

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CLARENDON)
)
 The State of South Carolina)
)
 v.)
)
 George Smith,)
)
 _____ Defendant.)

IN THE GENERAL SESSIONS COURT
 Indictment No: 2008-GS-14-0352

**ORDER DENYING MOTION
 FOR NEW TRIAL**

RECEIVED

Apr 18 2025

SC Court of Appeals

THIS MATTER COMES BEFORE ME on a request by the Defendant for a new trial pursuant to Rule 29(b) of the South Carolina Rules of Criminal Procedure. Defendant asserts that after his conviction of Assault and Battery with the Intent to Kill, Armed Robbery, and Possession of a Weapon During a Violent Crime in 2009, he discovered his trial counsel had a conflict of interest that resulted in deficient representation. Defendant alleges his attorney, Harry Devoe, had represented the victim’s brother thereby dividing Mr. Devoe’s loyalty and ardor of his defense of Defendant.

“To prevail on a motion for a new trial based on after discovered evidence, a defendant must show (1) the evidence is such as will probably change the result if a new trial is granted; (2) the evidence has been discovered since the trial; (3) the evidence could not have been discovered prior to trial by the exercise of dule diligence; (4) the evidence is material; and (5) the evidence is not merely cumulative or impeaching.” *State v. Needs*, 333 S.C. 134, 508 S.E.2d 857, 869 (1998).

Defendant has not shown that knowing Mr. Devoe represented the victim’s brother in an unrelated case would probably change the result of his conviction. Mr. Devoe represented Brodtus Black, brother of the victim in Defendant’s case, on various drug charges. Mr. Black was arrested on April 28, 2009 and pleaded guilty on July 6, 2009, which is less than three

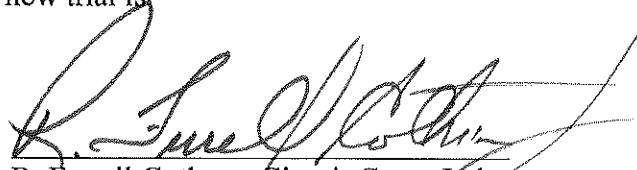
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months of his arrest date. Defendant was convicted on December 8, 2009. Mr. Black's drug charges are tangential and inconsequential to Defendant's case. Additionally, Defendant has not shown that the alleged conflict of interest could not have been discovered prior to trial by the exercise of due diligence. The Third Circuit Public Defender's office did have the software and capability to track case assignments in 2009. This information could have been obtained by Mr. Devoe or anyone relevant to the case by requesting said information from the public defender's office. Defendant's assertion of an alleged conflict of interest regarding his representation appears to be mere speculation.

This same issue was brought before a judge during Defendant's post-conviction relief (PCR) hearing and the court found Defendant failed to prove any conflict. Mr. Devoe testified that he had never heard of Mr. Black and PCR counsel could not locate any records evidencing a conflict of interest by Mr. Devoe in his representation of Defendant. At the time of the PCR hearing, Mr. Devoe testified that he essentially had no memory of representing the victim's brother, Mr. Black. The record indicates that Mr. Devoe represented Mr. Black for a mere two months at most, because the case was adjudicated within two months of Mr. Black's arrest on April 28, 2009. He plead guilty on July 6, 2009. It is reasonable to believe that counsel did not remember or draw a connection between the victim and Mr. Black due to the limited amount of time that he represented Mr. Black; therefore, counsel would not have had any conflict with his representation of Defendant.

Therefore, Defendant's motion for a new trial is

DENIED.AND IT IS SO ORDERED.


R. Ferrell Cothran, Circuit Court Judge

Manning, South Carolina
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