro se) as follows:

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 ATTORNEY(S) FOR THE APPLICANT

JOHNNY E. JAMES, JR., Esq.
 Post Office Box 11549
 Columbia, South Carolina 29211-1549
 ATTORNEY(S) FOR THE RESPONDENT



 AMY W. COX, CLERK OF COURT

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