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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ORANGEBURG COUNTY
Diane S. Goodstein, Circuit Court Judge

2016-CP-38-0674

Tellaferro Randolph, # 296483,

Appellant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Tellaferro Randolph, # 296483, appeals the Order of Dismissal denying his Application for Post-Conviction Relief filed July 7, 2021, issued by the Honorable Diane S. Goodstein, Resident Judge, First Judicial Circuit.



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FILED FOR RECORD
WINNIFA B. CLARK

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG) THE FIRST JUDICIAL CIRCUIT

Tellaferro Randolph, #296483,)
Applicant,) CLERK OF COURT
ORANGEBURG, SC 2016-CP-38-0674

v.)

ORDER OF DISMISSAL

State of South Carolina,)
Respondent.)

This matter is before the Court based on an application for post-conviction relief filed by Applicant Tellaferro Randolph on May 25, 2016. Respondent the State of South Carolina filed a return requesting an evidentiary hearing. An evidentiary hearing was convened December 14, 2017, before the Honorable Kristi L. Harrington, then-circuit court judge. At the conclusion of the hearing, Judge Harrington took the matter under advisement and requested both parties submit proposed orders. Before issuing a final order, Judge Harrington retired from the bench, leaving the matter unresolved.

Pursuant to Rule 63, SCRPC, this matter has come before this Court as a resident judge of the First Judicial Circuit.¹ As provide in Rule 63, SCRPC, this Court has been provided with and thoroughly reviewed the entire record, including the transcript of the evidentiary hearing before Judge Harrington. After this review of the record, this Court certifies familiarity with the record and determines that the matter may be completed based on the record without prejudice to the Applicant or Respondent. Moreover, this Court determines Applicant has failed to establish any constitutional deprivations or other grounds entitling him to post-conviction relief and denies this application with prejudice. Specific findings of fact and conclusions of law are set forth

¹ The Honorable Edgar W. Dickson, the current Chief Administrative Judge for Common Pleas for the First Judicial Circuit, presided over Applicant's plea proceeding.

ATTEST: TRUE COPY
Winnifa B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

below as required pursuant to S.C. Code Ann. § 17-27-80.

I. PROCEDURAL HISTORY

Applicant was indicted by the October 2015 term of the Grand Jury for Orangeburg County for murder (2014-GS-38-1258), and attempted murder (2014-GS-38-1257). On October 29, 2015, Applicant appeared before the Honorable Edgar W. Dickson and pled guilty to the lesser-included offenses of voluntary manslaughter (2014-GS-38-1258) and assault and battery of a high and aggravated nature (ABHAN) (2014-GS-38-1257). Judge Dickson sentenced Applicant to fifteen years' imprisonment for voluntary manslaughter and fifteen years' imprisonment for ABHAN, to be served concurrently. Applicant did not appeal the conviction or sentence.

II. CURRENT ACTION BEFORE THE COURT

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

1. Ineffective Assistance of Counsel
 - a. "Counsel failed to appeal."
 - b. "Counsel misinformed me."
2. Subject Matter Jurisdiction
 - a. "Court of General Sessions failed to have jurisdiction."
 - b. "Defective indictment."
3. "Violation of U.S. Constitution 4th, 5th, 6th, and 14th amendments."

In response, Respondent served a return and motion for more definite statement, requesting amendments with specific allegations and an evidentiary hearing to resolve the claims.

An evidentiary hearing was convened December 14, 2017 before Judge Harrington. Applicant was represented by Jonathan D. Waller, Esquire. Respondent was represented by then-Assistant Attorney General Ruston W. Neely of the South Carolina Attorney General's Office.

At the evidentiary hearing, Applicant proceeded forward solely on the following claims:

1. Ineffective assistance of counsel.
 - a. Involuntary guilty plea
 - i. Failure to provide with discovery materials.
 - ii. Failure to challenge search and seizure

As reflected in the transcript, Applicant testified on his own behalf and presented testimony from plea counsel Robert Douglas Mellard. No other witnesses were presented and no additional evidence was introduced. At the conclusion of the evidentiary hearing, Judge Harrington took the matter under advisement and requested proposed orders from both parties within thirty days. Proposed orders were submitted to Judge Harrington. As discussed previously, Judge Harrington retired from the bench before ruling on this matter, and accordingly, this matter is before this Court pursuant to Rule 63, SCRPC.

III. SUMMARY OF TESTIMONY

Applicant testified he met with Counsel five to ten times and discussed potential defenses to his charges. Applicant testified he received the incident report, witness statements, consent to search form, and NCIC report, but did not receive a ballistics or an autopsy report. Applicant testified they searched his residence with the consent of his brother, who resided there. He testified his mother's car was searched, but he did not know whether they got a search warrant or consent. Applicant stated he pleaded guilty because he was scared of the sentence murder carries and the evidence the State had against him. Applicant testified if he had known what the solicitor was going to allege the facts were he would not have pleaded guilty. On cross-examination, he testified he didn't know he could say anything to stop the plea despite the fact he continued to answer the plea judge's colloquy questions correctly.

Counsel testified he met with Applicant over ten times. Counsel said Applicant gave him contact information for two witnesses, who his office tried to contact. Counsel testified he never received an autopsy or ballistics report, but he would not have let the case go to trial without

receiving an autopsy report. Counsel testified there were no ballistics tests done to his knowledge. Counsel testified Applicant wanted to plead guilty and wanted Counsel to get the charge reduced to voluntary manslaughter. Counsel testified Applicant insisted he didn't have a gun, but was at the scene. Counsel testified if he received supplemental discovery he would have gone over it with Applicant.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court reviewed the record in its entirety, including the transcript from the evidentiary hearing, which allowed this Court to weigh the testimony of both Applicant and plea counsel. After this thorough review of the record as required under Rule 63, SCRPC, this Court finds no additional proceedings are necessary and a ruling can be rendered based on the record. Furthermore, this Court determines Applicant has failed to establish any constitutional deprivations or other grounds entitling him to post-conviction relief and denies this application with prejudice. Specific findings of fact and conclusions of law are set forth below as required pursuant to S.C. Code Ann. § 17-27-80.

A. Ineffective Assistance of Plea Counsel

This Court finds the record fully supports the knowing and voluntary nature of Applicant's guilty plea. 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). "A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Thus, an applicant must show both error and

prejudice to win relief in a PCR proceeding.” Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001).

The court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. The transcript reflects the guilty plea was knowingly and voluntarily entered with a full understanding of the charges and consequences of the plea. 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). Statements made during a guilty plea should be considered conclusively, unless an Applicant presents valid reasons why he should be allowed to depart from the truth of his statements. See Crawford v. United States, 519 F.2d 347, 350 (4th Cir. 1975) (overruled on other grounds by United States v. Whitley, 759 F.2d 327 (4th Cir.1985)). Applicant presented no reasons to show that he should be allowed to depart from the truth of the statements he made during his guilty plea hearing. For the reasons set out below, this Court finds the record and credible testimony support Applicant had a full understanding of the charges and consequences of his guilty plea:

1. Involuntary Guilty Plea

Applicant asserts his guilty plea was entered involuntarily as the result of ineffective

assistance of counsel. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the Applicant had a full understanding of the consequences of his plea and the charges against him. See Boykin, 395 U.S. at 243. In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. See Harris v. Leeke, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984).

The transcript reflects the guilty plea was knowingly and voluntarily entered with a full understanding of the charges and consequences of the plea. 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, 431 U.S. at 73-74. Statements made during a guilty plea should be considered conclusively, unless an Applicant presents valid reasons why he should be allowed to depart from the truth of his statements. See Crawford, 519 F.2d at 350. Applicant presented no reasons to show that he should be allowed to depart from the truth of the statements he made during his guilty plea hearing.

An applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness, and there is a reasonable probability, but for trial counsel's errors, he would not have pleaded guilty, but would have insisted on going to trial instead. See Roscoe, 345 S.C. at 20, 546 S.E.2d at 419. Given the Applicant's burden of proof and the analysis to be applied to this claim, the Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it will be treated as such.

An applicant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and

defendant, between court and defendant's counsel, or both." Roddy, 339 S.C. at 34, 528 S.E.2d at 421. "[T]he voluntariness of a guilty plea is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing." Dalton, 376 S.C. at 138, 654 S.E.2d at 874. Admissions "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." Id. at 137-38, 654 S.E.2d at 874.

Having reviewed the pleadings, considered the applicable law, and reflected upon the plea transcript and testimony provided at the evidentiary hearing, this Court denies and dismisses Applicant's allegation that his guilty plea was involuntary for the reasons set out below:

a. Failure to provide Applicant with discovery materials.

Applicant testified he wanted and never received a ballistics and autopsy report. Applicant further testified he had no proof that a ballistics or autopsy report existed. Counsel testified he never received the autopsy report and there was no ballistics report. Counsel stated Applicant wanted to plead guilty and the autopsy report would have been obtained before Applicant went to trial, had he wished to go to trial. Counsel also testified Applicant's story was that he never fired a bullet and the gun was never recovered. Therefore, there was no critical evidence that could have been obtained from the autopsy. Counsel provided Applicant with the State's discovery evidence and explained it to Applicant. This Court finds Counsel's actions and advice were not deficient nor was Applicant prejudiced by Counsel's alleged deficiency. This Court finds Applicant knew he had not seen a ballistics report or autopsy report when he pleaded guilty and it did not affect the voluntarily, intelligent, and knowing nature of Applicant's guilty plea.

This Court finds Counsel's advice was well within the range of competence required of defense attorneys. Therefore, this Court denies and dismisses this allegation.

b. Failure to challenge search and seizure.

Applicant failed to show how Counsel challenging the search and seizure would have benefitted his case. Applicant did not prove what Counsel would have found if he had challenged the search and seizure. 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. Strickland, 466 U.S. 668. "The applicant's mere speculation what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice." State v. Glover, 318 S.C. 496, 498-499, 458 S.E.2d 538, 540.

The only evidence Applicant presented regarding the search was speculation on the part of Applicant. Applicant testified his brother consented to the search of he and his brother's residence by law enforcement, which is a legal search. Applicant also testified the other search was of his mother's vehicle and did not know whether law enforcement had a search warrant or not. Based on Applicant's own testimony, any challenge of the vehicle search by Counsel would have been denied due to Applicant's lack of standing to challenge the search. Law enforcement obtained proper consent to search the house and Applicant did not prove the search of his mother's car could have or should have been challenged. Applicant also waived any potential defenses when he pleaded guilty. Further, the majority of the evidence in the case was witness statements against Applicant, and no evidence was alleged to have been developed from the

searches. This Court finds Applicant failed to prove he was prejudiced by any lack of investigation by Counsel.

Accordingly, this Court finds Applicant failed to prove Counsel failed to properly investigate. This Court also finds Applicant failed to prove he was prejudiced by Counsel's lack of investigation such that there was a reasonable probability the result of the proceeding would have been different had Counsel investigated further. Accordingly, this Court denies and dismisses this allegation.

IV. CONCLUSION

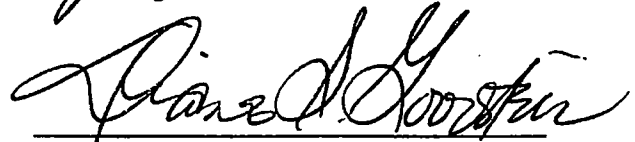
Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes Applicant must file and serve a notice of appeal within thirty days from receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203 and Rule 243, SCACR. 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. Rule 71.1(g), SCRPC, provides that if Applicant wishes to seek appellate review, his post-conviction relief attorney must serve and file a notice of appeal on Applicant's behalf. Applicant and his attorney are directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. Applicant Tellaferro Randolph's application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant shall remain remanded to the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 15 day of July, 2021.



DIANE S. GOODSTEIN
Resident Judge of the First Judicial Circuit

St. George, South Carolina