

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2010CP4603279

RECEIVED

Christopher A Woody

South Carolina State

AUG 12 2013

SC Supreme Court
DEFENDANT(S)

PLAINTIFF(S)

Submitted by:

Attorney for: Plaintiff Defendant
 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 for trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON): Rule 12(b), SCRCP; Rule 41(a), SCRCP (Vol. Nonsuit);
 Rule 43(k), SCRCP (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON): Rule 10(d), SCRCP; Bankruptcy;
 Binding arbitration, subject to right to restore to condition, 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

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk:

ATTORNEY GENERAL'S OFFICE

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5/30/13

JR
5/30

ADMINISTRATIVE INSTRUCTIONS

FILE OPEN END

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ORDER: TRANSCRIPT

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OTHER: Scan CB:

calendar date 30 days

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment refers to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Amount (List number(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/ John C. Hayes, III.
Circuit Court Judge

2049
Judge Code

5/23/2013
Date

For Clerk of Court Office Use Only

This judgment was entered on May 24, 2013, and a copy mailed first class or placed in the appropriate attorney's box on May 24, 2013, to attorneys of record or to parties (when appearing pro se) as follows:

Harry Leslie Devoe Jr. 7411 Black River Rd. New Zion, SC
29111

James Rutledge Johnson PO Box 11549 Columbia, SC
29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

David Hamilton - Clerk of Court

Court Reporter

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Christopher A. Woody, 309141,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

SIXTEENTH JUDICIAL CIRCUIT

Case No: 2012-CP-46-3279

ORDER

FILED-RECEIVED
2013 MAY 24 PM 3:41
LAW OFFICE
C.C.P. & GS
YORK COUNTY, SC

Applicant filed his application for Post-Conviction Relief (PCR) on August 2, 2010. The case was heard by the undersigned on the 13th day of May 2013. The State of South Carolina was represented I. Rutledge Johnson, Esquire, and the Applicant was represented Harry Devoe, Esquire.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. Applicant was indicted at the February 2005 term of the York County Grand Jury for Murder (2005-GS-46-0858), Possession of a Firearm During the Commission of a Violent Crime (2005-GS-46-0858A), Criminal Conspiracy (2005-GS-46-0859), and Unlawfully Carrying a Pistol (2005-GS-46-0860). Mr. Woody was represented by John Delgado, Esquire. From May 2-6, 2005, the Applicant proceeded to a jury trial and was found guilty as indicted of all charges. The Honorable Lee S. Alford sentenced the Applicant to life without parole for murder, five (5) years for possession of a firearm, five (5) years for conspiracy, and one (1) year for the unlawful carrying of a pistol, all running concurrent.

A Notice of Appeal was filed on the Applicant's behalf, and an appeal was perfected by Joseph L. Savitz, III, Esquire. The S.C. Court of Appeals affirmed. State v. Woody, 2008-UP-

534 (filed Sept. 11, 2008). The Petition for Rehearing was denied by Order dated December 19, 2008. The S.C. Supreme Court denied the Applicant's Petition for Writ of Certiorari by Order dated November 4, 2009. The Remittitur was issued on November 9, 2009.

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

1. Ineffective assistance of trial counsel
2. Ineffective assistance of appellate counsel

Applicant's PCR counsel stated the underlying issues for the Court's consideration as to the general Ineffective Assistance of trial counsel claim were:

1. Discovery Failures
2. Trial Attorney Failed to Hire Gunshot Residue Expert to Counter State
3. Trial Attorney Failed to Hire Pathology Expert

The Applicant alleges he received ineffective assistance of counsel. The Application lists fifteen (15) issues; however, because the Applicant bears the burden of proving allegations made in his Application, only those addressed in the hearing, listed above, will be considered by the Court. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Additionally, only arguments in regards to the ineffective assistance of trial counsel were heard. Therefore, ineffective assistance of appellate counsel will not be considered by the Court.

Because the Applicant bears the burden of proving the allegations in his Application, 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." Sirickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

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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, 50 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.

The Applicant's PCR counsel stated that one of the bases of Trial Counsel's ineffective assistance was a failure during the discovery stage of the trial process. At the PCR hearing, no evidence was presented by the Applicant to support this allegation. Because there was no evidence presented in support of this matter, the Court finds that the Applicant failed to meet his burden of proving Ineffective Assistance of Counsel based on a failure during the discovery process of the Applicant's trial.

The Applicant's PCR counsel stated that a secondary basis of Trial Counsel's ineffective assistance was the failure to hire a pathology expert. At the PCR hearing, no evidence was presented by the Applicant in support of this allegation against Trial Counsel. Because there was no evidence presented to show that Trial Counsel was deficient in failing to hire a pathology expert nor was there evidence presented to support a finding that the Applicant was prejudiced by Trial Counsel's failure to hire such an expert, the Court is in no position to find that Trial

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Counsel provided ineffective assistance to the Applicant based on his decision against hiring a pathology expert.

PCR Counsel also presented, without the support of testimony, that Trial Counsel was ineffective for failing to pursue the finding of a bullet in the victim's apartment. Nothing was offered at the Applicant's PCR hearing to give credence to this contention.

The Applicant testified at his PCR hearing that he was not given the opportunity to testify on his own behalf at the time of his trial. The Applicant testified that Trial Counsel did not want the Applicant to testify, because it would come off as unfavorable to the Applicant should he testify in a way that was inconsistent with a co-defendant. The Court finds that it is the job of legal counsel to make a recommendation to his or her client as to whether or not it is in the client's best interest to testify; however, it is ultimately a defendant's decision to take the stand or not. The Court finds that the Applicant was notified of his right to testify by Trial Counsel. The Court further finds that the Applicant was notified of his right to testify on his own behalf by the Trial Court, and the Applicant waived his right to do so. (TR p. 710, LL 2-25; p. 711, LL1-4). The Court finds that the Applicant exercising his right to remain silent, even if based on the recommendation of Trial Counsel, is not sufficient evidence to show that Trial Counsel's assistance was deficient or ineffective in any way.

At the Applicant's PCR hearing, the bulk of the evidence presented, if not the totality, was testimony concerning the gunshot residue found on the victim in this case and Trial Attorney's decision against hiring an expert in gunshot residue for the Applicant's defense.

The Applicant called as his first witness B.J. Barrowclough, Deputy Public Defender for York County. Mr. Barrowclough testified that the York County Public Defender's Office represented Mr. Woody, as well as his co-defendants, Debrezio Campbell and Desmond

Campbell. It was later determined that there was a conflict in representation of the three co-defendants together by the Public Defender's Office. Mr. Barrowclough testified that, based on the conflict, his office ceased representation of the Applicant and Desmond Campbell. The Applicant's counsel attempted to question Mr. Barrowclough about the Jackson v. Denno hearing conducted in the Applicant's pre-trial; however, Mr. Barrowclough said that he was not present for the hearing and, therefore, could not attest to what was or was not argued in such hearing.

The Applicant then called his trial counsel, John Delgado (Trial Counsel), as a witness. Trial Counsel testified that the Applicant refused a thirty (30) year plea offer from the solicitor. Trial Counsel testified that the Applicant told him that he was scared he would be killed the night of the crime and that he had seen the victim reaching behind for a gun when the victim was shot. Trial Counsel testified that, based on these allegations by the Applicant, the best and only defense for Applicant was an "imperfect self-defense." Trial Counsel testified that there existed many facts adverse to Applicant's self-defense, making it difficult to argue that the Applicant was without fault in bringing about the crime. Mr. Delgado testified to the existence of such adverse facts as the Applicant advanced to the scene of the crime while in possession of his loaded .45 caliber gun without a valid SC concealed weapons permit, Applicant knew that a drug deal was going to take place at the scene of the crime, and Applicant knew there was bad blood between Debrezio Campbell and the victim they were visiting.

Trial Counsel testified that there was gunshot residue found on the victim's left hand, but he was unable to find anyone to testify to the victim being left-handed. Trial Counsel also testified that he thought delving into the specifics of the forensics, the "blood and guts," would ultimately harm his client rather than help his case. Trial Counsel testified that the self-defense theory was so unstable based on the adverse facts stated above that only after extensive argument

on the matter by Trial Counsel did Judge Axford agree to charge the jury on self-defense. Trial Counsel testified that he had hired a gunshot residue expert in cases he had handled in the past but that he did not believe hiring a gunshot residue expert would have been of any help in the Applicant's case.

The Applicant then called two expert witnesses. The first, Steven Howard, was qualified as an expert in gunshot residue, and the second, Dr. Adel Shaker, was qualified as an expert in determining the presence of gunshot residue in firearm incidences. The Court finds that the testimony of neither expert shows that Trial Counsel's decision against hiring his own gunshot residue expert in defense of the Applicant's case renders Trial Counsel's assistance ineffective. Neither expert could offer definitive testimony that testing of the gunshot residue found on the scene would add any evidence or benefit to the Applicant beyond that done by the State's expert in trace evidence.¹ Agent Jennifer Stoner, the State's expert, could show that the victim had or was reaching for a gun at the time he was shot. At trial, Agent Stoner testified that both the palm and back of each hand of the victim were tested and that particles were found on the left palm of the victim's hand consistent with those of gunshot residue. (TR p. 505, LL 18-24). Agent Stoner further testified that, while the gunshot residue found on the palm of the victim's left palm was not consistent with the victim having fired a weapon, she could not rule out the victim having handled the a gun. (TR p. 507, LL 23-24). In *Arb v. Catoe*, the Supreme Court of South Carolina found that, based on trial counsel's failure to acquire an expert witness to dispute the negative results from the tests for presence of gunshot residue, trial counsel's decisions were "unreasonable and clearly deficient" and his assistance was ineffective. 372 S.C. 318, 336 (2007). In the present case, however, the presence of gunshot residue on the person of the victim was not at issue. The prosecution's expert testified to the presence of gunshot residue on the


¹ Trace evidence includes but is not limited to that of gunshot residue.

victim, Trial Counsel cross-examined the expert, and the prosecution's expert arguably provided testimony that was not definitively refuted by any testimony presented by the Applicant at his PCR hearing. In point of fact the testimony presented at trial regarding the presence of gunshot residue and that presented at the PCR hearing are consistent.

The Court finds that Trial Counsel's decision against hiring a gunshot residue expert does not render his assistance deficient, as it was reasonable under the circumstances. Even if Trial Counsel's assistance could be construed as deficient, the Court finds that such a deficiency would not prejudice the Applicant, as the Court is not convinced that new testimony regarding the gunshot residue would change the result of the Applicant's case.

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

IT IS SO ORDERED.



John C. Hayes, III
Presiding Judge #7

May 23, 2013
York, South Carolina