

IN THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
APPEAL FROM SPARTANBURG COUNTY
COURT OF COMMON PLEAS
J. MARK HAYES, II, CIRCUIT COURT JUDGE
2012-CP-42-1868

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S.C. Supreme Court

Andrew Clayton Ladron,.....Petitioner.

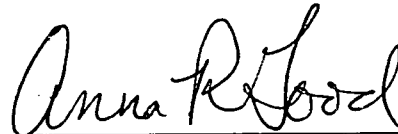
vs

The State of South Carolina,.....Respondent.

NOTICE OF APPEAL

Andrew Clayton Ladron appeals the Honorable J. Mark Hayes, II's July 24, 2013, order denying post-conviction relief to the Petitioner. Undersigned counsel received notice of entry of the order on August 1, 2013. A copy of the order on appeal is attached to this notice.

Respectfully submitted,



Anna R. Good
Law Office of Anna Good, LLC
1720 Main Street, Suite 303
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Telephone: (803) 429-9107
Fax: (803) 799-4059

Attorney for the Petitioner.

August 5, 2013.

OTHER COUNSEL OF RECORD:
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Post Office Box 11549
Columbia, SC 29211-1549

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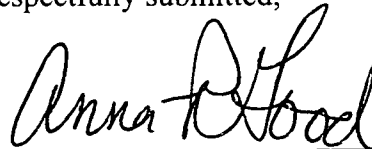
vs

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PROOF OF SERVICE

I, Anna Good, certify that I have today served the within notice of appeal upon the Respondent by depositing a copy of it in the United States Mail, postage prepaid, addressed to the attorney of record, Suzanne White, P.O. Box 11549, Columbia, South Carolina 29211-1549. I further certify that all parties required by Rule to be served have been served this 5th day of August, 2013.

Respectfully submitted,



Anna R. Good, Esquire
Law Office of Anna Good, LLC
1720 Main Street, Suite 303
Columbia, South Carolina 29201

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STATE OF SOUTH CAROLINA)
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COUNTY OF SPARTANBURG)
)
)
Andrew Clayton Ladron, #339906,)
)
)
Applicant,)
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v.)
)
State of South Carolina,)
)
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Respondent.)
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_____)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2012-CP-42-1868

ORDER OF DISMISSAL

This matter comes before the Court by way of an Application for Post-Conviction Relief filed May 2, 2012. The Respondent filed its Return on February 28, 2013. An evidentiary hearing into the matter was convened on April 5, 2013, at the Spartanburg County Courthouse. The Applicant was present at the hearing and was represented by Anna R. Good, Esquire, Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, representing the Respondent.

At the hearing, the Applicant testified on his own behalf. William G. Rhoden, Esquire, ("Counsel") testified on behalf of the Respondent. This Court also had before it a copy of the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the Return, the Appellate Court records, and the trial transcript.

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 Spartanburg County. The Applicant was indicted by the Spartanburg County Grand Jury at the August 2006 term for lewd act upon a minor (06-GS-42-2888). He was represented by William G. Rhoden, Esquire. On February 24,

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2010, the Applicant proceeded to trial in absentia after which a jury convicted him of the charge as indicted. He was sentenced by the Honorable E.C. Burnett III, to confinement for twelve (12) years.

A timely Notice of Appeal and Anders brief were filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals dismissed Applicant's appeal. State v. Ladron, Op. No. 2012-UP-103 (S.C. Ct. App. filed February 22, 2012). The Remittitur was submitted on March 12, 2012.

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel, in that;
 - a. Counsel "failed to argue that Mr. Ladron was [sic] given actual notice of trial from the court or Solicitor's office, resulting in Mr. Ladron's trial in absence."
 - b. Counsel "failed to review discovery and any supplemental discovery with Mr. Ladron, including, but not limited to, the discovery packet, the forensic interview DVD, the DVDs of Mr. Ladron's statements."
 - c. Counsel failed "to prepare for trial with Mr. Ladron"
 - i. Counsel "only met with Mr. Ladron over a two year period five (5) times for a total of one hour and forty minutes (1 hr. 40 min.), including trial preparation"
 - d. "Failure to take actions Mr. Ladron requested"
 - i. "Mr. Ladron's case was pending for four years and despite Mr. Ladron requesting Mr. Rhoden to file a motion for a speedy trial and to file a motion for a psychological evaluation of the alleged victim, Mr. Rhoden failed to do so."
 - e. "Failure to subpoena needed documents"
 - i. Counsel "failed to subpoena DSS records regarding the alleged victim to inquire as to whether statements of sexual abuse were given to DSS workers"
 - f. "Failure to instruct Mr. Ladron properly regarding bond conditions"

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- i. Counsel "instructed Mr. Ladron he could go to Arizona, despite his bond conditions saying otherwise, which led to Mr. Ladron being tried in his absence."

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

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) (citing Rule 71.1(e), SCRCP). 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, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 682 (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. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms."

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Cherry, 300 S.C. at 117, 385 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 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland).

Failure to Prepare for Trial

Applicant testified that he originally retained William Winter as his attorney in March 2006, but after Mr. Winter passed away, Counsel took over the case in 2008. Applicant testified that he met with Counsel approximately five or six times, but for no more than an hour each time. Applicant testified that there were numerous things that he asked Counsel to do prior to trial, but Counsel never did. Applicant testified that he requested that Counsel file a motion for a speedy trial, contact several witnesses, and subpoena DSS records of the victim. Applicant testified that Counsel never did any of these things. Applicant also testified that Counsel never reviewed any discovery materials with the Applicant.

Counsel testified that he did take the case after his partner, William Winter, was diagnosed with cancer. However, Counsel testified that he and Mr. Winter sat down with Applicant on April 14, 2008, and discussed the case and all of his options with Applicant. Counsel testified as to at least seven times that he and the Applicant met prior to trial. Counsel testified that he discussed the case with Applicant and reviewed discovery materials with the Applicant, including the report from the Children's Advocacy Center and witness statements. Counsel testified that his general practice is to have a court reporter transcribe DVDs from the Children's Advocacy Center and he provided the transcription to the Applicant. The jury was

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never shown the DVD. Counsel testified that he discussed with Applicant the possibility of the speedy trial motion, but he did not file one because Counsel's philosophy was that more time would be more beneficial to their case. Counsel testified that the majority of witnesses that Applicant asked him to contact were related to the family and a Detective, whose testimony Counsel did not believe he could have gotten into evidence properly.

Counsel also testified that he had the school records of the victim, but did not have any DSS statements. Counsel testified that he was not aware of any inconsistent statements by the victim. However, Counsel testified that the Applicant and his family were extremely critical of the victim. Counsel testified that there was never any physical evidence, so the case focused on credibility of witnesses.

This Court finds the testimony of Counsel to be more credible than that of the Applicant. This Court finds that Counsel reviewed discovery materials with the Applicant, as testified to by Counsel. To establish counsel was inadequately prepared, an Applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel been more fully prepared. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998); Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial). The "brevity of time spent in consultation, without more, does not establish that counsel was ineffective." Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980). This Court finds that the Applicant failed to meet his burden of proof as to this claim. Applicant failed to provide any evidence or information that would have been discovered had Counsel completed additional investigation. This Court would have to speculate as to what evidence, if

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any, could have been discovered from DSS and whether or not the evidence would have even been admissible at trial.

Additionally, prejudice from trial counsel's failure to interview or call witnesses cannot be shown where the witnesses do not testify at post-conviction relief. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Bassette v. Thompson, 915 F.2d 932 (4th Cir. 1990), cert. denied, 499 U.S. 982 (1991). The Applicant's mere speculation as to what a witnesses' testimony would have been cannot, by itself, satisfy his burden of showing prejudice. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993); Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995). An Applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998). This Court finds that the Applicant has also failed to meet his burden as to this claim. None of the witnesses that Applicant alleges should have been contacted to testify at trial were present, nor did anyone testify at the PCR hearing.

Finally, this Court finds that Counsel articulated a valid trial strategy for not making motion for a speedy trial in the hopes of delaying the trial to potentially benefit the Applicant. This Court finds no evidence that Counsel was deficient in his representation of Applicant or in his preparation for trial. Therefore, this claim is denied and dismissed.

Failure to Properly Argue that Applicant Had No Actual Notice of Trial and

Failure to Properly Instruct Applicant Regarding Bond Conditions

Applicant testified that he was involved in an affair that resulted in the birth of a child in 2009 and he wanted to go spend time with the child. Counsel told him that there was nothing in his bond requiring him to be in the State of South Carolina, rather, that the Applicant just had to

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be back for the trial, which was scheduled for September or October 2008. Applicant testified that Counsel contacted him by phone on a Thursday regarding trial on the following Monday, at which time Applicant requested that Counsel seek a continuance. However, Counsel informed Applicant on Saturday that he could not get a continuance, at which time Applicant informed Counsel that he would probably not be back in South Carolina in time for trial. Applicant testified that he never communicated with Counsel through emails and that he never reviewed his bond conditions personally.

Counsel testified that he absolutely reviewed bond conditions with the Applicant, which included not leaving South Carolina without permission, but by that time, the Applicant had already left the state. Counsel testified that the Applicant informed him that Applicant's mother had been in an accident and then sent Counsel an address and phone number from Arizona for Counsel to contact him. Counsel testified that it was not unusual for the Applicant and Counsel to communicate through email and Counsel testified to at least seven email exchanges he could find immediately in his file. Counsel testified that the trial was originally scheduled for January 2010, but the case was continued because of witness unavailability. When he received the notice for trial, Counsel testified that he sent a letter to the Applicant's local address informing him that he needed to be prepared for trial on that date. Counsel testified that he also emailed Applicant on January 17, 2010, informing him that the date of the trial was February 22, 2010. Also, Counsel testified that he talked with Applicant on the phone the Thursday before trial continuing to urge Applicant to return to South Carolina. Counsel testified that he received a voicemail from the Applicant on the Friday or Saturday prior to trial which indicated that Applicant was getting on a bus that day to head back to South Carolina for trial. On the date of trial, Counsel sent Applicant's family to the bus station and requested that the court give him time to locate

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Applicant. The court agreed to begin with other cases, but by the time trial had arrived, the Applicant still had not returned. However, Counsel acknowledged that he did not argue to the court that the Applicant had not received notice of trial since the notice for trial was sent to Counsel. Counsel testified that because he represented Applicant, Counsel's receiving notice of trial was considered to be the Applicant receiving notice of trial.

This Court finds the testimony of Counsel to be more credible than the testimony of the Applicant. The record is clear that Counsel requested a continuance when it appeared that the trial may be conducted in Applicant's absence, but this Court also finds it clear that the Applicant was fully on notice of the date of trial and aware that the trial would proceed in his absence if he failed to appear for trial. As indicated through testimony, the Applicant was in contact with Counsel on a regular basis and in the week before trial even indicated that he was returning for trial. Counsel testified that he informed Applicant of the date of trial and received communication from the Applicant that he would return for trial.

This Court also finds that the record is clear that the court found the Applicant had received notice of the date of trial and had been informed that the trial would proceed in his absence if he failed to appear. This Court finds no deficient conduct on Counsel's behalf. The Applicant has failed to offer any testimony or evidence to demonstrate that had Counsel made the argument that the Applicant did not receive actual notice, that the outcome of the trial could have been affected. Further, because this Court finds Counsel's testimony more credible, this Court has no doubt that the Applicant was aware of the conditions of his bond and that Counsel properly advised him regarding those conditions. Therefore, the Applicant has failed to meet his burden of proof and this claim is denied and dismissed.

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Summary

This Court finds in regards to the allegations of ineffective assistance of counsel, Counsel's testimony is more credible than the Applicant's testimony. This Court further finds Counsel adequately conferred with the Applicant, conducted a proper investigation, was thoroughly competent in his representation, and that Counsel's conduct does not fall below the objective standard of reasonableness.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – 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 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 Counsel's performance. This Court concludes the Applicant has not met his burden of proving Counsel failed to render reasonably effective assistance. See Frasier supra. Therefore, this allegation is denied.

CONCLUSION

Based on all 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 cautions Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the

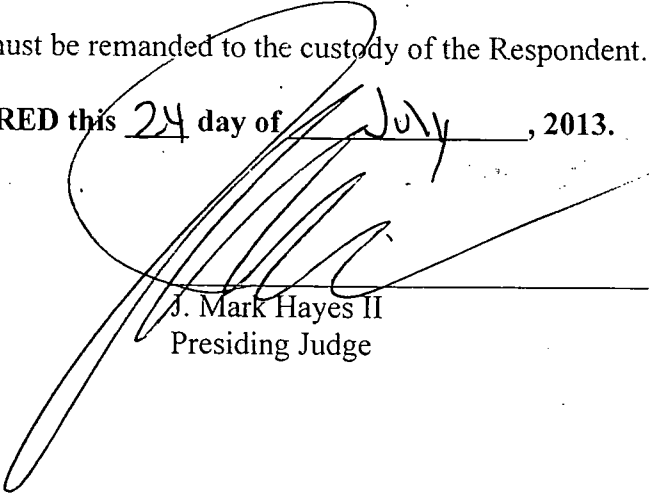
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denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

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 24 day of July, 2013.



J. Mark Hayes II
Presiding Judge

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