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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court of South Carolina

APPEAL FROM YORK COUNTY
Court of Common Pleas

The Honorable William A. McKinnon, Circuit Court Judge

2017-CP-46-1438

Christopher David Tyson, Respondent,

v.

The State, Defendant.

NOTICE OF APPEAL

Christopher David Tison appeals the decision of the Post-conviction Relief matter heard before the Honorable William A. McKinnon. This appeal originates from the Order of Dismissal dated September 5, 2019.

Respectfully submitted,

William G. Yarborough III, #05192
Attorney for Petitioner
308 W. Stone Avenue Greenville, SC 29609
Telephone (864) 331-1612 Fax (864) 370-0022

October 11, 2019
Greenville, SC

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CERTIFICATE OF SERVICE

I, Traci Trouton-Burr, certify on this date, October 11, 2019, I served a Notice of Appeal in this action, dated October 11, 2019 on Daniel Shearouse Clerk of Court, S.C. Supreme Court, by mailing it to him/her at his/her work address, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

The Honorable Daniel Shearouse
Clerk of Court
SC Supreme Court
PO Box 11330
Columbia, SC 29211

Honorable Alan Wilson
S.C. Attorney General's Office
PO Box 11549
Columbia, SC 29211-1549

Respectfully submitted,

E Crowther

Elizabeth Crowther
Paralegal to William G. Yarborough, III

SWORN TO before this 11
Day of October, 2019

Theresa Thom

Notary Public for South Carolina
My Commission expires: 3/20/24

STATE OF SOUTH CAROLINA COUNTY OF YORK	)	IN THE COURT OF COMMON PLEAS FOR THE SIXTEENTH JUDICIAL CIRCUIT
	)	
	)	2017-CP-46-1438
Christopher David Tison,	)	
Applicant,	)	**ORDER OF DISMISSAL**
v.	)	
State of South Carolina,	)	
Respondent.	)	

This matter comes before the Court by way of an application for post-conviction relief filed by retained counsel, William G. Yarborough, III, on May 17, 2017. The State (Respondent) filed a return and motion to dismiss on June 14, 2018. The Honorable Judge Daniel D. Hall, acting in his capacity as Chief Administrative Judge, signed and filed a conditional order of dismissal on June 21, 2018. Thereafter, Applicant, through counsel, filed a response to Respondent's motion to dismiss and a motion to amend his post-conviction relief application on July 9, 2018. On July 16, 2018, Respondent filed an amended return requesting an evidentiary hearing.

An evidentiary hearing into the matter was convened on August 14, 2019, at the Moss Justice Center. Christopher Tison (Applicant) was present at the hearing and represented by William G. Yarborough, III, 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. Applicant's wife (Wife), Assistant Public Defender Harry Dest (Counsel) of the Sixteenth Circuit Public Defender's Office, and Assistant Solicitor Misti Shelton (Shelton) of the Sixteenth Circuit Solicitor's Office 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 and dismisses this application with prejudice.

PROCEDURAL HISTORY

The records before this Court establish Applicant appeared in the York County Court of General Sessions before the Honorable John C. Hayes, III, on July 13, 2016. Applicant pled guilty as indicted to contributing to the delinquency of a minor and waived presentment to the grand jury for first-degree assault and battery and pled guilty pursuant to Alford v. North Carolina, 400 US. 25 (1970) to that charge. Pursuant to negotiations between the State and Applicant, Judge Hayes sentenced Applicant to imprisonment for concurrent terms of three years suspended upon service of three years' probation for contributing to the delinquency of a minor and seven years suspended upon service of three years' probation for first degree assault and battery. The negotiations also included mandatory sex offender registration. Applicant did not appeal his conviction or sentence.

SUMMARY OF FACTS

On March 28, 2015, Victim was spending the night with Applicant's daughter. (GP Tr. 10.) Applicant provided alcohol to Victim that evening. (GP Tr. 10.) Victim had two and a half Bud Lite Raz-Ber-Ritas. (GP Tr. 10.) At some point that night, Applicant's daughter went to bed and Victim remained in the living room with Applicant. (GP Tr. 10.) Applicant was on the couch next to Victim and began rubbing her leg. (GP Tr. 10.) Applicant then digitally penetrated Victim without her consent. (GP Tr. 10.) Applicant's wife was in the room, but she was asleep. (GP Tr. 10.) After Applicant assaulted Victim, he woke his wife up and they went to bed. (GP Tr. 10.) Victim reported the incident three days later. (GP Tr. 10.) Although there was no forensic evidence linking Applicant to the incident, there were text messages between Applicant and Victim where he acknowledged doing something that evening that could have made her feel weird and apologized. (GP Tr. 10-11.)

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. "Was not made aware that a plea to assault and battery would result in being placed on the sex offender's registry since the plea charge was not listed as a sex crime."

Applicant, through counsel, amended his application on June 29, 2018, alleging:

2. Ineffective assistance of counsel
    a. "Applicant was not made aware that a plea to assault and battery 1st degree would result in having to be placed on the sex offender registry."
    b. "Counsel was ineffective for failing to adequately investigate the facts of the case and advise Applicant in regards to entering the Alford plea."
    c. "Counsel failed to investigate the facts, seek material discovery, interview witnesses who were present for the offense conduct, and advise Applicant accordingly. Applicant lacked sufficient knowledge of the State's case against him. Applicant was therefore deprived of an informed evaluation of his chances of proceeding to trial as opposed to entering a guilty or Alford plea. As a result of plea counsel's errors, Applicant's plea was not knowingly or voluntarily entered."

On August 14, 2019, an evidentiary hearing was convened. Applicant proceeded with the hearing on all of the allegations set forth in his amended application. Additionally, Applicant raised an issue during testimony alleging Counsel misinformed Applicant that his guilty plea would not have an effect on his ability to continue employment with the National Guard. Since this issue was raised during testimony, it will be addressed in this order.

SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

Applicant's Testimony

Applicant testified that he is thirty-five years old and originally from Florida. Applicant testified he has lived in Rock Hill / York area since 2005. Applicant testified he is employed full-

time with the Army National Guard and Insulating Services. Applicant testified he lives on Rock Hill Army base and is married with two daughters.

Applicant testified the incident that led to his charges occurred when one of his daughters had a friend (Victim) stay the night. Applicant testified both daughters and Victim were watching a video with him and his wife. Applicant testified later that night Applicant and his wife went to bed. Applicant testified he was with his wife the whole time. Applicant testified he learned about three days later of the accusations when officers with York Police Department showed up at his work and arrested him. Applicant testified he was surprised. Applicant testified law enforcement did not interview his wife. Applicant testified he could not afford an attorney at that time so Counsel was appointed to represent him. Applicant testified he was originally charged with sexual assault or "something like that."

Applicant testified he met with Counsel numerous times. Applicant testified he reviewed discovery with Counsel and always maintained with Counsel that he did not commit this offense. Applicant testified, "I let him know right away I was innocent." Applicant testified the case lingered for a year and he felt pressured. Applicant testified Counsel told him if he took the plea he would not have to do fifteen to twenty years in prison. Applicant testified he felt terrified about that possibility. Applicant testified he did not want to take the deal at all and told Counsel that. Applicant testified he does not know what an Alford plea is and does not remember discussing that with Counsel. Applicant testified he just remembers the plea. Applicant testified he took the plea because he was frustrated with losing time at work and was being told by Counsel he could get twenty years in prison and he cannot do twenty years.

Applicant testified his understanding was that he would only be on the sex offender registry while he was on probation. Applicant testified he found out about the registry when he showed up for probation. Applicant testified the sex offender registry affects his life because he is trying

to build a home and it is hard to find a six month lease for a residence that is not near a park or a pool.

Applicant testified because of the probation officer informing the National Guard about his sex offender registry status, the National Guard was forced to put in an involuntary separation packet on him. Applicant testified he talked to Counsel about his status with the National Guard and Counsel told Applicant he would talk to someone he knew at the Department of Veteran's Affairs to see if the plea would affect Applicant's military status. Applicant testified the next time he met with Counsel, Counsel told him his contact at the Department of Veteran's Affairs said the plea would not affect his status. Applicant testified he relied on that information and, had he known it would have affected his status, he would not have taken the plea. Applicant testified he would have taken his case to trial had he known the plea would affect his military service. Applicant testified he loves the military and has been denied two deployments because of his convictions. Applicant testified he was under the impression he would be able to serve his country.

Applicant testified he told Counsel and the investigator that he did not have sexual contact with Victim. Applicant testified he asked Counsel to check for DNA and he does not believe that was done. Applicant testified he found out later that Victim had been taking alcohol and drinking it and hiding the cans in his daughter's bedroom. Applicant testified he was "absolutely" never alone with Victim. Applicant testified this was the second time he had ever met Victim because he had been away with the military.

Applicant testified he wishes someone would have helped him go to trial. Applicant testified he is not familiar with North Carolina v. Alford.[1] Applicant testified he would have liked

[1] 400 U.S. 25 (1970).

for his wife and daughter to be called as witnesses at trial. Applicant testified this is ruining his life.

On cross-examination, Applicant testified he understands he could face twenty years if he is successful on his post-conviction relief application. Applicant testified he thought he was pleading guilty to assault and battery third degree. Applicant testified he met with Counsel more than ten times. Applicant testified he went over the text messages and his recorded statements to law enforcement with Counsel. Applicant testified he did not recall waiving his constitutional rights. Once Applicant was able to review the guilty plea transcript, Applicant testified the transcript "says I did." Applicant testified he did not understand what waiving presentment on the first-degree assault and battery charge meant, but he never told the plea judge or Counsel that he did not understand. Applicant testified the transcript indicates he told the plea judge he was pleading freely and voluntarily; that he agreed with the facts the State recited in court; that he was satisfied with counsel; and that he was not threatened or coerced into pleading to his charges.

Applicant testified he also initialed next to the waiver of his constitutional rights on the plea waiver form. Applicant testified he also initialed the plea waiver form where it explained he was pleading under Alford and, based on the negotiated plea, would be on the sex offender registry. Applicant testified Counsel told him the sex offender registry was mandatory with probation. Applicant testified he was led to believe that he would only be on the sex offender registry while on probation. Applicant testified he did not know it was lifetime until he went to probation.

Applicant testified he recalled his burglary charge. Applicant testified part of the dismissal of that charge was that he pay $6,000 in restitution. Applicant testified the order he signed dismissing that charge also indicated he would have to be on the sex offender registry.

On re-direct examination Applicant testified Counsel did not talk to him about the sex offender registry. Applicant testified he did not understand the contributing to the delinquency of

a minor charge. Applicant testified if he had understood, he would have asked for a jury trial. Applicant testified he did not understand he was pleading to assault and battery first degree, he believed it was assault and battery third degree. Applicant testified he believes he got the assault and battery third degree from when he was going over all of the paperwork. Applicant testified he believes he would have been put in jail had he not signed the paperwork. Applicant testified he did not read the plea waiver form when he initialed next to assault and battery first degree. Applicant testified Counsel told him they would go over it after the plea.

Wife's Testimony

Wife testified she has been married to Applicant for eighteen years. Wife testified she and Applicant have two daughters. Wife testified she heard about the allegations two or three days after Victim left their home. Wife testified she was never interviewed by police and she was present in the home the entire night. Wife testified her daughter was never interviewed by police and they never spoke to Victim's family. Wife testified she only met Victim a few times before the allegations came out and did not know her family. Wife testified they were having a family movie night and nothing was out of the norm. Wife testified she and Applicant went to bed at the same time. Wife testified nothing odd happened. Wife testified that Victim seemed off, but her daughter said Victim is just like that. Wife testified they found Razberitas in her daughter's room, which she did not supply. Wife testified Victim was thirteen at the time and her daughter was fourteen. Wife testified she is positive she and Applicant went to bed at the same time. Wife testified she does not believe Applicant woke up in the middle of the night.

Wife testified they were prepared to take whatever steps needed to be taken to address the accusations. Wife testified Applicant went to meet with Counsel. Wife testified Applicant only told her about the guilty plea after it was said and done. Wife testified Applicant's impression

after the plea was that he was going to be discharged. Wife testified she feels Applicant did not know what was going on and she wishes she could have helped him more.

On cross-examination, Wife testified she only had one conversation with Counsel. Wife testified she met with Counsel again and was able to see the evidence the State had in the case. Wife testified she saw Applicant's statements to law enforcement. Wife testified she saw the text messages as well. Wife testified Applicant is currently in the military. Wife testified she thought Counsel was confident and would get Applicant off because there was nothing against Applicant.

Counsel's Testimony

Counsel testified he has been with the Sixteenth Circuit Public Defender's Office since 1990. Counsel testified he was appointed to Applicant's case. Counsel testified they were in a trial posture for about a year prior to Applicant's plea. Counsel testified the case was a "he said, she said." Counsel testified Victim accused Applicant of digital penetration and providing her with alcohol. Counsel testified looking at the evidence in the case, it would have been Victim's testimony versus the testimony of Applicant. Additionally, Counsel testified Applicant provided statements to law enforcement. Counsel testified what concerned him the most about the statements was that there were omissions left out. Counsel testified initially Applicant denied touching Victim or doing anything improper. Counsel testified, after further questioning, Applicant admitted to law enforcement to kissing Victim on the forehead when he went to bed. Counsel testified later Applicant admitted to law enforcement to kissing Victim on the lips and acknowledged that was a mistake. Counsel testified Victim is a thirteen year-old girl. Counsel testified Applicant also admitted to law enforcement to serving her alcohol.

Counsel testified Applicant told him that on the night of the incident his wife fell asleep on the couch and his daughter had gone to bed. Counsel testified it was important to note that Victim's story coincided with Applicant's statement that his wife fell asleep and his daughter went to bed

at the time that he touched her. Counsel testified, for digital penetration cases, medical evidence may not be present. Counsel testified Victim went to the hospital, she complained about pain, but no evidence was found. Counsel testified had they proceeded to a jury trial he would have harped on the lack of medical evidence at trial, but Victim's testimony could be enough to convict Applicant.

Counsel testified the Monday following the incident, Applicant texted Victim's friend, Lilly. Counsel testified law enforcement interviewed Lilly and "ripped" her phone. Counsel testified the number that texted Lilly was traced back to Applicant. Counsel testified it was the same number Applicant put on his paperwork with Counsel's office. Counsel testified Applicant texted, "Let's pretend like it didn't happen," among other things. Counsel testified he was very concerned about this evidence. Counsel testified there are different ways of interpreting the text messages, but in the end it would have been up to the jury as to whether the text messages were referring to Applicant providing alcohol to Victim or whether they were referring to Applicant touching Victim.

Counsel testified he did interview Wife. Counsel testified Wife told him that she fell asleep and that Wife and Applicant had provided alcohol to Victim. Counsel testified he told Wife she was lucky she was not charged as well. Counsel testified Wife and Applicant's daughter would have been potential witnesses at trial. Counsel testified he did not believe Wife would have been a good witness. Counsel testified Applicant's daughter did not say much to him.

Counsel testified he explained what an Alford plea was to Applicant. Counsel testified Applicant would be able to maintain his innocence, but agree there is a substantial likelihood that a jury would find him guilty of the charge. Counsel testified in his experience he has found it is very difficult for people to admit to sexual assault regardless of the circumstances. Counsel testified the State was adamant about the sex offender registry from the beginning. Counsel

testified he did not guarantee Applicant any results, but he told Applicant he did not think a judge would give him probation. Counsel testified the State provided a negotiated plea where Applicant could plead guilty to contributing to the delinquency of a minor and then plead under Alford to first-degree assault and battery. Counsel testified he told Applicant about the negotiated plea. Counsel testified he met with Applicant and Wife and showed Wife the videotaped statements Applicant made to law enforcement and the text messages Applicant sent to Lilly's phone.

Counsel testified the judge was aware that the sex offender registration was part of the negotiated plea. Counsel testified the State was adamant about the sex offender registration being part of the plea. Counsel testified he is not sure why the plea judge said he would have to make a finding regarding the sex offender registry. Counsel testified he cannot speak to the plea judge's or Applicant's state of mind. Counsel testified he told Applicant that the sex offender registry was a lifetime registration. Counsel testified he is unaware of our state offering anything other than lifetime registration.

Counsel testified he did not get into specifics about the National Guard and whether Applicant would be discharged or not because he could not advise him about that. Counsel testified he did reach out to a friend of his at the Department of Veteran's Affairs and they did not know either, so he was unable to provide any information to Applicant regarding any collateral consequence that would affect his military career.

Counsel testified at the beginning of his representation Applicant wanted to go to trial, and always said he did not touch Victim, but Applicant had to acknowledge the evidence against him. Counsel testified in the end, if Applicant had been found guilty of criminal sexual conduct he would have been in jail for a long time.

On cross-examination, Counsel testified he filed Rule 5 and Brady motions in Applicant's case and the State complied with his discovery motions. Counsel testified Wife's testimony during

the post-conviction relief hearing was not consistent with her statements to Counsel during their meeting. Counsel testified Wife admitted to providing alcohol to Victim. Counsel testified Applicant made his own assumptions about what would happen to him with the National Guard after his plea. Counsel testified he did not advise Applicant regarding the National Guard. Counsel testified it was in Applicant's best interest to plead guilty. Counsel testified it was ultimately Applicant's decision to take the negotiated plea offer from the State. Counsel testified they provided a counter-offer to the State after the State's initial offer. Counsel testified Applicant pled to his own counter-offer, which included the sex offender registry. Counsel testified he discussed first-degree assault and battery with Applicant. Counsel testified there was never an offer or a discussion about assault and battery third-degree. Counsel testified if Applicant had wanted to proceed to trial, he would have taken Applicant's case to trial.

Counsel testified sometimes there can be medical evidence in cases like this, and, had Applicant elected to go to trial, he would have attacked the lack of medical evidence in this case. Counsel testified, however, in his experience medical experts will testify that sometimes medical evidence is present in these cases and sometimes it is not.

On re-direct, Counsel testified Applicant initially admitted to kissing Victim on the forehead and then later admitted to kissing her on the lips. Counsel testified it was his word against Victim's word and there was no DNA. Counsel testified he did not know of Victim making allegations of this nature before. Counsel testified the main emphasis in attacking her credibility would have been the consumption of alcohol. Counsel testified that based on Applicant's inconsistent statements to law enforcement, serving a thirteen year old alcohol, and the text messages that Applicant's case looked bad.

Shelton's Testimony

Shelton, the assistant solicitor, testified she has been with the solicitor's office since 2002 and all of her practice has been in criminal law. Shelton testified she complied with Counsel's discovery motions. Shelton testified she met with Victim three times and believes the strongest evidence against Applicant would have been Victim's testimony and the text messages. Shelton testified Victim was consistent in her statements each time she talked with her. Shelton testified Victim called the number the text messages were coming from and Applicant answered the phone. Shelton testified the same phone number was also tied to Applicant in his burglary case. Shelton testified Applicant also told law enforcement he may have touched Victim's thigh. Shelton testified it was a fairly strong sex case.

Shelton testified Victim's main concern was that Applicant be on the sex offender registry. Shelton testified they did not want him to go to prison for a very long time, but they also did not want him doing this to other girls. Shelton testified she made a note in her file that she made an offer to Counsel and Counsel wanted some additional time to discuss the case with Applicant. Shelton testified she was adamant about the sex offender registration but flexible on the time Applicant would serve. Shelton testified she spoke with Counsel at least once a week regarding this case. Shelton testified they discussed the evidence against Applicant as well. Shelton testified at some point around June 2016, Counsel came back with a counter-offer for assault and battery first-degree with sex offender registration. Shelton testified Victim agreed to the counter-offer. Shelton testified the sex offender registration was always part of plea negotiations. Shelton testified she never indicated the sex offender registration would be temporary.

On cross-examination, Shelton testified her negotiations are on the record of the plea hearing. Shelton testified she does not know why the plea judge said he would have to make a finding for the sex offender registry. Shelton testified sometimes judges get in a groove with their

colloquy. Shelton testified defense attorneys typically do not share what their investigation shows. Shelton testified Victim was never inconsistent.

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, guilty plea hearing transcript, 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 not made aware that his plea to assault and battery first-degree would result in having to be placed on the sex offender registry.

Applicant alleges he believed he would only be on the sex offender registry while he was on probation. Applicant alleges the plea judge's colloquy confused him as the plea judge indicated he would have to make a finding regarding the sex offender registration. However, Counsel testified he went over the sex offender registration with Applicant and explained it was a lifetime registration. Shelton also testified there was never a discussion of a plea offer that did not include the sex offender registration and Applicant pled to his own counter-offer, which included the sex offender registration.

Upon review of this record, it is clear Applicant was informed by Shelton and the plea judge of the charges he was pleading to and the requirement that he be placed on the sex offender registry. (GP Tr. 5, 6, 8, 12.) It is also clear Applicant acknowledged the sex offender registration

would be part of his plea as he initialed next to the terms of his negotiated plea on the plea waiver form. (Plea Waver Form, p. 2.) Although Applicant testified he was confused by the plea judge's comments during his plea hearing, the record clearly shows the plea judge imposed the sex offender registration on Applicant at the conclusion of the plea and Applicant did not protest to Counsel or the plea judge or indicate to either that he was confused. (GP Tr. 12.)

This Court finds Applicant has failed to establish any deficiency on behalf of Counsel, as Counsel testified he informed Applicant he would have to be on the sex offender registry for life and Applicant still proceeded with his negotiated plea. Additionally, Applicant has failed to establish any resulting prejudice from any alleged deficiency as Applicant was clearly aware of his charges and the imposition of the sex offender registration as part of his negotiated plea prior to entering his plea. Based on the forgoing, Applicant has failed to meet his burden to establish deficiency or prejudice as set forth in Strickland and this allegation must be denied and dismissed with prejudice.

Involuntary Plea

Counsel failed to investigate the facts of the case, seek material discovery, interview witnesses that were present for the offense conduct, and advise Applicant in regards to entering the Alford plea. Applicant was deprived of an informed evaluation of his chances in proceeding to trial. Therefore, Applicant's plea was not knowingly and voluntarily entered.[2]

Applicant alleges Counsel was constitutionally ineffective for failing to take Applicant's case to trial. Applicant testified he met with Counsel numerous times[3] and went over discovery with Counsel. Applicant testified Counsel told him if he took the plea offer he would not have to do twenty years in prison. Applicant testified he did not want to take the deal and only took it because he was frustrated with losing time at work and being told by Counsel that he could get

[2] This section combines #2 and #3 of Applicant's allegations.
[3] On cross-examination, Applicant testified he met with Counsel more than ten times.

twenty years in prison. Applicant testified he told Counsel and the investigator from Counsel's office that he did not have sexual contact with Victim. Applicant testified he asked Counsel to check for DNA and he does not believe that was done. Applicant testified he wished someone would have helped him go to trial. Applicant testified he wanted his wife and daughter to be called as witnesses at trial. Applicant testified this is ruining his life.

Counsel testified he filed discovery motions in this case and the State complied with those motions. Shelton also testified Counsel filed discovery motions and she complied with those motions. Counsel testified he went over discovery with Applicant and Wife. Counsel testified he would have taken Applicant's case to trial had Applicant wanted to proceed to trial. Counsel testified Applicant pled to the counter-offer they made to the State and it was Applicant's decision to plead rather than go to trial. Counsel testified there was no DNA or medical evidence in this case and, had they proceeded to trial, he would have argued that to the jury. Counsel testified it is his experience that medical experts will testify that sometimes there is medical evidence in this case and sometimes there is not. Counsel testified he believed it was in Applicant's best interest to take the plea in this case because the evidence did not look good. Counsel further testified Wife's testimony at the post-conviction relief hearing was not consistent with what she told Counsel and Counsel did not believe she would be a good witness.

A review of the record shows Applicant knew of his constitutional right to a jury trial and waived that along with his other constitutional rights during his plea. Applicant also initialed and signed a plea waiver form that further explained his right to a jury trial and other constitutional rights and Applicant, after initialing and signing the form, elected to proceed with his plea hearing.

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

WSM 1/16

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).

Applicant entered a guilty plea to the contributing to the delinquency of a minor charge, but elected to enter an Alford plea to the first-degree assault and battery charge. Alford pleas are treated exactly the same as a standard guilty plea. State v. Herndon, 403 S.C. 84, 742 S.E.2d 375 (2013) (citations omitted). "A guilty plea constitutes a waiver of nonjurisdictional defects and claims of violations of constitutional rights." Jamison v. State, 410 S.C. 456, 467, 765 S.E.2d 123, 129 (2014) (citing State v. Rice, 401 S.C. 330, 331-32, 737 S.E.2d 485, 485-86 (2013); Hyman v. State, 397 S.C. 35, 44, 723 S.E.2d 375, 379 (2012)).

This Court finds Applicant has failed to establish any deficiency on behalf of Counsel as Counsel testified there was an investigator on this case and he did obtain and review discovery with Applicant and Wife. Counsel also testified he would have argued the lack of DNA or medical evidence in this case to the jury had Applicant wanted to proceed to a jury trial. However, Applicant ultimately chose to take the negotiated plea, which Counsel testified was in his best interest. Additionally, Counsel testified he did not believe Applicant had a good chance of being

found not guilty at trial. According to Shelton's testimony, she also assessed this case as being a fairly strong case against Applicant. The record also establishes Applicant knowingly, intelligently, and voluntarily entered his plea as the plea court conducted a thorough colloquy with Applicant prior to accepting his plea and imposing the probationary sentence.

Applicant has also failed to establish any resulting prejudice from the alleged deficiency. Counsel testified he had prepared to take Applicant's case to trial for a year prior to the plea. Counsel testified it was Applicant's decision to enter his plea and, had Applicant wanted to proceed to trial, Counsel testified he would have taken Applicant's case to trial. Based on the forgoing, Applicant has failed to meet his burden to establish deficiency and prejudice as set forth in Strickland and these allegations must be denied and dismissed with prejudice.

Applicant's Military Status

Applicant testified Counsel told him he would talk to someone at the Department of Veteran's Affairs to see if Applicant's plea would affect his military status. Applicant testified the next time he met with Counsel, Counsel told him his plea would not affect his military status. Applicant testified he relied on that information and, had he known it would have affected his status, he would not have taken the plea.

Counsel testified he did reach out to a friend of his at the Department of Veteran's Affairs to see if Applicant would be discharged because of his plea and Counsel testified his friend did not know the answer. Counsel testified he did not provide Applicant any advice regarding the impact his plea would have on his military status because he did not know how the plea would impact his military career. Counsel testified whether the military was going to discharge Applicant or not was a collateral consequence of Applicant's plea and he provided him no advice on the matter. Counsel further testified Applicant told him he spoke to someone at the National Guard and assured Counsel he would be fine going forward with his plea. Counsel testified any

misunderstanding regarding Applicant's military status came from Applicant's own investigation into the matter with the National Guard.

Plea counsel is not required to specifically advise a defendant of a collateral consequence of a plea, but when counsel undertakes to give advice on a collateral consequence and that advice is erroneous, grounds exist for post-conviction relief. See Smith v. State, 329 S.C. 280, 283, 494 S.E.2d 626, 628 (1997); Hinson v. State, 297 S.C. 456, 458, 377 S.E.2d 338, 339 (1989) (finding plea counsel ineffective for giving incorrect advice regarding parole eligibility). However, the applicant must prove he relied on the misinformation to receive post-conviction relief. Frasier, 351 S.C. at 389, 570 S.E.2d at 174–75 (citing Smith, 329 S.C. 280, 494 S.E.2d 626; Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)).

This Court finds Counsel did not advise Applicant as to the impact his plea would have on his military status. Applicant has failed to show this Court any deficiency on behalf of Counsel as Counsel did not misrepresent the impact the plea would have on Applicant's military career. Additionally, Applicant has failed to show this court any resulting prejudice from the alleged deficiency as Applicant, who was currently in the National Guard at the time of his plea, researched the impact of his plea with the National Guard and told Counsel he would not be discharged as a result of his plea. Any misunderstanding regarding the impact of his plea on his military career was based on information Applicant obtained on his own from the National Guard, not Counsel. Therefore, this Court finds Applicant has failed meet his burden as set forth in Strickland and this allegation must be 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:

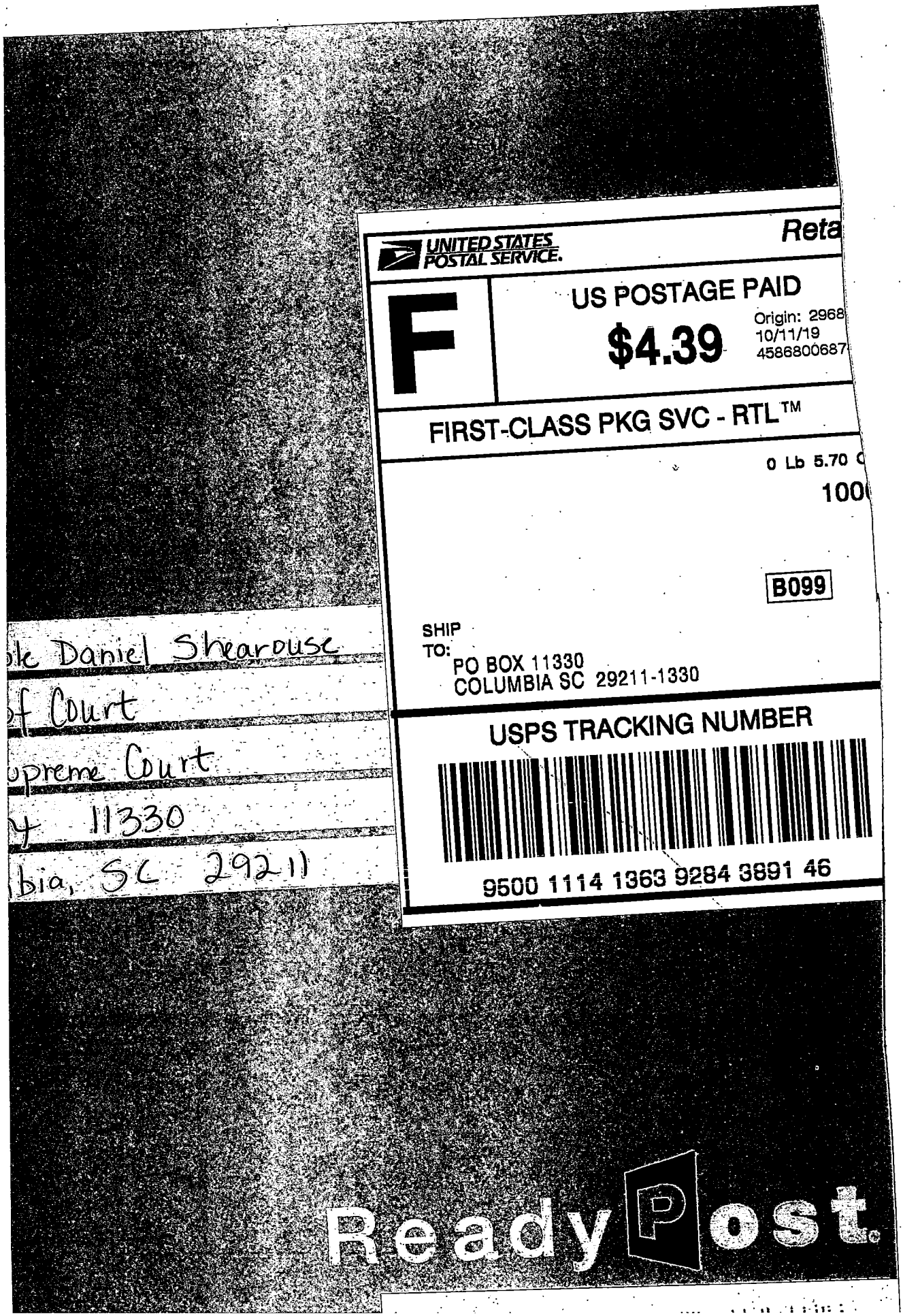
1. The application for post-conviction relief is denied and dismissed with prejudice.

AND IT IS SO ORDERED this 3 day of September, 2019.

#2761

WILLIAM A. MCKINNON
Presiding Judge
Sixteenth Judicial Circuit

York, South Carolina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