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October 8, 2013

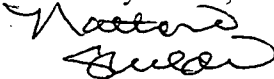
Hon. Daniel E. Shearhouse
Supreme Court of South Carolina
PO Box 11330
Columbia, SC 29211

Re.: Dixon v. State (12-CP-46-04257)

Dear Mr. Shearhouse:

Please find enclosed the original and three copies of petitioner's Notice of Appeal and Certificate of Service for the above referenced case. Please file the original and mail the copies back to me in the also enclosed self addressed stamped envelope. I have also attached the signed order denying petitioner's pcr application. Please feel free to contact me with any other questions or concerns that you may have. Thank you.

Sincerely Yours,



Nathan Sheldon
Shaw Law Firm

RECEIVED
OCT 10 2013
S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM YORK COUNTY
Court of Common Pleas

G. Edward Welmaker, Circuit Court Judge

Case No. 2012-CP-46-04257

John William Dixon,
#00350805

Petitioner,

RECEIVED

OCT 10 2013

v.


State of South Carolina,

Respondent.

S.C. SUPREME COURT

NOTICE OF APPEAL

Please take note that the above petitioner, John William Dixon, intends to appeal the denial of the relief sought in his application for Post Conviction Relief (2012-CP-46-04257). The Honorable G. Edward Welmaker denied the relief on August 12, 2013. A written order was filed on September 10, 2013 and received by petitioner's counsel on September 12, 2013.


Nathan Sheldon
PO Box 36250
Rock Hill, South Carolina 29732
(803) 329-4200
Attorney for Petitioner

Other Counsel of Record:
Joshua L. Thomas
Assistant Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3970
Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM YORK COUNTY
Court of Common Pleas

G. Edward Welmaker, Circuit Court Judge

Case No. 2012-CP-46-04257

John William Dixon, #0035085

Petitioner,

v.

State of South Carolina,

Respondent,

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing NOTICE OF APPEAL has been served on the below listed people by mailing a copy properly addressed with sufficient postage affixed thereto this 8th day of October, 2013.

Joshua L. Thomas
Office of the Attorney General
PO Box 11549
Columbia, SC 29211


John William Dixon, #0035805
Kershaw Correctional Institution
4848 Gold Mine Highway
Kershaw, SC 29067

Hon. David Hamilton
York County Clerk of Court- Common Pleas
PO Box 649
York, SC 29745

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OCT 10 2013

S.C. SUPREME COURT


Shannon Kimbrell
Paralegal, Shaw Law Firm

FORM 4

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

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2012CP4604257

John William Dixon	South Carolina State Of
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PLAINTIFF(S)

DEFENDANT(S)

Submitted by: The Court	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant
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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 to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, 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 INFORMATION

RECEIVED

ORDER OF DISMISSAL GRANTING WHITE V. STATE APPEAL

OCT 10 2013

This order ends does not end the case.

Additional Information for the Clerk: _____

S.C. SUPREME COURT

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title 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 Against (List name(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/ G. Edward Welmaker
Circuit Court Judge

2137
Judge Code

08/30/2013
Date

For Clerk of Court Office Use Only

This judgment was entered on **September 10, 2013**, and a copy mailed first class or placed in the appropriate attorney's box on **September 10, 2013**, to attorneys of record or to parties (when appearing pro se) as follows:

✓ Nathan James Sheldon PO Box 36250 Rock Hill, SC 29732

✓ James Rutledge Johnson PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

Court Reporter

David Hamilton - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

RECEIVED

OCT 10 2013

IN THE COURT OF COMMON PLEAS
FOR THE SIXTEENTH JUDICIAL CIRCUIT

S.C. SUPREME COURT

Case No. 2012-CP-46-4257

FILED-RECEIVED
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DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

John William Dixon, #350805,)
)
Applicant,)

v.)

State of South Carolina,)
)
Respondent.)

**ORDER OF DISMISSAL
GRANTING WHITE V. STATE
APPEAL**

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed December 12, 2012. Respondent made its Return on March 18, 2013. The Court convened an evidentiary hearing into the matter on August 12, 2013, at the York County Courthouse. Applicant was present at the hearing and represented by Nathan J. Sheldon, Esquire. Joshua L. Thomas, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the PCR hearing. Applicant's probation revocation counsel, Mark McKinnon, Esquire, also testified. The Court had before it a copy of the revocation hearing transcript, the records of the York County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the return, and the exhibits introduced by Applicant at the hearing.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the York County Clerk of Court. In December 2007, the York County Grand Jury indicted Applicant for threatening the life of a public employee (2007-GS-

46-4372). He was represented by Gary Lemel, Esquire. On June 20, 2008, Applicant pled no contest to the charge as indicted. The Honorable R. Knox McMahon sentenced Applicant to confinement for a period of five (5) years, suspended upon the service of five (5) years of probation. Applicant did not appeal his plea or sentence.

On March 8, 2010, Applicant appeared before the Honorable John C. Hayes, III, for a probation revocation hearing. Upon information and belief, the Sixteenth Circuit Public Defender's Office represented Applicant at this hearing. Judge Hayes revoked Applicant's probation for ninety (90) days and continued Applicant on probation after service of the revoked time. Applicant did not appeal this revocation or sentence.

On May 7, 2012, Applicant again appeared before Judge Hayes for a probation revocation. Mark McKinnon, Esquire, represented Applicant at this revocation hearing. Judge Hayes revoked Applicant's probation in full and terminated him from probation. Applicant did not appeal this revocation or sentence.

II. ALLEGATIONS

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

1. Ineffective assistance of counsel
 - a. Failure to object to trial procedure

At the PCR hearing, the Applicant proceeded on the allegation of ineffective assistance of probation revocation counsel and an allegation he was denied a direct appeal from his probation revocation hearing.



III. SUMMARY OF TESTIMONY

Applicant testified he was arrested in Florida on June 8, 2011, on charges of aggravated assault with a firearm, assault, and battery. Applicant testified that while in jail Florida on these charges, he learned that the South Carolina Department of Probation, Parole, and Pardon Services placed a hold on him for violating the terms of his probation. According to Applicant, he learned of the hold sometime in mid-July when the Florida jail received a faxed copy of the violation warrant. Applicant testified he pled no contest to the Florida charges in March 2012. According to the Florida sentencing sheet entered into evidence, Applicant pled to three charges of battery and two charges of assault; the firearms charge was *nolle prossed*. In exchange for the plea, Applicant received a time-served sentence. Applicant testified he was not released from jail immediately. Instead, he said he remained in the Florida jail until April 2012, when a prisoner transport van took him back to South Carolina. He testified that when he arrived back in South Carolina, he was incarcerated in the York County detention center. Applicant testified he met with his revocation counsel before the hearing. In that meeting, Applicant says he discussed the procedural history of the Florida charges. Applicant testified he never discussed an appeal from the revocation sentence. Applicant testified he asked the judge for credit for time-served while in jail in Florida. He further testified he would have pursued an appeal if he had known about it. On cross-examination, Applicant admitted he was familiar with the probation revocation process from the prior ninety day revocation. He further admitted the Florida plea was a violation of the terms of his probation. He explained he knew revocation counsel would argue for a partial revocation.

Revocation counsel testified he received notice of Applicant's Monday morning



probation revocation hearing on the Thursday before. He testified he met with Applicant on Friday to discuss the case. Counsel testified he discussed the revocation procedure and any possible defenses Applicant may have to the charge. He testified he believed the Applicant had no viable defense to the violation. Instead, he hoped to impress upon the revocation judge that Applicant had done well on probation prior to the incident in Florida, and that a partial revocation was a more appropriate sentence. Counsel also testified that he spoke with Applicant's plea counsel on the Florida charges and attempted to speak to Applicant's Florida probation agent. Counsel recalled asking the judge for a partial revocation and for credit for time-served from the date the hold was put on Applicant in Florida. Counsel testified that he thought the judge had the discretion to give credit for time-served either from the date the warrant was served or from the date the hold was placed on Applicant. He further testified he did not think Applicant had a viable appeal because there was no abuse of discretion in the revocation judge's decision to only award credit for time-served from the date the warrant was served. On cross examination, counsel admitted that he did not do any research on whether Applicant was entitled to credit for time-served from the date the warrant was issued. However, he did state that he researched the issue in the past and interpreted the law as giving the judge wide discretion in determining credit for time-served. He further admitted that he did not discuss an appeal with Applicant because he did not think there was a viable appellate issue.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed 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

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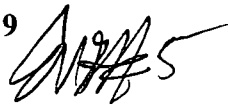
has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003):

A. Ineffective Assistance of Probation Revocation Counsel

Applicant alleges he received ineffective assistance of probation revocation 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), 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. Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006) (citing Strickland v. Washington, 466 U.S. 668, 687 (1984)). In order to prove prejudice, an applicant must show “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). “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, 466 U.S. at 694). Where counsel articulates a valid reason for employing a certain strategy, such conduct should not be deemed ineffective assistance of counsel. Roseboro v. State, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995) (citations omitted); Stokes v. State, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992).

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With respect to probation revocation counsel, the Strickland standard applies. A probationer has a right to counsel, though not a Sixth Amendment one. Turner v. State, 384 S.C. 451, 455, 682 S.E.2d 792, 794 (2009); see also Gagnon v. Scarpelli, 411 U.S. 778 (1973). Rather, Rule 602(a), SCACR, requires the appointment of counsel for indigent defendants in probation revocation proceedings. Nonetheless, "the same analysis for ineffectiveness that applies in other PCR proceedings involving claims against counsel should, by analogy, apply in PCR proceedings involving claims against probation counsel." Turner, 384 S.C. at 455, 682 S.E.2d at 794; see e.g., United States v. Wren, 682 F.Supp. 1237 (S.D.Ga. 1988). However, since a probation revocation hearing is not a formal adversarial proceeding, "the Court must review counsel's performance in light of the particular type of proceeding involved." Wren, 682 F.Supp. at 1242.

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

Accordingly, this Court finds Applicant has failed to prove the first prong of the Strickland test – that counsel failed to render reasonably effective assistance under prevailing professional norms. This Court also finds Applicant has also 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 probation revocation counsel failed to render reasonably effective assistance. See Frasier, 351 S.C. at 389, 570 S.E.2d at 174.

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682 S.E.2d at 795. Therefore, the Court affirmatively finds Applicant did not knowingly and voluntarily waive his appellate rights and is entitled to an appeal from his probation revocation hearing. Applicant's lack of an appeal can be remedied pursuant to White v. State.

C. 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 Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby deemed to have been abandoned.

V. CONCLUSION

Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations before or during his probation revocation proceedings. Counsel was not deficient in any manner, nor was Applicant prejudiced by counsel's representation. Therefore, this application for PCR must be denied and dismissed with prejudice. This Court, however, concludes Applicant is entitled to review of direct appeal issues from the probation revocation hearing pursuant to White v. State.

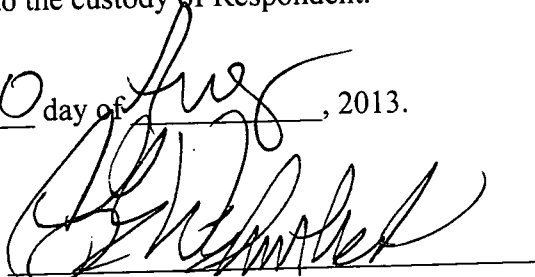
IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief be denied and dismissed with prejudice;
2. Within thirty (30) days of service of this Order, counsel for Applicant must file a notice of appeal to secure the appropriate review of Applicant's probation revocation hearing. Counsel and Applicant are directed to Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986), and Rule 243(i), SCACR, for the appropriate procedure for securing appellate review; and



3. That Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 30 day of Aug, 2013.



G. EDWARD WELMAKER
Presiding Circuit Judge
Sixteenth Judicial Circuit

Pickens, South Carolina