STATE OF SOUTH CAROLINA COUNTY OF AIKEN	)	IN THE COURT OF COMMON PLEAS FOR THE SECOND JUDICIAL CIRCUIT
William H. Blake, #348497, Applicant, v. State of South Carolina, Respondent.	)	2012-CP-02-0374 **ORDER OF DISMISSAL**

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on February 13, 2012 and amended on December 17, 2013. Respondent submitted its amended return on June 25, 2014. An evidentiary hearing into the matter was convened on September 8, 2015, at the Aiken County Courthouse. Applicant was present at the hearing and was represented by Aimee Zmroczek, Esquire. Respondent was represented by Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. The Applicant was indicted at the November 2011 term of the Aiken County Grand Armed Robbery (2011-GS-02-01378). Applicant waived presentment to the November 2011 term of the Aiken County Grand Jury for Voluntary Manslaughter. Barry L. Thompson, II, Esquire, represented him. On October 24, 2011, the Applicant entered an Alford plea as indicted. The Honorable George C. James, Jr. sentenced Applicant to confinement for a period of twenty-three (23) years in accordance with plea negotiations between Applicant and the State.

FILED 2.22.16

A notice of appeal was filed on November 2, 2011. The appeal was dismissed following submission of an Rule 203(d)(1)(B)(iv) Explanation filed by Applicant's counsel, stating that there is no "good faith basis to believe that any issues are properly before the Court of Appeals" and that Applicant "did not object to the sentence or file a motion to reconsider the sentence." The Remittitur was sent on March 2, 2012.

ALLEGATIONS

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

1. Ineffective Assistance of Counsel
    a. Failing to properly investigate
    b. Failing to explain waiving presentment of the indictment to the Grand Jury
    c. Failing to request a continuance and challenge the solicitor's authority under Langford.
2. Involuntary Guilty Plea
    a. Due to coercion by the Solicitor's office specifically Counsel ineffective for failing to object to solicitor's improper vouching of potential witnesses against defendant.
3. Prosecutorial Misconduct

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. The State presented testimony from Barry L. Thompson, Esquire. (hereinafter "Plea Counsel") and David Miller, Esquire (hereinafter "Solicitor"). This Court also had before it a copy of the Aiken County Clerk of Court records, Applicant's South Carolina Department of Correction records, appellate records, the PCR application, and amended return.

Applicant testified that he is twenty eight years old. Applicant stated that he is currently housed in McCormick correctional institution. Applicant stated that he was twenty three years old when he was arrested for the charges. Applicant stated that he was charged with armed

robbery and murder. Applicant stated that he entered a plea pursuant to Alford in exchange for the State reducing the murder charge to voluntary manslaughter. Applicant stated that he did not have a good understanding of what he was doing when he entered his plea under Alford.

As it related to his armed robbery charges, Applicant stated Plea Counsel failed to investigate his alibi witnesses. Applicant stated that he had "no clue" whether Plea Counsel even spoke with his alibi witnesses. Applicant stated that Rebecca Easton, his then girlfriend, was his alibi witness. Applicant further stated that he requested Plea Counsel to have the .357 pistol swabbed for DNA. Applicant stated that he never received any DNA analysis from the weapon. Applicant concluded that he would have gone to trial had Plea Counsel investigated his alibi witnesses and sent the pistol off to SLED for DNA testing. Applicant stated that during his plea the State informed the court that his co-defendant was white. Yet, the victim's statement said that there were two black guys. Applicant stated the State alleged that he called the victim, but the phone records did not match.

As it related to his murder charge, Applicant stated Plea Counsel failed to investigate Tina Lupe, his potential alibi witness. Applicant further stated that he never saw the video tape of his alleged co-defendant. Applicant stated his co-defendant allegedly re-enacted the murder. Applicant stated the SLED report stated that they had recovered a .308 casing. Applicant pointed out that the State informed the Court that the Victim was killed by a .303 caliber bullet. Applicant stated that he was never informed of this information prior to his plea. Applicant further stated that he received a lot of Brady material after his plea. Specifically, Applicant referenced various text messages. Applicant stated that he could have used this information to impeach possible state witnesses. Applicant stated that he received a photo lineup where he was not identified as shooter.

Applicant stated that he pled under the advice of Plea Counsel. Applicant stated that Plea Counsel informed him that the State was prepared to try the armed robbery and murder case separately and potentially seek a life without parole sentence. Applicant stated that he only met with Plea Counsel three times. Applicant stated that he never reviewed any discovery material nor did he discuss any possible defenses. Applicant recalled waiving his constitutional rights during his plea. Applicant recalled waiving presentment for the voluntary manslaughter charge. Applicant recalled telling the plea judge that he was satisfied with Plea Counsel's services. Applicant recalled telling the plea judge that no one was promising or threatening him in order to get him to plead guilty. Applicant recalled telling the plea judge that he wanted to plead guilty under Alford.

Following Applicant's testimony, Plea Counsel was called to testify. Plea Counsel stated that he has been practicing law since 2004. Plea Counsel stated that he was appointed to represent Applicant and met with him at least five separate times. Plea Counsel stated that he filed for and reviewed all evidence with Applicant prior to his plea. Plea Counsel stated that he provided Applicant with a copy of Rule 5 and Brady material. Plea Counsel stated that he explained to Applicant that he had not received all of the discovery material prior to his pleading guilty. Despite that fact, Plea Counsel stated Applicant wanted to accept the plea offer and plead guilty. Plea Counsel stated that he discussed what it meant to waive presentment of the indictment to the grand jury. Plea Counsel stated it was Applicant's decision to plead guilty under North Carolina v. Alford.

Plea Counsel stated that Applicant claimed that nothing happened. Plea Counsel stated that there were no facts to support an alibi defense. Plea Counsel stated the State had overwhelming evidence against Applicant. Plea Counsel stated that he spoke with Applicant's

girlfriend for half a day at his office. Plea Counsel stated that he had an investigator look into Applicant's alibi as well. Trial Counsel stated that Applicant's girlfriend had a picture of Applicant allegedly taken when the armed robbery took place. Plea Counsel stated he was prepping Applicant's girlfriend for trial when the whole alibi story "fell apart." Plea Counsel stated that he simply did not have a legitimate alibi defense to the armed robbery. Plea Counsel stated Applicant's co-defendants were going to be called against him at trial.

Plea Counsel stated prior to going to trial on the armed robbery, the State offered to allow Applicant to plead guilty to the lesser included offense of voluntary manslaughter and recommend that the sentence run concurrently to the armed robbery charge. Plea Counsel stated that the offer would allow Applicant to serve time for both charges at the same time and remove the possibility of life without parole. Plea Counsel noted that Applicant would not have received credit for time served on the Armed Robbery if convicted at a later point on the murder charge. Plea Counsel stated Applicant did not want to plead guilty but instead would plead guilty under North Carolina v. Alford. Plea Counsel opined that Applicant got a very substantial benefit from the plea offer.

Plea Counsel stated that he advised Applicant that he had not concluded his investigation on the murder case. Plea Counsel stated there was a substantial amount of evidence against Applicant early on in his investigation, but his investigation was not complete. Plea Counsel stated despite his investigation not being complete, Applicant wanted to accept the benefit of the plea offer and entered a plea pursuant to North Carolina v. Alford.

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 at the post-conviction relief hearing. This Court has further had the opportunity to

observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

INEFFECTIVE ASSISTANCE OF COUNSEL

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged 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." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use 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, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). 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." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty Trial Counsel, the

Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart , 474 U.S. 52, 106 S.Ct. 366 (1985).

ALLEGATIONS

1. Ineffective assistance of counsel rendering his guilty plea involuntary.

This Court notes Applicant claims that due to his attorney's sub-standard performance, he has been denied his constitutionally protected right to counsel. In deciding a claim of ineffective assistance of counsel, the focus is on "the fundamental fairness of the proceeding whose result is being challenged." Strickland v. Washington, 466 U.S. 668 (1984). Applicant must show a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Id. When a guilty plea is challenged, applicant must show that counsel's performance was deficient and that, but for counsel's errors, there is a reasonable probability a guilty plea would not have been entered. Griffin v. State, 361 S.C. 173, 176, 604 S.E.2d 394, 396 (2004). The burden of proof is on the applicant to prove the allegations raised in his application. Brown v. State, 340 S.C. 590, 593, 533 S.E.2d 308, 309 (2000).

The Court finds that Applicant was not deprived of effective assistance of counsel. Defense Counsel's decisions and conduct were reasonable under the circumstances, and did not fall below professional norms of competency. Applicant has failed to show that Counsel did not advise him as to the consequences of his guilty plea. Further, the transcript of record indicates that the Honorable George C. James, Jr., thoroughly discussed the plea, the negotiated sentence, and the consequences of the plea with Applicant. Ultimately, Judge James found that the Applicant was completely aware of what his plea entailed. The record reflects that Applicant was well aware of the benefits he was receiving with the plea deal that he took and that

Applicant made the decision to accept the plea offer even though the investigation into the murder charge was not yet complete. For these reasons, the application is denied.

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 testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

[signature to follow]

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the 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, 305 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. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and

2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 28th day of January, 2016.

EDGAR W. DICKSON
Presiding Judge
Second Judicial Circuit

Orangeburg, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF AIKEN	)	IN THE COURT OF COMMON PLEAS FOR THE SECOND JUDICIAL CIRCUIT
William Henry Blake, III, #348497, Applicant, v. State of South Carolina, Respondent.	)	Case No.: 2019-CP-02-1354

ORDER GRANTING RELIEF PURSUANT TO AUSTIN V. STATE

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Robert J. Harte, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

JUN 10 2021

Robert J. Harte
C.C.C.P. & G., Aiken County, S.C.
Charla Griffin Plowden
Deputy Clerk

INTRODUCTION

This is a PCR case commenced by the Applicant, William H. Blake, III, (Blake), by filing an Application for Post-Conviction Relief on June 3, 2019. This is Blake's second application for post-conviction relief of the subject convictions, in which he requests relief in the form of the opportunity to seek belated appellate review of the result in his first PCR action. This Court has reviewed the entire record in the case as well as the September 25, 2020, Affidavit of Aimee Zmrocek, Blake's counsel in his first PCR challenging the subject convictions. As the only allegation contained in this current application for post-conviction relief is the request for an opportunity to seek belated appellate review of his prior PCR application, the State has indicated that it does not object to an order granting to Blake the opportunity to seek belated appellate review of the denial of his first post-conviction relief application, based on the sworn testimony of Ms. Zmrocek establishing her failure to file the notice of appeal. Having conducted the review noted above and giving due weight to the State's decision not to oppose relief, this Court grants to Blake the relief requested in his PCR Application. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d

FILED June 10 2021
Robert J. Harte CMP
C.C.C.P. & G.S.
Charla Griffin Plowden
Deputy Clerk

JBM/1

395 (1991), Blake shall be granted the opportunity to seek belated appellate review of his prior PCR application.

FACTS

The hearing court denied relief in Blake's prior PCR (2012-CP-02-0374). A Rule 59(e) Motion to Reconsider was filed following the denial of relief, but after the denial of that Motion, no appeal was ever filed in Blake's first PCR action. Blake instructed his counsel to file an appeal, but the appeal of that action was never filed because of a miscommunication in the office of Blake's counsel, Aimee Zmrocek.

LAW

The leading case adressing this scenario is Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), which permits PCR litigants to petition the Supreme Court for belated appellate review of their unsuccessful PCRs if they are improperly denied the right to pursue that appeal. A PCR applicant is entitled to relief purusant to Austin if the PCR judge on the second PCR finds, iner alia, that "the applicant requested and was denied an opportunity to seek appellate review." Odom v. State, 337 S.C. 256, 262, 523 S.E.2d 753, 756 (1999). The Affidavit of Blake's counsel on his first PCR action establishes that Blake requested and was denied an opportunity to seek appellate review of the denial of PCR in that action, so Blake is entitled to seek belated appellate review of his first PCR action under Austin v. State.

TBM/2

WHEREFORE, based on the foregoing findings of fact and conclusions of law and on the State's decision not to oppose relief, this Court **ORDERS** that Blake's application for post conviction relief is **GRANTED** and Blake shall be provided relief limited to the opportuinty to seek belated appellate review of the denial of his prior post-conviction relief application, pursuant to the procedure outlined Austin v. State.

AND IT IS SO ORDERED!

Jennifer B. McCoy
Presiding Circuit Court Judge
Second Judicial Circuit

Charleston, SC
June 4, 2021

TRM/3