

The Supreme Court of South Carolina

Courtney Sease,

Petitioner,

v.

State of South Carolina,

Respondent.

The Honorable D. Craig Brown
Hampton County
Trial Court Case No. 2009-CP-25-00394

ORDER

The request for an extension until May 9, 2012 to serve and file the Petition for Writ of Certiorari and Appendix is granted. Pursuant to this Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY



Clerk

Columbia, South Carolina

April 10, 2012

cc: Appellate Defender Elizabeth A. Franklin-Best
Assistant Attorney General Ashleigh Wilson



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

ORIGINAL

Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1343
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

April 9, 2012

RECEIVED

APR 9 2012

S.C. Supreme Court

The Honorable Daniel E. Shearouse
Clerk, S.C. Supreme Court
P.O. Box 11330
Columbia, SC 29211

Re: Courtney Sease v. State

Dear Mr. Shearouse:

The Petition for Writ of Certiorari and accompanying appendix are due to be served and filed with the Court today. However, because of my heavy workload at this time, I am requesting a thirty day extension in which to serve and file the petition.

By copy of this letter, I am informing Matthew J. Friedman, Esquire, of the Attorney General's Office, of my request.

Sincerely,

Elizabeth A. Franklin-Best
Appellate Defender

EAF/cms

cc: Matthew J. Friedman, Esquire



SCCID

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Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

February 9, 2012

RECEIVED

FEB - 9 2012

S.C. Supreme Court

The Honorable Daniel E. Shearouse
Clerk, S.C. Supreme Court
Post Office Box 11330
Columbia, SC 29211

Dear Mr. Shearouse:

The following case falls under the 60 day rule for appeals, and the date we received the transcript is listed to the side.

Courtney Sease v. State of South Carolina

2/8/2012

I would appreciate you beginning our time limits from the above date, and if you need additional information, or have any questions please contact me.

Thank you for your assistance in this matter.

Sincerely,

Sharon A. Graham
Administrative Coordinator



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1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
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Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

December 1, 2011

RECEIVED

DEC - 1 2011

Ms. Bonnie H. Kelly
Circuit Court Reporter
P O Box 50614
Columbia, SC 29250-0614

S.C. Supreme Court

Dear Ms. Kelly:

Please provide us with the following transcript:

Courtney Sease v. State of South Carolina Case #: 09-CP-25-00394

County: Hampton Date of Trial: August 31, 2011

Presiding Judge: D. Craig Brown

To ensure prompt payment, please sign and complete the enclosed CID FORM 3500 and include the original criminal case number (Indictment number) where the space is provided.

Please number the lines on the paper from 1-25, and include any and all recorded motions, pre and post-trial. Additionally, please transcribe the jury selection, and the State and defense counsel's opening and closing arguments.

If you are aware of any co-defendants or if the Attorney General's Office has already requested a transcript, please let us know.

Sincerely,

Sharon A. Graham
Administrative Coordinator

cc: S.C. Supreme Court
Attorney General's Office

PCR

GERALD A. KELLY, J.D.
ATTORNEY AT LAW

4760 Yemassee Hwy
Varnville, South Carolina 29944

038L 280

803-943-0510 office and fax

geraldkelly@islc.net

NOV 18 2011 12:14 PM

11/18/11

11/18/11 12:14 PM

11/18/11 12:14 PM

November 18, 2011 (12:14pm)

Honorable Daniel E. Shearouse
Clerk of the South Carolina Supreme Court
P.O. Box 11330
Columbia, South Carolina
29211

RECEIVED

NOV 21 2011

S.C. SUPREME COURT

RE: Courtney Sease, #328318 v. State of South Carolina, 2009-CP-25-394

Dear Sir:

803-943-0510 office and fax

ASUMMHE 2009-CP-25-394

Please accept for filing the enclosed documents to perfect appeal in the cited case.

Sincerely,

Gerald A. Kelly
Gerald Alan Kelly, 3358

4760 Yemassee Hwy.

Varnville, South Carolina 29944

803-943-0510, office and fax

Enclosures:

1. Order Granting White v. State Appeal and Denying All Other Allegations
2. Notice of Appeal
3. Proof of Service

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM HAMPTON COUNTY
Court of Common Pleas

Hon. D. Craig Brown, Circuit Court Judge

Case No. 2009-CP-25-394

Courtney Sease, #328318.....Petitioner

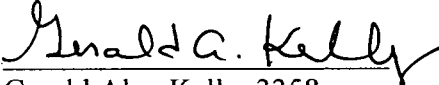
v.

State of South CarolinaRespondent

NOTICE OF APPEAL

Courtney Sease,#328318, appeals the order of Hon. D. Craig Brown filed October 14, 2011. Petitioner received notice of filing of the Order Granting White v. State Appeal and Denying All Other Allegations on October 21, 2011, by receiving a copy from the Office of the Attorney General of South Carolina, Assistant Attorney General Matthew J. Friedman.

November 18, 2011



Gerald Alan Kelly, 3358
4760 Yemassee Hwy
Varnville, SC 29944
803-943-0510, office and fax
Attorney for Petitioner

Other Counsel of record:
Matthew J. Friedman
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211-1549
803-734-3970
Attorney for Respondent

RECEIVED

NOV 21 2011

S.O. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM HAMPTON COUNTY
Court of Common Pleas

Hon. D. Craig Brown, Circuit Court Judge

Case No. 2009-CP-25-394

Courtney Sease, #328318 Petitioner

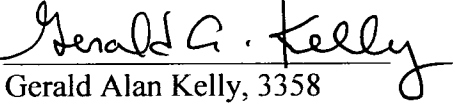
v.

State of South Carolina Respondent

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Matthew J. Friedman by depositing a copy of it in the United States Mail, postage prepaid, on November 18, 2011, addressed to him at Office of the Attorney General, P.O. Box 11549, Columbia, SC 29211-1549.

November 18, 2011


Gerald Alan Kelly, 3358
4760 Yemassee Hwy
Varnville, SC 29944
803-943-0510, office and fax
geraldkelly@islc.net
Attorney for Petitioner

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HAMPTON)
)
 Courtney Sease, #328318,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 2009-CP-25-394

**ORDER GRANTING WHITE V. STATE
 APPEAL AND DENYING ALL OTHER
 ALLEGATIONS**

FILED
 2011 OCT 11 PM 12:47
 CLERK OF COURT
 COMMON PLEAS
 COUNTY OF HAMPTON, S.C.

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed September 1, 2009, and amended on December 29, 2009. The Respondent made its Return and Partial Motion to Dismiss on March 2, 2010. An evidentiary hearing into the matter was convened on August 31, 2011, at the Beaufort County Courthouse. The Applicant was present at the hearing and was represented by Gerald A. Kelly, Esquire. Matthew J. Friedman, Esquire, of the South Carolina Attorney General’s Office represented the Respondent.

The Applicant and Robert M. Hughes, Esquire, testified at the PCR hearing. This Court had before it the records of the Hampton County Clerk of Court, the Applicant’s records from the South Carolina Department of Corrections, the trial transcript, the Order of Dismissal from the Court of Appeals, the Remittitur dated July 14, 2008, the PCR application and amended application, and the Respondent’s Return and Partial Motion to Dismiss thereto.

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 Hampton County. The Applicant

was indicted at the April 2008 term of the Hampton County Grand Jury for murder (2008-GS-25-190) and possession of a weapon during commission of a violent crime (2008-GS-25-191). Robert M. Hughes, Esquire, represented the Applicant. Applicant proceeded to trial on May 7-8, 2008, after which a jury found him guilty as indicted. The Honorable Perry M. Buckner sentenced the Applicant to confinement for thirty-five (35) years for murder and five (5) years consecutive for possession of a weapon during the commission of a violent crime.

Counsel filed a timely Notice of Appeal on Applicant's behalf. The South Carolina Court of Appeals issued an Order of Dismissal on June 26, 2008, in which it indicated that the appeal was dismissed based on Applicant's failure to provide documentation showing the transcript had been timely ordered and/or serve and file the Appellant's Initial Brief and Designation of Matter. The Remittitur was issued on July 14, 2008.

ALLEGATIONS

The Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel in that counsel
 - a. Failed to disclose discovery evidence to Applicant.
 - b. Failed to make background checks of witnesses for convictions or mental and physical tests.
 - c. Failed to determine if witnesses were psychotic, retarded, or drug users.
 - d. Failed to place details of Applicant's background into evidence.
 - e. Failed to use written witness statements at trial.
 - f. Failed to object to testimony of witnesses not listed in discovery.
 - g. Failed to object to prosecutorial misconduct.
 - h. Failed to make a motion for dismissal.
 - i. Failed to inform Applicant of the statutory right to examine jurors during voir dire.
2. Ineffective assistance of appellate counsel in that counsel failed to properly perfect Applicant's appeal. Applicant did not knowingly and voluntarily waive his appellate rights.

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 his or her 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).

Applicant testified that counsel was ineffective for failing to disclose discovery evidence to Applicant. He testified that he did not review any witness statements with counsel prior to the trial. He asserted that the two eyewitnesses – Danny Zorn and Bennie Jackson – gave inconsistent statements and counsel failed to cross-examine them about their statements or make background checks on them. He also asserted that Mr. Jackson was not on the original witness list, but counsel failed to object to his testimony at trial. Applicant testified that he gave a statement to Officer Bolton, but he did not say what Officer Bolton testified that he said. Applicant testified that he was a witness to the shooting, but he did not shoot the victim. However, he admitted that he did not tell counsel the name of the real shooter or any witnesses. Applicant testified that counsel failed to place details of Applicant's background into the record during sentencing. He contended that counsel should have objected to prosecutorial misconduct when the solicitor told the jury that Applicant was a murderer. Applicant also testified that counsel failed to inform him of his statutory right to examine jurors during voir dire. Applicant asserted that trial counsel filed a Notice of Appeal, but his appellate attorney did not get the transcripts to the appellate court in time and his appeal was ultimately dismissed.

Trial counsel testified that he reviewed the witness statements with Applicant prior to the

trial. He testified that he learned that Mr. Jackson was a witness the day before trial, but he was provided with access to Mr. Jackson that same day. He asserted that he was able to cross-examine Mr. Jackson and Mr. Zorn regarding their statements. Counsel testified that Applicant never told him that he was not the shooter. He testified that Applicant's defense was that he was not there or if he was there it was self-defense, but he did not provide an alibi. Counsel testified that his investigation indicated that Applicant was there. Applicant admitted that he shot the victim after an argument over money, during which Applicant grabbed the victim's gun and shot the victim at least twice after he turned to run. Counsel asserted that Applicant's version of the facts was very similar to the statements of the two eyewitnesses. Counsel testified that he requested a Jackson v. Denno hearing, but the Applicant's oral statement and the victim's dying declaration were both admitted by the trial court.

Ineffective Assistance of Counsel

Applicant alleges that he received ineffective assistance of counsel. In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). 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 (1984); Butler, 334 S.E.2d 813.

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 adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The applicant must overcome this

presumption in order to receive relief. Cherry, 386 S.E.2d 624.

Courts use a two-pronged test to evaluate 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." Id. at 625 (citing Strickland, 466 U.S. 668). 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." Id. at 625. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

This Court finds that trial counsel's testimony is credible. This Court finds that counsel is a trial practitioner who has extensive experience in the trial of serious offenses. Counsel conferred with the Applicant on several occasions. During conferences with the Applicant, counsel discussed the pending charges, the elements of the charges and what the State was required to prove, Applicant's constitutional rights, and possible defenses or lack thereof.

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 that Applicant's attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, 466 U.S. at 668; Butler, 286 S.C. 441, 334 S.E.2d 813. This Court further finds counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his representation. This Court finds that counsel's representation did not fall below an objective standard of reasonableness.

This Court finds that counsel properly reviewed the discovery with Applicant and adequately cross-examined the eyewitnesses with respect to their statements. This Court finds that there was no basis for counsel to object to prosecutorial misconduct.

This Court finds that trial counsel adequately offered mitigating factors to the trial court. Counsel noted that Applicant had no prior record, was only 19 years old, and had a ninth grade education. Counsel also asked the trial court to be merciful in fashioning a sentence. The trial court was lenient under the circumstances in sentencing Applicant to thirty-five (35) years for murder. In addition, Applicant was given an opportunity to address the trial court, and he failed to mention any other details of his background that he believed could have been a mitigating factor during sentencing.

Accordingly, this Court finds Applicant has failed to prove the first prong of Strickland, specifically that counsel failed to render reasonably effective assistance under prevailing professional norms. This Court also finds the Applicant has failed to prove the second prong of Strickland, specifically that he was prejudiced by counsel's performance. Applicant's complaints concerning counsel's performance are without merit and are denied and dismissed.

White v. State Appeal

This Court finds that Applicant did not freely and voluntarily waive his right to appellate review. Trial counsel filed a timely Notice of Appeal, but the appeal was ultimately not properly perfected and was dismissed by the Court of Appeals. This Court finds that Applicant was without fault in the dismissal of his appeal. Accordingly, this Court finds that Applicant is entitled to a review of direct appeal issues as permitted by White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974). In White v. State, our Supreme Court determined that, where the post-conviction relief judge finds the applicant did not freely and voluntarily waive his appellate

rights, the applicant may petition the South Carolina Supreme Court for review of direct appeal issues. This Court concludes the Applicant is entitled to a review of his convictions pursuant to White v. State. In order to secure this review, however, the Applicant must appeal from this Order.

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 evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

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 trial and sentencing proceedings. Counsel was not deficient in any manner, nor was the Applicant prejudiced by counsel's representation. Therefore, with the exception of the White v. State issue, this application for PCR 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 written notice of entry of this Order 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 served and filed.

IT IS THEREFORE ORDERED:

1. That the Applicant is granted review of direct appeal issues pursuant to White v. State;
2. That the other allegations in the application for post-conviction relief be denied and dismissed with prejudice; and
3. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 6th day of October, 2011.

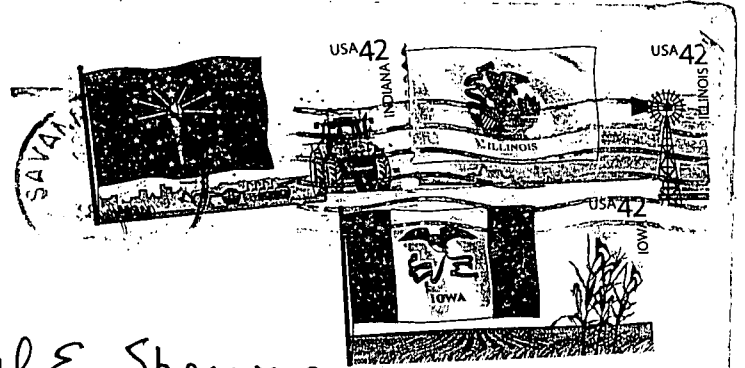
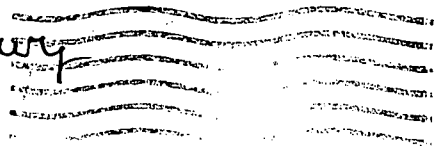


The Honorable D. Craig Brown
Presiding Judge
14th Judicial Circuit

Florence, South Carolina.

Kelly
Attorney at Law
4760 ~~Georgia~~ Highway
Vainorville SC
29944

Courtney
Please



Honorable Daniel E. Shearous
Clerk of South Carolina Supreme Court
P.O. Box 11330
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