STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM KERSHAW COUNTY
Court of Common Pleas

The Honorable D. Craig Brown and G. Thomas Cooper, Jr., Circuit Court Judges

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Case No. 2017-CP-28-0226
2014-CP-28-302

Alonzo Tarell Jones, ...Petitioner,

v.

State of South Carolina, ...Respondent.

NOTICE OF APPEAL

Applicant, Alonzo Tarell Jones, appeals the order of the Honorable D. Craig Brown, dated January 31, 2022, and filed February 2, 2022, and the order of G. Thomas Cooper, Jr., dated December 3, 2015, and filed December 9, 2015, pursuant to *Austin v. State,* 305 S.C. 453, 409 S.E. 2d 395 (1991).

2/11, 2022

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STATE OF SOUTH CAROLINA COUNTY OF KERSHAW	)	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT
Alonzo Tarell Jones, Applicant, v. State of South Carolina, Respondent.	)	Case No.: 2017-CP-28-0226 **ORDER GRANTING BELATED APPEAL PURSUANT TO AUSTIN v. STATE**

FILED FOR RECORD
2022 FEB -2 PM 1:08
JANET C. HASTY
CLERK OF COURT
KERSHAW COUNTY, S.C.

This matter came before the court for a hearing on January 24, 2022. The Applicant, Alonzo Tarell Jones, was represented by Counsel Michael H. Lifsey. The Respondent, State of South Carolina, was represented by Assistant Attorney General Michael D. Davidson.

PROCEDURAL HISTORY

On April 19, 2013, Applicant pled guilty to Unlawful Carrying of a Pistol and Resisting Arrest in Kershaw County General Sessions Court and was sentenced to concurrent terms of one year suspended to six months of probation on each charge. No direct appeal was taken from these convictions or sentences. On April 8, 2014, Applicant, with the assistance of retained counsel Ronald W. Moak, filed his first PCR application. That action was docketed as 2014-CP-28-0302. Subsequent to the filing of this action, Applicant was incarcerated on federal charges. A hearing on the PCR action was held on July 16, 2015. Counsel Moak represented Applicant at this hearing but Applicant was not present and no evidence was presented on behalf of the Applicant. An order was issued on December 3, 2015, dismissing Applicant's application with prejudice. Counsel Moak did not file an appeal on Applicant's behalf.

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Applicant ultimately filed a complaint with the Office of Disciplinary Counsel concerning Counsel Moak's representation of him alleging that Counsel Moak never attempted to call or explain what was happening in regard to his PCR action, failed to respond to emails requesting status updates and other communications, failed to inform Applicant his PCR hearing was scheduled and arrange a means by which Applicant could participate, and failed to advise Applicant that his application was denied at the end of the hearing. Counsel Moak's representation of Applicant was cited as one of the bases for discipline imposed on Counsel Moak. *Matter of Moak,* 417 S.C. 73, 789 S.E. 2d 42, (2016). In that opinion, the Supreme Court found that Counsel Moak violated Rules 1.3 and 1.4, South Carolina Rules of Professional Conduct, Rule 407, SCACR, because he did not act with reasonable diligence in his representation of Applicant, and did not keep Applicant reasonably informed about the status of the matter or comply with requests for information.

In November of 2016, Applicant filed a petition for writ of Habeas Corpus in the original jurisdiction of the South Carolina Supreme Court. On December 1, 2016, the Supreme Court issued an order holding that habeas relief was not proper as applicant had not exhausted all other available remedies pursuant to *Gibson v. State,* 329 S.C. 37, 495 S.E. 2d 426 (1998). Accordingly, the South Carolina Supreme Court denied the petition without prejudice and advised Applicant to file a subsequent application in the circuit court asserting these claims. Applicant filed this action in conformity with that advice. A hearing was held on January 24, 2022, to determine if Applicant was entitled to appellate review of his prior PCR application bearing the docket number 2014-CP-28-0302.

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FINDINGS OF FACT

Applicant testified on his own behalf. His recitation of the procedural history of the case was consistent with the history outlined above. He testified that Counsel Moak never informed him of the date of his PCR hearing or the outcome of that hearing. Applicant testified that Counsel Moak never informed him of his right to appeal from a decision dismissing his application and that he did not knowingly and intelligently waive that right. Applicant further testified that if he had been informed of his right to appeal the dismissal of his application, he would have requested Counsel Moak file an appeal. He further testified that his purpose in filing the habeas action in the original jurisdiction of the South Carolina Supreme Court was to seek appellate review of his prior PCR application.

Ronald W. Moak testified at the call of the State. Mr. Moak is currently suspended from the practice of law for other, unrelated misconduct. *In the Matter of Moak*, 427 S.C. 1, 828 S.E. 2d 760 (2019). Mr. Moak testified that he did not keep Applicant informed of the status of his prior PCR application and that he did not inform him of the dismissal of his application or of his right to appeal the dismissal.

At the conclusion of the evidentiary hearing, the State conceded that Applicant had met his burden showing he was entitled to appellate review pursuant to *Austin*.

Based on the testimony of both Applicant and Mr. Moak, it is uncontroverted that Applicant was not informed of his right to appeal the dismissal of his prior PCR action and Applicant did not knowingly and intelligently waive his right to appeal.

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CONCLUSIONS OF LAW

PCR applicants have a right to seek appellate review. Section 17-27-100, S.C. Code of Laws, as amended, and *Austin v. State,* 305 S.C. 453, 409 S.E. 2d 395 (1991). A PCR Applicant is entitled to a belated *Austin* appeal if the PCR judge find either: (1) the applicant requested and was denied an opportunity to seek appellate review; or (2) the right to appellate review of a previous PCR order was not knowingly and intelligently waived. *Odom v. State,* 337 S.C. 256, 523 S.E. 2d 753 (1999).

THEREFORE, IT IS ORDERED that Applicant is entitled to appellate review of the dismissal of his prior PCR application, 2014-CP-28-0302.

AND IT IS SO ORDERED this 31 **day of** Jan., **2022.**

D. CRAIG BROWN
Circuit Court Judge

Florence, South Carolina

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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2014-CP-28-302

Alonzo Tarell Jones	State of South Carolina
PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (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. ☐ See Page 2 for additional information.

☐ **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; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge **Judge Code** **Date**

For Clerk of Court Office Use Only

ATTEST True, Correct & Certified Copy of Original on File in this Court
Jean B. Gould
Clerk of Court Kershaw County

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 3/2013)

This judgment was entered on **9th day of December, 2015**, and a copy mailed first class or placed in the appropriate attorney's box on **9th day of December, 2015**, to attorneys of record or to parties (when appearing pro se) as follows:

Ronald Wade Moak PO Box 2544 Camden, SC 29020

ATTORNEY(S) FOR THE PLAINTIFF(S)

James Clayton Mitchell III PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Joyce McDonald

Joyce McDonald - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

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

STATE OF SOUTH CAROLINA COUNTY OF KERSHAW	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
Alonzo T. Jones, Fed. ID: 70680-053 Applicant, v. State of South Carolina, Respondent.	**2014-CP-28-00302** **ORDER OF DISMISSAL**

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed April 8, 2014. Respondent made its Return on June 12, 2014, requesting an evidentiary hearing be convened. Ronald W. Moak, Esquire, was retained by Applicant to represent him. An evidentiary hearing was held on July 16, 2015, at the Richland County Courthouse. Applicant was present and represented by Counsel Moak. J. Clayton Mitchell, Esquire, of the South Carolina Attorney General's Office represented Respondent.

At the PCR hearing, Cornelius J. Riley, Esquire, testified. This Court had before it the Kershaw County Clerk of Court records, Applicant's South Carolina Department of Corrections records, the PCR application, the Return, and the guilty plea transcript.

I. PROCEDURAL HISTORY

Applicant was indicted during the February 2013 term of the Kershaw County Grand Jury for Unlawful Carrying of a Pistol (2013-GS-28-0083). Additionally, Applicant waived presentment to the Kershaw County Grand Jury for Resisting Arrest (2013-GS-28-0334). Applicant was represented by Cornelius J. Riley, Esquire. On April 9, 2013, Applicant appeared before the Honorable DeAndrea G. Benjamin, where he pleaded guilty to both offenses. Judge Benjamin sentenced Applicant to one (1) year imprisonment for Unlawful Carrying of a Pistol

and to a concurrent one (1) year imprisonment for Resisting Arrest. Applicant did not appeal his guilty pleas or sentences.

In this action, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel in failing to properly investigate the charges against Applicant.
2. Ineffective assistance of counsel in failing to advise Applicant that he could be subject to federal prosecution.

II. APPLICABLE LAW

In a post-conviction relief action, Applicant bears the burden of proving the allegations in the application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, 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, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order 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. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced 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. With respect to guilty plea counsel, the Applicant must show 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, 59 (1985).

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

Failure to Investigate

Applicant alleges Counsel was ineffective for failing to investigate the facts of the case. He argues that he has learned the gun that was recovered from him during the incident was not processed by investigators. Counsel testified Applicant was originally charged with being a felon in possession of a firearm but that charge was dropped because he did not have a requisite felony conviction. Counsel credibly testified that there was no dispute about whether there was a gun found on Applicant. He testified that Applicant was eager to plead guilty and was happy with the sentence.

This Court finds this allegation without merit. "Criminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential

witnesses and making an independent investigation of the facts and circumstances of the case." Edwards v. State, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011) (internal citations omitted). The record reflects Applicant fully admitted his guilt to the plea court. "A guilty plea constitutes a waiver of nonjurisdictional defects and claims of violations of constitutional rights." Jamison v. State, 410 S.C. 456, 467, 765 S.E.2d 123, 129 (2014) (citing State v. Rice, 401 S.C. 330, 331-32, 737 S.E.2d 485, 485-86 (2013); Hyman v. State, 397 S.C. 35, 44, 723 S.E.2d 375, 379 (2012)). Notably the South Carolina Supreme Court has held "[a] guilty plea represents a break in the chain of events which has preceded it in the criminal process." Id (citations omitted). "When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea." Id (citing Rice, 401 S.C. at 332, 737 S.E.2d at 486). Applicant cannot now claim that he did not have a gun when arrested. He fully agreed to the facts as laid out by the solicitor and admitted to the allegations set forth in the indictment.

In any event, Applicant failed to present any evidence that the gun was *not* properly processed by law enforcement. See Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998) ("failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result."). The allegation rests entirely on speculation. This allegation is denied and dismissed with prejudice.

Failure to Advise That Applicant Could be Subject to Federal Prosecution

This Court further finds Applicant knowingly and voluntarily entered into the guilty plea. Applicant alleges he was not advised that he could be subjected to federal prosecution from the incident. He alleges that if he had known this, he would not have pleaded guilty. This Court finds

this issue is a collateral, rather than direct, consequence of the sentence and therefore is not cognizable in this forum. "The law is clear that a valid plea of guilty requires that the defendant be made aware of all the direct consequences of his plea." Cuthrell v. Director, Patuxent Institution, 475 F.2d 1364, 1365 (4th Cir.), cert. denied, 414 U.S. 1005 (1973). "The distinction between 'direct' and 'collateral' consequences of a plea, while sometimes shaded in the relevant decisions, turns on whether the result represents a definite, immediate and largely automatic effect on the range of the defendant's punishment." Id at 1366. In Cuthrell, the Fourth Circuit determined that the possibility of civil commitment proceedings was a collateral consequence of a plea to a criminal assault charge, and failure to advise petitioner of this collateral consequence did not render the plea unconstitutional.

Here, the issue of whether the federal authorities will press charges is absolutely collateral to Applicant's convictions. The decision was fully discretional with a completely separate authority and jurisdiction. It was in no way definite, immediate or automatic upon entering the plea. This Court finds Counsel had no duty whatsoever to advise Applicant of the possibility that he could be charged by the federal government.

Further, as Counsel credibly testified, he did not know the federal authorities were investigating the case. Counsel did note that the solicitor will normally take a "hands-off" approach and wait to see if a defendant is convicted in federal court before moving forward with the State charges. He noted that the State charges are usually *nolle prossed* in that situation if a defendant is convicted in federal court. Here, Applicant is essentially alleging that Counsel was ineffective in failing to advise him to wait to plead until the federal charges were adjudicated. Counsel did not know of any federal investigation involving Applicant. He testified he did not believe this sort of incident would draw the attention of federal authorities and therefore had no

reasons to consider it. He further testified that he believed the prosecution to be legal because of the doctrine of dual sovereignty. This Court finds Counsel acted reasonably in his representation and made a strategic decision to advise Applicant to plead guilty to the charges as he believed the plea deal to be beneficial to Applicant. It was not unreasonable for Counsel not to advise Applicant of that fact that he could be prosecuted by federal authorities. Counsel had no knowledge and had no reason to know that Applicant was under investigation by the federal authorities. This allegation is denied and dismissed with prejudice.

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, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

IV. CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Applicant failed to demonstrate counsels' performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) 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 THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and

2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 3RD day of December, 2015.

G. THOMAS COOPER, JR.
Presiding Judge

Columbia, South Carolina