

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Maite Murphy, Circuit Court Judge

Case No. 2012-CP-38-01523

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S.C. SUPREME COURT

Nathan L. Teague #271416.....Applicant/Appellant

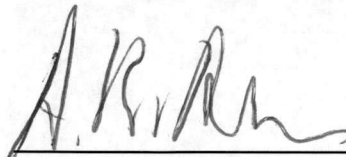
v.

State of South Carolina.....Respondent/Respondent

NOTICE OF APPEAL

This is a post-conviction relief case. Appellant appeals from the Order of Dismissal entered in this case on August 22, 2014. The Order appealed from is attached. This appeal is timely because the lower court entered an Order on July 26, 2021, granting Appellant the right to seek belated appellate review of the August 22, 2012, Order under Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). Appellant's trial counsel received written notice of the July 26, 2021, Order by email on August 24, 2021. A copy of the July 26, 2021, Order is also attached.

Columbia, SC
September 23, 2021



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ATTORNEYS FOR RESPONDENT

STATE OF SOUTH CAROLINA)
 COUNTY OF ORANGEBURG)
 Nathan Lee Teague, #271416,)
 Applicant,)
 v.)
 State of South Carolina,)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE FIRST JUDICIAL CIRCUIT

Case No. 2012-CP-38-01523

ORDER OF DISMISSAL

2014 AUG 22 PM 3:25

This matter comes before the Court by way of an application for post-conviction relief filed September 10, 2012. The State made its Return on March 13, 2013, requesting an evidentiary hearing be held. An evidentiary hearing into the matter was convened on May 27, 2014, at the Dorchester County Courthouse. Applicant was present at the hearing and was represented by counsel, Andrew Farley, Esquire. Respondent was represented by Assistant Attorney General Megan E. Harrigan of the South Carolina Attorney General's Office. After reviewing all testimony and other evidence presented at the hearing, along with a review of all records provided to the Court, this Court finds that there are no constitutional deprivations or other grounds on which to grant relief and is denying and dismissing this application with prejudice.

PROCEDURAL HISTORY

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Orangeburg County Clerk of Court. Applicant was true bill indicted at the August 2010 term of the

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

Orangeburg County Grand Jury for two counts of Armed Robbery (2010-GS-38-1174, -1175), and Escape, Attempted Escape or Possess Tools to Escape from Prison, Recaptured in State (2010-GS-38-1178). Applicant was represented by Michael R. Culler, Jr., Esquire. On June 21, 2012, Applicant appeared before the Honorable Edgar W. Dickson, where he pled guilty as indicted. Judge Dickson sentenced Applicant to confinement for a period of twenty three years for each count of Armed Robbery and ten years confinement for Escape, Attempted Escape or Possess Tools to Escape from Prison, Recaptured in State, with all sentences to be served concurrently. Applicant did not appeal his convictions or sentences.

In his application for post-conviction relief, Applicant alleged that he was being held in custody unlawfully based on the following allegations:

1. Ineffective assistance of counsel;
 - a. "I was going to trial, until my lawyer gave me misadvice [sic]."
2. After discovered evidence; and
 - a. "My lawyer and prosecutor said evidence existed, that did not."
3. "My counsel giving me misadvice [sic] to plea guilty."
 - a. "My counsel gareenteed [sic] me a sentence to plea guilty, which did not happen."

SUMMARY OF TESTIMONY PRESENTED AT EVIDENTIARY HEARING

At the evidentiary hearing, Applicant testified on his own behalf and presented testimony from plea counsel, Michael R. Culler, Jr. (hereinafter "Counsel"). This Court also had before it Applicant's guilty plea transcript, the records from the Orangeburg County Clerk of Court regarding the subject convictions, and Applicant's records from the South Carolina Department of Corrections.

Applicant testified first on his own behalf. He testified that he was originally represented by R. Douglas Mellard, Esquire, of the Orangeburg County Public Defender's Office, after which he retained private counsel Harry Devoe to represent him. He testified that Devoe was relieved and Counsel was appointed to represent him. He testified that he met with his other attorneys and Counsel several times. He testified that he reviewed all discovery materials with Counsel, as well as a surveillance video of one of the crimes. He testified that Counsel used a private investigator, Danny McDaniels, who tracked down the surveillance video. Applicant testified that the video supports his newly discovered evidence claim, because Counsel and McDaniels inaccurately told him that the video identified him as the culprit when the suspect in the video is unidentifiable.¹

He testified that "in the beginning, [Counsel] did everything [he] asked him to do." He testified that he reviewed the elements of the crimes and possible defenses with Counsel. He testified that he asked Counsel to file motions to sever and change venue, both of which were not done to his knowledge. He testified that the State served him with notice of its intention to seek life without parole based on his prior convictions. He testified that Counsel advised him that he would likely be convicted if he went to trial and receive a life sentence. He testified that he decided to plead guilty because he did not want to receive a life sentence if convicted at trial. He testified that he did not want to plead guilty to the first armed robbery because he was not guilty, but did so at Counsel's advice. He testified that he lied while under oath at his guilty plea when he told the plea court he was guilty and that he was satisfied with Counsel based on Counsel's advice. He testified that he understood the State's plea offer was for a sentence between

¹ This Court notes that Applicant did not present the video for this Court's review.

eighteen to twenty-three years and acknowledged that the sentence he received was within this range.

He testified that he has been diagnosed with schizoaffective disorder and is currently on medications that are controlling this condition. He testified that he was evaluated twice before his guilty plea, once at the court's request by DMH and once at his Counsel's request by private clinical psychologist, Valerie Holstrom. He testified that he was found competent by DMH, but Holstrom expressed some concerns regarding his competency. (See Applicant's Ex. No. 1).

Following Applicant's testimony, Counsel was called to testify by Applicant. Counsel testified that he was the third attorney to handle this case, with Mellard from the Public Defender's office first representing Applicant, then Devoe as private counsel before he was relieved due to health issues. He testified that he met with Applicant numerous times, as well as spoke with his mother "ad nauseum." He testified that Applicant was evaluated by DMH and Holstrom before he became involved with the case, but he reviewed both reports. He testified that Applicant was competent in his opinion, based on his interactions with Applicant and his review of these reports. He testified that both previous attorneys had discovery and reviewed the materials with Applicant. He testified that the discovery included statements from all of Applicant's co-defendants, a radio transmission from the police car involved, video surveillance footage, all of which "showed [Applicant] was guilty." He elaborated that the video, which he showed to Applicant before his plea, showed a suspect with the exact, specific and identifiable tattoos that Applicant had, leaving the convenience store immediately after the robbery. He testified that there is no way the video can be newly or after discovered evidence, as he

specifically recalls showing Applicant the video with his investigator, McDaniels. He testified that Applicant would likely have been convicted at trial and received a life sentence based on the overwhelming evidence of guilt. He testified that the State had served Applicant with notice of intent to seek life without parole based on his prior record, which was extensive. He testified that he advised Applicant it would be in his best interest to plead guilty. He testified that the State offered a sentence range of eighteen to twenty-three years imprisonment, which he timely communicated to Applicant. He testified that he is certain Applicant understood that he would receive a sentence of eighteen to twenty-three years if he pled guilty. He testified that it was Applicant's decision to plead guilty.

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. This Court finds that Counsel's testimony is credible and should be afforded great weight; additionally, this Court finds that Applicant's testimony lacks credibility, particularly in light of his admission that he has previously lied during court proceedings. 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 his or her application and establishing that he is entitled to relief. Abney v. State, 408 S.C. 41,

45, 757 S.E.2d 544, 546 (S.C. Ct. App. 2014), *reh'g denied* (Apr. 24, 2014) (citing Goins v. State, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012)). 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.

The proper measure of performance is whether an 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. 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. "[T]he court should recognize that counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Abney, 408 S.C. at 46, 757 S.E.2d at 546 (citing Strickland, 466 U.S. at 690). With respect to guilty plea 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 (1985); Roscoe v. State, 345 S.C. 16546 S.E.2d 417 (2001).

After careful review based on the standard discussed above, including a review of the testimony of the witnesses presented at the evidentiary hearing, this Court denies this application on the basis that Counsel's performance did not fall below the standard required and there was no resulting prejudice to Applicant from these alleged deficiencies. Applicant alleges that Counsel was ineffective for giving him misadvice and guaranteeing him a sentence which he did not receive. This Court finds that Applicant has failed to meet his burden of establishing any deficiency in regards to these allegations. Counsel's credible testimony reveals that he fully reviewed all discovery with Applicant, explained to him that he would likely be convicted based on the overwhelming inculpatory evidence, and negotiated a favorable plea deal that would allow Applicant to avoid a mandatory life without parole sentence. Counsel fully explained all facets of the State's offer, which would result in a sentence between eighteen to twenty-three years imprisonment. This Court finds that Counsel's performance was reasonable and prudent based on the facts and circumstances of this case and that Applicant has failed to establish any deficiency of Counsel. Furthermore, this Court finds that Applicant cannot establish any resulting prejudice from Counsel's alleged deficiencies, as there is no reasonable likelihood that the result of the proceeding would have been different or that Applicant would have proceeded to trial. Applicant testified numerous times that he pled guilty to avoid a mandatory life sentence, which was an all but certainty based on the overwhelming evidence of guilt. Therefore, this

Court finds that Applicant has failed to meet his burden of proof in regards to both deficiency and prejudice and that these allegations must be denied and dismissed with prejudice.

Newly Discovered Evidence

Applicant alleges that he is entitled to a new trial based on newly discovered evidence. Specifically, Applicant alleges the video surveillance from one of the armed robberies amounts to newly discovered evidence because it does not clearly identify him as the suspect. This Court finds that this allegation is without merit and must be denied and dismissed. A defendant requesting a new trial based on newly or after discovered evidence must show that the evidence:

- (1) Is such as would probably change the result if a new trial was had;
- (2) Has been discovered since the trial;
- (3) Could not by the exercise of due diligence have been discovered before the trial;
- (4) Is material to the issue of guilt or innocence; and
- (5) Is not merely cumulative or impeaching.

Hayden v. State, 278 S.C. 610, 611-12, 299 S.E.2d 854, 855 (1983). Here, Applicant has failed to establish what his newly discovered evidence is or show that the alleged evidence meets *any* of the requirements for newly discovered evidence. Specifically, this Court notes that Applicant viewed the video before pleading guilty, so it cannot be newly or after discovered since his guilty plea. Therefore, this Court finds that this allegation must be denied and dismissed with prejudice as a matter of law.

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

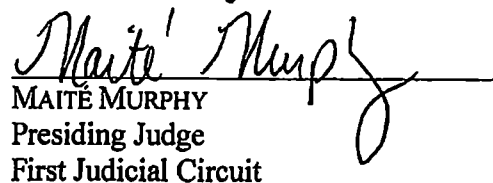
application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

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, 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 an 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 shall be denied and dismissed with prejudice; and
2. The Applicant shall remain remanded to the custody of the State.

AND IT IS SO ORDERED this 10 day of August, 2014.


MAITÉ MURPHY
Presiding Judge
First Judicial Circuit

St. Louis, South Carolina.



ALAN WILSON
ATTORNEY GENERAL

August 21, 2014

2014 AUG 22 PM 2:35
CLEW

The Honorable Winnifa Brown-Clark
Clerk of Court, Orangeburg County
Post Office Box 9000
Orangeburg, South Carolina 29115-9000

Re: Nathan Lee Teague, #271416 v. State of South Carolina
2012-CP-38-01523

Dear Ms. Brown-Clark:

Enclosed please find the signed original **Order of Dismissal** in the above captioned case for filing in your office. Please return a clocked copy to me once you have filed this document. If you have any questions or concerns, please contact me at (803) 734-3737 or MHarrigan@scag.gov.

Sincerely,

Megan E. Harrigan
Assistant Attorney General

MEH/sbm
Enclosure

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ORANGEBURG)
)
 Nathan L. Teague, #271416,)
)
 Applicant,)
)
 vs.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE FIRST JUDICIAL CIRCUIT

C.A. No. 2016-CP-0937

**CONSENT ORDER GRANTING
 BELATED APPELLATE REVIEW PURSUANT
 TO AUSTIN V. STATE**

CLERK OF COURT
 ORANGEBURG, SC

2017 JUL 26 AM 11:09

FILED FOR RECORD
 WINNIFRA B. CLARK

This matter comes before the Court by way of an application for post-conviction relief (PCR) dated July 12, 2016. Respondent made its return on July 26, 2017. An evidentiary hearing on the matter convened December 12, 2017, at the Dorchester County Courthouse before the Honorable Kristi L. Harrington, then-circuit court judge. Applicant was present at the hearing and represented by Arthur K. Aiken, Esquire. Ruston Neely of the South Carolina Office of the Attorney General represented Respondent. At the conclusion of the hearing, Judge Harrington took the matter under advisement. Before issuing a final order, Judge Harrington retired from the bench, leaving the matter unresolved.

Pursuant to Rule 63, SCRCPP, this matter has come before this Court as a resident judge of the First Judicial Circuit.¹ As provide in Rule 63, SCRCPP, this Court has been provided with and thoroughly reviewed the entire record, including the transcript of the evidentiary hearing

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. The Honorable Maite Murphy, the current Chief Administrative Judge for General Sessions for the First Judicial Circuit, presided over Applicant's previous PCR 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 below as required pursuant to S.C. Code Ann. § 17-27-80.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Orangeburg County Clerk of Court. In August 2010, the Orangeburg County Grand Jury indicted Applicant for two counts of armed robbery (2010-GS-38-1174, -1175) and attempted escape (2010-GS-38-1178). Michael R. Culler, Esquire, represented Applicant. On June 21, 2012, Applicant pleaded guilty as indicted to all charges before the Honorable Edgar W. Dickson. Pursuant to the State's recommendation, Judge Dickson sentenced Applicant to imprisonment for concurrent terms of twenty-three years each for both armed robbery charges and ten years for attempted escape. Applicant did not appeal his convictions or sentences.

2012-CP-38-1523

Applicant filed an application for post-conviction relief (PCR) on September 10, 2012, alleging ineffective assistance of counsel and newly discovered evidence. An evidentiary hearing convened on May 27, 2014, at the Dorchester County Courthouse before the Honorable Maite Murphy. Applicant was present at the hearing and was represented by Andrew Farley, Esquire. Respondent was represented by Assistant Attorney General Megan Harrigan Jameson of the

South Carolina Attorney General's Office. Judge Murphy denied Applicant's application for post-conviction relief with prejudice on August 18, 2014. Applicant did not file an appeal of the denial of relief.

ALLEGATIONS

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

1. Ineffective Assistance of PCR Counsel
 - a. "PCR Counsel failed to file a timely appeal on PCR decision."

Through PCR counsel, Applicant amended his application to include the following allegation:

1. Ineffective assistance of prior PCR counsel
 - a. "Prior PCR counsel rendered ineffective assistance of counsel to Teague because prior PCR counsel failed to appeal the dismissal of Teague's first PCR when Teague requested and was denied an opportunity to seek appellate review and Teague did not knowingly and intelligently waive his right to appellate review."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court reviewed the record in its entirety, including the transcript from the evidentiary hearing. 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. Specific findings of fact and conclusions of law are set forth below as required pursuant to section 17-27-80 of the South Carolina Code.

Applicant alleges he was denied the right to appeal the dismissal of his previous post-conviction relief application. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of a previous application when the applicant establishes he did not knowingly and voluntarily waive his right to appellate review of the denial of relief in the

previous action.

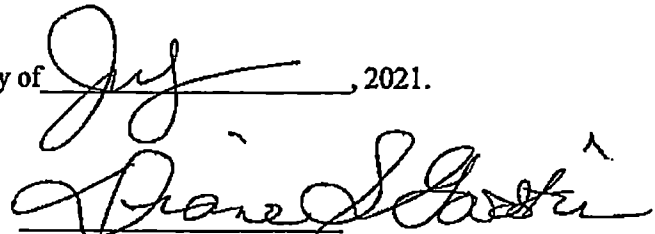
After review of the facts and circumstances surrounding the waiver of the Applicant's right to appeal the denial of allegations in the Applicant's previous post-conviction relief application (2012-CP-38-1523), the parties consented to the granting of relief pursuant to Austin v. State. The parties agree that Applicant did not voluntarily waive his right to appeal the post-conviction relief court's denial of relief and dismissal of the Applicant's application for post-conviction relief. Counsel for Applicant testified Applicant never notified him he wished to appeal, so Counsel did not file a notice of appeal. However, Applicant testified he never received notice of the outcome of the previous action and was not served with an order informing him of the denial of relief. Respondent was unable to confirm with the clerk of court whether Applicant was personally served with the Order of Dismissal in case number 2012-CP-38-1523.

Based upon the foregoing, this Court finds granting Applicant the right to petition for belated appellate review of the denial of relief in Applicant's first PCR action (2012-CP-38-1523) pursuant to Austin v. State is warranted.

IT IS THEREFORE ORDERED:

1. Applicant remain in the custody of the South Carolina Department of Corrections; and
2. Applicant be granted an appeal of case 2012-CP-38-1523 pursuant to Austin v. State.

AND IT IS SO ORDERED this 26 day of July, 2021.



Honorable Diane S. Goodstein
Presiding Judge
First Judicial Circuit

Orangeburg, South Carolina