

CAROLINE M. HORLBECK
ATTORNEY AT LAW

PCR

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August 30, 2013

Via Regular Mail

Mr. Daniel E. Shearouse
Clerk, The S.C. Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

RECEIVED

SEP 3 - 2013

S.C. SUPREME COURT

Re: MARION JAMES DODD v. State

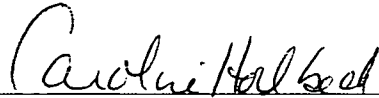
Dear Mr. Shearouse:

Enclosed you will find the original Notice of Appeal in the above matter along with Proof of Service upon the Respondents. The Notice has been filed with the Greenville County Clerk of Court.

These matters are being referred to the Office of Appellate Defense in that we were participating as Court appointed counsel at trial.

Thank you for your attention to this matter.

Yours very truly,


Caroline M. Horlbeck, Esq.

Enclosure

cc: Office of the Attorney General
Office of Appellate Defense

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
THE HONORABLE D. Garrison Hill

CA No. 2011-CP-23-5107

RECEIVED

SEP 3 - 2013

MARION JAMES DODD,

APPELLANT,

vs.

STATE OF SOUTH CAROLINA

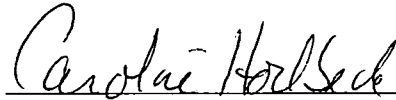
RESPONDENT.

SC SUPREME COURT
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ED-CLERK OF COURT
GREENVILLE CO S.C.
DUL B. WICKENSINGER

NOTICE OF APPEAL

Appellant MARION JAMES DODD, appeals from the Order of the Honorable D. Garrison Hill, Circuit Court Judge clocked August 7, 2013.

Respectfully submitted,



Caroline M. Horlbeck, Esq.
101 Whitsett St
Greenville, SC 29601

Date: August 23, 2013

Other Counsel of Record: Karen Ratigan, Esq.
Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE SUPREME COURT

Marion James Dodd,)
)
Appellant,)

C.A. No. 2011-CP-23-5107

-vs-)

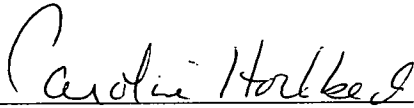
CERTIFICATE OF SERVICE

State of South Carolina,)
)
Respondent.)
_____)

This is to certify that I am an employee in the law office of Caroline M. Horlbeck, attorneys for Appellant, and that I have this day caused to be served upon the person(s) named below Appellant's Notice of Appeal by placing copies of same in the United States mail, with adequate postage thereon, addressed as follows:

Ms. Lorie French
S.C. Office of Appellate Defense
P.O. Box 11433
Columbia, SC 29211

Karen Ratigan, Esq.
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211


Caroline M. Horlbeck

Greenville, South Carolina

August 30, 2013

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Marion James Dodd,)
 S.C.D.C. No. 236658,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2011-CP-23-5107

RECEIVED
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 S.C. SUPREME COURT
 ORDER OF DISMISSAL

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed August 1, 2011. The Respondent made its return on December 30, 2011. An evidentiary hearing into the matter was convened on June 18, 2013 at the Greenville County Courthouse. The Applicant was present at the hearing and represented by Caroline Horlbeck, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's plea counsel, Larry Cooke, Esquire. The Court had before it the Greenville County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, the return, and the Applicant's Exhibits 1-3.¹

¹ This Court notes the Respondent produced a letter from the court reporter at the guilty plea hearing, which stated the plea transcript was unavailable because of an equipment malfunction. At the conclusion of the PCR hearing, the parties reconstructed the record with testimony from assistant solicitor Howard Steinberg, the Applicant's plea counsel, and the Applicant.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted at the October 2010 term of the Greenville County Grand Jury for possession with intent to distribute (PWID) cocaine base (2010-GS-23-8007), trafficking cocaine (2010-GS-23-8008, count 1), and possession of a weapon during the commission of a violent crime (2010-GS-23-8008, count 2). He was represented by Larry Cooke, Esquire.

On May 24, 2011, the Applicant pled guilty to PWID cocaine base, second offense and trafficking cocaine (10-28 grams), second offense. The Honorable G. Edward Welmaker sentenced the Applicant to concurrent terms of eight (8) years on each charge. The Applicant did not file an appeal.

ALLEGATIONS

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

1. Ineffective assistance of counsel:
 - a. Failed to challenge the validity of the arrest warrant.
 - b. "Applicant's residence entered illegally, without a search warrant by the Greenville County Sheriff's Office."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record 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

The Applicant alleges he received 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).

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. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). When there has been a guilty plea, the applicant must prove that counsel’s representation was below the standard of reasonableness and that, but for counsel’s unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

The Applicant stated he told plea counsel the wrong name was on the search warrant. The Applicant stated plea counsel said it would be fixed and that a new warrant with his name was issued. The Applicant stated the warrant was signed on June 9, 2010 and executed on June 10, 2010, but the return was not signed until July 8, 2010. The Applicant stated he never discussed this timeline with plea counsel and that, if they had discussed it, he would have gone to trial because neither the search warrant nor the arrest were legal.

Plea counsel testified he filed discovery motions after he was appointed to represent the Applicant. Plea counsel testified he received discovery materials and reviewed them several times with the Applicant. Plea counsel testified he discussed the facts of the case with the Applicant – that police obtained a search warrant after receiving a tip that he was dealing drugs

and that the Applicant told them there were drugs and a gun in a box. Plea counsel testified he was aware the search warrant had the name "Larry Wilson" at the top, but confirmed the Applicant's name was listed in both the body of the warrant and on the return. Plea counsel testified there were no serious issues with either the warrant or the return.

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds the Applicant's testimony is not credible, while also finding plea counsel's testimony is credible. This Court further finds plea counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his representation.

This Court finds the Applicant failed to meet his burden of proving plea counsel was ineffective. Plea counsel testified he filed discovery motions, received those materials, and reviewed them several times with the Applicant. This Court finds plea counsel's testimony is credible. Plea counsel testified he was aware the search warrant correctly named the Applicant in the body of the warrant and the return but mistakenly listed "Larry Wilson" at the top. Plea counsel testified, however, this did not create a serious issue in the case. This Court agrees. The scrivener's error did not invalidate the search warrant and this Court notes a corrected copy of the warrant was later prepared. See State v. Herring, 387 S.C. 201, 213, 692 S.E.2d 490, 496 (2009) (finding a typographical error did not affect the validity of a search warrant) (citation omitted). This Court also finds that, contrary to the Applicant's contention, the date of the return on the warrant did not serve to invalidate it because the Applicant failed to produce any evidence of resulting prejudice. See State v. Weaver, 374 S.C. 313, 323, 649 S.E.2d 479, 483-84 (2007) (citing State v. Wise, 272 S.C. 384, 252 S.E.2d 294 (1979)).

Accordingly, this Court finds the Applicant has failed to prove the first prong of the

Strickland test – that plea counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that plea 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 plea counsel’s performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

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 testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

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 guilty plea and sentencing proceedings. Counsel was not deficient in any manner and the Applicant was not 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 this Order if he wants 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 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 August, 2013.

Man 1-

D. Garrison Hill
Presiding Judge
Thirteenth Judicial Circuit

Greenville, South Carolina.

POST CONVICTION RELIEF HEARING

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

)
)

THIRTEENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA

VS.

ORDER OF APPOINTMENT OF LEGAL
COUNSEL FOR INDIGENT DEFENDANT

Marion James Dodd
Inmate

SCDC# 236658

Waterlee River Correctional Institution
Address

P.O. Box 189
City/State/ZIP

Rembert SC 29128
Telephone

PCR Case No. 2011 CP 23 0 5107

Original Attorney: Larry Cooke

* * * * *

The defendant contends that he is indigent and in need of services of an attorney as contemplated by law.

THEREFORE, Caroline Horlbeck, Attorney at Law, is appointed as counsel for the defendant.

This 10 day of Jan, 2012

Joel Kluber
Criminal Justice Coordinator

12-34

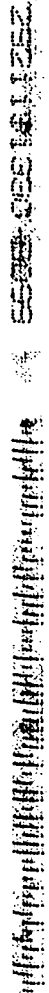
CAROLINE M. HORLBECK

Attorney At Law

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GREENVILLE, SOUTH CAROLINA 29601

Via Regular Mail

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Clerk, The S.C. Supreme Court
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