THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

W. Jeffrey Young, Circuit Court Judge

Case No. 2010-CP-23-05554

Barry Reynolds Styles, S.C.D.C. No. 123115.....Appellant

v.

State of South Carolina.....Respondent

NOTICE OF APPEAL

Barry Reynolds Styles, S.C.D.C. No. 123115 (hereafter "Mr. Styles"), hereby gives Notice of Appeal in the above-captioned case. Mr. Styles appeals the Order of Dismissal of the Circuit Court, signed on March 15, 2013 by the Honorable W. Jeffrey Young, and filed on April 2, 2013. The undersigned counsel received written notice of entry of this Order on April 5, 2013.

April 18, 2013

Denny P. Major, S.C. Bar No. 74907
P.O. Box 2048
Greenville, South Carolina 29602-2048
(864) 240-3200

ATTORNEYS FOR APPELLANT

Other Counsel of Record:

Karen C. Ratigan
Assistant Deputy Attorney General
P. O. Box 11549
Columbia, SC 29211
Attorneys for Respondent

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

W. Jeffrey Young, Circuit Court Judge

Case No. 2010-CP-23-05554

Barry Reynolds Styles, S.C.D.C. No. 123115.....Appellant

v.

State of South Carolina.....Respondent

PROOF OF SERVICE

This is to certify that the foregoing NOTICE OF APPEAL was served in the above-referenced case by placing a copy of said document in the United States Mail on this the 18th day of April, 2013, addressed as follows:

Karen C. Ratigan, Esq.
Assistant Deputy Attorney General
South Carolina Attorney General's Office
Post Office Box 11549
Columbia, SC 29211

Denny P. Major, S.C. Bar No. 74907
P.O. Box 2048
Greenville, South Carolina 29602-2048
(864) 240-3200

ATTORNEYS FOR APPELLANT

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 2010CP2305554

Barry Reynolds Styles *vs.* South Carolina State Of

CHECK ONE:

☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ ACTION DISMISSED (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ ACTION STRICKEN (*CHECK REASON*): ☐ Rule 40(j) SCRCP; ☐ Bankruptcy;

☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other: _____

☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☐ Statement of Judgment by the Court:

Dated at Greenville, South Carolina, this 2nd day of April, 2013.

Court Reporter:

PRESIDING JUDGE - W Jeffrey Young

This judgment was entered on the 2nd day of April, 2013, and a copy mailed first class this 2nd day of April, 2013, to attorneys of record or to parties (when appearing pro se) as follows:

Denny Parker Major PO Box 2048 Greenville, SC 29602

ATTORNEY(S) FOR THE PLAINTIFF(S)

Karen Christine Ratigan PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court - Clerk of Court

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	C.A. No. 2010-CP-23-5554
COUNTY OF GREENVILLE)	
)	
Barry Reynolds Styles,)	
S.C.D.C. No. 123115,)	
)	
Applicant,)	**ORDER OF DISMISSAL**
)	
v.)	
)	
State of South Carolina,)	
)	
Respondent.)	

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed July 9, 2010. The Respondent made its return on December 22, 2010. An evidentiary hearing was convened on February 14, 2013 at the Greenville County Courthouse. The Applicant was present and represented by Denny P. Major, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying were Lila Mae Styles and Orlando Fuller. The Court had before it the transcript of the guilty plea hearing, the records of the Greenville County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the PCR application and subsequent amendments, the return, and the Applicant's Exhibit 1.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted at the December 2009 term of the Greenville County Grand Jury for murder (2009-GS-23-9897, count 1) and possession of a weapon during commission of a violent crime (2009-GS-23-9897,

count 2). He was represented by Daniel J. Farnsworth, Esquire.

On March 31, 2010, the Applicant pled guilty to the lesser-included offense of voluntary manslaughter and possession of a weapon during commission of a violent crime. The Honorable Edward W. Miller sentenced the Applicant to concurrent terms of twenty (20) years for voluntary manslaughter and five (5) years for possession of a weapon during commission of a violent crime. The Applicant did not appeal.

ALLEGATIONS

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

1. Ineffective assistance of counsel:
   a. Failed to file a notice of appeal.
   b. Advised the Applicant to plead guilty "without regard for principle to law."

Counsel for the Applicant filed a Motion to Amend Application for Post Conviction Relief on February 27, 2012. This filing contained various items already submitted by the Applicant (such as his PCR application and affidavits), as well as the guilty plea transcript and a Memorandum in Support of Application for Post Conviction Relief. In the Memorandum, the Applicant raised the following issues:

1. Ineffective assistance of counsel:
   a. Told the Applicant he would plead guilty to involuntary manslaughter.
   b. Failed to file an appeal.

Counsel for the Applicant filed a Supplemental and/or Amended Application for Post Conviction Relief dated November 26, 2012. The filing contained various items already submitted in either the original PCR application or the February 27, 2012 amendment. In addition, the Applicant raised the following issues:

1. Ineffective assistance of counsel:
   a. Represented the victim in an earlier matter.
   b. Failed to object to entry of a guilty plea for voluntary manslaughter instead of involuntary manslaughter.
   c. Failed to present character witnesses.
   d. Failed to properly investigate self-defense and present these findings at the plea hearing.

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 and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

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).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

The Applicant stated he had seven meetings with plea counsel and that they reviewed the State's evidence, his version of events, the autopsy report indicating the victim had been shot six times, and the elements of self-defense. The Applicant stated he did not know at the time that plea counsel had previously represented the victim. The Applicant stated plea counsel told him at their sixth meeting that he would "try to get him" a plea to involuntary manslaughter. The Applicant stated plea counsel explained the sentence range for involuntary manslaughter was 1-5 years. The Applicant stated plea counsel told him that he would "try" to get a plea offer for involuntary manslaughter and that the State was considering it. The Applicant testified he believed he was pleading guilty to involuntary manslaughter on the day of the plea hearing. The Applicant testified that, while the plea judge mentioned he was facing a sentence of 2-30 years, plea counsel told him not to worry about that. The Applicant stated plea counsel told him that he would file an appeal if things did not go well, but that he never filed one. The Applicant stated he wanted to appeal because (1) his sentence was too harsh and (2) he believed he was pleading guilty to involuntary manslaughter.

Lila Mae Styles, the Applicant's wife, stated plea counsel told them the Applicant was pleading guilty to involuntary manslaughter. Mrs. Styles stated she did not know the plea recommendation was for a thirty year sentence. Orlando Fuller, the Applicant's stepson, stated plea counsel said he was "trying to get [the Applicant] to involuntary manslaughter."

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. The Applicant admitted to the plea judge that he was guilty. (Plea transcript, p.10). The Applicant also told the plea judge that he understood the trial rights he was waiving in pleading guilty, was satisfied with counsel, and had not been coerced in any way. (Plea transcript, pp.8-11).

This Court finds the Applicant failed to meet his burden of proving plea counsel was deficient because he did not divulge he had previously represented the victim. The Applicant entered two docket sheets into evidence from November 1992 that indicate plea counsel represented the victim.[1] The Applicant stated plea counsel never told him of this prior representation. This Court finds plea counsel was not ineffective in failing to disclose he had represented the victim twenty years earlier. This Court finds the Applicant has failed to meet his burden of showing that a potential conflict of interest actually materialized into a realized conflict adversely affecting plea counsel's performance. See Jackson v. State, 329 S.C. 345, 354, 495 S.E.2d 768, 773 (1998) (citing Cuyler v. Sullivan, 446 U.S. 335, 100 S. Ct. 1708, 64 L. Ed. 2d 333 (1980)); Padgett v. State, 324 S.C. 22, 27, 484 S.E.2d 101, 103 (1997).

This Court finds the Applicant failed to meet his burden of proving plea counsel had advised he would be pleading guilty to involuntary manslaughter. Mrs. Styles testified plea counsel told them the Applicant would plead guilty to involuntary manslaughter. This Court find Mrs. Styles' testimony is not credible. This finding is supported by the fact that both the Applicant and Mr. Fuller stated plea counsel merely said he would "try" to get a recommendation for involuntary manslaughter. Rather, this Court finds the plea offer from the State was for a thirty year sentence on voluntary manslaughter and that plea counsel conveyed this offer to the Applicant. The Applicant's contention that he believed he was pleading guilty to involuntary manslaughter is both not credible and not supported by the facts of the case. See State v. Rivera, 389 S.C. 399, 404, 699 S.E.2d 157, 159 (2010) ("Involuntary manslaughter is defined as: (1) the unintentional killing of another without malice, but while engaged in an unlawful activity not naturally tending to cause death or great bodily harm; or (2) the

[1] Applicant's Exhibit 1.

unintentional killing of another without malice, while engaged in a lawful activity with reckless disregard for the safety of others."). As recited at the plea hearing, the Applicant shot the victim (who was armed with a knife) six times after they had an argument. (Plea transcript, pp.12-14). Further, the Applicant's' own testimony at the PCR hearing was that he shot the victim after the victim pulled out a knife. These facts do not constitute involuntary manslaughter. See id. Further, the Applicant's contention that he was pleading guilty to involuntary manslaughter is not supported by the plea record. When the case is called, it is noted the Applicant is pleading guilty to voluntary manslaughter. (Plea transcript, p.3). The plea judge advises the sentence range was 2-30 years. (Plea transcript, p.6). The State noted it made a recommendation for thirty years but plea counsel stated this was not "a 30 year case." (Plea transcript, p.14; p.21). The record itself refutes any allegation the Applicant would have believed he was pleading guilty to involuntary manslaughter – especially when he knew that charge carried 1-5 years. See Stalk v. State, 375 S.C. 289, 300, 652 S.E.2d 402, 407 (Ct. App. 2007); see also Rayford v. State, 314 S.C. 46, 48-49, 443 S.E.2d 805, 806 (1994) (where transcript of guilty plea proceeding refuted applicant's claim that he did not understand the terms of a plea bargain, grant of PCR was inappropriate notwithstanding applicant's claim lawyer misadvised him). While the plea transcript indicates the plea judge stated "[i]nvoluntary manslaughter carries two to 30 years," any error in this regard was cured by the remainder of the plea colloquy. (Plea transcript, p.6). See Holden v. State, 393 S.C. 565, 575, 713 S.E.2d 611, 616 (2011); Burnett v. State, 352 S.C. 589, 593-94, 576 S.E.2d 144, 246 (2003). This Court further finds that, while the Applicant stated plea counsel told him not to worry about these alleged issues during the plea hearing, this testimony is both not credible and not persuasive.

This Court finds the Applicant failed to meet his burden of proving plea counsel should

have filed an appeal. Plea counsel has a constitutionally imposed duty to consult with the defendant about an appeal only when there is reason to think either: (1) that a rational defendant would want to appeal or (2) that this defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores-Ortega, 528 U.S. 470, 480, 120 S. Ct. 1029, 1036 (2000). In order to make this determination, "courts must take into account all the information counsel knew or should have known." Id. (citing Strickland, 466 U.S. at 690, 104 S. Ct. at 2066). Although not determinative, a highly relevant factor will be whether the conviction follows a trial or a guilty plea, both because a guilty plea reduces the scope of potentially appealable issues and because a plea may indicate the defendant seeks an end to judicial proceedings. Id. Petitioner made a clear, informed choice to plead guilty that day. See Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969). Petitioner did not indicate at any point that he was doing so based on a promise of a plea to involuntary manslaughter or a sentence of less than five years. Based on the nature of the case and a thorough and complete guilty plea colloquy, it is unlikely a rational defendant would have wanted to appeal. See Roe v. Flores-Ortega, 528 U.S. at 480, 120 S. Ct. at 1036.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that plea counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that plea counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by plea counsel's performance. This Court concludes the 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 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 evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice. This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

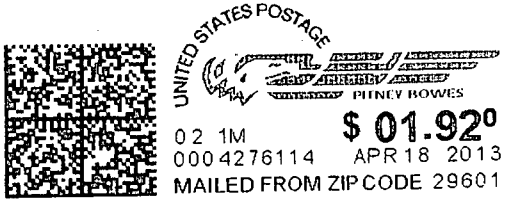
1. That the application for post-conviction relief be denied and dismissed with prejudice; and

2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 15 day of March, 2013.

W. Jeffrey Young
Presiding Judge

Sumter, South Carolina.



Haynsworth
Sinkler Boyd, P.A.
ATTORNEYS AND COUNSELORS AT LAW

POST OFFICE BOX 2048
GREENVILLE, SOUTH CAROLINA 29602-2048

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
1231 Gervais Street
Columbia, South Carolina 29201

Haynsworth
Sinkler Boyd, P.A.

ATTORNEYS AND COUNSELORS AT LAW

ONE NORTH MAIN, 2ND FLOOR (29601-2772)
POST OFFICE BOX 2048 (29602-2048)
GREENVILLE, SOUTH CAROLINA
TELEPHONE 864.240.3200
FACSIMILE 864.240.3300
www.hsblawfirm.com

DENNY P. MAJOR
ATTORNEY
DIRECT DIAL NUMBER 864.240.3296
dmajor@hsblawfirm.com

April 18, 2013

VIA U.S. MAIL
The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
1231 Gervais Street
Columbia, South Carolina 29201

RE: Barry Reynolds Styles, S.C.D.C. No. 123115 v. State of South Carolina, Greenville County Court of Common Pleas No. 2010-CP-23-5554

Dear Mr. Shearouse,

Enclosed for filing are an original and a copy of a Notice of Appeal in the above case. Also enclosed are the following:

(1) proof of service of the Notice of Appeal on the Respondent,
(2) a copy of the Order which is being challenged on appeal, and
(3) a copy of letter filing Notice of Appeal with the lower court.

This appeal is being filed with the Supreme Court because this is an appeal from a Post-Conviction Relief action. We are not subject to any filing fee since this is a Post-Conviction Relief matter where I was appointed to represent an indigent applicant. Please return a file-stamped copy to me in the envelope provided.

Sincerely,

HAYNSWORTH SINKLER BOYD, P.A.

Denny P. Major

Encl.
cc: Karen C. Ratigan, Assistant Deputy Attorney General
Barry Styles

DOC #891433