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Irma R. Brooks
Attorney

December 20, 2013

South Carolina Supreme Court
PO Box 11330
Columbia, SC 29211

RE: Randolph Frazier v State of South Carolina
Case No. 2011-CP-29-1253

RECEIVED

DEC 28 2013

S.C. Supreme Court

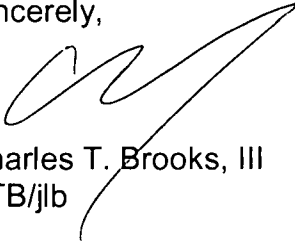
Dear Sir or Madam:

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: Suzanne H. White, Office of Attorney's General
South Carolina Office of Appellate Defense
Randolph Frazier, 172585

268822

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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

RECEIVED

DEC 23 2013

S.C. Supreme Court

Case No: 2011-CP-29-1253

Randolph Frazier..... Appellant

S.C.D.C. No.: ~~172585~~
268822

Petitioner

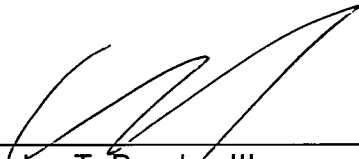
v.

The State..... Respondent

NOTICE OF APPEAL

Randolph Frazier appeals her/her Denial for Post Conviction Relief in this case. The Order of Dismissal was imposed and signed by the Honorable Clifton Newman, on DECEMBER 12, 2013, which I, Charles T. Brooks, III received on December 20, 2013.

December 20, 2013


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Attorney for Appellant

Other Counsel on Record:
Suzanne H. White, Esquire
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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: 2011-CP-29-1253

Randolph Frazier.....Appellant
S.C.D.C. No.: 172585

Petitioner

268622

v.

The State.....Respondent

PROOF OF SERVICE

I, the undersigned, do hereby certify that on this 20th 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 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
Post Office Box 11549
Columbia, South Carolina 29211-1549

Randolph Frazier, 172585
Perry Correctional Institution
430 Oaklawn Road
Pelzer, South Carolina, 29669

Dated: December 20, 2013


Charles T. Brooks, III
Attorney for the Appellant
309 Broad Street
Sumter, South Carolina 29150
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STATE OF SOUTH CAROLINA)
 COUNTY OF LANCASTER)
 Randolph Frazier, #172585, *268822*)
 Applicant,)
 v.)
 State of South Carolina,)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 SIXTH JUDICIAL CIRCUIT

2011-CP-29-1253

ORDER OF DISMISSAL

FILED
 OFFICE OF CLERK
 OF COURT
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 CLERK OF COURT
 LANCASTER, SC

This matter comes before the Court by way of an Application for Post-Conviction Relief filed September 7, 2011. The Respondent made its Return on or about April 26, 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 trial 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 April 2008 term of the Lancaster County Grand Jury for burglary – 1st degree (08-

GS-29-0469)¹. He was represented by William P. Frick, Esquire. On September 17, 2008, the Applicant proceeded to trial where he was found guilty of the charge. He was sentenced by the Honorable Paul M. Burch to confinement for life for burglary – 1st degree.

The Applicant filed a timely Notice of Appeal. The South Carolina Court of Appeals affirmed his conviction and sentence. State v. Frazier, Op. No. 4818 (filed April 13, 2011, refilled June 10, 2011). Petitions for Rehearing were filed by both sides following the issuance of the Opinion. The Petitions were each denied, but the Court withdrew the original Opinion filed April 13, 2011, and substituted the Opinion filed June 10, 2011. The Remittitur was returned on August 19, 2011.

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 object to Brady violations,
2. Due process violations;
3. Violation of 4th Amendment; and
4. Prosecutorial misconduct.

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).

¹ Applicant was also indicted for an additional charge of burglary – 1st degree (08-GS-29-0470), which on Motion of

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).

Trial Counsel, was severed from the trial of the challenged indictment.

The Applicant testified that he was represented at trial by Counsel. Applicant testified that the indictment that the State proceeded on at trial was not the indictment that Applicant thought he would be tried on. Applicant testified that Counsel told him that he was unprepared for trial. Applicant testified that he believes that Counsel should have requested a continuance in order to prepare. Applicant also testified that some of the evidence at this trial was from another alleged burglary.

Counsel testified that he was prepared to represent Applicant at this trial. Counsel testified that he had represented the Applicant on prior charges and may have made statements regarding not being ready in those cases, but not in this case. Counsel testified that Applicant had previously been acquitted of burglary – 1st degree at a trial and then there was a hung jury at a second burglary trial, but he was not aware of evidence being used at trial related to any other burglary. Counsel testified that this was not a life without parole case at the Solicitor's request, but the judge gave Applicant a life sentence. Counsel testified that he was surprised that the Applicant received life. Counsel testified that the Solicitor had offered to let the Applicant plead guilty to two charges, but Applicant did not want to accept the offer because he wanted to be required to only serve 65% of a sentence and that was not ever offered.

This Court finds that the Applicant has failed to meet his burden of proof as to this claim. The Applicant offered no evidence or testimony that Counsel was deficient in his representation of the Applicant at trial. This Court finds that Counsel did all he could do for Applicant at trial. This Court also notes that the trial judge informed Applicant that the community could not afford to keep the Applicant on the streets and pointed out the length of Applicant's criminal history when sentencing the Applicant.

This Court also finds that there was overwhelming evidence of Applicant's guilt of this

charge; therefore, the Applicant was not prejudiced by any alleged deficient representation. Where there is overwhelming evidence of guilt, a trial counsel's deficient representation will not be prejudicial. Ford v. State, 314 S.C. 245, 442 S.E.2d 604 (1994); See also Humbert v. State, 345 S.C. 332, 548 S.E.2d 862 (2001); Geter v. State, 305 S.C. 365, 409 S.E.2d 344 (1991).

Due Process Violations

Although the Applicant raised this allegation in his application, the Applicant did not pursue this claim at the hearing. Therefore, this Court finds that the Applicant voluntarily abandoned this issue.

Violation of Fourth Amendment

Although the Applicant raised this allegation in his application, the Applicant did not pursue this claim at the hearing. Therefore, this Court finds that the Applicant voluntarily abandoned this issue.

Prosecutorial Misconduct

Although the Applicant raised this allegation in his application, the Applicant did not pursue this claim at the hearing. Therefore, this Court finds that the Applicant voluntarily abandoned this issue.

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

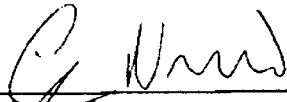
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

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 12 day of December, 2013.



Clinton Newman
Presiding Judge

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South Carolina Supreme Court
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