WALLER
LAW GROUP

November 5, 2019

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

Re: Ibn Gadson vs. State of South Carolina
C/A No: 2018-CP-40-02515

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. Gadson 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: Brianna L. Schill, South Carolina Office of Attorney General

Enclosures

Waller Law Group
1116 Blanding Street, Suite 2B
Columbia, SC 29201

803-520-7278
www.wallerlawgroup.com
jonathan@wallergroupsc.com

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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Diane Schafer Goodstein, Circuit Court Judge

2018-CP-40-02515

Ibn Gadson, # 373198,

Appellant,

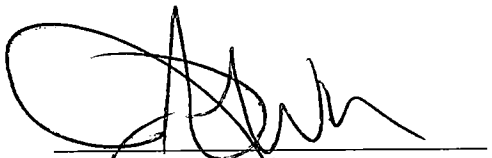
v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Ibn Gadson, # 373198, appeals the Order of Dismissal denying his Application for Post-Conviction Relief filed October 24, 2019, issued by the Honorable Diane Schafer Goodstein, Presiding Judge, Fifth Judicial Circuit.



Jonathan D. Waller

Waller Law Group
SC Bar No.: 76290
1116 Blanding Street
Suite 2B
Columbia, SC 29201
803-520-7278 (phone)
jonathan@wallergroupsc.com
ATTORNEY FOR PETITIONER

November 5, 2019

Other Counsel of Record:
Brianna L. Schill, Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3319

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Diane Schafer Goodstein, Circuit Court Judge

2018-CP-40-02515

Ibn Gadson, # 373198,

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, Brianna L. Schill, 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

November 5, 2019

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT
Ibn Gadson, #373198, Applicant, v. State of South Carolina, Respondent.	Case No.: 2018-CP-40-02515 **ORDER OF DISMISSAL**

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed by Ibn Gadson (Applicant) on May 8, 2018. Respondent made its Return on July 10, 2018. An evidentiary hearing into the matter was convened on June 20, 2019, at the Richland County Courthouse before the undersigned. Jonathan D. Waller, Esquire, represented Applicant. Assistant Attorney General Brianna L. Schill of the South Carolina Attorney General's Office represented Respondent.

At the hearing, Applicant testified on his own behalf. Tivis C. Sutherland, IV, Esquire, Applicant's plea counsel, also testified. This Court had before it a copy of the records of the Richland County Clerk of Court, records from the South Carolina Department of Corrections, the PCR application, Respondent's Return, and the plea transcript. 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 is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. During its April 2016 term, the Richland County Grand Jury indicted Applicant for murder

(2016-GS-40-1659), armed robbery (2016-GS-40-1661), two counts of kidnapping (2016-GS-40-1665, -1668), possession of a weapon during the commission of a violent crime (2016-GS-40-1666), attempted armed robbery (2016-GS-40-1667), and first-degree assault and battery (2016-GS-40-1670).

In March 2017, Applicant was subsequently indicted for second-degree assault and battery by mob (2016-GS-40-0335), and participating in a riot by prisoners (2017-GS-40-0334). Additionally, Applicant waived presentment on one count of throwing bodily fluids on a correctional officer (2017-GS-40-4243). Tivis C. Sutherland, Esquire, (Counsel) represented Applicant. Assistant Solicitor Kathryn Cavanaugh, Esquire, prosecuted the case.

On July 19, 2017, Applicant pleaded guilty before the Honorable Jocelyn Newman as indicted to armed robbery, attempted armed robbery, and first-degree assault and battery, and to the lesser-included charges of accessory after the fact to murder and third-degree assault and battery by mob. Pursuant to a negotiation with the State, Judge Newman sentenced Applicant to imprisonment for concurrent terms of twenty-five years for armed robbery, twenty years for attempted armed robbery, fifteen years for accessory after the fact, ten years for first-degree assault and battery, and one year for third-degree assault and battery by mob.[1] Judge Newman also sentenced Applicant to a consecutive term of time-served for throwing of fluids on a correctional officer.

ALLEGATIONS

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

[1] In exchange for his guilty plea, the State also dropped several charges, including: (1) two counts of kidnapping; (2) one count of possession of a weapon during a violent crime; and (3) one count of rioting. (GP Tr. 4, lines 11-17).

"Ineffective Assistance of Counsel"

a. "Trial counsel gave erroneous advice to plea guilty"
b. "My counsel told me if I didn't plea I could've face the death penalty"

SUMMARY OF TESTIMONY

Applicant's Testimony

Applicant's Direct Examination

Applicant testified he received three different sets of charges. Applicant testified Counsel represented him because the Public Defender's office had a conflict with one of his co-defendants. Applicant testified he first met with Counsel in January or February 2016. Applicant stated only the first set of charges were pending at the time of his first meeting with Counsel. Applicant claimed they did not discuss much information regarding his case, but that they got to know each other at that meeting. Applicant stated Counsel wanted to get a better understanding of his case during their initial meeting, and they did not discuss discovery at that time.

Applicant indicated he and Counsel discussed his constitutional rights. Applicant testified he gave a statement to law enforcement, and he discussed this statement with Counsel. Applicant stated he and Counsel did not discuss whether they would challenge his statement. Applicant also testified his co-defendant gave a statement do law enforcement, but he and Counsel did not discuss it.

Applicant testified his second set of charges stemmed from a confrontation in jail. Applicant testified he had met with Counsel two or three times at the time he received his second set of charges. Applicant testified he and Counsel discussed his second set of charges and how the new charges would affect his preexisting charges. Applicant claimed he and Counsel did not meet after he received his third set of charges.

Applicant claimed Counsel never discussed discovery with him with the exception of the statements he made to law enforcement. Applicant alleged he never knew about any DNA evidence found at the scene. Applicant testified he was aware of the video of the incident, but he never saw the video itself.

Applicant stated Counsel never discussed defenses to Applicant's cases. Applicant also testified Counsel never began preparing for trial. Applicant admitted he did not give Counsel contact information for any possible witnesses that Counsel could investigate. Applicant testified he decided to plead guilty because his co-defendant had already done so, and Applicant felt pressured to plead guilty. Applicant testified that at the time of his guilty plea, Counsel was not prepared for trial. Applicant further testified he pleaded guilty because Counsel told him he would be sentenced to death if he did not plead guilty. Applicant testified he did not ask Counsel questions about the death penalty.

Applicant testified he believes Counsel did not seek information regarding what evidence the State had against him. Applicant also claimed Counsel did not explain the evidence to him. Applicant claimed that if he had understood the evidence the State had against him, he would not have pleaded guilty.

Applicant's Cross-Examination

On cross-examination, Applicant testified he and Counsel reviewed his statements, but he and Counsel did not review any DNA or video evidence. Applicant recalled telling the plea court he wished to waive his constitutional rights. Applicant recalled telling the plea court he was pleading guilty freely and voluntarily. Applicant recalled telling the plea court he did not need more time to talk to Counsel, and he understood discussions he had with Counsel. Applicant recalled telling the plea court he was pleading guilty because he was guilty.

Applicant's Re-Direct Examination

On re-direct examination, Applicant testified he learned information after his guilty plea hearing that changed his opinion regarding whether he was satisfied with his representation from Counsel. Applicant testified he did not have enough information at the time of his guilty plea hearing to decide if he wanted to plead guilty or not.

Counsel's Testimony

Counsel's Direct Examination

Counsel testified he has been practicing law for fifteen years and 99.9% of his practice has been in criminal law. Counsel testified he became involved in Applicant's case because the Public Defender's office can only represent one defendant in a co-defendant situation.

Counsel testified Applicant told him that Applicant and his co-defendant went to Columbia to meet women and smoke marijuana. Counsel stated Applicant's plans fell through, and Applicant and his co-defendant planned to meet someone to buy marijuana in a parking lot. Counsel testified Applicant stated he and his co-defendant simultaneously decided to rip off the drug dealer (Victim). Counsel testified Applicant sat in the vehicle while his co-defendant stood outside by Victim Counsel testified Applicant struck Victim with a gun, but Applicant's co-defendant shot Victim and Victim subsequently died.

Counsel testified he reviewed all relevant discovery with Applicant, but that they reviewed the discovery "a little at a time." Counsel stated discovery included statements, incident reports, video, and DNA evidence found on Victim's car. Counsel testified he reviewed the statements and incident reports with Applicant. Counsel testified he did not show the video to Applicant but that he discussed the contents with Applicant. Counsel testified Applicant knew the video existed at the time he pleaded guilty. Counsel testified he also discussed the DNA evidence with Applicant, and

similarly, Applicant knew of the existence of the DNA evidence at the time of his guilty plea. Counsel testified he did not hire an investigator.

Counsel testified he and Applicant discussed trial strategy "intermittently." Counsel testified he told Applicant if the State wanted to pursue the murder charge, Applicant could get thirty years, day-for-day. Counsel testified he did not tell Applicant he would receive the death penalty if he did not plead guilty. Counsel testified if Applicant actually believed he was going to receive the death penalty, it would have been due to a misunderstanding. Counsel could not recall a conversation where the death penalty was mentioned.

Counsel testified he believed it was in Applicant's best interest to plead guilty, but he would have been prepared to try Applicant's case if Applicant ultimately wanted a trial.

Counsel's Cross-Examination

On cross-examination, Counsel testified he could not specifically recall what he told Applicant regarding the video evidence other than informing Applicant the incident had been captured on video. Counsel recalled "haggling" with the Solicitor and trying to obtain the best possible plea deal in light of the fact that Applicant was not the shooter.

Counsel's Re-Direct Examination

On re-direct examination, Counsel testified Applicant never told him he did not want to plead guilty because Applicant had not viewed the video. Counsel further testified the Solicitor mentioned the video evidence at Applicant's guilty plea hearing and Applicant still chose to plead guilty. Counsel testified Applicant's co-defendant admitted to shooting the Victim.

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 and his plea was not voluntarily and knowingly made. 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 (1984)). 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.

This Court finds Applicant failed to prove Counsel's performance was deficient in any way, nor was Applicant prejudiced by Counsel's performance. Accordingly, for the reasons below, this Court denies and dismisses Applicant's application with prejudice.

Applicant's Involuntary Guilty Plea Based on Counsel's Alleged Erroneous Advice

Applicant alleges his guilty plea was not voluntarily and knowingly made because he received erroneous advice from Counsel and because Counsel did not review discovery with him. This Court disagrees and finds Applicant knowingly and voluntarily plead guilty.

Applicant testified Counsel never discussed discovery with him, with the exception of the statements Applicant made to law enforcement. Applicant alleged he never knew about any DNA evidence found at the scene. Applicant testified he was aware of the video of the incident, but he never saw the video itself. Applicant testified Counsel discussed Applicant's statement to law enforcement, but they did not discuss his co-defendant's statement.

As Applicant testified, he informed the plea court he was not coerced or threatened to plead guilty. (GP Tr. 13, lines 10-14). Applicant also testified at his plea hearing that he was pleading guilty on his own free will and accord. (GP Tr. 13, lines 15-17). At that time, Applicant testified it was his own decision to plead guilty. (GP Tr. 13, lines 18-20). Applicant further testified at his plea hearing that Counsel had done everything he asked him to do. (GP Tr. 15, lines 7-9). Applicant testified at his PCR hearing he recalled telling the plea court that he was satisfied with Counsel, and he did not need more time with Counsel.

At the evidentiary hearing, Counsel testified he reviewed all relevant discovery with Applicant. Counsel stated the discovery included statements, incident reports, video, and DNA evidence found on Victim's car. Counsel testified he reviewed the statements and incident reports with Applicant. Counsel testified he did not show the video to Applicant but he discussed it with Applicant. Counsel testified Applicant knew the video existed at the time he pleaded guilty. Counsel testified he also discussed the DNA evidence with Applicant, and similarly, Applicant knew of the existence of the DNA evidence at the time of his guilty plea.

Applicant also alleges Counsel was ineffective for telling him he would receive the death penalty if he did not plead guilty, and that but for this alleged statement, Applicant would have proceeded to trial.

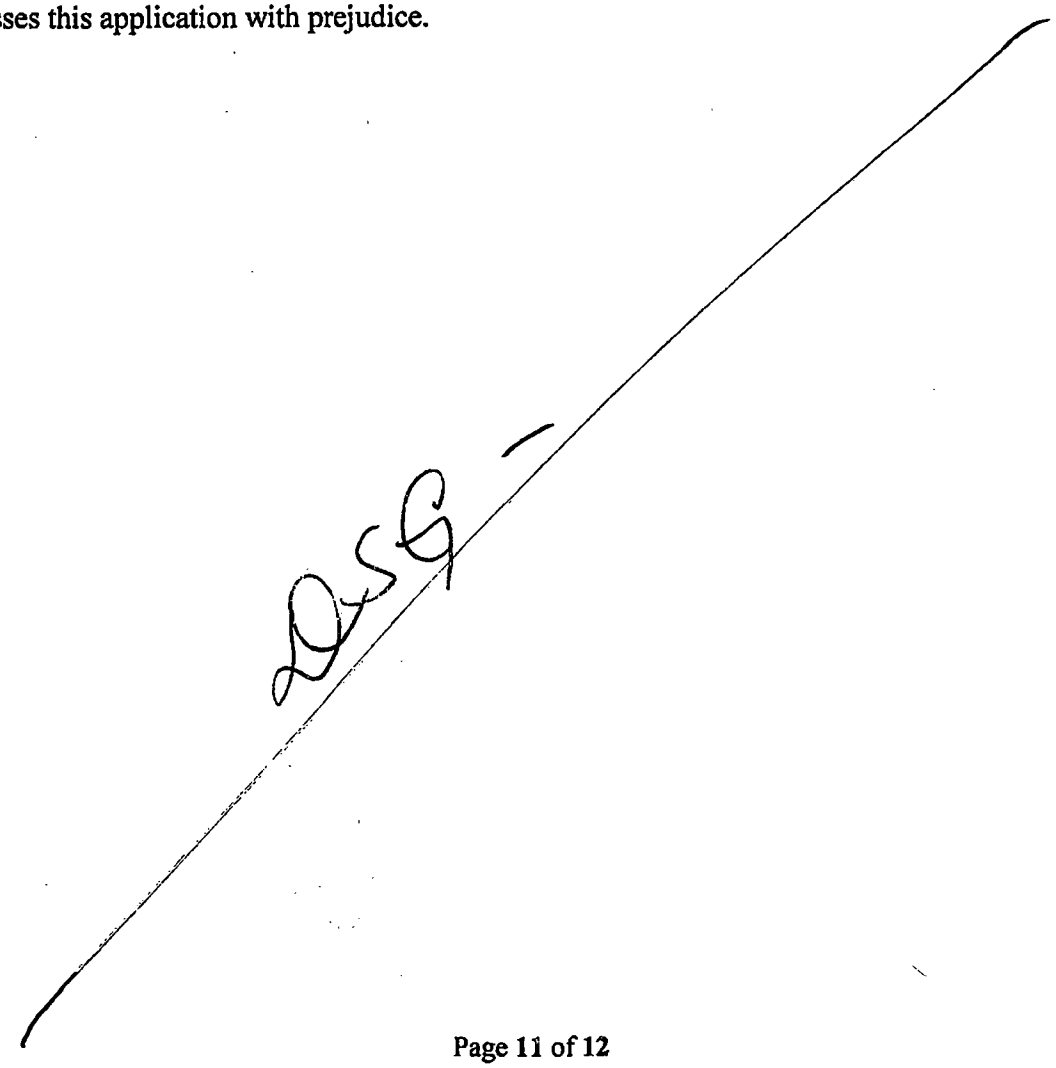
Applicant testified at the evidentiary hearing Counsel told him he would receive the death penalty if he did not plead guilty. Applicant testified he pleaded guilty based on this alleged statement. However, Counsel testified he did not tell Applicant he would receive the death penalty. Counsel testified he told Applicant if the State wanted to pursue the murder charge, Applicant could get thirty years, day-for-day. Counsel further testified he believed it was in Applicant's best interest

to plead guilty, but that had Applicant wanted a trial, he would have been prepared to try Applicant's case.

In evaluating issues concerning guilty pleas, this Court will consider the entire record, including the transcript of the guilty plea proceeding and the evidence presented at the post-conviction relief hearing. Roddy v. State, 339 S.C. 29, 528 S.E.2d 418 (2000). Voluntariness of a guilty plea is not merely determined by an examination of a specific inquiry by the plea court alone but rather is determined by the record of both the guilty plea proceeding and the post-conviction relief hearing. Id. In order to find a guilty plea was knowingly and voluntarily entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238 (1969). Further, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant; thus, an applicant's right to contest the validity of such a plea is usually foreclosed. Dalton v. State, 376 S.C. 130, 137–38, 654 S.E.2d 870, 874 (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Therefore, admissions "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." Id. (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975)); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

This Court finds the testimony of Counsel credible while also finding Applicant's testimony not credible. Counsel discussed the video evidence, the DNA evidence, and both statements with Applicant. The credible evidence shows Applicant was aware of the existence of both the DNA and video evidence, but he still opted to enter a guilty plea without viewing the evidence himself. This Court finds Counsel did not tell Applicant he would receive the death penalty if Applicant did not plead guilty. The transcript reflects Counsel told the plea court he explained to Applicant the charges against him and the possible punishment for each charge. (GP Tr. 4). Furthermore, when

asked at the evidentiary hearing why he ultimately pleaded guilty, Applicant stated he did so because his co-defendant was previously sentenced, and he felt pressured to plead guilty by some unnamed and unspecified influence or person. Applicant did not indicate he pleaded guilty due to this alleged statement by Counsel. This Court finds Applicant ultimately chose to take the negotiated plea, and agrees with Counsel's testimony doing so was in his best interest. Several other charges were dismissed in exchange for Applicant's guilty plea. Additionally, Applicant told the plea court he was freely and voluntarily pleading guilty, he was satisfied with his representation from Counsel, and that Counsel had done everything Applicant asked him to do. Accordingly, this Court finds Applicant freely and voluntarily entered his guilty plea, and therefore, denies and dismisses this application 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 the Respondent.

AND IT IS SO ORDERED.

DIANE SCHAFER GOODSTEIN
Presiding Circuit Court Judge
Fifth Judicial Circuit

10/14, 2019

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