

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM Calhoun COUNTY
Maité Murphy, Circuit Court Judge

2018-CP-09-00033

RECEIVED
AUG 10 2021
S.C. SUPREME COURT

Edward Britt, # 097580,

Appellant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Edward Britt, # 097580, appeals the Order of Dismissal denying his Application for Post-Conviction Relief filed July 16, 2021, issued by the Honorable Maité Murphy, Presiding Judge, First Judicial Circuit.



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STATE OF SOUTH CAROLINA
COUNTY OF CALHOUN

FILED

IN THE COURT OF COMMON PLEAS
IN THE FIRST JUDICIAL CIRCUIT

2021 JUL 16 12:08

Edward Britt, Jr., #097580,

KENNETH HASTY
CLERK OF COURT
CALHOUN COUNTY
ST. MATTHEW, SC

Case No.: 2018-CP-09-00033

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AUG 10 2021

ORDER OF DIMISSAL

S.C. SUPREME COURT

v.

State of South Carolina,

Respondent.

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed by Edward Britt, Jr. (Applicant) on March 21, 2018, and amended February 25, 2019. Respondent made its Return and Motion to Dismiss on May 25, 2018. An evidentiary hearing into the matter was convened February 26, 2019, at the Dorchester County Courthouse before the undersigned. Jonathan D. Waller, Esquire, represented Applicant. Assistant Attorney General Benjamin H. Limbaugh represented Respondent.

At the hearing, Applicant testified on his own behalf. Respondent called Applicant's plea counsel, Martin R. Banks. This Court also had before it a copy of the Calhoun County Clerk of Court's records regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the application and amendments, Respondent's Return, and the plea transcript. After a review of the record and all evidence presented, this Court finds Applicant has failed to meet his requisite burden of proof and denies relief.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Calhoun County Clerk of Court. In March 2017, the Calhoun County Grand Jury indicted Applicant for murder (2016-GS-09-0312). The charge resulted from

an August 2016 incident in which Applicant fatally shot the victim in the victim's home following an apparent attempted robbery. Tr. pp. 13-16. The Honorable Martin R. Banks represented Applicant. Donald N. Sorenson, Esquire, prosecuted the case. On May 22, 2017, Applicant pleaded guilty as indicted without negotiations or recommendation before the Honorable Edgar W. Dickson. Judge Dickson sentenced Applicant to imprisonment for forty years' imprisonment. Applicant did not appeal from his guilty plea or sentence.

ALLEGATIONS

In his original application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "Ineffective assistance of Plea Counsel with respect to Hill v. Lockhart."
2. "Plea counsel advised that I was not entitled to appeal."

In his amended application, Applicant added the following claims:

1. "Counsel was ineffective for failing to investigate the facts and circumstances surrounding the allegations against Applicant and his subsequent statements to law enforcement, thus rendering Applicant's plea unknowingly and involuntarily entered into."
2. "Counsel was ineffective for failing to conduct an adequate amount of meeting (sic) with Applicant to review discovery so Applicant would know of the allegations against him, thus rendering Applicant's plea unknowingly and involuntarily entered into."

SUMMARY OF TESTIMONY AT EVIDENTIARY HEARING

Applicant testified that he asked counsel to investigate the statements of the other people that were with him during the commission of the crime. Applicant testified that Donald Bowen and a woman were together when the crime took place. Applicant testified that the statements given to law enforcement were simply not correct and that he asked counsel to investigate them. Applicant testified that counsel did not investigate or speak with him about how his potential intoxication could have possibly influenced his statements to law enforcement. Applicant testified he asked counsel for his discovery, but that it was never provided to him. Applicant testified that

he was not aware that there were no fingerprints on the gun and he did not discuss with counsel his taking law enforcement directly to the gun. Applicant testified that he told the plea judge that he had reviewed the law and the facts with his counsel. Applicant testified that he told the plea judge that he was aware that he had a right to proceed to a jury trial and was waiving that right to enter a guilty plea. Applicant testified that he told the plea judge that he was satisfied with his counsel. Applicant testified that he recalled the solicitor reciting the facts of the case and that he agreed with those facts. Applicant testified that he told the plea judge that he was not forced into taking the plea. Applicant testified that counsel met with him twice prior to his plea. Applicant testified that he plead because he was confused and frustrated.

Counsel testified that he has a stack of letters from Applicant in his file asking questions about the case and that he would have answered all of those questions in person. Counsel testified that it is his practice to answer all questions about a case from a defendant. Counsel testified that he has notes on listening to every minute of Applicant's audio confession and notes on his confession at the scene of the crime. Counsel testified that he has pictures of Applicant at the scene showing law enforcement where the gun was to be found. Counsel testified that he does not typically give the full discovery to the defendant, as the information can be spread throughout the prison system. Counsel testified that if he did not give Applicant his discovery it is his practice to review all of the information with him. Counsel testified that he was prepared to go to trial. Counsel testified that he did not believe that Applicant had any truly viable defenses, as Applicant provided two detailed confessions to law enforcement. Finally, counsel testified that it was ultimately Applicant's decision to plead guilty.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the evidence presented at the evidentiary hearing, observed the

witnesses, passed upon their credibility, and weighed the testimony and evidence accordingly in its discussion below. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, as well as the plea transcript. This Court finds the combined record of the plea transcript and the testimony and evidence presented the evidentiary hearing establishes Applicant received effective assistance of counsel, and this application should be denied. Set forth below are the relevant findings of fact and conclusion of law as required by section 17-27-80 of the South Carolina Code of Laws.

Applicant alleges he received ineffective assistance of counsel such that his guilty plea was rendered involuntary. In a post-conviction relief action, the 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 trial 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. The courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 689. 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 plea counsel. Id. at 117, 386 S.E.2d at 625. First, the 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 (1984)).

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, 386 S.E.2d at 625. When there has been a guilty plea, the applicant must prove counsel's representation was below the standard of reasonableness, and but for counsel's unprofessional errors, there is a reasonable probability he would not have pleaded 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).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. 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.

Based on this standard set forth above, this Court finds Applicant has failed to meet his requisite burden of establishing any constitutional ineffectiveness of counsel as to any of his allegations, as addressed below:

Counsel Advised Applicant not Entitled to Appeal

Applicant alleges that counsel was ineffective for advising him that he was not entitled to an appeal from his guilty plea. Counsel testified that he was not concerned with Applicant's mental competency. Counsel testified that he thoroughly investigated this case. Counsel testified that he explained Applicant's rights to him before he entered the guilty plea. Counsel testified that he would never tell a client that they were not entitled to an appeal and did not do so in this case. Counsel testified that Applicant never asked him to file an appeal in this case. Counsel testified

that he met with Applicant numerous times throughout the representation. This Court finds counsel's testimony to be highly credible, especially regarding not advising a client that they were not entitled to an appeal. Counsel testified that he would never advise a client that way, this Court finds that testimony credible. Therefore, this Court finds that Applicant has failed to meet his burden and that counsel was not ineffective in his representation.

Failure to Investigate Facts of Case and Applicant's Statements

Counsel has a duty to undertake reasonable investigations or to make a decision that renders a particular investigation unnecessary. Strickland v. Washington, 466 U.S. 668, 691, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Thus, "[a] criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State." McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). Moreover, counsel's decision not to investigate should be assessed for reasonableness under all the circumstances with heavy deference to counsel's judgment. Simpson v. Moore, 367 S.C. 587, 597, 627 S.E.2d 701, 706 (2006). "[C]ounsel's conversations with the defendant may be critical to a proper assessment of counsel's investigation decisions...." Strickland, 466 U.S. at 691, 104 S.Ct. 2052. "[A] court deciding an actual ineffectiveness claim must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct." Id. at 690, 104 S.Ct. 2052. Bagwell v. State, 410 S.C. 259, 265, 763 S.E.2d 630, 633-34 (Ct. App. 2014).

As noted above, Counsel testified that he was prepared to proceed to trial and had properly investigated the case. Counsel testified that he received discovery and reviewed the evidence with Applicant, as well as the law relating to Applicant's case. Counsel further testified that any potential defense to Applicant's charges was made very difficult considering his multiple detailed

confessions and leading law enforcement to the weapon. Significantly, Applicant never testified what evidence he wanted counsel to investigate that would help his case and how that evidence would change the result. Most significantly, Applicant never once testified that he would have proceeded to trial had counsel made some form of further unspecified investigation. Thus, this Court finds that counsel performed appropriate investigation into Applicant's case and Applicant has failed to establish he was prejudiced by any alleged deficiency. This allegation is dismissed with prejudice.

**Failure to Consult with Applicant and Failure to make aware of the Allegations
against him**

“Brevity of time spent in consultation, without more, does not establish that counsel was ineffective.” Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980). When claims of ineffective assistance of counsel are based on lack of preparation time, an applicant challenging his conviction must show specific prejudice resulting from counsel's lack of time to prepare. Cronic, infra; U. S. v. LaRoache, 896 F.2d 815 (4th Cir. 1990).”

As noted above, Counsel testified that he met with Applicant on a number of occasions and would have answered all of the questions contained in Applicant's letters to him. Counsel testified that he would have reviewed all of the discovery materials with Applicant. Applicant testified that he informed the plea judge that he agree with the facts of the case as recited by the solicitor, that he was aware of the charges against, that counsel reviewed the law and facts with him, that he reviewed the evidence against him, and that he was satisfied with his counsel. Again, most significantly, Applicant never testified that he would have proceeded to trial had counsel met with him on more occasions or had he known some other unspecified information about the charges against him. Therefore, this Court dismisses this allegation with prejudice.

III. CONCLUSION

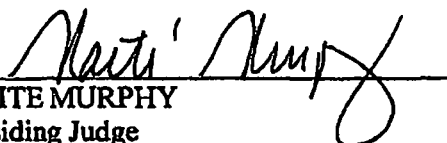
Based on all the forgoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient, nor was Applicant prejudiced by Counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

The Court notes 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. 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), 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 South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 29 day of June, 2021.



MAITE MURPHY
Presiding Judge
First Judicial Circuit