

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Post Conviction Relief

S.C. SUPREME COURT

Perry H. Gravely, Circuit Court Judge

Lower Court Case No.: 2019-CP-40-6527

Savoy Woodard #353988,..... Petitioner

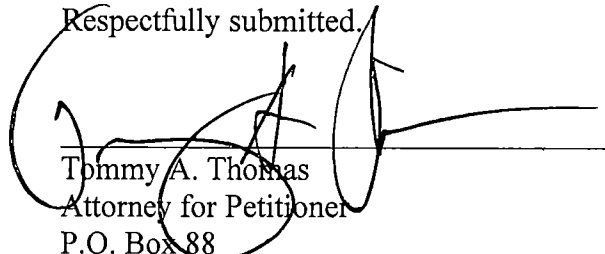
vs.

State of South Carolina,Respondent.

NOTICE OF APPEAL

The Appellant, Savoy Woodard, appeals the Order of Dismissal, signed by The Honorable Perry H. Gravely on January 12, 2021 and filed on January 21, 2021. Appellant received written notice of entry of this order on January 21, 2021.

Respectfully submitted,



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February 10, 2021

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Savoy Woodard, #353988,)
Applicant,)

2019-CP-40-6527

v.)

ORDER OF DISMISSAL

State of South Carolina,)
Respondent,)

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FILED
RICHLAND COUNTY
EMERLEEN H. HODGKINS
C.C.P., G.S., & F.C.

This matter comes before the Court by way of Savoy Woodard's (Applicant) application for post-conviction relief (PCR) filed November 20, 2019. The State made its return and partial motion to dismiss all claims but *White v. State*, on or about June 15, 2020.

An evidentiary hearing convened on November 30, 2020, via Cisco Webex Meetings¹ at which time Applicant was present and represented by Tommy A. Thomas, Esquire. Assistant Attorney General Michael D. Davidson of the South Carolina Attorney General's Office represented the State. At the hearing, Applicant testified on his own behalf. Respondent presented testimony from Courtney Gibbes, Esquire ("Counsel").

Following a thorough review of the record in its entirety, as well as the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to meet his requisite burden of establishing any constitutional violations and denies this application.

¹ The remote hearing was scheduled pursuant to our Supreme Court's administrative orders Re: Operation of the Trial Courts During the Coronavirus Emergency, S.C. Sup. Ct. Order amended Apr. 22, 2020 (Shearouse Adv. Sh. No. 17), and Re: Video/Audio Conferencing Hearings Statewide, Order No. 2020-04-30-01 (S.C. Sup. Ct. Order filed Apr. 30, 2020).

PROCEDURAL HISTORY

The records before this Court establish Applicant is confined in the South Carolina Department of Corrections (SCDC) pursuant to orders of commitment of the Richland County Clerk of Court. Applicant was indicted at the August 2012 term of the Richland County Grand Jury for two counts of armed robbery (2012-GS-40-4001, -3993), two counts of strong armed / common law robbery (2012-GS-40-3999, -3980), one count of attempted armed robbery (2012-GS-40-3960), one count of first-degree assault and battery (2012-GS-40-3982), one count of assault and battery of a high and aggravated nature (ABHAN) (2012-GS-40-3959), and one count of possession of a stolen vehicle, \$2,000–\$10,000 (2012-GS-40-3998). Applicant was represented by Assistant Public Defender Courtney Ann Gibbes. Assistant Solicitor Kathryn Ashton prosecuted the case.

On January 22, 2013, Applicant pleaded guilty as indicted to all charges, before the Honorable DeAndrea Benjamin. The State recommended concurrent sentences. Judge Benjamin sentenced Applicant to serve concurrent terms of fifteen years for each armed robbery, fifteen years for each strong armed robbery, fifteen years for attempted armed robbery, ten years for first-degree assault and battery, ten years for ABHAN, and ten years for the stolen vehicle charge. Applicant did not appeal.

ALLEGATIONS

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

1. Ineffective assistance of counsel:
 - a. Where Applicant entered into an involuntary guilty plea because “Applicant was told by Public Defender . . . that he was to receive the minimum for all Armed Robbery charges due to this being his first conviction.”

- b. Where plea counsel failed to file a direct appeal when “Applicant asked Defense attorney to file for [a]ppeal, but it was not filed.”

Applicant requests relief in the form of a belated appeal.

Prior to the commencement of the evidentiary hearing, the State renewed its motion to dismiss all claims but for his claim he is entitled to a belated appeal.² While counsel for Applicant argued in opposition to the State’s motion, he acknowledged that Applicant filed his application after the statute of limitations had expired. Based on the State’s motion and argument from counsel, this Court granted the State’s partial motion to dismiss all claims except the belated appeal claim, and considered the issue of whether he is entitled to a belated direct appeal pursuant to *White*.

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 also had before it the records of the Richland County Clerk of Court regarding the subject conviction, Applicant’s records from the South Carolina Department of Corrections, the application, the State’s return, and the plea transcript. 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 reviewed the trial court record and has heard the testimony of both Applicant and Counsel. The Court finds Counsel’s testimony on these issues to be credible, while also finding Applicant’s testimony is not credible. This Court has therefore weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusion of law as required by S.C. Code Ann. Sec. 17-27-80 (2003).

² Pursuant to *White v. State*, 263 S.C. 110, 119, 108 S.E.2d 35, 39 (1974).

Here, the only issue before the Court is whether Applicant is entitled to a belated appeal pursuant to *White*. The United States Supreme Court has rejected a bright-line rule that counsel must always consult with the defendant regarding an appeal. *Roe v. Flores-Ortega*, 528 U.S. 470, 480 (2000). Instead, “counsel has a constitutionally imposed duty to consult with the defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing.” *Id.* Further, “a highly relevant factor in this inquiry will be whether the conviction follows a trial or a guilty plea, both because a guilty plea reduces the scope of potentially appealable issues and because such a plea may indicate that the defendant seeks an end to judicial proceedings.” *Id.*

The South Carolina Supreme Court has held there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea, absent extraordinary circumstances. *Turner v. State*, 380 S.C. 223, 224, 670 S.E.2d 373, 374 (2008). However, the bare assertion that a defendant was not advised of appellate rights is insufficient to grant relief. *Weathers v. State*, 319 S.C. 59, 61, 459 S.E.2d 838, 839 (1995). Instead, a defendant must offer proof that extraordinary circumstances exist such that he should have been advised of the right to appeal. *Id.* One situation in which extraordinary circumstances arise is when a defendant explicitly inquires about his right to appeal following a guilty plea. *Jones v. State*, 382 S.C. 589, 596, 677 S.E.2d 20, 23-24 (2009); *Weathers*, 319 S.C. at 61, 459 S.E.2d at 839.

In a post-conviction relief action, 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

[proceeding] 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. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. 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 689. A PCR 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 trial counsel. *Id.* at 117, 386 S.E.2d at 625. First, 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). 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.” *Id.* at 117-18, 386 S.E.2d at 625. To show prejudice in these circumstances, a defendant must demonstrate that there is a reasonable probability that, but for plea counsel’s deficient failure to consult with him about an appeal, he would have timely appealed. *Flores-Ortega*, 528 U.S. at 484.

In *White v. State*, 263 S.C. 110, 108 S.E.2d 35 (1974), the South Carolina Supreme Court held that even if the post-conviction relief court finds that the Applicant never voluntarily and intelligently abandoned his appeal, the court has no jurisdiction to grant a belated appeal. Therefore, where an accused establishes in a post-conviction relief hearing that he was unconstitutionally deprived of his statutory right to a direct appeal, the South Carolina Supreme

Court, upon an appeal of the post-conviction relief decision, will review the trial record and pass upon all issues properly raised and argued as if the direct appeal has been perfected.

Here, Applicant pleaded guilty on January 22, 2013. Applicant testified he pleaded freely and voluntarily and he was aware of his right to appeal his guilty plea. Applicant testified he asked Counsel to file an appeal immediately after he was sentenced to fifteen-years because he thought he was going to get ten years; however, Applicant conceded that he was aware that the judge could sentence him to any number between the minimum ten years and the maximum twenty years. Applicant testified he wrote a letter to the Clerk of Court in Richland County informing her he would like a notice of appeal and that the Clerk responded that she sent notice to the proper parties; however, Applicant presented no evidence of any proof of the letters. Applicant conceded he did not try to follow up with Counsel via another method such as a letter, a collect call, or another fax.

Counsel testified she discussed an appeal with Applicant before his plea while going over the "Advice of Rights" form. Counsel testified she explained to Applicant that the plea offer was a minimum of ten years and a maximum of twenty years. Counsel testified she explained to Applicant that she would ask Judge Benjamin to impose the minimum ten years, but ultimately Judge Benjamin had the discretion to sentence him up to twenty years. Counsel testified Applicant understood he could get any range of years between the two and that Applicant understood and still wanted to plead guilty. Counsel testified Applicant never asked her to file an appeal, but if he had, she would have done so. Counsel further testified Applicant never showed any interest in pursuing a direct appeal; however, if he had done so, she would have filed an appeal. Additionally, Counsel testified she saw no appealable issues with Applicant's guilty plea hearing, but if there had been any meritorious issues, she would have filed a direct appeal.

This Court finds Applicant has failed to meet his burden of proving he did not voluntarily and intelligently waive his right to appeal. By Applicant's own admission, he was aware he had the right to appeal if he wished. Additionally, this Court finds credible Counsel's testimony that Applicant never asked her to appeal and never showed any interest in pursuing a direct appeal. Further, this Court finds credible Counsel's testimony that she saw no appealable issues with Applicant's guilty plea hearing. Accordingly, this Court finds Applicant has failed to satisfy the requirements set forth in the *Roe v. Flores-Ortega* test and therefore, he has failed to show he is entitled to a belated direct appeal under *White v. State*.

Therefore, Applicant's request for belated review of direct appeal issues pursuant to *White* is hereby **DENIED**, and the application is dismissed with prejudice.

CONCLUSION

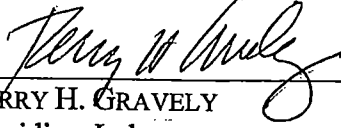
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of appeal within thirty 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*, 306 S.C. 453 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 12th day of January, 2021.



PERRY H. GRAVELLY
Presiding Judge
Fifth Judicial Circuit

Pickens

, South Carolina