

The Brooks Law Office, LLC

CHARLES T. BROOKS, III, ATTORNEY AT LAW

IRMA R. BROOKS, ATTORNEY AT LAW

309 BROAD STREET ~ SUMTER, SOUTH CAROLINA 29150
POST OFFICE BOX 3512 ~ SUMTER, SOUTH CAROLINA 29151
(803) 418-5708

FAX: (803) 934-9618 TOLL FREE: (877) 770-8792

Email: cbrooks@ctbrooks.com

RECEIVED

JUN 03 2013

May 30, 2013

S.C. SUPREME COURT

South Carolina Supreme Court
PO Box 11330
Columbia, SC 29211

RE: Richard J. Coleman, 350680 v State of South Carolina
Case No. 2012-CP-46-3281

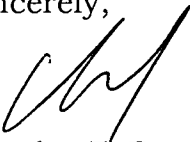
Dear Sir or Madam:

Enclosed herewith you will find the Notice of Appeal, Order of Dismissal, along with a Proof of Service in reference to the above named Applicant.

If you have any questions or concerns, please contact my office at the number stated above.

With kind regards, I am

Sincerely,



Charles T. Brooks, III
CTB/srw

Enclosed as stated

Cc: J. Rutledge Johnson, Office of Attorney's General
South Carolina Office of Appellate Defense
Richard J. Coleman, 350680

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM YORK COUNTY
Court of Common Pleas
Honorable John C. Hayes, III, Circuit Court Judge

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Case No: 2012-CP-46-3281

S.C. SUPREME COURT

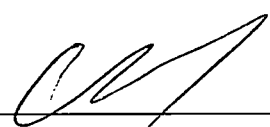
Richard J. Coleman.....Appellant
S.C.D.C. 350680

v.

The State.....Respondent

NOTICE OF APPEAL

Richard J. Coleman, appeals his Denial for Post Conviction Relief in this case. The order of Dismissal was imposed and signed by the Honorable John C. Hayes, III, May 20, 2013, which I, Charles T. Brooks, III, received on May 28, 2013.



Charles T. Brooks, III
309 Broad Street
Post Office Box 3512
Sumter, South Carolina, 29151
(803) 418-5708
Attorney for Appellant

Other Counsel on Record:
J. Rutledge Johnson, Esquire
Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-3970

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM YORK COUNTY
Court of Common Pleas
Honorable John C. Hayes, III, Circuit Court Judge

RECEIVED

JUN 03 2013

Case No: 2012-CP-46-3281

S.C. SUPREME COURT

Richard J. Coleman.....Appellant
S.C.D.C. 350680

v.

The State.....Respondent

PROOF OF SERVICE

I, the undersigned, do hereby certify that on this 30th day of May, 2013, served the foregoing **Notice of Appeal, Order of Dismissal**, as well as **Proof of Service** in this matter by depositing a true copy of it in the United States Mail, postage prepaid, on May 30, 2013, addressed to the following as indicated below:

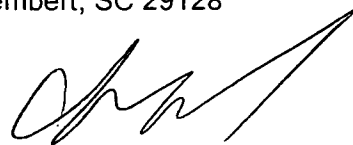
South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

South Carolina Office of Appellate Defense
1330 Lady Street, Suite 401
PO Box 11589
Columbia, SC 29211-1589

Office of Attorney's General
Attn: J. Rutledge Johnson, Esquire
Post Office Box 11549
Columbia, South Carolina 29211-1549

Richard J. Coleman, 350680
Wateree Correctional Institution
PO Box 189
Rembert, SC 29128

Dated: May 30, 2013



Charles T. Brooks, III
Attorney for the Appellant
309 Broad Street
Sumter, South Carolina 29150
(803) 418-5708

STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)
)
 Richard J. Coleman, 350680,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 SIXTEENTH JUDICIAL CIRCUIT
 Case No.: 2012-CP-46-3281

FILED-RECEIVED
 2013 MAY 22 AM 10:30
 DAVID HAMILTON
 C.C. CP. 16 GS
 YORK COUNTY, SC

ORDER

Applicant filed his application for Post-Conviction Relief (PCR) on September 17, 2012. The case was heard by the undersigned on the 16th day of May 2013. The State of South Carolina was represented J. Rutledge Johnson, Esquire, and the Applicant was represented by Richard Brooks, Esquire.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court's orders of commitment. The Applicant was indicted by the October 2011 term of the York County Grand Jury for Trafficking Crack Cocaine (2011-GS-46-3300), Possession of Marijuana with Intent to Distribute (PWID) (2011-GS-46-3301), PWID Marijuana within proximity of a public park or playground (2011-GS-46-3302), Trafficking Cocaine (2011-GS-46-3303), PWID Cocaine within proximity of a public park or playground (2011-GS-46-3304), and PWID Crack Cocaine within proximity of a public park or playground (2011-GS-46-3305). The Applicant was represented by Mark McKinnon, Esq. On April 24, 2012, the Applicant pled guilty to trafficking Crack Cocaine, 2nd offense as a lesser included offense, PWID Marijuana, 3rd or subsequent offense, PWID Marijuana within proximity of a park, Trafficking Cocaine, 2nd offense, PWID Cocaine, and PWID Crack Cocaine as indicted. The Honorable Lee S. Alford sentenced the Applicant, pursuant to a negotiated

sentence, to confinement for ten (10) years for each charge to run concurrently. The Applicant did not appeal his conviction or sentence.

In his Application for post-conviction relief, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
 - a. "Counsel ill-advised defendant of motion to suppression hearing; stating that the judge tends to side with officers and solicitors. If that happens then the defendant has no defense."
 - b. "Counsel failed to secure an indictment before the Grand Jury prior to trial or plea and to challenge the validity of the indictments prior to the plea."
 - c. "Counsel failed to advise defendant to go forward with jury trial, but rather insisted defendant accept the plea. Basing his decision on the amount of years defendant was facing."
2. "Violation of United States Constitutional Amendments 4,5,6,14"
3. "Failure to prove Subject Matter Jurisdiction"

I.

In his Application, the Applicant claims subject matter jurisdiction was not proved in this case. At the time of the PCR hearing, there was no testimony or other evidence presented to support this allegation. The Court finds that the Applicant has not met his burden of proving a lack of subject matter jurisdiction, and, therefore, the allegation will not be considered by the Court in determining whether the Applicant's PCR should be granted.

II.

The Applicant claims that he was provided ineffective assistance of counsel in entering his plea of guilt. The Court finds that the Applicant's attorney rendered effective assistance well within the standard of reasonableness within professional norms for a criminal defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Petitioner 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 (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. 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, 104 S. Ct. 2052. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 200 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used 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, 386 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, 386 S.E.2d at 625. A reasonable probability is a probability sufficient to

undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

At the hearing, the Applicant first took the stand to testify on his own behalf. The Applicant testified that he made the decision to take the negotiated¹ plea offered by the solicitor on the case based on Mark McKinnon (plea counsel) leading him to believe that the defenses available to him were minimal. The Applicant testified that his plea counsel failed to fully explain potential Fourth Amendment violations that could lead to the suppression of the evidence, specifically the drugs, found in the Applicant's apartment on the night of his arrest. The Applicant testified that the main focus of his meetings with plea counsel was the suggestion by counsel to take the plea offer and very little focus on trial strategy. The Applicant further testified that he understood that should his PCR be granted, he would be facing forty (40) to (50) years but, nonetheless, wished to proceed.

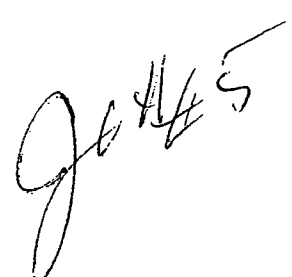
The Applicant then called plea counsel, Mark McKinnon, to the stand to testify. Plea counsel testified that there were, in reality, no factual defenses available for the Applicant and that the entirety of the meetings with the Applicant consisted of discussions on the potential violations of the Applicant's Fourth Amendment rights and getting the evidence obtained as a result of such violations suppressed. Plea counsel testified that he explained to the Applicant that the potential Fourth Amendment violations fell within a gray area of the law. Plea counsel further testified that he explained to the Applicant that going to trial with the only hope being suppression of the evidence with no factual defenses to rely on should the evidence not be suppressed was a great risk. Plea Counsel testified that while most of his conversations with the Applicant did, in fact, center around the plea offer, he did explain to the Applicant the possibility

¹ The Applicant testified that the plea was a recommended plea; however, it was later determined in the hearing by reference to the plea agreement form that the plea was actually a negotiated plea.

of a judge suppressing the evidence, the appeals process, and that it was the Applicant's decision to take the plea or go forward with a trial.

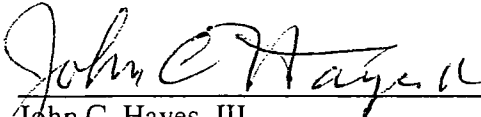
The Court finds that plea counsel reasonably explained to the Applicant the possible outcomes and defenses should the case go to trial, and the record reflects that the Applicant agreed that all of his potential defenses had been explained to him by plea counsel at the time of his plea. (TR p. 11, LL 9-12). The Court finds that the Applicant was apprised by his plea counsel, as well as the Court, of his right to a trial by jury, right to present his witnesses, and right to testify on his own behalf should he decide to do so. (TR p. 9, LL 2-19). The Court finds that the Applicant was made fully aware of his right to appeal should he take his case to trial by the Court, and from the testimony presented, was consulted as to the entire appeals process by plea counsel. (TR p. 10, LL 1-2). Based on testimony by the Applicant at his PCR hearing, as well as at the time of his plea, the Court finds the Applicant was not promised anything in return for pleading guilty. (TR p. 10, LL 20-22). The Court finds that it was the decision of the Applicant to enter his plea of guilt upon advice of competent counsel with which the Applicant was satisfied at the time of the plea. (TR p. 10, LL 23-25; TR p. 11, L 1).

Based on the evidence presented at the PCR hearing, as well as a review of the record, the Court finds that the Applicant has not met his burden of proving ineffective assistance of counsel and finds that the Applicant's claim is without merit; therefore, his Application for Post-Conviction Relief is denied and dismissed with prejudice.

A handwritten signature in black ink, appearing to read "J. H. S.", is located in the bottom right corner of the page.

Applicant has thirty (30) days to seek Certiorari from the South Carolina Supreme Court after receipt of this Order.

IT IS SO ORDERED.

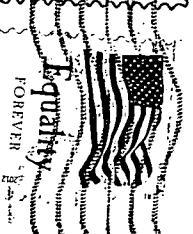

John C. Hayes, III
Presiding Judge # 6

May 20, 2013
York, South Carolina

THE BROOKS LAW OFFICES, LLC
309 BROAD STREET
P.O. BOX 3512
SUMTER, S.C. 29151

COLUMBIA, SC 29201

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South Carolina Supreme Court
PO Box 11330
Columbia, SC 29211

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