



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

March 5, 2012

RECEIVED

MAR 5 2012

Ms. April P. Herron
Circuit Court Reporter
P O Box 17675
Greenville, SC 29606

S.C. Supreme Court

Dear Ms. Herron:

Please provide us with the following transcript:

Jamango McKinney v. State of South Carolina Case #: 10-CP-23-02589

County: Greenville Date of Trial: November 9, 2011

Presiding Judge: Edward W. Miller

To ensure prompt payment, please sign and complete the enclosed CID FORM 3500 and include the original criminal case number (Indictment number) where the space is provided.

Please number the lines on the paper from 1-25, and include any and all recorded motions, pre and post-trial. Additionally, please transcribe the jury selection, and the State and defense counsel's opening and closing arguments.

If you are aware of any co-defendants or if the Attorney General's Office has already requested a transcript, please let us know.

Sincerely,

Sharon A. Graham
Administrative Coordinator

cc: S.C. Supreme Court
Attorney General's Office

PCR

Law Office of Lawrence W. Crane

101 WHITSETT STREET
GREENVILLE, SOUTH CAROLINA 29601

LAWRENCE W. CRANE, ESQ.
ELIZABETH P. WIYGUL, ESQ.
CAROLINE M. HORLBECK, ESQ.

TELEPHONE (864) 235-2900
FAX (864) 467-1916
TOLL FREE (800) 852-0899

January 28, 2012

Via Regular Mail

Mr. Daniel E. Shearouse
Clerk, The S.C. Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re: JAMANGO MCKINNEY v. State

Dear Mr. Shearouse:

Enclosed you will find the original Notice of Appeal in the above matter along with Proof of Service upon the Respondents. The Notice has been filed with the Greenville County Clerk of Court.

These matters are being referred to the Office of Appellate Defense in that we were participating as Court appointed counsel at trial.

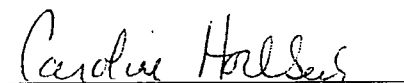
Thank you for your attention to this matter.

RECEIVED

JAN 31 2012

S.C. SUPREME COURT

Yours very truly,


Caroline M. Horlbeck, Esq.

Enclosure

cc: Office of the Attorney General
Office of Appellate Defense

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
THE HONORABLE EDWARD W. MILLER

CA No. 2010-CP-23-2589

JAMANGO MCKINNEY,

APPELLANT,

vs.

STATE OF SOUTH CAROLINA

RESPONDENT.

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMMER
2012 JAN 18 P 2:08

NOTICE OF APPEAL

Appellant JAMANGO MCKINNEY, appeals from the Order of the Honorable Edward W. Miller, Green County Judge, entered and docketed December 29, 2011.

RECEIVED

JAN 9 1 2012

S.C. SUPREME COURT

Respectfully submitted,

Caroline M. Horlbeck

Caroline M. Horlbeck, Esq.
101 Whitsett St
Greenville, SC 29601

Date: January 9, 2012

Other Counsel of Record: Karen Ratigan, Esq.
Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE SUPREME COURT

Jamango McKinney,)
)
Appellant,)

C.A. No. 2010-CP-23-2589

-vs-)

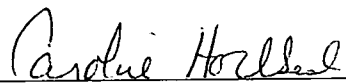
CERTIFICATE OF SERVICE

State of South Carolina,)
)
Respondent.)

This is to certify that I am an employee in the law office of Lawrence W. Crane, attorneys for Applicant, and that I have this day caused to be served upon the person(s) named below Applicant's Notice of Appeal by placing copies of same in the United States mail, with adequate postage thereon, addressed as follows:

Ms. Lorie French
S.C. Office of Appellate Defense
1205 Pendleton St., Suite 306
Columbia, SC 29201

Karen Ratigan, Esq.
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211



Caroline M. Horlbeck

Greenville, South Carolina

January 28, 2012

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

JUDGMENT IN A CIVIL CASE

CASE NO: 2010CP2302589

RECEIVED
CLERK OF COURT
GREENVILLE, SC
DEC 29 2011
PM 12:40

Jamago 336810 Mckinney vs. South Carolina State Of

CHECK ONE:

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**
SCRPC (Vol. Nonsuit): Rule 12(b), SCRPC: Rule 41(a).
 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: _____
- 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: Statement of Judgment by the Court:

Dated at Greenville, South Carolina, this 29th day of December, 2011.

Court Reporter: _____

PRESIDING JUDGE - Edward W Miller

This judgment was entered on the 29th day of December, 2011, and a copy mailed first class this 29th day of December, 2011, to attorneys of record or to parties (when appearing pro se) as follows:

✓ Caroline M.W. Horlbeck Law Offices Of Lawrence
W. Crane 101 Whitsett Street Greenville, SC 29601

ATTORNEY(S) FOR THE PLAINTIFF(S)

Karen Christine Ratigan Attorney Generals Office
Po Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court
- Clerk of Court

Index ID 47135
M2010 02540

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
Jamago Sir Edward McKinney,)
S.C.D.C. No. 336810,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
C.A. No. 2010-CP-23-2589

ORDER OF DISMISSAL

FILED
2010 OCT 29 PM 12:40

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed April 1, 2010. The Respondent made its return on August 20, 2010. An evidentiary hearing into the matter was convened on November 9, 2011 at the Greenville County Courthouse. The Applicant was present at the hearing and represented by Caroline Horlbeck, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's plea counsel, John P. Abdalla, Esquire. The Court had before it the transcript of the guilty plea hearing, the records of the Greenville County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the Respondent's return.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted by the Greenville County Grand Jury for conspiracy (2009-CP-23-2170), armed

robbery (2009-GS-23-2171, count 1), and possession of a weapon during commission of a violent crime (2009-GS-23-2171, count 2). He was represented by John P. Abdalla, Esquire.

On September 9, 2009, the Applicant pled guilty.¹ The Honorable R. Lawton McIntosh sentenced the Applicant to concurrent terms of five (5) years for conspiracy, twenty (20) years suspended on the service of seventeen (17) years for armed robbery, and five (5) years for possession of a weapon during commission of a violent crime. The Applicant did not appeal.

ALLEGATIONS

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

1. Ineffective assistance of counsel.
2. Violation of Constitutional rights.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the 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).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, “[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

¹ The State not prossed numerous indictments after the Applicant entered his guilty plea.

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). When there has been a guilty plea, the applicant 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, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

The Applicant stated plea counsel was assigned to his case after his first plea attorney had a conflict. The Applicant stated he reviewed some discovery materials with his first attorney and some materials with plea counsel. The Applicant stated he told plea counsel the following items were missing from the discovery materials: statements from three (3) witnesses and the photographic lineup. The Applicant stated plea counsel failed to challenge the defective indictments. The Applicant testified plea counsel never contacted his witnesses (specifically, Michelle Bennett). The Applicant testified plea counsel told him he should plead guilty because he could potentially receive a life sentence. The Applicant testified he agreed to plead guilty because plea counsel promised he would receive a ten (10) to fifteen (15) year sentence. The Applicant acknowledged he told the plea judge that he had not been made any promises in exchange for pleading guilty but said that plea counsel told him to lie to the judge. The Applicant admitted numerous other serious charges were dismissed as a result of the plea. The Applicant admitted his co-defendants had implicated him and that he knew the victims had identified him in a photographic lineup.

Plea counsel confirmed he was not the Applicant's first attorney. Plea counsel testified the discovery motions had already been filed when he assumed representation. Plea counsel testified he reviewed the facts of the case and the discovery materials with the Applicant but did not recall there were any missing discovery items. Plea counsel testified there were no defects in the indictments. Plea counsel testified that, if he had received a witness name from the Applicant, he would have given the information to an investigator. Plea counsel testified he did not recall (and there was nothing in his file pertaining to) the name Michelle Bennett. Plea counsel stated he advised the Applicant of the potential sentences he could receive on each charge. Plea counsel stated he did not recall telling the Applicant he was facing a life sentence but that perhaps his advice was interpreted that way because the Applicant was facing substantial sentences. Plea counsel stated he told the Applicant this was not a case they could win at trial and that he would have advised the Applicant to plead guilty. Plea counsel stated he would have explained to the Applicant that he was pleading guilty without a sentence recommendation. Plea counsel testified he told the Applicant he would ask for a ten (10) to fifteen (15) year sentence, which he did. Plea counsel testified he did not tell the Applicant to lie to the plea judge.

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds the Applicant's testimony is not credible, while also finding plea counsel's testimony is credible. This Court further finds plea counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his representation.

The Applicant admitted to the plea judge that he was guilty of the charges. (Plea transcript, p.11). The Applicant also told the plea judge that he understood the trial rights he was waiving in pleading guilty, was satisfied with counsel, and had not been coerced in any way.

(Plea transcript, pp.8-11).

This Court finds the Applicant failed to meet his burden of proving plea counsel did not properly investigate the case or obtain all of the discovery materials. Plea counsel testified he did not believe he was missing any of the discovery materials. The Applicant stated, for example, that the photographic lineup was missing but plea counsel testified he had reviewed that item. Further, while the Applicant alleged plea counsel failed to investigate his case, he failed to articulate what else plea counsel should have done to prepare and the impact this further preparation would have had on his case. See Davis v. State, 326 S.C. 283, 486 S.E.2d 747 (1997) (denying relief where applicant failed to present witnesses or specific testimony establishing he would have had a defense with additional time to prepare for trial); Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (holding applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial).

This Court finds the Applicant failed to meet his burden of proving plea counsel was ineffective because he did not subpoena witnesses – specifically, Michelle Bennett. As none of these alleged witnesses testified at the evidentiary hearing, any discussion regarding what they would have testified about at trial is purely speculative. See Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (the South Carolina Supreme Court “has repeatedly held a PCR 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 in order to establish prejudice from the witness’ failure to testify at trial.”) (emphasis in original).

This Court finds the Applicant failed to meet his burden of proving plea counsel should have objected to the indictments. This Court notes indictments are not evidentiary or

jurisdictional documents – they are merely notice documents. State v. Gentry, 363 S.C. 93, 102, 610 S.E.2d 494, 500 (2005). The indictments in this case were true-billed and clearly sufficient to put the Applicant on notice of the charges he was facing. See State v. Tumbleston, 376 S.C. 90, 95-96, 654 S.E.2d 849, 852 (Ct. App. 2007). Further, the Applicant’s argument that the Grand Jury was not scheduled to convene when his indictments were signed is without merit. While terms of court are technically prescribed by statute, this Court notes general sessions matters may be transacted during common pleas terms of court and vice versa. See S.C. Code Ann. §§ 14-5-410, -420 (Supp. 2003).

This Court finds the Applicant failed to meet his burden of proving plea counsel misadvised him about the sentence he would receive. Plea counsel testified he advised the Applicant of the potential sentences he could receive on all of his outstanding charges. The Applicant must be advised of such before he can plead guilty. See Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (finding that, before a defendant can enter a guilty plea, he “must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived”). This Court does not find credible the Applicant’s assertion that plea counsel promised he would receive a 10-15 year sentence and that he should lie to the plea judge in order to receive that sentence. This Court finds plea counsel advised the Applicant that he would request a 10-15 year sentence and, in fact, did so at the plea hearing. (Plea transcript, p.15). The Applicant informed the plea judge no promises had been made in order to induce his plea. (Plea transcript, p.8). Further, the Applicant did not object when the State noted he was pleading guilty without a sentence recommendation. (Plea transcript, p.8). In addition, the Applicant signed the sentencing sheets in this case, which were clearly marked “Without Negotiations or



Recommendation.” This Court finds the Applicant was aware he was pleading guilty without a sentence recommendation.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that plea counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that plea counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by plea counsel’s performance.

This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner and the Applicant was not prejudiced by counsel’s representation. Therefore, this PCR application must be denied and dismissed with prejudice.


This Court advises the Applicant that he must file a notice of intent to appeal within thirty

(30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 20 day of December, 2011.


Edward W. Miller
Presiding Judge
Thirteenth Judicial Circuit

Jal, South Carolina.

Lawrence W. Crane
Attorney At Law
101 WHITSETT STREET
GREENVILLE, SOUTH CAROLINA 29601

*Jamargo
McKenney*

Via Regular Mail
Mr. Daniel E. Shearouse
Clerk, The S.C. Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211



2921131330 8099

