

The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

March 13, 2012

Appellate Defense
South Carolina Commission
on Indigent Defense
P O Box 11589
Columbia, SC 29211

Re: Gaither, LaDarriuse A. v. The State, 201-CP-46-03127 (Appellate Case
Tracking No. 2012-20810)

Dear Counsel:

Enclosed is correspondence received from your client. Since your office now represents him in this matter, no action will be taken on this *pro se* filing. Miller v. State, 388 S.C. 347, 697 S.E.2d 527 (2010); Jones v. State, 348 S.C. 13, 558 S.E.2d 517 (2002); State v. Stuckey, 333 S.C. 56, 508 S.E.2d 564 (1998); Foster v. State, 298 S.C. 306, 379 S.E.2d 907 (1989).

Very truly yours,

CLERK

Enclosure

cc: Staff Attorney J. Rutledge Johnson
Mr. LaDarriuse A. Gaither, # 339064

LaDorrius Gaithers #339064
Lee Correction Institution
990 Wisacky Highway/S1139
Bishopville, South Carolina 29010

RECEIVED
MAR 18 2012
S.C. SUPREME COURT

March 8th. 2012

Honorable Daniel E. Shearouse, Chief Clerk
South Carolina State Supreme Court
Post Office Box
Columbia, South Carolina 29201

RE: LaDorrius Gaithers v. South Carolina
SUBJECT: Pending Rule 59 motion

Hon. Chief Clerk

I am writing this letter to inform court a rule 59 motion is currently pending in lower court. However, the attorney general already has a copy of motion and knows it was pending long before order was filed and no part of my allegations were included in order. Therefore, when I wrote to my PCR counsel and told him a rule 59 motion, was pending in court he made no effort to have motion disposed of nor did he make an attempt to file one himself. Accordingly, despite fact court does not allow Hybrid representation, it still does not negate fact that counsel was asked to do so and one was already filed in court. Had counsel simply informed court and attorney general, he was going to follow through with Applicant motion then my issues would have been addressed by order. Finally, since Marlar is controlling law on rule 59 motions, then attorney general at a minimum should allow this motion to be disposed of before allowing

the appeal to proceed. Furthermore, since applicant is making a diligent effort to have issues preserved, then attorney general can not argue at a later date claims are procedurally barred under Holland v. Florida, Coleman v. Thompson as the state itself is at fault for interfering with review of issues. Thus, applicant ask court to hold appeal in abeyance until motion is disposed of.

RECEIVED

MAR 1 8 2012

Respectfully Submitted
LaDorrius Goithers
LaDorrius Goithers / Pro Se

cc: file

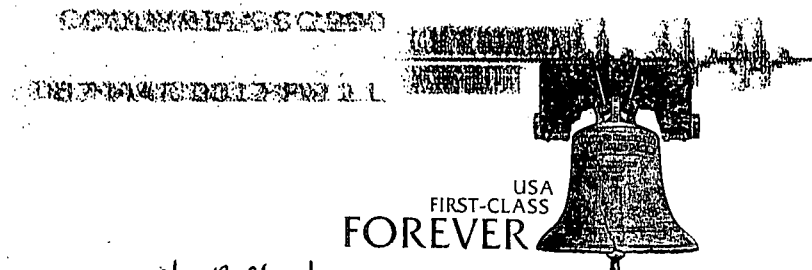
Attorney General

Per Counsel

S.C. SUPREME COURT

P.S. I have not received a copy of notice of appeal from Per Counsel, and this was what counsel told me in his 2/23/2012 letter and time has or is about to expire

LaDarrise Gaithers #338064
Lee Correction Institution
990 Wisacky Highway / S1139
Bishopville, South Carolina 29010



Honorable Daniel E. Shearouse, Chief Clerk
South Carolina State Supreme Court - 1231 Gervais St.
Columbia, South Carolina 29201

29201+9999



SUPREME COURT OF SOUTH CAROLINA

APPEAL FROM THE COMMON PLEAS COURT OF YORK COUNTY

Judge Paul M. Burch

Case No. 2010-CP-46-3127

LaDarriuse A. Gaither

v.

State of South Carolina

NOTICE OF APPEAL

RECEIVED

FEB 14 2012

S.C. SUPREME COURT

LaDarriuse A. Gaither, appeals the order of the Honorable Paul M. Burch, Circuit Court Judge for the Sixteenth Circuit, dated February 1, 2012, Notice was entered on February 9, 2012.

February 13, 2012

F. Lee O'Steen

F. Lee O'Steen
P.O. Box 36534
Rock Hill, SC 29732
(803) 327-5300
Fax (803) 327-5250
Attorney for Appellant
SC Bar # 68558
osteenlaw@comporium.net

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)
)
LaDarriuse A. Gaither)
)
Applicant,)
)
v.)
)
State of South Carolina)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT
C.A. No. 2010-CP-46-3127

CERTIFICATE OF SERVICE

I the undersigned, being over eighteen (18) years of age and not an attorney in or a party to this action, hereby certify that I have served Notice of Appeal by personally mailing a copy thereof, postage prepaid, addressed to :

Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

Clerk of Court for York County
P.O. Box 649
York, SC 29745

Attorney General's Office
for the State of South Carolina
P.O. Box 11549
Columbia, SC 29211

South Carolina Office of Appellate Defense
1122 Lady Street, Suite 940
Columbia, SC 29201

February 13, 2012
York County, South Carolina

Joanne Fowler
P.O. Box 36534
Rock Hill, SC 29732
(803)327-5300 Phone
(803) 327-5250 Fax

RECEIVED

FEB 14 2012

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)
)
LaDarriuse A. Gaither)
)
Applicant,)
)
v.)
)
State of South Carolina)
)
Respondent.)
_____)

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Columbia, SC 29201

February 13, 2012
York County, South Carolina


Joanne Fowler
P.O. Box 36534
Rock Hill, SC 29732
(803)327-5300 Phone
(803) 327-5250 Fax



ALAN WILSON
ATTORNEY GENERAL

February 5, 2012

2012 FEB -9 PM 4:32
C.C. 7 & SS
YORK COUNTY, SC

The Honorable David Hamilton
Clerk of Court, York County
P. O. Box 649
York, S. C. 29745-0649

Re: LaDarriuse A. Gaither v. State of South Carolina
2010-CP-46-3127

Dear Ms. Roseneau:

Enclosed please find the original Orders signed by the Honorable Paul M. Burch. Please return clocked copies of these Orders to our office, in the envelope provided, and serve the appropriate opposing counsel for the above applicants.

Thank you for your assistance.

Sincerely,

Matthew J. Friedman
Assistant Attorney General

MJF/arh

FORM 4

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

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2010CP4603127

LaDarrise Gaither	South Carolina State of
PLAINTIFF(S)	DEFENDANT(S)
Submitted by: Matthew J. Friedman	Attorney for: <input type="checkbox"/> Plaintiff <input checked="" type="checkbox"/> Defendant <input type="checkbox"/> 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.
- 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; (formal order to follow) Statement of Judgment by the Court:

ORDER OF DISMISSAL

This order ends does not end the case.

ORDER INFORMATION
 Additional Information for the Clerk:

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.

S/ Paul M. Busch
 Circuit Court Judge

2048
 Judge Code
 For Clerk of Court Office Use Only

2012 11/1/12
 Date

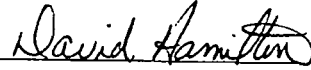
This order was entered on February 9, 2012, and a copy mailed first class or placed in the appropriate attorney's box on February 9, 2012, to attorneys of record or to parties (when appearing pro se) as follows:

Lee O'Steen P O Box 36534 Rock Hill, SC 29732
LaDarriuse Gaither #339064 LCI Sum-South Rm 1139, 990 Wisacky Hwy,
Bishopville, SC 29010

ATTORNEY(S) FOR THE PLAINTIFF(S)

Harrison D Brant Office Of Attorney General P. O. Box 11549 Columbia,
SC 292111549

ATTORNEY(S) FOR THE DEFENDANT(S)



David Hamilton - Clerk of Court

Court Reporter

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)
)
LaDarriuse A. Gaither, #339064,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)

IN THE COURT OF COMMON PLEAS

2010-CP-46-3127

ORDER OF DISMISSAL

2012 FEB -9 PM 4:32
CLERK OF COURT
YORK COUNTY, SC

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed July 27, 2010. The Respondent made its Return on February 11, 2011. An evidentiary hearing into the matter was convened on October 11, 2011 at the York County Courthouse. The Applicant was present at the hearing and represented by F. Lee O'Steen, Esquire. Matthew J. Friedman, Esquire, of the South Carolina Attorney General's Office represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Applicant's plea counsel, Leah Moody, Esquire, also testified at the hearing. This Court had before it the records of the York County Clerk of Court regarding the subject convictions, the Applicant's records from the Department of Corrections, the plea transcript, the PCR application, the State's Return thereto, and a July 8, 2009 letter from co-defendant Victor Williams to counsel.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for York County. The Applicant was indicted at the April 2009 term of the York County Grand Jury for assault and battery with intent to kill (ABWIK) (2009-GS-46-1781, Count 1), possession of a weapon during the commission of

a violent crime (2009-GS-46-1781A, Count II), criminal conspiracy (2009-GS-46-1779), attempted armed robbery (2009-GS-46-1780, Count I), and possession of a weapon during the commission of a violent crime (2009-GS-46-1780A, Count II). Leah Moody, Esquire, represented the Applicant. On January 25, 2010, the Applicant pled no contest to ABWIK (2009-GS-46-1781, Count I), possession of a weapon during the commission of a violent crime (2009-GS-46-1781A, Count II), and conspiracy (2009-GS-46-1779). In exchange for Applicant's pleas, the State dismissed the two remaining charges. On January 28, 2010, the Honorable Lee S. Alford sentenced the Applicant to fifteen (15) years for ABWIK, five (5) years for possession of a firearm during the commission of a violent crime, and five (5) years for conspiracy, which were to all run concurrently. Applicant did not appeal the plea or sentence.

ALLEGATIONS

The Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel in that
 - a. "Counsel failed to investigate case."
 - b. "Counsel failed to challenge constitutional violations."
2. "No contest plea was not followed properly."

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 hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon his or her 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).

Plea counsel testified that she received a letter from Applicant's co-defendant Victor Williams. In the letter, the co-defendant said he was pressured to give a statement and was

willing to help Applicant. Counsel asserted that the co-defendant never said Applicant did not commit these offenses and he changed his story multiple times. She testified that she discussed the co-defendant's statements and his letter with Applicant prior to the plea. Counsel testified that the co-defendant was manipulative and wrote completely different letters to the solicitor. She also testified that she spoke with the co-defendant's attorney, who indicated that the co-defendant's testimony at Applicant's trial would not be favorable to Applicant. Counsel testified that she conducted a thorough investigation, but no alibi witnesses panned out. She testified that no witness count account for Applicant between 7:30 and 9:00. She asserted that she spent more than seventy hours on the case and was prepared for trial. Counsel testified that it was ultimately Applicant's decision to accept the plea offer.

Counsel testified that she subpoenaed booking photos, contacted Applicant's cousin and grandmother, contacted the solicitor, tried to find an alibi witness, was prepared to subpoena phone records, and tried to locate witnesses Brittany Thompson, a neighbor named Leon, J.B., and Buddha. She asserted that Brittany Thompson and Leon did not return her calls, and she did not have contact information on J.B. and Buddha. Counsel testified that Applicant's cousin and grandmother placed Applicant with the co-defendant on the day in question. She testified that there was no lineup because no one was arrested at first and the victim was paralyzed and immediately rushed to the hospital. Counsel testified that she told Applicant that the jury would have had sympathy for the victim at trial because he was paralyzed during the shooting. She asserted that Applicant was adamant that he was not there, and she explained the significance of the no contest plea to Applicant. She testified that she explained the consequences of the plea to Applicant and had him sign a plea affidavit.

Applicant testified that he saw the co-defendant's letter to counsel for the first time after

the plea. He asserted that he thought the victim had picked him out of a lineup. He testified that the main evidence against him was the co-defendant's statement, and he was not aware of the co-defendant's change of opinion until after the plea. Applicant testified that he did not know the real names and addresses of some of the witnesses that he gave to counsel.

Ineffective Assistance of Counsel

The Applicant alleges that he received ineffective assistance of counsel. In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the 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 (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. The applicant must overcome this presumption in order to receive relief. Cherry, 386 S.E.2d 624.

Courts use a two-pronged test to evaluate 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." Id. at 625 (citing Strickland, 466 U.S. 668). 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." Id. at 625. With respect to

guilty plea counsel, the applicant must show that 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, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

This Court finds that Applicant's testimony is not credible with respect to the discussions about the co-defendant's letter and the absence of a photo lineup while also finding that trial counsel's testimony is credible. This Court finds that counsel is a trial practitioner who has extensive experience in the trial of serious offenses. Counsel conferred with the Applicant on several occasions. During conferences with the Applicant, counsel discussed the pending charges, the elements of the charges and what the State was required to prove, Applicant's constitutional rights, and possible defenses or lack thereof.

This Court finds that it was Applicant's decision to accept the plea offer. Applicant indicated during the plea hearing that he understood the nature of the charges and the possible punishments. He also indicated that he was satisfied with his attorney and that no one has threatened him or promised him anything to accept the plea offer. Applicant told the plea court that he was entering the plea of his own free will. This Court finds that Applicant entered the no contest plea freely and voluntarily with a full understanding of the consequences of the plea.

Regarding Applicant's claims of ineffective assistance of counsel, this Court finds Applicant has failed to meet his burden of proof. This Court finds that counsel demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, 466 U.S. at 668; Butler, 286 S.C. 441, 334 S.E.2d 813. This Court further finds counsel adequately conferred with Applicant, conducted a proper investigation, and was thoroughly competent in her representation. This Court finds that

counsel's representation did not fall below an objective standard of reasonableness.

This Court finds that counsel properly discussed the co-defendant's multiple statements and letters prior to the plea. This Court is not persuaded by Applicant's testimony that he did not know about the co-defendant's letter until after the plea.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test, specifically that counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that counsel committed either errors or omissions in her representation of the Applicant. The Applicant failed to show that counsel's performance was deficient. This Court also finds the Applicant has failed to prove the second prong of Strickland, specifically that he was prejudiced by counsel's performance. Applicant's complaints concerning counsel's performance are without merit and are denied and dismissed.

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 plea or sentencing proceedings. Counsel was not deficient in any manner, nor was the Applicant prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with

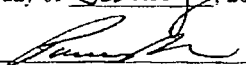
prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of written notice of entry of this Order 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 served and filed.

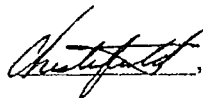
IT IS THEREFORE ORDERED:

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 1st day of February, 2012.



Paul M. Burch
Presiding Judge
16th Judicial Circuit

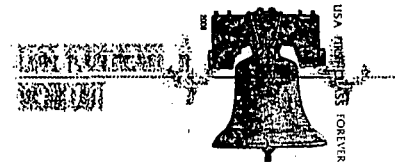

_____, South Carolina.

O'Steen Law Firm
A Limited Liability Company

Attorney and Counselor at Law
2254 Celanese Road
P.O. Box 36534
Rock Hill, SC 29732

*L. Darrusse
a. Yaitter*

CHARLOTTE NC 282
13 FEB 2012 4743 1



Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

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