

THE SOUTH CAROLINA SUPREME COURT

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S.C. SUPREME COURT

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Jocelyn Newman, Circuit Court Judge

ORIGINAL

Case No.
(2016-CP-40-02141)

Dequan Vereen,.....Appellant

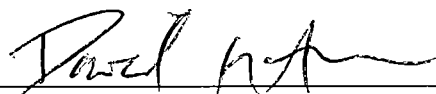
v.

State of South Carolina,Respondent.

NOTICE OF INTENT TO APPEAL

Appellant appeals the Order of Dismissal denying his Application for Post-Conviction Relief filed March 25, 2020, sent by the S.C. Attorney General's Office on March 31, 2020 and received by Counsel on April 2, 2020. Appellant hereby files and serves this Notice of Intent to Appeal by regular mail today, April 3, 2020.

THE ALLEN LAW FIRM, P.A.



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

JUDGMENT IN A CIVIL CASE

CASE NO. 2016CP4002141

DeQuan Vereen (SCDC #364939)

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Newman, J

Attorney for : Plaintiff Defendant
or
 Self-Represented Litigant

DISPOSITION TYPE (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. See Page 2 for additional information.
- 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
- STAYED DUE TO BANKRUPTCY
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

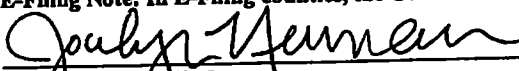
RICHLAND COUNTY
FILED
2020 MAR 25 AM 9:22
JEANETTE W. MOORE
C.C.P., G.S., & F.C.

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : _____

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details. E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.


Circuit Court Judge

2757
Judge Code

March 17, 2020
Date

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

DeQuan Vereen (SCDC #364939),

Applicant,

v.

State of South Carolina

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Civil Action No. 2016CP4002141

ORDER OF DISMISSAL

JEANETTE W. MCBRIDE
C.C.B., G.S., & F.C.

2020 MAR 25 AM 9:22

RICHLAND COUNTY,
FILED

This matter comes before the Court by way of Application for Post-Conviction Relief ("PCR Application") filed on March 7, 2016. Respondent filed its return on December 9, 2016. An evidentiary hearing was held on March 29, 2017 at the Richland County Judicial Center. Applicant was present along with his attorney, David K. Allen, Esquire. Respondent was represented by Assistant Attorney General Jessica E. Kinard.

For the reasons set forth below, the Application for Post-Conviction Relief is DENIED; and this matter is DISMISSED WITH PREJUDICE.

FACTUAL AND PROCEDURAL HISTORY

Applicant is currently incarcerated at the South Carolina Department of Corrections ("SCDC") pursuant to orders of commitment from the Richland County Clerk of Court. During its August 2014 term, the Richland County Grand Jury indicted Applicant for two counts of attempted armed robbery (2014-GS-40-5489 and -5493), attempted murder (2014-GS-40-5491), and murder (2014-GS-40-5488). Applicant was represented on these charges by Alicia Dyar Goode, Esquire ("Plea Counsel").

On July 30, 2015, Applicant pled guilty before the Honorable Robert E. Hood ("Plea Court") to one count of voluntary manslaughter (which was reduced from murder), one count of

Page 1 of 9

Order of Dismissal

Vereen (SCDC #364939) v. State, 2016CP4002141

SCANNED

armed robbery, and one count of attempted murder. His plea was in exchange for a negotiated thirty-year sentence on each charge, with all sentences to run concurrently. The Plea Court postponed imposition of the negotiated sentence until August 4, 2015, so that the crime victims and certain family members could attend.

Applicant timely filed a notice of appeal on August 11, 2015. While his appeal was pending, Applicant filed his first PCR Application on November 3, 2015 (2015-CP-40-6525). On November 24, 2015, the Honorable Alison R. Lee dismissed that PCR Application without prejudice, pending resolution of the appeal. Applicant's appeal was dismissed by the South Carolina Court of Appeals, and the Remittitur was sent on January 6, 2016. (App. Case No. 2015-001719). Applicant filed the instant PCR Application on March 7, 2016.

In his current PCR Application, Applicant alleges that he is being unlawfully held in custody for the following reasons:

1. Ineffective assistance of counsel
 - a. Lack of pretrial investigation, failure to interview witnesses
2. Involuntary guilty plea
 - a. Counsel rendered inadequate advice, a reasonably competent attorney would not have advised me to plead guilty
3. Denial of due process

The Court has had the opportunity to review the record in its entirety (including the trial transcript, records from the Richland County Clerk of Court, records from the South Carolina Department of Corrections, and Applicant's appellate records) and has heard the testimony and arguments presented at the evidentiary hearing. The Court has also had the opportunity to observe each witness who testified at the evidentiary hearing, to closely pass upon their credibility, and to weigh their testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. CODE ANN. §17-27-80 (2003).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Sixth and Fourteenth Amendments to the United States Constitution guarantee criminal defendants the right to the effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668 (1984). Where a PCR 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.” *Id.* at 686; *see also Butler v. State*, 286 S.C. 441 (1985). 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 691. The applicant must overcome this presumption in order to receive relief. *Bell v. State*, 321 S.C. 238 (1996); *see also Cherry v. State*, 300 S.C. 238 (1989); Rule 71.1(e), SCRPC.

The court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel’s performance was deficient. Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” *Cherry*, 300 S.C. at 117 (citing *Strickland*, 466 U.S. 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.” *Id.* at 117-18. Specifically, where an applicant has pled guilty, he must prove that counsel’s representation was below the standard of reasonableness and that, but for counsel’s unprofessional errors, there is a reasonable probability that he would not have pled

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).

I. Involuntary Guilty Plea

Applicant alleges that Plea Counsel was deficient in her representation by failing to employ an investigator to assist in his defense, to interview witnesses, and to follow up on leads which could support his defense to the charges. According to Applicant, this lack of preparation on the part of Plea Counsel prejudiced him in that he felt forced to plead guilty instead of proceeding to trial. The Court disagrees that any of this rendered Applicant's guilty plea involuntary.

A defendant who pleads guilty on the advice of counsel may collaterally attack the voluntariness of the plea only by showing that (1) counsel's performance was deficient, and (2) there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty. *Johnson v. Catoe*, 336 S.C. 354, 520 S.E.2d 617 (1999); *Wolfe v. State*, 326 S.C. 158, 485 S.E.2d 367 (1997); *Satterwhite v. State*, 325 S.C. 254, 481 S.E.2d 709 (1997). In addition,

[I]n many guilty plea cases, the "prejudice" inquiry will closely resemble the inquiry engaged in by courts reviewing ineffective-assistance challenges to convictions obtained through a trial. For example, where the alleged error of counsel is a failure to investigate or discover potentially exculpatory evidence, the determination whether the error "prejudiced" the defendant by causing him to plead guilty rather than go to trial will depend on the likelihood that discovery of the evidence would have led counsel to change his recommendation as to the plea. This assessment, in turn, will depend in large part on a prediction whether the evidence likely would have changed the outcome of a trial.

Stalk v. State, 383 S.C. 559, 562, 681 S.E.2d 592, 594 (2009) (citing *Hill*, 474 U.S. at 52).

Similarly, "[W]here counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." *Watson v. State*, 370 S.C.

68, 72, 634 S.E.2d 642, 644 (2006) (citing *Stokes v. State*, 308 S.C. 546, 419 S.E.2d 778 (1992)). “Counsel’s performance is accorded a favorable presumption, and a reviewing court proceeds from the rebuttable presumption that counsel ‘rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.’” *Smith v. State*, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (quoting *Strickland*, 466 U.S. at 690). “Accordingly, when counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel.” *Id.* (citing *Caprood v. State*, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)). “Courts must be wary of second-guessing counsel’s trial tactics; and where counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel. *Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 529 (1992) (citing *Goodson v. U.S.*, 564 F.2d 1071 (4th Cir. 1977)).

Plea Counsel came to represent Applicant after his first appointed attorney – who had represented him for more than two years – left the Public Defender’s Office. The case was transferred to Plea Counsel in February 2015, approximately six months before Applicant entered his guilty plea. Applicant testified that the short duration of Plea Counsel’s representation was insufficient for him to trust her or feel comfortable going to trial with her as his attorney.

Applicant also testified that he disagreed with Plea Counsel’s decision not to hire an investigator to assist in preparing his defense. He believes that Plea Counsel should have challenged the written statement allegedly given by Applicant at the hospital, and that Plea Counsel should have conducted some investigation into the video evidence that the State intended to use against him (which, according to Applicant, varied each time he reviewed it). Applicant also complained that Plea Counsel never discussed potential defenses with him and

that when he tried to broach the subject, Plea Counsel didn't seem interested in discussing the topic. She focused her discussions on the second incident for which Applicant was charged, but Plea Counsel was less interested in discussing the details of the first incident.

Contrary to Applicant's belief, Plea Counsel testified that she was prepared for trial. Plea Counsel admitted not hiring an investigator to assist in preparing Applicant's case for trial and acknowledged that an investigator could have been helpful. However, Plea Counsel also stated that she reviewed all of the evidence for Applicant's case, including the videos and statements, and reviewed all of those things with Applicant.

Plea Counsel also gave credible testimony that she researched and considered possible defenses for Applicant's charges. Specifically, Plea Counsel testified that she did not believe that the "defense of others" claim would be viable for Applicant, and she had no information on which to base an alibi defense. She intended to challenge the voluntariness of the statement allegedly given by Applicant while he was hospitalized. She believed that to be the State's best evidence against Applicant for the first incident. As to the second incident, Plea Counsel evaluated the strength of the State's case and determined that although the law would support a lesser charge of voluntary manslaughter against Applicant, he could ultimately be convicted of murder anyway because of the associated felony. In addition, Plea Counsel noted the existence of an eyewitness and a clear video of the incident location showing Applicant.

In terms of strategy, Plea Counsel stated that she and Applicant always spoke of the two incidents together; however, they were both aware that the State wanted to the two cases separately. Trial of the second, more recent incident would happen first because the possible penalty upon conviction was greater and would have allowed the State, upon trial of the first incident, to serve notice of intent to seek life without parole on Applicant.

Plea Counsel testified that, after thoroughly discussing the laws of felony murder, she did not feel confident in taking the cases to trial; and she believed that dispensing of them in a joint plea was the best resolution. Ultimately, she gave all information that she had to Applicant and allowed him to make his own decision without attempting to sway his opinions. She recalled that he had a difficult time in discussing and negotiating plea offers because he wanted to be able to plead to a certain term of years, rather than to a sentencing range. After negotiating offers and counteroffers with the State, the decision to plead guilty was Applicant's.

Based on the foregoing, Applicant is unable to demonstrate that Plea Counsel was ineffective or that she did anything more than employ a valid strategy in resolving his case. Further, although Applicant claims that he only pled guilty because he would otherwise have to "go into trial blind," this is not supported by the evidence. Applicant's uninformed belief that Plea Counsel was not ready for trial is insufficient to sustain his burden of proof. Plea Counsel thoroughly investigated and prepared for trial and presented her progress to Applicant over the course of many meetings. Applicant understood the adversities and options that he faced and made an informed, voluntary decision to plead guilty. Therefore, these allegations are denied and dismissed with prejudice.

II. Due Process

Applicant also alleges that he was denied due process of law and that there was an infringement of his rights under certain amendments to the United States Constitution. However, Applicant failed to set forth with any specificity, either in his application or at the hearing, the grounds upon which these constitutional violations are based.

The Uniform Post-Conviction Procedures Act requires that an applicant must "...specifically set forth the grounds upon which the application is based." S.C. CODE ANN. §17-

27-50 (1976). In a PCR Application, it is incumbent upon the applicant to make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. *Welch v. MacDougall*, 246 S.C. 258, 143 S.E.2d 455 (1965); *Blandshaw v. State*, 245 S.C. 385, 140 S.E.2d 784 (1965).

Here, Applicant has failed to make a *prima facie*, at any stage of this proceeding, that he is entitled to relief. Therefore, this allegation must be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act.

III. Other Allegations

As to any and all allegations that were raised in the PCR Application or during the evidentiary hearing in this matter but not specifically addressed in this Order, the Court finds that Applicant failed to present any testimony, argument, or evidence regarding such allegations. Accordingly, the Court finds the Applicant has abandoned any such allegations.

CONCLUSION

Based on the foregoing, the Court finds and concludes that Applicant has not established any constitutional violations or deprivations which would require this Court to grant relief. Plea Counsel was not deficient in any manner, and Applicant was not prejudiced by Plea Counsel's representation. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

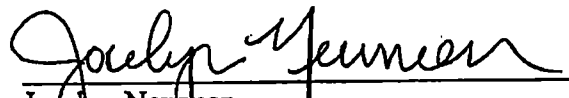
Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR (providing the appropriate procedure to perfect an appeal). Pursuant to *Austin v. State*, 305 S.C. 453, 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 that the Application for Post-Conviction relief is DENIED and DISMISSED with prejudice.

IT IS FURTHER ORDERED that DeQuan Vereen (SCDC #364939) be remanded to the custody of the State of South Carolina.

AND IT IS SO ORDERED.


Jocelyn Newman

March 17, 2020
Columbia, South Carolina.