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December 20, 2013

RECEIVED

DEC 29 2013

S.C. Supreme Court

South Carolina Supreme Court
PO Box 11330
Columbia, SC 29211

RE: Morris C. Harris v State of South Carolina
Case No. 2012-CP-29-1534


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/srw

Enclosed as stated

Cc: Suzanne H. White, Office of Attorney's General
South Carolina Office of Appellate Defense
Morris C. Harris, 292040

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas
Honorable Clifton Newman, Circuit Court Judge

Case No: 2012-CP-29-1534

Morris Calvin Harris.....Appellant
S.C.D.C. 292040
v.
The State.....Respondent

RECEIVED

DEC 23 2013

S.C. Supreme Court

NOTICE OF APPEAL

Morris Calvin Harris, appeals his Denial for Post Conviction Relief in this case. The order of Dismissal was imposed and signed by the Honorable Clifton Newman, December 12, 2013, which I, Charles T. Brooks, III, received on December 20, 2013.



Charles T. Brooks, III
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Attorney for Appellant

Other Counsel on Record:
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THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas
Honorable Clifton Newman, Circuit Court Judge

Case No: 2012-CP-29-1534

Morris Calvin Harris.....Appellant
S.C.D.C. 292040
v.
The State Respondent

PROOF OF SERVICE

I, the undersigned, do hereby certify that on this 20th day of December, 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 20, 2013, addressed to the following as indicated below:


South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

South Carolina Office of Appellate Defense
1330 Lady Street, Suite 401
PO Box 11589
Columbia, SC 29211-1589

Office of Attorney's General
Attn: Suzanne H. White, Esquire
Post Office Box 11549
Columbia, South Carolina 29211-1549

Morris Calvin Harris, 292040
McCormick Correctional Institution
386 Redemption Way
McCormick, S. C. 29899

Dated: December 20, 2013


Charles T. Brooks, III
Attorney for the Appellant
309 Broad Street
Sumter, South Carolina 29150
(803) 418-5708

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LANCASTER)
)
 Morris Calvin Harris, #292040,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 SIXTH JUDICIAL CIRCUIT

2012-CP-29-1534

ORDER OF DISMISSAL

FILED
 OFFICE OF CLERK
 OF COURT
 LANCASTER, SC
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This matter comes before the Court by way of an Application for Post-Conviction Relief filed October 26, 2012. The Respondent made its Return on or about June 25, 2012. An evidentiary hearing into the matter was convened on August 5, 2013, at the Lancaster County Courthouse. The Applicant was present at the hearing and was represented by Charles T. Brooks III, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. William P. Frick, Esquire, also testified. This Court also had before it a copy of the records of the Lancaster County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the Return, the Appellate Court records, and the plea transcript.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lancaster County Clerk of Court. The Applicant was indicted at the December 2008 term of the Lancaster County Grand Jury for murder (2007-GS-29-0891). The Applicant was represented by William P. Frick, Esquire. On March 30, 2009, the

Applicant pled guilty pursuant to N.C. v. Alford to the lesser included offense of voluntary manslaughter. The Applicant was sentenced by the Honorable Kenneth G. Goode to confinement for a period of thirty years.

Upon information and belief, the Applicant filed a *pro se* notice of appeal. The South Carolina Court of Appeals dismissed the appeal for failure to timely order the transcript by Order dated May 26, 2009. The Remittitur was returned on June 12, 2009.

ALLEGATIONS

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

1. Ineffective assistance of counsel, in that;
 - a. Counsel failed to file a notice of appeal.

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 their 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).

Ineffective Assistance of Counsel

The 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), SCRPC). 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 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, 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. "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).

The Applicant testified that he began with a trial on the charge, but did not think he was being represented well. Applicant testified that he did not understand what Judge Goode was saying during the guilty plea and wants to have the plea set aside because he is innocent. However, Applicant testified that he thinks it was in his best interest to plead pursuant to Alford once the trial started because Counsel told him he could potentially receive forty years.

Counsel testified that he represented the Applicant on this charge for two years. Counsel testified that the charge was serious because the victim was cut, shot, beaten, and then burned. Counsel testified that there was evidence that linked the Applicant based on a bullet from another

case. Counsel testified that the Applicant gave police a statement and during the Jackson v. Denno hearing, the Applicant informed Counsel that he did not want to go through with a trial. Counsel testified that he discussed with the Applicant the fact that voluntary manslaughter carried from zero to thirty years and the fact that the plea was straight up with no recommendations or negotiations. Counsel testified that he believes Applicant made the right decision to plead guilty based upon the evidence and lack of possible success on pre-trial issues.

Counsel also testified that the Applicant did not ask him to file a notice of appeal and Counsel saw no issues that could be brought up on appeal.

This Court finds that Counsel's testimony is most credible. This Court finds that the Applicant was well-represented at trial and ultimately the plea. This Court also finds that the Applicant pled pursuant to Alford freely and voluntarily. This was a brutal crime and any possibility of less than the maximum sentence for voluntary manslaughter was purely wishful thinking. The record is clear that there were no recommendations or negotiations for a particular sentence. Further, the record is clear that the Applicant had made certain admissions in his statement, that had it not been suppressed, would have made a conviction almost guaranteed.

The Applicant has alleged that he is entitled to a review of direct appeal issues pursuant to White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974). Counsel has a constitutionally-imposed duty to consult with a defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal, or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores-Ortega, 528 U.S. 470, 120 S.Ct. 1029 (2000). This Court does not find any indication that the Applicant or any rational defendant would want to appeal the plea.

This Court cannot find any deficiency on Counsel's behalf in his representation of the

Applicant. Therefore, this Court finds that the Applicant failed to meet his burden of proof as to these claims and they are denied and dismissed.

Summary

This Court finds in regards to the allegation of ineffective assistance of counsel, the Applicant's testimony is not credible. This Court further finds Counsel adequately conferred with the Applicant, conducted a proper investigation, was thoroughly competent in his representation, and that Counsel's conduct does not fall below the objective standard of reasonableness.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in his representation of the Applicant.

This Court also finds the Applicant has 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 Counsel failed to render reasonably effective assistance. See Frasier supra. Therefore, this allegation is denied.

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.

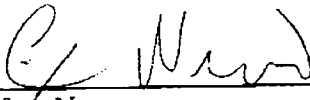
This Court cautions Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the

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 the 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 this 12th day of December, 2013.



Clifton Newman
Presiding Judge

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P.O. BOX 3512
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COLUMBIA SC 290

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