

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Clarendon County
Court of Common Pleas
W. Jeffrey Young, Circuit Court Judge

Appellate Case No. 2012-213366

LEON A. GOODMAN,

Petitioner,

vs.

STATE OF SOUTH CAROLINA,

Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

ALAN WILSON
Attorney General

MEGAN E. HARRIGAN
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ATTORNEYS FOR RESPONDENT

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S.C. Supreme Court

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ISSUE PRESENTED

Is there evidence of probative value in the record to support the post-conviction relief court's finding that Counsel was not ineffective in regards to appealing Applicant's conviction and sentence, where Counsel testified that he timely filed a notice of appeal, served all necessary parties, and responded to all paperwork sent to him by the South Carolina Commission on Indigent Defense – Division of Appellate Defense that was handling Petitioner's appeal?

STATEMENT OF THE CASE

Petitioner was indicted during the May 2009 term of the Clarendon County Grand Jury for Possession with Intent to Distribute Cocaine Base (2009-GS-14-0109). He was represented by Scott L. Robinson, Esquire (hereinafter "Counsel") of the Clarendon County Public Defender's Office. On December 6-9, 2010, Petitioner proceeded to a jury trial in his absence before the Honorable R. Ferrell Cothran, Jr., where he was convicted as indicted. Judge Cothran sentenced Applicant at that time and the sentence was sealed. On March 8, 2010, Petitioner, along with Counsel, appeared before Judge Cothran, at which time his sentence was unsealed and Petitioner was sentenced to twenty years imprisonment.

At Petitioner's request, Counsel filed a timely notice of appeal and served all necessary parties, including the South Carolina Commission on Indigent Defense – Division of Appellate Defense. Counsel responded to correspondence he received from the Division of Appellate Defense. On April 29, 2010, the South Carolina Court of Appeals dismissed Petitioner's appeal "due to the failure of Appellate Defense to timely order the transcript . . . as provided for in Rule 207 of the South Carolina Appellate Court Rules." No petition for reinstatement was filed, and the Remittitur was sent on May 18, 2010.

Petitioner filed an application for post-conviction relief on December 15, 2010 with the sole allegation that Counsel was ineffective for failing to perfect an appeal on his behalf. The relief sought was appellate review pursuant to White v State, 263 S.C. 110, 108 S.E.2d 35 (1974). Respondent made its Return on August 5, 2011, requesting an evidentiary hearing be held. An evidentiary hearing was convened on September 18, 2012, at the Sumter County Courthouse before the Honorable W. Jeffrey Young. Petitioner was present and represented by

Eleazer R. Carter, Esquire. Respondent was represented by Assistant Attorney General Megan E. Harrigan of the South Carolina Attorney General's Office. Petitioner testified on his own behalf, testifying that he asked Petitioner to file an perfect an appeal on his behalf and that Counsel was ineffective for failing to ensure that his trial transcript was ordered, resulting in the dismissal of his appeal. Respondent presented testimony from Counsel, who testified that he timely filed and served the notice of appeal on all parties, including the South Carolina Commission on Indigent Defense – Division of Appellate Defense and timely responded to all communication from the Division of Appellate Defense. Judge Young denied and dismissed Petitioner's application for post-conviction relief by written Order dated October 16, 2012.

Petitioner filed a Petition for Writ of Certiorari on November 15, 2013. This Return follows.

STANDARD OF REVIEW

The proper standard of review of a post-conviction relief evidentiary hearing is whether “‘any evidence’ of probative value” exists to sustain the post-conviction relief court’s findings. Cherry v. State, 300 S.C. 115, 119, 386 S.E.2d 624, 626 (1989) (emphasis added). This Court will affirm if there is any evidence to support the post-conviction relief court’s ruling. Moore v. State, 399 S.C. 641, 646, 732 S.E.2d 871, 873 (2012).

In a post-conviction relief action, an applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel 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, Id.

The proper measure of performance is whether an 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. Strickland; supra. An applicant must overcome this presumption in order to receive relief. Cherry, supra.

The reviewing court applies 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, the court measures an attorney’s performance by its “reasonableness under professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland, supra. 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.

ARGUMENT

There is evidence of probative value in the record to support the post-conviction relief court's finding that Counsel was not ineffective in regards to appealing Applicant's conviction and sentence, where Counsel testified that he timely filed a notice of appeal, served all necessary parties, and responded to all paperwork sent to him by the South Carolina Commission on Indigent Defense – Division of Appellate Defense that was handling Petitioner's appeal.

Petitioner asserts that the post-conviction relief court erred in determining that Counsel was not ineffective in regards to Petitioner's direct appeal, arguing that Counsel "failed to take the additional step needed, i.e., the submission of the indigency affidavit, after filing the notice of appeal was done, in order to ensure that petitioner's appeal would be perfected." PWC p. 6. Petitioner argues that this omitted step amounts to deficiency of counsel and denied him the right to appellate review, thereby prejudicing him. However, the post-conviction relief court properly determined that this argument was without merit and that counsel was not ineffective, where Counsel testified that he timely filed a notice of appeal, served all necessary parties, and responded to all paperwork sent to him by the South Carolina Commission on Indigent Defense – Division of Appellate Defense that was handling Applicant's appeal. As there is evidence of probative value in the record to support its ruling, the post-conviction relief court should be affirmed.

Under South Carolina Appellate Court Rules, Counsel performed proficiently ensuring that an appeal was perfected on behalf of his client. "After conviction of an accused who has been represented by appointed counsel or Public Defender, the Office of Appellate Defense shall represent the accused until final judgment. After serving and filing a Notice of Appeal for an accused who desires to appeal, appointed counsel and Public Defenders shall be automatically relieved as appellate counsel for the accused, without obtaining leave to withdraw as provided in

Rule 264, SCACR. However, the Public Defender or appointed counsel shall assist in representing the accused in any manner necessary to properly perfect the appeal or as otherwise requested by the Office of Appellate Defense.” Rule 602(e)(3), SCACR. And affidavit of indigency is only required when trial counsel was *retained* and a defendant wishes to be represented on appeal by the Office of Appellate Defense. See Rule 602(e)(4), SCACR (emphasis added).

In the present case, the post-conviction relief court specifically found that Counsel’s credible testimony revealed that he properly filed and served a notice of appeal on all necessary parties, including the South Carolina Commission on Indigent Defense – Division of Appellate Defense, as well as responded to all correspondence he received from the Division of Appellate Defense. App. p. 345. This is supported by the testimony presented at the post-conviction relief hearing. App. p. 335 ln. 9 – p. 336 ln. 6; p. 338 ln. 10 – p. 339 ln. 7; p. 339 ln. 23 – p. 340 ln. 6. Counsel fulfilled all obligations and duties are required by the South Carolina Appellate Court Rules in timely filing and serving the notice of appeal and responding to all inquiries from the Office of Appellate Defense. As Counsel was a public defender, not retained counsel, an affidavit of indigency was not required.¹ Petitioner’s reliance on Frasier v. State, 306 S.C. 158, 410 S.E.2d 572 (1991), is erroneous, as trial counsel in Frasier was *retained*, while Counsel in Petitioner’s case was an appointed public defender.

The record contains evidence of probative value to support the post-conviction relief court’s findings that Counsel was not ineffective. This Petition should be denied.

¹ Counsel testified that he responded to correspondence he received from the Office of Appellate Defense, but did not testify that he ever received an affidavit of indigency.

CONCLUSION

For the foregoing reasons, the State submits that the Petition should be denied. Should this Court grant the Petition for Writ of Certiorari, Respondent requests permission to more fully brief the issues herein.

Respectfully submitted,

ALAN WILSON
Attorney General

MEGAN E. HARRIGAN
SC Bar No. 100108
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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March 3, 2014

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Clarendon County
The Honorable W. Jeffrey Young, Circuit Court Judge
Case No. 2010-CP-14-0705
Appellate Case No. 2012-213366

LEON A. GOODMAN,

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v.

STATE OF SOUTH CAROLINA,

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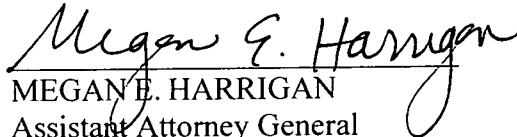
PROOF OF SERVICE

I, Megan E. Harrigan, certify that I have served the within **Return to Petition for Writ of Certiorari** on Petitioner by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Wanda H. Carter, Esquire
South Carolina Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211

I further certify that all parties required by Rule to be served have been served.

This 3rd day of March, 2014.


MEGAN E. HARRIGAN
Assistant Attorney General
S.C. Bar No. 100108

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ALAN WILSON
ATTORNEY GENERAL

March 3, 2014

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S.C. Supreme Court

The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re: **Leon A. Goodman v. State of South Carolina**
Appellate Case No. 2012-213366

Dear Mr. Shearouse:

Enclosed for filing are the original and six (6) copies of Respondent's Return to Petition for Writ of Certiorari.

Sincerely,

Megan E. Harrigan
Assistant Attorney General
S.C. Bar No. 100108

MEH/ko
Enclosures

cc: Wanda H. Carter, Esquire, Appellate Defense
Trisha Allen, Victim's Services