

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

JUDGMENT IN A CIVIL CASE
CASE NO: 2011CP2302638

Edmond Jerome Mayes 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), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; 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:

Scarlet B Moore Ox 17615 Greenville, SC 29606

Karen Christine Ratigan PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

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

2013 APR - 2 1:32
FILED-CLERK OF COURT
GREENVILLE, S.C.
PAUL B. WICKENSIMER

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Edmond Jerome Mayes,¹)
 S.C.D.C. No. 281710,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2011-CP-23-2638

RECORDED
 2013 MAR 15 AM 9:02
 CLOCKED IN ERROR
 JAMES C. CAMPBELL
 CLERK OF COURT
 SUMTER COUNTY, S.C.

ORDER OF DISMISSAL

2013 APR - 2 P 1:52

FILED-CLERK OF COURT
 GREENVILLE CO. S.C.
 PAUL B. WICKENSHER

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed April 18, 2011. The Respondent made its return on June 27, 2011. An evidentiary hearing into the matter was held on February 13, 2013 at the Greenville County Courthouse. The Applicant was present and represented by Scarlet B. Moore, 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 both the Applicant's plea counsel, Scott D. Robinson, Esquire and the Applicant's first plea counsel, Larry H. Cooke, Esquire. The Court had before it the guilty plea transcript, 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 amendment, and the return.

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 October 2009 term of the Greenville County Grand Jury for resisting arrest with assault

¹ The South Carolina Department of Corrections lists the Applicant's name as Edward Jerome Mayes.

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(2009-GS-23-5453) and at the September 2010 term for trafficking cocaine (2010-GS-23-2749).

He was represented by Scott D. Robinson, Esquire.

On February 8, 2011, the Applicant pled guilty to a negotiated sentence. The Honorable G. Edward Welmaker levied concurrent terms of ten (10) years for resisting arrest with assault and ten (10) years for trafficking cocaine, second offense. The Applicant did not file an 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. Advised the Applicant the charges were classified as non-violent and parole eligible.
 - b. Failed to inform of the right to appeal.
2. Involuntary guilty plea.

In a pro se document titled "Amendments to Application for Post-Conviction Relief" filed February 13, 2013, the Applicant makes the following allegations:

1. Ineffective assistance of counsel:
 - a. Failure to investigate the facts surrounding the circumstances of the arrest.
 - b. Failure to assist in deciding whether to plead guilty.
 - c. Failure to communicate the written six year plea offer.
 - d. Failure to familiarize himself with the case.
 - e. Failure to impart an understanding of the law in relation to the facts.
 - f. Misadvised about the potential sentence.
 - g. Misadvised there was no potential defense.
 - h. Coerced the Applicant into pleading guilty.
 - i. Failure to advise about the right to appeal.
2. Involuntary guilty plea.

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/Involuntary Guilty Plea

The Applicant alleges his guilty plea was involuntary and that 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).

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C.

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131, 318 S.E.2d 360 (1984)).

The Applicant's first attorney, Larry H. Cooke, Esquire, testified the public defender file in the Applicant's case was opened on August 5, 2009. Cooke testified the Applicant had several charges because he would be arrested on new set of charges each time he made bond. Cooke testified the State made a plea offer for six years on November 5, 2010. Cooke testified the Applicant was informed of this offer over the telephone and told him the deadline to accept the offer was that day. Cooke testified the Applicant never got back to him about accepting the offer. Cooke testified the Applicant was sent to SCDC soon afterwards. Cooke testified the Applicant sent a letter to him dated November 8, 2010 in which he acknowledged they discussed the six-year offer during a phone call. Cooke read this letter into the record and noted he attached it to his response to a grievance filed by the Applicant (in which the Applicant complained he was not informed of a six-year offer).

Plea counsel testified he was appointed on January 13, 2011 and knew Cooke had been the previous attorney in this case. Plea counsel testified he filed discovery motions, received those materials and reviewed them with the Applicant, discussed the Applicant's version of events, and informed the Applicant of the sentence ranges on the charges. Plea counsel testified both he and his investigator had several meetings with the Applicant. Plea counsel testified the Applicant had mentioned there was a prior six year offer from the State. Plea counsel testified, however, the offer had expired before he was appointed. Plea counsel testified the State made an offer for a ten-year negotiated sentence. Plea counsel testified he and his investigator reviewed this offer with the Applicant more than once. Plea counsel testified he explained the nature of a negotiated sentence and its advantages and disadvantages. Plea counsel testified the Applicant was pleased with the ten-year negotiated offer because it would be concurrent to the sentence he

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was already serving. Plea counsel testified he did not recall telling the Applicant this would be a non-violent sentence.

The Applicant stated he did not learn about a six-year offer from the State until after he had been sent to SCDC. The Applicant stated he filed a grievance against Cooke. The Applicant stated that, even if the November 8th letter he sent to Cooke mentioned that he spoke with Cooke on the phone about the six-year offer, he did not recall speaking with Cooke about it. The Applicant stated he met with plea counsel once after he was appointed (and with counsel's investigator twice). The Applicant stated the investigator told him the six-year offer was gone. The Applicant stated plea counsel told him the State made a new offer for a negotiated ten-year sentence. The Applicant stated he felt he had no choice but to accept the offer but admitted he did not say anything to the plea judge about his dissatisfaction. The Applicant stated plea counsel told him he would be pleading guilty to a non-violent sentence.

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds the Applicant's testimony is not credible, while also finding plea counsel's testimony is credible. This Court further finds plea counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his representation.

The Applicant admitted to the plea judge that he was guilty and the facts recited by the solicitor were true. (Plea transcript, p.9; p.11). 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.9-11).

This Court finds the Applicant failed to meet his burden of proving he was not properly advised of a six-year plea offer. This Court finds Cooke is credible and specifically finds the

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Applicant is not credible. Cooke testified he received the offer on November 5th, discussed it with the Applicant that day, and informed him the deadline to accept was the same day. The Applicant admitted on cross-examination that he was taken to SCDC on November 10th, so this Court finds he had adequate time to consider the offer and reply to Cooke that day. This Court notes the Applicant's November 8th letter to Cooke acknowledged their telephone conversation about the six-year offer. This Court finds Cooke fulfilled his responsibilities to the Applicant in this regard. Cf. Davie v. State, 381 S.C. 601, 675 S.E.2d 416 (2009) (holding counsel's failure to convey the State's plea offer to defendant constituted deficient performance).

This Court finds the Applicant failed to meet his burden of proving plea counsel was ineffective in not obtaining this six-year offer. Plea counsel testified this offer had long expired before he was appointed in this case. This Court finds both that plea counsel's testimony is credible and that the Applicant knew about the expiration of the offer by the time plea counsel was appointed. Regardless, this Court notes plea counsel managed to secure a beneficial negotiated ten-year sentence for the charges at issue. This Court further notes this negotiation also involved the dismissal of several other charges. (Plea transcript, p.9). The guilty plea transcript indicates the Applicant was aware of the nature and terms of the negotiated sentence. (Plea transcript, p.9; p.11). The guilty plea transcript does not indicate, however, that the Applicant was dissatisfied with plea counsel or wished to have the six-year offer reinstated. Rather, the Applicant stated he wanted to plead guilty and was satisfied with plea counsel's representation. (Plea transcript, p.10; p.11). The Applicant failed to meet his burden of proving plea counsel was deficient in his representation. See Hill v. Lockhart, 474 U.S. at 58-59, 106 S. Ct. at 370.

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

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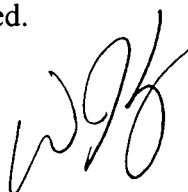
misadvised him that he was pleading guilty to a non-violent sentence. This Court notes plea counsel testified he did not recall telling the Applicant he would serve a non-violent sentence. This Court finds plea counsel's testimony is credible. This Court notes plea counsel is an experienced criminal defense attorney and would be well-aware that a trafficking cocaine charge would be classified as violent. See S.C. Code Ann. § 16-1-60 (Supp. 2006). As such, this Court finds it is highly improbable plea counsel would have advised the Applicant would be serving a non-violent sentence in this case.

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. This Court also concludes the Applicant has failed to meet his burden of proving his guilty plea was not knowing and voluntary. 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.

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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. Furthermore, the Applicant's guilty plea was entered knowingly and voluntarily within the mandates of Boykin. 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.