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December 3, 2019

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

RECEIVED

DEC 09 2019

S.C. SUPREME COURT

RE: William S. Pegues #261269 v. State of South Carolina
2017-CP-13-0252

Dear Mr. Shearouse:

Please find enclosed a Notice of Appeal along with the accompanying Order for the above-referenced matter. By way of this letter I am copying the Office of Appellate of Defense, as I was appointed to represent Mr. Pegues.

Best regards,

L. Sherril Alford, Esquire

cc: William S. Pegues
Jacob A. Isenberg, Assistant Attorney General
Chesterfield County Clerk of Court
Della White, Office of Appellate Offense

STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

APPEAL FROM CHESTERFIELD COUNTY
Court of Common Pleas

DEC 09 2019

The Honorable Brooks P. Goldsmith, Circuit Court Judge

S.C. SUPREME COURT

Case No. 2017-CP-13-0252

William S. Pegues, #261269, Petitioner,

v.

State of South Carolina, Respondent.

NOTICE OF APPEAL

Applicant, William S. Pegues, appeals the order of the Honorable Brooks P. Goldsmith, dated September 19, 2019, and filed September 30, 2019.

December 3, 2019



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ATTORNEY FOR APPLICANT

Opposing Counsel:
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PO Box 11549
Columbia, SC 29211-1549

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHESTERFIELD COUNTY
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DEC 09 2019

The Honorable Brooks P. Goldsmith, Circuit Court Judge
S.C. SUPREME COURT

Case No. 2017-CP-13-0252

William S. Pegues, #261269, Petitioner,

v.

State of South Carolina, Respondent.

PROOF OF SERVICE

I, L. Sherril Alford, certify that I have served the within Notice of Appeal on Respondent on December 4, 2019 by depositing a copy of the same in the United States mail, postage prepaid, addressed to:

Jacob A. Isenberg, Assistant Attorney General
S.C. Attorney General's Office
PO Box 11549
Columbia, SC 29211-1549

I further certify that all parties required by Rule to be served have been served.

December 3, 2019



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STATE OF SOUTH CAROLINA
COUNTY OF CHESTERFIELD

) IN THE COURT OF COMMON PLEAS
) FOR THE FOURTH JUDICIAL CIRCUIT
)

William S. Pegues,
S.C.D.C. No. 261269,

) Case No.: 2017-CP-13-00252
)
)

Applicant,

)
) **ORDER OF DISMISSAL**
)

v.

State of South Carolina,

)
)
)

Respondent.

)
)
)

2019 SEP 30 PM 12: 06
Wanda C. Miles
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

This matter comes before the Court by way of an application for post-conviction relief filed by William S. Pegues ("Applicant") on April 28, 2017. Respondent made its return on December 4, 2017. The Court convened an evidentiary hearing into the matter on August 21, 2017, at the Chesterfield County Courthouse. Applicant was present at the hearing and represented by Sherril Alford, Esquire. Jacob A. Isenberg, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's plea counsel, Ashley McIntyre, Esquire ("Counsel") also testified. The Court had before it Applicant's records from the South Carolina Department of Corrections, a copy of the original plea transcript, the records of the Chesterfield County Clerk of Court regarding the subject convictions, Applicant's direct appeal records, and pleadings. After a thorough review of all evidence and testimony in the record, this Court finds Applicant's application should be dismissed with prejudice.

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Chesterfield County Clerk of Court. Applicant was indicted at the March

2016 term of the Chesterfield County Grand Jury for burglary, first degree (2016-GS-13-00077), assault and battery of a high and aggravated nature (2016-GS-13-00078), and possession of a weapon during the commission of a violent crime (2016-GS-13-00079). Ashley McIntyre represented Applicant, and Mary T. Johnson-Lee, of the Fourth Circuit Solicitor's Office, prosecuted the case.

On January 10, 2017, Applicant pled guilty as indicted. The Honorable Paul M. Burch sentenced Applicant to imprisonment for concurrent terms of seven years for ABHAN, and five years for possession of a weapon during the commission of a violent crime. Applicant again appeared before the Court on January 11, 2017, at which time Judge Burch sentenced him to a concurrent term of fifteen years for the burglary.

Applicant, by and through representation, filed a timely notice of appeal wherein Counsel indicated that she was "not aware of an appellate issue preserved for appeal. [Counsel] only filed this Notice of Appeal because my client requested such." By order dated February 16, 2017, the South Carolina Court of Appeals dismissed the appeal for want of a sufficient explanation as required by Rule 203(d)(1)(B)(iv), SCACR. State v. Pegues, S.C. Ct. App. Order filed February 16, 2017. The Remittitur was issued on March 6, 2017.

II. CURRENT ALLEGATIONS

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

1. Ineffective Assistance of Counsel
 - a. 'counsel failed to adequately investigate'
2. Involuntary Guilty Plea
 - a. "counsel was unwilling to adequately assist me had I chosen to take counsel's erroneous advice and went to trial to prove my innocence"
3. Due Process Violation

Applicant requests relief as follows:

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Wanda C. Mills
CLERK OF COURT
CHESTERFIELD COUNTY, SC

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CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

- “Vacate sentences and convictions and remand for new trial”

At the evidentiary hearing, Applicant proceeded forward on allegations of ineffective assistance of counsel and an involuntary guilty plea. However, Applicant did not provide any evidence or testimony about his due process violation allegation. Therefore, this Court finds Applicant’s allegation regarding a due process violation is dismissed with prejudice.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed 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 records submitted to it by the parties and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented.

A. Ineffective Assistance of Counsel

Applicant’s allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his 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, Applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668, 686 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland. First, Applicant must prove that counsel’s performance was deficient. Strickland, 466 U.S. at 686; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its

"reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). "When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect." Yarborough v. Gentry, 540 U.S. 1, 5 (2003) (citing Strickland, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. Cullen v. Pinholster, 563 U.S. 170, 196 (2011); Harrington v. Richter, 562 U.S. 86, 109-10 (2011). "[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight." Yarborough at 6; see also Murphy v. Davis, 901 F.3d 578, 592 (5th Cir. 2018) ("[C]ounsel's performance need not be optimal to be reasonable."). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

Second, counsel's deficient performance must have prejudiced 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. "The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury." United States v. Basham, 789 F.3d 358, 371-72 (4th Cir. 2015) (quoting Elmore v. Ozmint, 661 F.3d 783, 858 (4th Cir. 2011)).

In the context of a guilty plea, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he/she would not have pleaded guilty and would have insisted

Wanda C. Hiles
CLERK OF COURT
CHEROKEE COUNTY, S.C.
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on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985). Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. See Blackledge v. Allison, 431 U.S. 63, 73-74 (1977) ("Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible."). Statements made during a guilty plea should be considered conclusively, unless an Applicant presents valid reasons why he or she should be allowed to depart from the truth of his statements. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Crawford v. United States, 519 F.2d 347, 350 (4th Cir. 1975)).

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. Strickland, 466 U.S. at 696. 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. Id. at 696-97.

Failure to Investigate Witnesses

Applicant contends Counsel deficiently failed to interview witnesses present during the incident. In reviewing a claim that defense counsel failed to properly investigate a defense to a crime, a court's principle concern is whether the investigation "was itself reasonable." Taylor v. State, 404 S.C. 350, 364, 745 S.E.2d 97, 104 (2013). However, Counsel is not deficient in conducting a reasonable investigation as long as they interview potential witnesses "when it is reasonable to do so." Edwards v. State, 392 S.C. 449, 457, 710 S.E.2d 60, 65

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CLERK OF COURT
CHRISTENSEN COUNTY, S.C.

Here, Applicant testified there were several people in the house where the incident took place. Applicant testified some of them witnessed him being brutally beaten by a resident of the home. Applicant also testified one of them actually gave him permission to enter the home. Finally, Applicant testified he notified Counsel to interview all of them.

On the other hand, Counsel credibly testified she investigated all the factual witnesses identified by law enforcement. Counsel credibly recalled law enforcement turned over multiple statements from all named eyewitnesses. Counsel credibly testified Applicant did not provide her with any additional individuals to investigate beyond those identified by law enforcement. Moreover, Counsel credibly testified she advised Applicant being assaulted inside the residence was not a defense to first degree burglary. Therefore, Counsel credibly testified witnesses corroborating him being beaten would not likely be seen as relevant. Additionally, Counsel credibly testified she reviewed all statements taken by law enforcement. Counsel credibly testified the statements taken did not reflect Applicant had permission to enter the home. In fact, Counsel credibly recalled residents of the home stated they only realized Applicant entered the home after he began firing gunshots.

Accordingly, this Court finds Counsel gave credible testimony on the issue. Counsel read the witness statements then listened to Applicant tell his side of the story. Thereafter, she accurately advised him the assault would not apply to defending a first degree burglary charge. Further, she advised him all factual witnesses gave written statements indicating he barged into the house firing shots without permission. Therefore, this Court finds Counsel reasonably decided not interview witnesses where she had their written statements and determined the assault to irrelevant to a defense of first degree burglary. This Court further finds Applicant has failed to

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CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

overcome the burden to prove Counsel was deficient based upon a failure to interview eyewitnesses.

Applicant contends a factual witness would have testified he had permission to enter the home. The prejudice prong is dependent upon whether counsel's deficiencies "affected the outcome of the plea process." Frierson v. State, 417 S.C. 287, 789 S.E.2d 762 (Ct. App. 2016), aff'd as modified, 423 S.C. 257, 815 S.E.2d 433 (2018). To establish it through witness corroboration an applicant "must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing." Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998). "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. SCRE 801. Mere "speculation" about the details of what a witness would testify about is insufficient to establish prejudice. Dalton v. State, 376 S.C. 130 at 143, 654 S.E.2d 870 at 877.

Here, Applicant did not specifically name the individual who allegedly gave him permission to enter the home. Moreover, nobody testified on his behalf at this evidentiary hearing. Therefore, this Court finds Applicant is insufficiently speculating he would receive favorable testimony from the unidentified witness. This Court finds Applicant has failed to overcome the burden to prove he suffered prejudice resulting from the failure to interview factual witnesses.

B. Involuntary Guilty Plea

To find a guilty plea voluntarily and knowingly, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Roddy v. State, 339 S.C. 29, 528 S.E.2d 418 (2000). Also, an applicant's statements during the plea hearing are considered "conclusive unless [he] presents valid reasons why he should be allowed to depart

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CHRISTEN WOOD COUNTY, S.C.

from the truth" of them. Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007). Finally, the plea colloquy can cure any alleged deficiency if counsel not properly advise an applicant about the consequences of accepting it. See Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997) (stating that plea counsel's deficient performance can be cured by the plea court's colloquy).

Erroneous Sentence Advice

Applicant contends he did not enter a knowing plea based upon wrongfully believing conviction at trial would automatically result in a life sentence. Burglary in the first degree is a felony punishable by life imprisonment. S.C. Code Ann. § 16-11-311 (B). However, a court may sentence the defendant to a term of not less than fifteen years. Id.

Here, Applicant testified he wanted to go to trial on the first degree burglary charge. Thereafter, Applicant testified Counsel advised him conviction at trial would result in a mandatory sentence of life without parole. Finally, Applicant testified he entered a guilty plea to avoid exposure to this mandatory life sentence at trial.

On the other hand, Counsel credibly testified she accurately advised Applicant about sentencing requirements for first degree burglary. Specifically, Counsel credibly testified she advised Applicant he could receive a life sentence if a jury found him guilty. However, Counsel credibly testified she advised Applicant he could not receive less than fifteen years if a jury found him guilty.

Accordingly, the issue here is whether Applicant knew the potential consequences of being convicted of first degree burglary. Counsel gave credibly testimony she accurately advised Applicant about relevant sentencing consequences. Also, the plea court advised Applicant about potential sentencing consequences of first degree burglary. (Tr. 4). Thereafter, Applicant notified

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CLERK OF COURT
WESTFIELD COUNTY, S.C.
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the plea court he still wished to plead guilty. (Tr. 5). Accordingly, this Court finds Applicant knew the potential consequences of being convicted of first degree burglary. As a result, he has failed to overcome the burden to prove his decision to plea was not knowing or voluntary.

IV. CONCLUSION

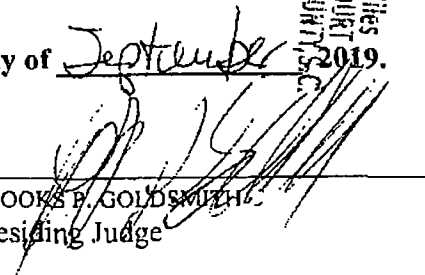
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel 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), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRPC provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must remain in the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 19 day of September 2019.


BROOKS P. GOLDSMITH
Presiding Judge

Wanda C. Miles
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

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Fourth Judicial Circuit

_____, South Carolina

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