

BICE LAW LLC

North and South Carolina Attorney-at-Law

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June 12, 2013

JUN 17 2013

The Honorable Daniel E. Shearouse
Supreme Court of South Carolina
PO Box 11330
Columbia, SC 29211

S.C. SUPREME COURT

RE: Post-Conviction Relief- Burchfield v. South Carolina
Case No: 2012-CP-46-02765

Dear Mr. Shearouse:

I have enclosed for filing in the above-referenced matter the original and one (1) copy of a Notice of Appeal.

Please file the original and return the extra copy to me in the enclosed self-addressed, stamped envelope.

Thank you for your assistance in this matter.

Very Truly Yours,

Kristina Bruggink

Enc.

cc: John Burchfield

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JUN 17 2013

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM YORK COUNTY
Court of Common Pleas

Honorable John C. Hayes, Circuit Court Judge

Case No: 2012-CP-46-02765

John Burchfield, #350403,

Appellant/Petitioner

v.

State of South Carolina,

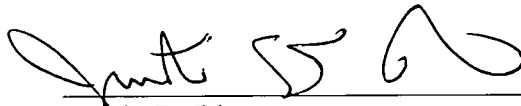
Respondent

NOTICE OF APPEAL

John Burchfield appeals the Honorable John C. Hayes' May 28, 2013 Order denying post-conviction relief to the Appellant/Petitioner ("Order"). Undersigned counsel received notice of entry of the Order on May 30, 2013. A copy of the Order is attached to this notice.

This the 11th day of June 2013.

BICE LAW LLC



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(704) 612-0273 – Facsimile
justin@bicelaw.us
Attorney for Appellant/Petitioner

Other Counsel of Record:
James Rutledge Johnson
Office of the Attorney General
PO Box 11549
Columbia, SC 29211
Attorney for Respondent

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JUN 11 2013

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM YORK COUNTY
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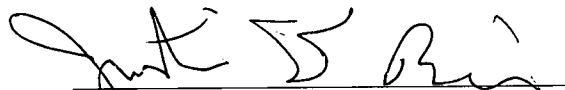
PROOF OF SERVICE

I hereby certify that on this date the Notice of Appeal was duly served upon counsel for Respondent by first class mail, sufficient postage prepaid, addressed as follows:

James Rutledge Johnson
Office of the Attorney General
PO Box 11549
Columbia, SC 29211
Attorney for Respondent

This the 12th day of June, 2013.

BICE LAW LLC



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Attorney for Appellant/Petitioner

STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)
)
 John Edward Burchfield, #350403,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 SIXTEENTH JUDICIAL CIRCUIT
 Case No.: 2012-CP-46-2765

ORDER

FILED-RECEIVED
 2013 MAY 28 PM 3:28
 DAVID L. JOHNSON
 C.C.P. & GS
 YORK COUNTY, SC

Applicant filed his application for Post-Conviction Relief (PCR) on August 1, 2012. The case was heard by the undersigned on the 16th day of May 2013. The State of South Carolina was represented by J. Rutledge Johnson, Esquire, and the Applicant was represented by Justin Bice, 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 March 2012 term of the York County Grand Jury for Entering a Bank with Intent to Steal (2012-GS-46-1033) and Possession of a Hoax Destructive Device (2012-GS-46-1034). The Applicant was represented by Casey Cornwell, Esq. On April 2, 2012, the Applicant pled guilty to both charges as indicted. The Honorable Lee S. Alford sentenced the Applicant, pursuant to a recommendation from the State, to confinement for ten (10) years for Entering a Bank with Intent to Distribute and on (1) year, concurrent, for Possession of a Hoax Destructive Device. 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. "My Public Defender lied and misrepresented me. The Solicitor did the same in open court."
 - a. "My Public Defender told me that the Solicitor could charge me with Entering a Bank with Intent to Steal and Armed Robbery at the same time."
2. "Also my Public Defender never came to see me in 95 days."

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 professional judgment. Strickland, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 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).

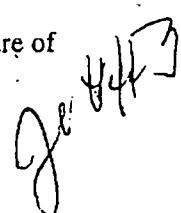
The Applicant first took the stand to testify on his own behalf. The Applicant testified that he was initially charged, along with Entering a Bank with Intent to Steal and Possession of a Hoax Destructive Device, with Armed Robbery. The Applicant testified that prior to the taking of his plea, the Armed Robbery charge against him was dismissed with prejudice. The Applicant

testified that he was not told until the time of the plea that the Armed Robbery charge was dismissed, the plea agreement included all three charges, and the recommended plea range remained at ten (10) to fifteen (15) years. The Applicant further testified that he did not believe it was right for the Court to counsel the State on how the Applicant should be charged.

The record reflects that, after Judge Alford's inquiring from the State as to why the Applicant would be charged with both Armed Robbery and Entering a Bank with Intent Steal and after sidebar discussion with the parties, the State announced to the Court that it would not proceed on the Armed Robbery charge against the Applicant. (TR p. 4, LL 22-25; TR p. 5, LL 5-14).

The State called Casey Cornwell (Plea Counsel) to the stand to testify. Plea Counsel testified that, at the time of his representation of the Applicant, he was employed by the York County Public Defender's Office. Plea Counsel testified that he met with the Applicant prior to taking the plea on at least two occasions. Plea Counsel testified that he made several attempts to have EB Springs (Solicitor) reduce the negotiated range to no avail. Plea Counsel further testified that he would have talked to the Applicant about the change of charges and that he talked to the Solicitor concerning the change in the charges mid-plea, but the Solicitor was not inclined to make any changes in the negotiated range based on the Armed Robbery charge being dropped. Therefore, Plea Counsel testified that the Armed Robbery charge being "kicked out" had no bearing on the negotiations. Plea Counsel testified that the Applicant was notified of all of his rights and that, even in light of the change, the Applicant's best option was to enter a plea of guilt.

The record reflects that the Applicant was made aware by the Court of the Armed Robbery charge being dismissed by the State, and the Applicant affirmed that he was aware of



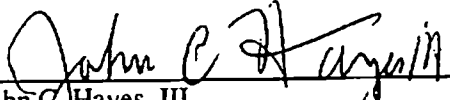
the change and the charges to which he would be pleading. (TR p. 6, LL 20-25; TR p. 7, LL 1-3). At the time of the plea, the Applicant was apprised by the Court of his right to a jury trial, which he would be forfeiting should he enter a plea of guilt, and the Applicant acknowledged that he understood the right and still wished to plead guilty. (TR p. 8, LL 2-25; TR p. 9, LL 1-17). At the time of his plea, the Applicant affirmed that he was satisfied with Plea Counsel's representation, that Plea Counsel had discussed the evidence and witnesses the State had against him, and that Plea Counsel had fully discussed the charges and possible defenses with him. (TR p. 10, LL 1-17). The Applicant affirmed that he was pleading guilty and that he was, in fact, guilty of the two charges. (TR p. 11, LL 7-12). At the time of the plea, Plea Counsel spent a relatively lengthy period of time mitigating for his client (TR p. 14, LL 13-25 – p. 16, LL 1-22), and the Solicitor commended Plea Counsel for the efforts he made in negotiating the plea for the Applicant. (TR p. 4, LL 13-15). At the time of the plea, the Applicant was sentenced to ten (10) years of incarceration, the least amount of time in the negotiated range. (TR p. 17, LL 12-16).

The Court finds that the Applicant's claim of ineffective assistance of counsel is without merit. The Applicant was apprised of all of his rights by the Court and Plea Counsel, he was effectively advised by Plea counsel as he attested to at the time of his plea, and the Applicant was made fully aware of the charges to which he was pleading at the time of the plea. The Court finds that there was no deficiency in Plea Counsel's making the Applicant aware of the change in charges, as the Applicant was made aware of the change practically simultaneously with Plea Counsel, and even if there was a deficiency in Plea Counsel's advisement, the Applicant was not prejudiced, as the plea terms or recommendation would not have been altered. The Court further finds that the Court, at the time the plea was taken, was in no way out of line in pointing out the redundant and superfluous nature of the charges.

Handwritten signature or initials in the bottom right corner of the page, appearing to be 'J. H. H. 4'.

Therefore, Applicant's Application for Post-Conviction Relief is denied and dismissed
with prejudice.

IT IS SO ORDERED.



John C. Hayes, III
Presiding Judge

May 28, 2013
York, South Carolina

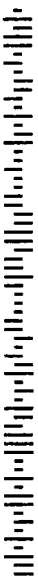
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North and South Carolina Attorney-at-Law

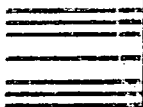
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The Honorable Daniel E. Shearouse
Supreme Court of South Carolina
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Columbia SC 29211-1330



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