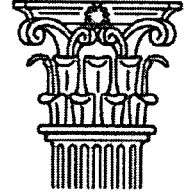


The Law Office of Joshua S. Nasrollahi
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December 09, 2013

VIA U.S. MAIL

Hon. Daniel E. Shearhouse
Clerk of Court
Supreme Court of South Carolina
PO Box 11330
Columbia, SC 29211
(803) 734-1080
(803) 734-1499 (fax)

RECEIVED

DEC 13 2013

S.C. Supreme Court

RE: *Otis Bland v. State of South Carolina, 2013-CP-24-00116*
Our File No. CP-13.1258.01

Dear Mr. Shearhouse:

Enclosed for filing is a notice of appeal in the above case. Also enclosed are the following:

- (1) Proof of service of the notice of appeal on the respondent.
- (2) A copy of the judgment which is to be challenged on appeal.

Please file the enclosed documents and return a clocked copy to my office in the envelope provided herewith. If you have any questions or concerns, please do not hesitate to contact me at your earliest convenience. With kind regards, I am

Very Sincerely Yours,

Joshua S. Nasrollahi

Encl. Notice of Appeal
Proof of Service
Judgment

cc: Otis Bland
990 Wisacky Highway
Bishopville, SC 29010

J. Rutledge Johnson
Assistant Attorney General
PO Box 11549
Columbia, SC 29211

Robert M. Dudek
Chief Appellate Defender
S.C. Commission on Indigent Defense
PO Box 11589
Columbia, SC 29211-1589

File

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenwood County
Court of Common Pleas
Thomas A. Russo, Circuit Court Judge

Case No. 2013-CP-24-0116

OTIS L. BLAND,

APPELLANT,

-v-

STATE OF SOUTH CAROLINA

RESPONDENT

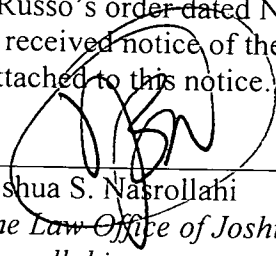
RECEIVED

DEC 13 2013

S.C. Supreme Court

NOTICE OF APPEAL

Otis L. Bland appeals the Honorable Thomas A. Russo's order dated November 14, 2013, and filed on December 9, 2013. The Appellant received notice of the entry of the order on December 9, 2013. A copy of this order is attached to this notice.


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Other Counsel of Record:
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Attorney for
Otis L. Bland

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenwood County
Court of Common Pleas
Thomas A. Russo, Circuit Court Judge

Case No. 2013-CP-24-0116

RECEIVED

DEC 13 2013

S.C. Supreme Court

OTIS L. BLAND,

APPELLANT,

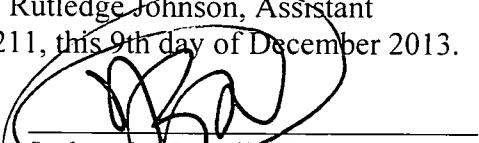
-v-

STATE OF SOUTH CAROLINA

RESPONDENT

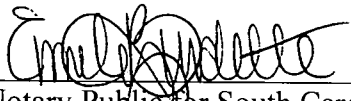
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Notice of Appeal in the above-referenced case has been served upon J. Rutledge Johnson, Assistant Attorney General, PO Box 11549, Columbia, SC 29211, this 9th day of December 2013.



Joshua S. Nasrollahi
*The Law Office of Joshua S.
Nasrollahi*
209 Waller Avenue
Greenwood, SC 29646
(864) 538-6000

SUBSCRIBED AND SWORN TO before me
This 9th day of December 2013.



Notary Public for South Carolina (L.S.)
My Commission Expires: 5/22/2023

Attorney for
Otis L. Bland

STATE OF SOUTH CAROLINA)
COUNTY OF GREENWOOD)

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

Otis Lamar Bland, #340910,)

2013-CP-24-0116

Applicant,)

ORDER OF DISMISSAL

v.)

State of South Carolina,)

Respondent.)

FILED
CLERK OF COURT
EIGHTH JUDICIAL CIRCUIT
GREENWOOD COUNTY, S.C.
FEB 11 2013

This matter comes before the Court by way of an Application for Post-Conviction Relief filed February 5, 2013. Respondent made its Return on May 8, 2013. An evidentiary hearing into the matter was convened on October 31, 2013, at the Greenwood County Courthouse. Josh Nasrollahi, Esquire represented Applicant. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

At the hearing, Applicant and Deborah Bland testified on his own behalf. Lance Sheek, Esquire also testified. This Court had before it a copy of the records of the Greenwood County Clerk of Court, records from the South Carolina Department of Corrections, and the trial transcript.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Greenwood County Clerk of Court. Applicant was indicted at the June 2009 term of the Greenwood County Grand Jury for Attempted Armed Robbery (2009-GS-24-0632) and Possession of a weapon during the commission of a violent crime (2009-GS-24-0628). He was also indicted at the March 2010 term of the Greenwood County Grand Jury for Attempted Burglary,

1st degree (2010-GS-24-0437). The Applicant was represented by Lance Sheek, Esquire. On May 19, 2010, the Applicant underwent trial by jury and was convicted. The Honorable W. Jeff Young sentenced Applicant to imprisonment for twenty (20) years for Attempted Armed Robbery, twenty (20) years, concurrent, for Attempted Burglary, 1st degree, and five (5) years, consecutive, for the weapons charge.

A Notice of Appeal was timely filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals by written opinion affirmed Applicant's conviction and sentence. State v. Bland, Op. No. 5002 (Ct. App. filed on July 18, 2012). The Remittitur was sent on August 3, 2012.

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

1. "Violation of the Fourteenth Amendment to the United States Constitution"
 - a. "The lost(sic) of exculpatory evidence to my behalf at trial."

At the PCR hearing, Applicant proceeded on his claim of ineffective assistance of counsel.

SUMMARY OF TESTIMONY

Applicant testified he was convicted in 2010 and was represented by Lance Sheek. He stated two co-defendants testified against him at trial. Applicant stated Counsel was appointed to his case late in the process and only met with Applicant once prior to his attempted guilty plea. Applicant testified Counsel did not discuss the discovery with him or the dangers of a trial before his attempted guilty plea. Applicant also stated Counsel did not review discovery, including the incident report, with him before his trial. He testified he gave a statement to law enforcement, but did not explain

this to Counsel. Applicant stated Counsel failed to explain the consequences to him of his giving a statement to law enforcement.

Applicant further testified that his co-defendants gave written statements to law enforcement and both had plea agreements with the State before they testified against Applicant at trial. Applicant claimed he did not discuss this testimony with Counsel before the trial.

Applicant testified he dropped out of school in the tenth grade and that he was enrolled in special education classes for children with learning disabilities. Applicant stated he told Counsel about these classes, but Counsel did not advise Applicant concerning their impact.

Applicant testified Counsel did not discuss with him his right to testify at trial. Applicant stated Counsel did, however, discuss the elements the State has to prove at trial and the potential sentence.

On cross-examination, Applicant admitted that both co-defendants testified Applicant was involved in the robbery and was the gunman in the case. He admitted that he did not have mental health records to present at the PCR hearing to show that he did not understand the trial proceedings or that he was unable to assist in his own defense. Applicant also testified he apologized to the victims and his mother for his actions in this case.

On re-direct, Applicant testified that while he did discuss his statement to law enforcement with Counsel, Counsel did not discuss co-defendants' statements with him.

Deborah Bland testified Applicant dropped out in the tenth grade and attended special education classes. She also testified Applicant had difficulty with comprehension and was tested for cognitive impairments.

Counsel testified he has been practicing criminal law for twenty-two years and has tried around seventy-five trials. He stated he was appointed to this case and was a solo practitioner at the time. Counsel testified he filed for Rule 5 and Brady discovery materials from the State. He stated he first met with Applicant briefly in General Sessions court, where Applicant informed Counsel he did not wish to plead guilty. Counsel testified he then met with Applicant in the county jail and informed Applicant that his co-defendants had struck a deal with the State and that they would testify against Applicant should he pursue a trial. According to Applicant's statement to law enforcement, he was only present during the first incident as a lookout and did not participate in the second attempted armed robbery (the one for which he was convicted). However, Counsel testified that Carson Henderson, attorney for one of the co-defendants, informed him that Mr. Henderson's client would testify that Applicant was present during both incidents and was the gunman in each scenario.

Counsel acknowledged Applicant processes information slower than most people and that he was aware Applicant was enrolled in special education classes. Counsel then stated, in his opinion, Applicant always knew and understood the charges against him and possessed the capacity for criminal responsibility. Counsel also testified Applicant was very involved in his own defense. Counsel further testified he has prior experience with having clients evaluated for mental capacity, but did not believe Applicant needed an evaluation.

Counsel then testified he attempted to obtain a favorable plea agreement with the State on Applicant's behalf and discussed this with Applicant. He stated Applicant's co-defendants had already pled guilty at the time of Applicant's trial but had not been sentenced, as they were going to testify at Applicant's trial. Counsel testified the State's plea offer was for Applicant to plead to

Burglary, 2nd degree, and Counsel discussed the mandatory minimum sentences the charges carried in this case. Counsel also testified there were troublesome issues with Applicant's statement to law enforcement, including the fact that Applicant was the only person who identified the model of the handgun used in the incidents. Counsel stated he objected to a photo lineup that law enforcement showed to one of the victims, but that victim was unable to identify anyone in the lineup as the perpetrator. Counsel also stated he moved for a dismissal based on this lineup as it was never presented to Counsel pursuant to Rule 5 and Brady, but the trial judge overruled his objection.

Additionally, Counsel testified he reviewed all of the discovery materials with Applicant, advised Applicant about his statement, and advised Applicant about the consequences of his statement. Counsel also stated he advised Applicant concerning his right to testify at trial or remain silent. Counsel further stated he was not allowed to interview Applicant's co-defendants, but did cross-examine both of them during the trial. Counsel stated their testimony was exactly what he expected it to be. Lastly, Counsel testified that he strongly urged Applicant to accept the State's plea offer, but Applicant chose not to.

On cross-examination, Counsel testified he met with Applicant after receiving discovery from the State, including a copy of Applicant's statement. In Counsel's opinion, this statement was fairly incriminating. Counsel testified he spoke with the attorneys of the co-defendants who stated their clients would testify that Applicant was the gunman. Counsel also stated that the victim's statement and identification of Applicant (that the gunman was the tall, thin man, when Applicant is taller and slimmer than his co-defendants) was not beneficial to Applicant's case.

Counsel testified he encouraged Applicant to accept the plea offer because of the evidence and testimony. Applicant appeared in General Sessions court to plead guilty, but at the last second,

his brother (who was not presented for the PCR hearing) told Applicant to pursue a trial, and Applicant took his brother's advice over Counsel's. Counsel also stated he explained to Applicant that the likelihood of success at trial was slim, and it was in Applicant's best interest to accept the plea offer, as the offer was for less time than he received after the jury's verdict of guilty.

Lastly, Counsel testified, in his professional opinion, that he did not think or believe that Applicant was incompetent or needed a mental evaluation as Applicant was always able to assist in his own defense.

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 at the post conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

Ineffective Assistance of Counsel

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) (citing Rule 71.1(e), SCRCPP). 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, 104 S.Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within

the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, 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, 385 S.E.2d at 625, *citing Strickland*. Second, counsel's deficient performance must have prejudiced 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 117-18, 386 S.E.2d at 625.

This Court had the opportunity to observe the witnesses on the witness stand and heard their testimony. This Court had a copy of the Clerk's records and has read the trial transcript, all of which assists the Court in judging the witnesses' credibility. This Court finds Applicant's testimony, regarding Counsel's ineffectiveness, is not credible while also finding Counsel's testimony credible.

This Court finds Counsel was competent and diligent in his representation of Applicant in this case. Counsel sufficiently advised Applicant of the charges against him, the potential penalties if convicted at trial, and the evidence the State would produce at trial, including but not limited to both co-defendants' statements and testimony that Applicant was the gunman. Counsel satisfactorily investigated this case based on the information supplied by Applicant and the evidence available. Counsel also engaged in plea negotiations which were beneficial to Applicant, however Applicant freely and voluntarily decided to forgo the plea agreement from the State and pursue a trial. This Court also finds Applicant was well informed by Counsel in this case. This Court is convinced that

all of Counsel's strategies were reasonable professional decisions based upon Counsel's experience and the facts of the case. As such, Applicant cannot show any resulting prejudice.

Failure to have Applicant mentally evaluated

Applicant alleges Counsel was ineffective for failing to have him mentally evaluated prior to trial.

Applicant testified that he dropped out of school during his tenth-grade year and was enrolled in special education classes. His mother testified to the same. Counsel, however, testified that while he was aware of Applicant's education level, he never thought Applicant did not understand the charges against or was not able to assist in his own defense. Counsel explained that while it may have taken Applicant longer to process information and that difficult concepts had to be explained in simpler terms, Applicant was fully engaged in his own defense and aided Counsel in the preparation of the case. Counsel further testified he has prior experience with having clients mentally evaluated, but found no reason to have Applicant evaluated.

Under Strickland, Applicant must prove both that counsel's performance was deficient and that this deficiency caused prejudice to the Applicant. To prove prejudice, Applicant must show that but-for counsel's errors, there exists a reasonable probability the outcome of the trial would have been different under Cherry and Strickland.

To prevail in a PCR action, Applicant must show by a preponderance of the evidence that he was incompetent when he stood trial. Jeter v. State, 308 at 232, 417 at 596. To demonstrate prejudice for failing to have a defendant evaluated, medical evidence needs to be presented at the PCR hearing to show the defendant was incompetent to stand trial or to participate in his own defense. See Wolfe v. State, 326 S.C. 158, 485 S.E.2d 367 (1997).

This Court finds Counsel rendered effective assistance of counsel concerning Applicant's mentally abilities and in his decision not to have Applicant evaluated. Further, Applicant failed to produce any medical testimony or documentation to show he was mentally incompetent at the time of his trial or that he was unable to assist in his own defense. Simply because Applicant dropped out of school in the tenth grade and was enrolled in special education classes, does not prove that he was incompetent to stand trial or that he could not assist in his own defense. Accordingly, the Applicant has failed to meet his burden of proof in this case.

CONCLUSION

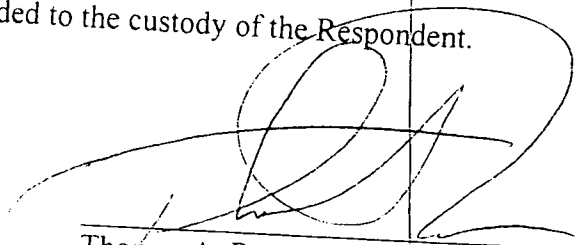
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court notifies Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

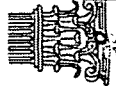
AND IT IS SO ORDERED!



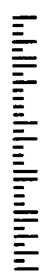
Thomas A. Russo
Presiding Circuit Court Judge
Eighth Judicial Circuit

11/14, 2013

Lexington, South Carolina



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 Greenwood, SC 29646



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 Clerk of Court
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