

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Larry B. Hyman, Jr., Circuit Court Judge

Case No. 2011-CP-22-00884

Corey Jawan Robinson,

Appellant,

v.

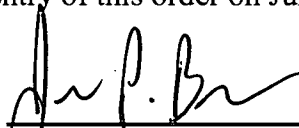
State of South Carolina,

Respondent.

NOTICE OF APPEAL

Corey Jawan Robinson appeals the order of the Honorable Larry B. Hyman, Jr., dated May 9, 2013. Appellant received written notice of entry of this order on June 19, 2013.

June 23, 2013



Jason P. Boan
Post Office Box 15849
Surfside Beach, South Carolina 29587
(843) 232-0750
Attorney for Appellant

Other Counsel of Record:
Tyson Andrew Johnson, Esquire
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Attorney for Respondent
(803) 734-3737

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JUN 26 2013

SC SUPREME COURT

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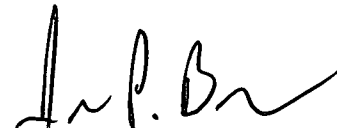
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Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the State of South Carolina by depositing a copy of it in the United States Mail, postage prepaid, on June 23, 2013, addressed to its attorney of record, Tyson Andrew Johnson, Esquire, Office of the Attorney General, Post Office Box 11549, Columbia, South Carolina 29211.

June 23, 2013



Jason P. Boan
Post Office Box 15849
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Attorney for Appellant

STATE OF SOUTH CAROLINA)
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 COUNTY OF GEORGETOWN)
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 Corey Jawan Robinson, 294233)
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 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 11-CP-22-884

ORDER OF DISMISSAL

This matter is before this Court by way of an application for post-conviction relief (PCR) filed December 2, 2011. The State made a timely Return. A hearing on the matter was convened at the Horry County Courthouse on April 26, 2013. Applicant was present and represented by Jason P. Boan, Esquire. The State was represented by Tyson Andrew Johnson, Sr., Esquire, of the South Carolina Office of the Attorney General.

Applicant testified on his own behalf at the hearing. His trial counsel, C. Reuben Goude, Esquire, also testified. In addition, this Court had before it the trial transcript, the Clerk of Court's records regarding the subject convictions, the Applicant's records from the Department of Corrections, the PCR application and the State's return.

ALLEGATIONS

Applicant alleged in his Application for PCR that he is being held in custody unlawfully as a result of ineffective assistance of counsel. Applicant provided numerous allegations in his "Amended Attachments to Petition for Post Conviction Relief." Applicant also alleged his appellate counsel was ineffective in failing to file a merits brief on his issues.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

FILED
 GEORGETOWN COUNTY, S.C.
 2013 JUN -4 AM 11:35
 ALEVA Y. WHITE
 CLERK OF COURT

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 (1985).

Ineffective Assistance of Counsel

Applicant alleges his conviction at trial is the result of ineffective assistance of counsel. The burden of proof is on the applicant in a PCR proceeding to prove the allegations in his application. Bell v. State, 321 S.C. 238, 467 S.E.2d 926 (1996); Rule 71.1(e), SCRPC.

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. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1996).

In order to prove prejudice, an applicant must show that but for counsel's errors, there is a reasonable probability the result at trial would have been different. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Id. Where trial counsel articulates a valid reason for employing certain trial strategy, such conduct should not be deemed ineffective assistance of counsel. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1995); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992).

This Court will now address the allegation of ineffective assistance of counsel:

Applicant represented himself

Applicant alleges that his counsel was ineffective, and refers to him as “pre-trial counsel” in his PCR because Applicant represented himself for his trial. It is clear to this Court that Applicant by making an informed and voluntary decision to fire his lawyer and choosing to represent himself after being thoroughly advised and questioned about this decision by the trial judge, that Applicant’s decision was knowing and voluntary, and that Applicant created the peril for which he now complains and blames “pre-trial counsel” for.

First, in the period leading up to trial, Applicant claimed counsel did not convey the state’s offer to plea to PWID second to Applicant. This is sharply disputed by counsel, who testified that Applicant was charged with PWID third, resisting arrest, assault and battery of high and aggravated nature, and assaulting an officer, and that he made it clear to Applicant that he had the opportunity to enter a plea to PWID second, but Applicant refused.

Counsel testified that on November 4, 2008 the assistant solicitor handling the case for the State mailed counsel a letter advising that as Applicant has two prior drug convictions for second offense, that if Applicant rejected the plea offer, the State would ask the judge to sentence Applicant under a third offense. Counsel testified he relayed this information and offer to Applicant, but that the offer made no difference to Applicant, who still chose a trial where he represented himself.

Counsel indicated that when the case was called the solicitor announced the charge would be a third offense, and that Applicant was told this and that he was facing a fifteen year minimum. Regarding the offer to plead to PWID second, counsel testified “I told Defendant” and “he said no, I ain’t pleading guilty.” Applicant now attempts to blame his trial counsel for the resulting verdict consequences of his decision to represent himself.

This Court finds counsel's version of events credible and Applicant not credible. This Court finds Applicant was aware of the consequences of waiving counsel, of proceeding as his own counsel, and the dangers of representing himself and Applicant's testimony to the contrary is not credible. This Court further finds Counsel's testimony credible and gives it great weight. This Court finds counsel relayed the plea offer to Applicant and that Applicant rejected the offer and elected to go to trial, where he lost. This claim is therefore denied.

Next, Applicant claims that counsel failed to argue his motions. The transcript reflects all of Applicant's motions were properly before the trial court, and that counsel gave competent representation in the face of a difficult client who sought to have him relieved. The Court notes that page 23 and 28-29 of the trial transcript reflect counsel submitted all of Applicant's motions, as well as his own, and the trial court ruled upon all of counsel and Applicant's motions. It is clear all of Applicant's motions were properly before the trial court, and the trial court dealt with those motions, but the court simply disagreed and ruled against Applicant. The record supports counsel's version of the trial, and casts a shadow over the credibility of Applicant's testimony and version of events. Therefore for this and the abovementioned reasons, this Court denied this allegation.

Finally, Applicant claims counsel struck a black male from the jury in some attempt to intentionally sabotage Applicant's case. Counsel in referring to his notes from the jury selection indicated the black male was struck because he was the son of a deputy, and a black female was the cousin of a deputy. In addition to failing to show errors of counsel in this regard, Applicant has failed to show prejudice resulting therefrom. This Court is not moved by Applicant's claims and is instead persuaded by counsel's version of the events, therefore this claim is denied.

Claims against Appellate counsel

Applicant claims his appellate counsel was ineffective for failing to file a merit brief on all Applicant's issues. Applicant provided no legal or factual support for this allegation. It is clear that appellate counsel appointed to represent an indigent defendant in his appeal from a criminal conviction does not have a constitutional duty to raise every non-frivolous issue requested by the defendant. Jones v. Barnes, 463 U.S. 745 (1983). Indeed, an indigent defendant has no constitutional right to compel appointed counsel to press non-frivolous points requested by the client, if counsel, as a matter of professional judgment, decides not to present those points. Id. Appellate counsel's representation will not be deemed ineffective if he makes an informed decision based on reasonable professional judgment not to pursue a particular issue on appeal. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985). Furthermore, under the two part test of Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984), an Applicant must show not only that counsel's performance was deficient, but that this deficiency prejudiced his defense. Applicant has failed to show with credible evidence either error or prejudice resulting therefrom, therefore this claim is denied.

CONCLUSION

Based on the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this Application for Post-Conviction Relief must be denied and dismissed with prejudice.

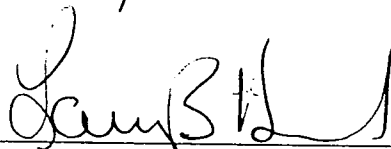
This Court advises the parties that in order to secure the appropriate appellate review, notice of appeal must be served and filed within thirty (30) days after receipt by counsel of notice of entry of this order. See Rules 203 and 243 of the South Carolina Appellate Court Rules. This Court notes that post-conviction relief counsel must advise an applicant of the right

to seek appellate review of a post-conviction relief order. State v. Bray, 366 S.C. 137, 620 S.E.2d 743 (2005). Also, pursuant to Austin v. State, 305 S.C. 453, 409 S.E. 2d 395 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRPC, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on an applicant's behalf.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 9 day of May, 2013.



Larry B. Hyman, Sr.
Presiding Judge
15th Judicial Circuit

Cenway, South Carolina

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June 23, 2013

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
Post Office Box 11330
Columbia, South Carolina 29211

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JUN 26 2013

S.C. SUPREME COURT

RE: Corey Jawan Robinson, v. State of South Carolina, Case No. 2011-CP-22-00884

Dear Mr. Shearouse:

Enclosed for filing is a notice of appeal in the above case. Also enclosed are the following:

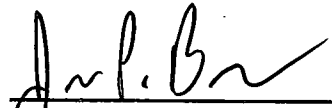
- (1) Proof of service of the notice of appeal on the respondent.
- (2) A copy of the order which is to be challenged on appeal.
- (3) No filing fee has been included because this Appellant is indigent and this appeal is from the denial of Appellant's post-conviction relief action.

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JUN 26 2013

S.C. SUPREME COURT

Sincerely,



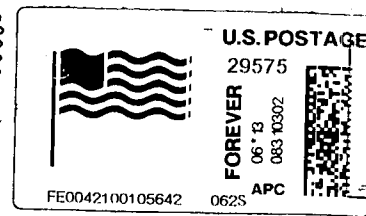
Jason P. Boan
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(843) 232-0750
Attorney for Appellant

cc:

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The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
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