

PCR

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON) ELEVENTH JUDICIAL CIRCUIT

William Patrick Deaton, #340130,)
Applicant,) 2010-CP-32-5311
v.) NOTICE OF APPEAL
State of South Carolina,)
Respondent.)

Notice is hereby given that William Patrick Deaton, #340130, Applicant in the above-captioned matter, hereby appeals the judgment and order of the Honorable W. Jeffrey Young, Circuit Court Judge, entered in this matter on January 4, 2013.

Applicant received written notice of this order April 1, 2013.

Respectfully submitted this 12th day of April 2013.

William P. Deaton
William Patrick Deaton, #340130
Lieber C.I., SA-09
P.O. Box 205
Ridgeville, SC 29472-0205

Applicant, pro se

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APR 18 2013
S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

) IN THE COURT OF COMMON PLEAS
)
) ELEVENTH JUDICIAL CIRCUIT

William Patrick Deaton, #340130,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

2010-CP-32-5311

AFFIDAVIT OF SERVICE BY MAIL

Personally appeared before me, William Patrick Deaton, #340130, who being first duly sworn, does hereby depose and state the following:

1. That I am the Applicant in the above-captioned matter.
2. That regular communication by mail exists throughout the State of South Carolina, and that this is a proper circumstance of service by mail.
3. That I have on the date listed below served a copy of the Notice of Appeal in this matter on Respondent by placing one copy in the United States mail, first class postage prepaid, and addressed as follows:

Alan Wilson
SC Attorney General
P.O. Box 11549
Columbia, SC 29211-1549

This 12th day of April, 2013

William P. Deaton
William Patrick Deaton, #340130

SWORN to before me this
12th day of April, 2013.

Ludeman Bryant
Notary Public for South Carolina
My Commission Expires: May 26, 2020

ORIGINAL

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT
JAN 14 A 11:20:10-CP-32-5311

William Patrick Deaton, #340130,
Applicant,

STEPHAN CARRIGG
CLERK OF COURT
LEXINGTON, SC
ORDER OF DISMISSAL

v.

State of South Carolina,
Respondent.

S.C. SUPREME COURT

APR 18 2013

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This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed December 14, 2010. Respondent made its Return on February 28, 2011. An evidentiary hearing into the matter was convened on August 15, 2012 at the Lexington County Courthouse. The Applicant was present at the hearing and was represented by Aimee J. Zmroczek, Esquire. The Respondent was represented by Kaelon E. May of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. Also testifying was Applicant's counsel, Sarah A. Hahn, Esquire. This Court also had before it the records of the Lexington County Clerk of Court, the transcript of the proceedings against the Applicant, the Applicant's records from the South Carolina Department of Corrections, and the exhibits entered into evidence at the hearing.

I. PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. The Applicant was indicted at the October 2009 term of the Lexington County Grand Jury for burglary—first degree

(2009-GS-32-2769). He was represented by Sarah A. Hahn, Esquire. On October 14, 2009, the Applicant pled guilty as charged. The Honorable Thomas A. Russo sentenced Applicant to sixteen years confinement for armed robbery and fifteen years confinement for burglary—first.

At the August 15, 2012 evidentiary hearing, Applicant proceeded on one allegation of ineffective assistance of counsel: (1) failure to make a motion to enforce the guilty plea agreement.

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.

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, “[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRPC). 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, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 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, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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CLERK OF COURT
LEXINGTON, SC

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, supra). 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. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland). 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, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

Failure to enforce a guilty plea agreement

This Court finds Applicant's allegation that that counsel was ineffective for failing to make a motion to enforce the original plea agreement was without merit. This Court finds counsel's testimony more credible than Applicant's testimony. The State's guilty plea offer included a recommendation that it was not opposed to guilty plea court imposing to the minimum ten year term of imprisonment for burglary—second and armed. Counsel conveyed the offer to Applicant and advised him that guilty plea court could ignore the State's

recommendation. Counsel testified the Applicant initially refused to accept any guilty plea offer that was harsher than five years imprisonment for attempted armed robbery and probation for the burglary charge.

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BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

Applicant changed course informed counsel that he wished to accept the guilty plea offer. Upon conveying to the solicitor that Applicant had decided to accept the guilty plea offer, counsel learned the original plea offer had been modified due to internal policies of the solicitor's office. The original offer was still available absent the State's unofficial recommendation. Counsel conveyed the modified guilty plea offer to the Applicant which the Applicant refused to accept. Yet, Applicant argues the State revoked the guilty plea agreement after his oral acceptance. The State withdrew the guilty plea offer. On January 29, 2010, Applicant pled guilty as charged to burglary—first and armed robbery.

This Court finds Applicant failed to meet his burden to prove. Applicant failed to prove that counsel was ineffective for not making a motion to enforce the guilty plea agreement. A defendant has no constitutional right to a plea bargain. Santobello v. New York, 404 U.S. 257, 262, 92 S.Ct. 495, 498 (1971) A plea agreement is only an "offer" until the defendant enters a court-approved guilty plea. A defendant accepts the "offer" by pleading guilty. Until formal acceptance has occurred, the plea is not binding on the defendant, the State, or the court. Reed v. Becka, 333 S.C. 676, 683, 511 S.E.2d 396, 400 (Ct. App. 1999). The decision whether to offer a plea bargain was within the solicitor's discretion. State v. Johnson, 287 S.C. 171, 337 S.E.2d 204, 205 (1985). This Court finds counsel conveyed all plea negotiations to Applicant and reasonably advised him on consequences of accepting and rejecting the State's guilty plea offer.

Applicant completely failed to meet his burden in establishing he detrimentally relied on the guilty plea agreement. Absent an actual plea of guilty, a defendant may enforce an oral plea agreement only upon a showing of detrimental reliance on a prosecutorial promise in plea bargaining. Custodio v. State, 373 S.C. 4, 10, 644 S.E.2d 36, 39 (2007). Applicant simply failed to present any evidence that by allegedly accepting the State's original plea offer he was induced to act adversely to his legal detriment.

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CLERK OF COURT
LEXINGTON, SC

Accordingly, this Court finds Applicant has failed to prove the first prong of the Strickland test – that counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present specific and compelling evidence that counsel committed either errors or omissions in his representation of Applicant. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by counsel's performance. This Court concludes Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

All Other Claims

Except as discussed above, this Court finds that the Applicant affirmatively waived the remaining allegations set forth in his application at the hearing. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's

failure to address these issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

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III. CONCLUSION

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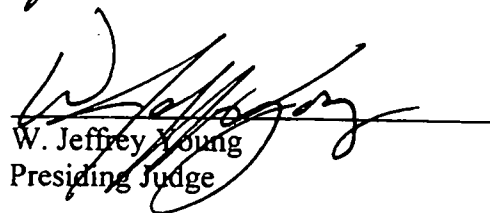
Based on all the forgoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, this application for post-conviction relief must be denied and dismissed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

DEBRA A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of Respondent

AND IT IS SO ORDERED this 4th day of January, 2012. 2013


W. Jeffrey Young
Presiding Judge

Sumter, South Carolina

William Deaton 340130
Lieber C.I. P.O. Box 205/5A-9
Ridgelyville S.C. 29472

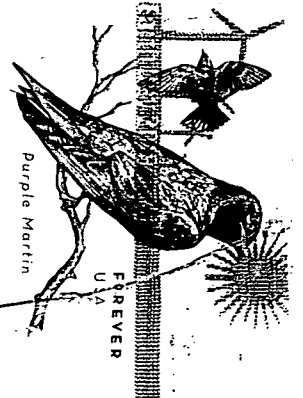
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LIEBER C.I.

"Clerk"
Daniel E. Shearouse
S.C. Supreme Court
P.O. Box 11330
Columbia, S.C. 29211-1330

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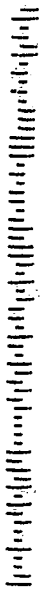
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THE DEPARTMENT OF CORRECTIONS HAS REVIEWED
THIS ITEM. THEREFORE,
THE DEPARTMENT DOES NOT ASSUME RESPONSIBILITY
FOR RESENTMENTS

FIRST CLASS



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