

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM WILLIAMSBURG COUNTY
Court of Common Pleas
Honorable R. Knox McMahon Circuit Court Judge

Case No: 2010-CP-45-0429


Alexander Samuel..... Appellant
S.C.D.C. No.: 337536

v.
The State..... Respondent

NOTICE OF APPEAL

Alexander Samuel appeals his Denial for Post Conviction Relief in this case. The Order of Dismissal was imposed and signed by the Honorable R. Knox McMahon on November 26, 2013, which I, Charles T. Brooks, III, received on December 12, 2013

December 12, 2013



Charles T. Brooks, III
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Attorney for Appellant

Other Counsel on Record:
Daniel Gourley, Esquire
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S.C. Supreme Court

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PROOF OF SERVICE

I, the undersigned, do hereby certify that on this 12th day of December, 2013, I served the foregoing **Notice of Appeal, Order of Dismissal**, as well as **Proof of Service** in this matter by depositing a true copy of it in the United States Mail, postage prepaid, on December 12, 2013 addressed to the following as indicated below:

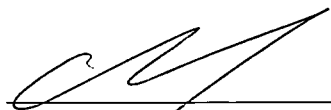
South Carolina Supreme Court
Post Office Box 11330
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Office of Attorney's General
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Alexander Samuel, 337536
Broad River Correctional Institution
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Dated: December 12, 2013


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DEC 16 2013

S.C. Supreme Court

STATE OF SOUTH CAROLINA)
COUNTY OF WILLIAMSBURG)

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Alexander Samuel, #337536,)

Case No. 2010-CP-45-429

Applicant,)

v.)

ORDER OF DISMISSAL

State of South Carolina,)

Respondent.)

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This matter comes before the Court by way of a post-conviction relief application filed on October 19, 2010 and received by the Attorney General's Office on January 17, 2013. The Respondent made its Return on April 9, 2013. An evidentiary hearing into the matter was convened on October 3, 2013 at the Sumter County Courthouse. Applicant was present at the hearing and was represented by Charles T. Brooks, III, Esquire. Respondent was represented by Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Williamsburg County Clerk of Court. Applicant was true bill indicted during the March 2009 term of the Williamsburg County Grand Jury for Burglary—First Degree; three counts of Armed Robbery; three counts of Kidnapping; Possession of a Weapon During Violent Crime; Criminal Conspiracy (2009-GS-45-50). LeGrand Carraway, Esquire, represented Applicant. On October 21, 2009, Applicant pled guilty as indicted before the Honorable Ralph K. Anderson, Jr. Pursuant to a recommendation by the State, Applicant was sentenced to twenty three years

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imprisonment for Armed Robbery, twenty three years imprisonment for Burglary in the First Degree, and five years for Criminal Conspiracy, with all charges running concurrently. No direct appeal was filed.

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following allegations:

1. Ineffective assistance of counsel
 - a. Failing to investigate and present facts
 - b. Failing to view physical evidence or scene photos
 - c. Failure to object to police misconduct and coercion.

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. The State presented testimony from plea counsel, Legrand Carraway, Esquire (Counsel). This Court also had before it a copy of Applicant's plea transcript, the records of the Williamsburg County Clerk of Court, and records from the South Carolina Department of Corrections.

During the evidentiary hearing, Applicant testified Counsel was his court appointed attorney. Applicant testified he only met with Counsel once prior to his guilty plea. Applicant testified he did not review discovery with Counsel. Applicant testified Counsel stated his co-defendant was planning to testify against him at trial and it would be in his best interest to plead guilty. Applicant testified that his co-defendant ultimately pled guilty and received the same plea deal as Applicant. Applicant testified he was upset because he was willing to plead guilty prior to his co-defendant and in Applicant's opinion he should have received a better offer than his co-defendant. Applicant testified co-defendant was more culpable. Applicant testified and the plea transcript reflects, that he told the plea judge he was satisfied with Counsels services (Pl. tr. p. 14). Applicant testified part of his plea agreement required him to proffer his testimony

against his fourth co-defendant who proceeded to trial. Applicant testified and the plea transcript reflects that it was Applicant's idea to rob Freddie Martin (Victim). (Tr. 5 ln 6-8). Applicant testified and the plea transcript reflects that Applicant picked up the other co-defendants including, Kreed Bateman, who possessed an automatic weapon. (Tr. p. 5 ln. 9—p. 6 ln. 5). Applicant testified and the plea transcript reflects that Applicant put on a mask and went into Victim's house. (Tr. p. 8 ln. 25—p. 9 ln. 6).

Following Applicant's testimony, Counsel was called to testify by the State. Counsel testified that he was appointed to Applicant's case. Counsel testified he met with Applicant at least ten to fifteen times prior to his guilty plea. Counsel testified he filed for and received discovery in Applicant's case. Counsel further testified he reviewed discovery with Applicant. Counsel testified based upon his meetings and review of the discovery, in his opinion the State would have been able to prove the Applicant's guilt beyond a reasonable doubt. Counsel characterized the evidence against Applicant as "overwhelming." Counsel testified he had enough time to prepare the case for trial and it was ultimately Applicant's decision to plead guilty. Counsel testified the State recommended a twenty three year sentence pursuant to Applicant's guilty plea.

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. Specifically, this Court finds that Counsel's testimony is very credible while Applicant's testimony is less credible. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).



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, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 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, 286 S.C. 441, 334 S.E.2d 813 (1985). Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating 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." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). 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." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985). Below are this Court's findings in regards to each of Applicant's allegations of ineffective assistance of counsel.

INEFFECTIVE ASSISTANCE OF COUNSEL

Counsel failed to investigate and present facts and view physical evidence or scene photos.

This Court finds Applicant's allegation that he was denied effective assistance of counsel due to a failure to investigate and present facts and view physical evidence or scene photos is without merit. Counsel testified he met with Applicant at least ten to fifteen times prior to Applicant's guilty plea. Counsel testified he filed for and reviewed discovery with Applicant. Counsel testified in his opinion the State would have been able to prove Applicant's guilt beyond a reasonable doubt and characterized the evidence against the Applicant as overwhelming. Further, Counsel testified he was prepared for trial. "Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result." Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998). Applicant can prove no prejudice when he presents no evidence at PCR hearing to show what Counsel could have further investigated in preparation for a trial. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998); Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997). Applicant provided no testimony or evidence which would substantiate this allegation and show what further investigation Counsel should have undertaken in preparation for a trial. Applicant has failed to meet his burden of proof and thus, this allegation is denied.

ALL OTHER ALLEGATIONS

Except as discussed above, this Court finds that the Applicant affirmatively waived the remaining allegations set forth in his application at the hearing. Specifically, Counsel's failure to object to police misconduct and coercion. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime,



307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d.282 (Ct. App. 1987). The Applicant's failure to address these issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the 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 notes that that Applicant must file and serve a notice of appeal within thirty 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 post-conviction relief. Rule 71.1(g), SCRCR, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

A handwritten signature in black ink, consisting of stylized initials and a long horizontal stroke extending to the right.


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 this 16 day of NOV, 2013.



R. KNOX MCMAHON
Presiding Judge
Third Judicial Circuit


_____, South Carolina

The Brooks Law Offices, LLC

Charles T. Brooks, III
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Irma R. Brooks
Attorney

December 12, 2013

South Carolina Supreme Court
PO Box 11330
Columbia, SC 29211

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DEC 16 2013
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RE: Alexander Samuel v State of South Carolina
Case No. 2010-CP-45-0429

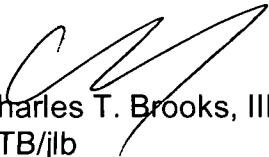
Dear Sir or Madam:

Enclosed herewith you will find the **Notice of Appeal, Order of Dismissal**, along with a **Proof of Service** in reference to the above named Applicant.

If you have any questions or concerns, please contact my office at the number stated above.

With kind regards, I am

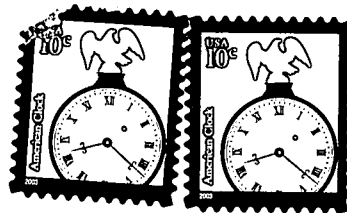
Sincerely,


Charles T. Brooks, III
CTB/jlb

Enclosed as stated

Cc: Daniel Gourley, Office of Attorney's General
South Carolina Office of Appellate Defense
Alexander Samuel, 337536

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