PCR

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March 3, 2014

South Carolina Supreme Court
PO Box 11330
Columbia, SC 29211

RE: Stanley Golson, 200479 v State of South Carolina
Case No. 2010-CP-32-3755

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: Walt Whitmire,Office of Attorney's General
South Carolina Office of Appellate Defense
Stanley Golson, 200479

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas
Honorable Frank R. Addy, Jr., Circuit Court Judge

Case No: 2010-CP-32-3755

Stanley Golson.....Appellant
S.C.D.C. 200479
v.
The State. . . . . .Respondent

NOTICE OF APPEAL

Stanley Golson, appeals his Denial for Post Conviction Relief in this case. The order of Dismissal was imposed and signed by the Honorable Frank R. Addy, Jr., February 17, 2014, which I, Charles T. Brooks, III, received on March 3, 2014.

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Stanley Golson.....Appellant
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PROOF OF SERVICE

I, the undersigned, do hereby certify that on this 3rd day of March, 2014, 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 March 3, 2014, 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
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Office of Attorney's General
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Stanley Golson, 200479
McCormick Correctional Institution
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Dated: March 3, 2014

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COPY ORIGINAL

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON Stanley Golson, S.C.D.C. No. 200479, Applicant, v. State of South Carolina, Respondent.	IN THE COURT OF COMMON PLEAS ELEVENTH JUDICIAL CIRCUIT **Case No. 2010-CP-32-3755** **ORDER OF DISMISSAL**

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed September 2, 2010. Respondent made its Return on December 30, 2010. An evidentiary hearing into the matter was convened on April 17, 2013 at the Lexington County Courthouse. The Applicant was present and was represented by Charles T. Brooks, III., Esq. The Respondent was represented by Walt Whitmire, Esq., of the Office of the Attorney General. Applicant and counsel testified at the hearing. As a preliminary matter, at the call of this case the Court also denied Applicant's *pro se* motion for continuance. This Court found PCR counsel conducted numerous consultations with Applicant in preparation for the hearing, and the case had been continued numerous time. Counsel understood Applicant's allegations and was fully prepared to present his case. In short, a continuance was wholly unnecessary and worked no prejudice upon Applicant or his counsel.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. The Applicant was

indicted at the October 2006 term of the Lexington County Grand Jury for distribution of crack-cocaine (2006-GS-32-3494) and distribution of crack-cocaine within proximity of a school (2006-GS-32-3491). He was represented by Josh Kendrick, Esq. (counsel). On April 3, 2007, Applicant underwent trial and was found guilty as indicted. He was sentenced by the Honorable R. Knox McMahon to life imprisonment without the possibility of parole (LWOP).

A Notice of Appeal was filed on the Applicant's behalf and perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence in an unpublished opinion (Op. No. 2010-UP-347 filed on July 6, 2010). The Remittitur soon followed

At the PCR hearing, Applicant moved forward on the following allegations:

1. Ineffective assistance of counsel:
   a. Failure to object to the prior convictions used to enhance Applicant's sentence to life to LWOP;
   b. Failure to make a motion to suppress the audio recordings from the informant's wire as the fruits of an illegal search;
   c. Failure to make a motion to suppress the audio recordings from the informant's wire for lack of foundation;
   d. Failure to object to the jury's review of exhibits during deliberations.
2. Prosecutorial Misconduct:
   a. Failure to disclose unspecified exculpatory evidence.

SUMMARY OF TESTIMONY

First, Applicant alleged counsel was ineffective for failing to object to prior conviction used to enhance Applicant's sentence to LWOP. Applicant claimed counsel should have challenged the State's record of his prior convictions used for enhancement prior to trial. Applicant stated that his 1990 conviction had been reversed. He claimed he was never properly indicted once his PCR was granted. Applicant subsequently entered a guilty plea to time served with the remainder of the active sentence suspended on the service of probation in 1998.

Applicant reasoned that because he was never indicted, his sentence was illegal. He claimed the sentence was invalid because he received the benefit of a suspended sentence not allowed by statute. Applicant explained that he filed another PCR Application on the matter and appeared *pro se*. He acknowledged that PCR action had been denied and dismissed. In addition, Applicant asserted he was illegally sentenced in 2002 for distribution within the proximity of a school (2002-GS-32-727). Applicant asked counsel to look these matters when he was served with the solicitor's intent to seek LWOP. Applicant also cited to a "possession charge," where he was charged despite the police not discovering drugs. Lastly, he claimed four other convictions that he served concurrent sentences on should have only counted as one prior offense for enhancement purposes.

Second, Applicant alleged counsel was ineffective for failing to object to the use of an unqualified informant in the controlled buy that led to his arrest and conviction. Applicant announced that he recently learned that an informant must be certified through the South Carolina Law Enforcement Division "SLED" prior to aiding police in narcotics interdictions. Applicant acknowledged that he had known the informant, "Jaime," for most of his life. He also acknowledged he invited her into his home and that she implicated him for the commission of this offense. Lastly, he acknowledged ~~this~~ that his phone lines were never tapped.

Third, in the alternative, Applicant alleged counsel was ineffective for failing to object to the alleged illegal controlled buy because the police failed to get an anticipatory warrant to conduct the operation. Thus, Applicant asserted the fruits of the informant's wire were rendered inadmissible absent sufficient authorization. Applicant stated counsel never advised him on the extent of his Fourth Amendment privacy expectations.

Fourth, again in the alternative, Applicant alleged counsel was ineffective for failing to object to audio recording from the wire because it was not properly authenticated and thereby constituted inadmissible evidence. Applicant stated "you couldn't hardly hear nobody's voice. You couldn't definitely hear my voice on the tape."

Fifth, Applicant alleged counsel was ineffective for failing to object to trial judge providing a cassette player, or its functional equivalent, that allowed the jury to listen to evidence during deliberations. Applicant reasoned the failure to object here compounded the prejudice from the tape recording which, as explained above, Applicant had maintained was inadmissible as violative of his Fourth Amendment rights.

Sixth, Applicant alleged counsel was ineffective for failing to object to the solicitor's untimely discovery disclosures. Applicant claimed the untimely disclosures constituted violations of both Rule 5, and Brady. Applicant indicated the prejudice occurred because the "U.S. Code of Laws" demanded that discovery disclosures be made at least ten (10) days prior to trial. He also claimed similar protections under South Carolina law.

Counsel testified to his course of conduct during the representation. Applicant never asked counsel to investigate additional witnesses or defenses. He independently reviewed the solicitor's notice of intent to seek LWOP. He obtained the prior sentencing sheets from the Clerk Court, and upon examination, counsel determined the convictions listed in the notice comported with the Clerk's records. Counsel discussed the accuracy of the notice with Applicant. He explained to Applicant that there was no way to challenge the numerous prior convictions that supported the notice. Instead, he advised Applicant that he would mount an Eighth Amendment challenge to the LWOP statute. Counsel independently reviewed the State's evidence and determined the audio recordings from the informant's wire constituted admissible evidence.

Counsel was adamant that there were not "any Fourth Amendment issues in this case." He noted the audio tape "was probably authentic." Furthermore, counsel noted he had no basis to object to an admissible court exhibit entering the jury room during deliberations. Counsel also noted that he vigorously raised a Rule 5, SCRCrP violation during the pretrial motions. Counsel apprised Applicant of the strength of the State's evidence and strongly advised him to consider the plea offer. Counsel testified he was fully prepared to take Applicant's case to trial. He hired an investigator in Applicant's case. Counsel developed a trial strategy to attack the informant's credibility. Even with the benefit of hindsight, counsel noted that there was nothing else he could have done to more effectively to present Applicant's case. For the reasons outlined below, this court agrees.

APPLICABLE LAW

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their 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, 104 S.Ct. 2052, 2064, (1984); Butler, 286 S.C. at 441, 334 S.E.2d at 813. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 668, 104 S.Ct. at 2064. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea 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.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court reviewed the Clerk of Court's records regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the transcripts and exhibits from the prior proceedings, and legal arguments of counsel. Pursuant to S.C. Code Ann. §17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

As a matter of general impression, this Court finds trial counsel's testimony more credible than Applicant's testimony. This Court finds counsel conducted a thorough investigation into Applicant's case as well as a thorough, independent evaluation of the State's notice to seek LWOP. All this information was properly discussed with Applicant in anticipation of trial. A defense attorney is not compelled by a duty to honor the wishes of an unreasonable client with regard to frivolous objections to clearly admissible evidence. Here, counsel appropriately devoted his resources and efforts to a reasonable trail strategy and thorough advocacy at trial. As

a result, counsel was certainly effective and proficient pursuant to Strickland's reasonableness standard.

A.

This Court finds Applicant's allegation that counsel was ineffective for not objecting to the use of prior convictions for enhancement purposes is wholly without merit. This Court finds the trial judge ~~meticulous~~ meticulously reviewed the clerk's records for possible error. (Trail Transcript pp.210-11; pp.219-22). See S.C. Code Ann. § 17-25-45; see also State v. Payne, 332 S.C. 266, 271, 504 S.E.2d 335, 337 (Ct. App. 1998) ("However, our case law has a long history of embracing the presumption of regularity that attaches to final judgments. The defendant bears the burden of proving his prior conviction is invalid."). The allegation that Applicant's numerous prior convictions were invalid rested merely on hearsay and speculation. This Court agrees with counsel that this allegation is without merit. Counsel carefully advised Applicant on the propriety of the use of his prior convictions to meet the LWOP statute's requirement. Furthermore, the trial judge carefully scrutinized Applicant's certified prior convictions. Therefore, this allegation is denied and dismissed.

B.

This Court finds Applicant's various allegations that counsel was ineffective for not *making* objections and suppression motions are without merit. "When the defendant claims that counsel's failure to articulate a Fourth Amendment claim was ineffective assistance, [the] defendant must show that such claim is **meritorious** and that the verdict would have been different absent the evidence that **should** have been excluded." McHam v. State, 404 S.C. 465, 475-76, 746 S.E.2d 41, 47 (2013) (citing Sikes v. State, 323 S.C. 28, 30, 448 S.E.2d 560, 562 (1994) (emphasis supplied). "The Fourth Amendment to the United States Constitution

guarantees the right of the people to be free from unreasonable searches and seizures and provides that no warrants shall be issued except upon probable cause, supported by oath or affirmation and particularly describing the place to be searched and the persons or things to be seized. Id., at 476, 746 S.E.2d at 47 (citing U.S. Const. amend. IV). "A search compromises the individual interest in privacy; a seizure deprives the individual of dominion over his or her person or property." Id. (internal citations and quotations omitted). This Court finds Applicant had no privacy interest in the wire worn on the informant's person. At the PCR hearing, Applicant acknowledged that he invited the informant into his home as a social guest. Additionally, Applicant had a close personal association with the informant. The record also clearly shows the informant's identity was properly disclosed to counsel. See State v. Humphries, 354 S.C. 87, 90, 579 S.E.2d 613, 615 (2003). Again this Court agrees with counsel's decision to refrain from making a frivolous objection. Therefore, this allegation is denied and dismissed.

This Court finds Applicant's allegation that counsel was ineffective for failing to object to the admission of the audio tape from the informant's wire based on authenticity is without merit. A proper foundation for the evidence was established. See State v. Aragon, 354 S.C. 334, 336, 579 S.E.2d 626, n.3 (Ct. App. 2003). Next, this Court finds Applicant's allegation that counsel was ineffective for not objecting to the jury having access to exhibits during deliberations to be wholly without merit. See State v. Steadman, 257 S.C. 528, 542, 186 S.E.2d 712, 717 (1972).

C.

Last, Applicant failed to meet his burden to prove counsel was ineffective for failing to challenge an alleged discovery or Brady violation.[1] "The Brady disclosure rule requires the

[1] Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963)

prosecution to provide to the defendant any evidence in the prosecution's possession that may be favorable to the accused and material to guilt or punishment." Porter v. State, 368 S.C. 378, 384, 629 S.E.2d 353, 356 (2006) (citation omitted). Brady evidence is either favorable exculpatory evidence or favorable impeachment evidence. Porter, 368 S.C. at 384, 629 S.E.2d at 356 (citing United States v. Bagley, 473 U.S. 667, 676, 105 S.Ct. 3375, 87 L.Ed.2d 481 (1985)). "Materiality of evidence is determined based on the reasonable probability that the result of the proceeding would have been different had the evidence been disclosed to the defense." Id. (citing Kennerly, 331 S.C. at 453, 503 S.E.2d at 220). A "reasonable probability" is demonstrated when the suppression "undermines confidence in the outcome of the trial." Id. (quoting Bagley, 473 U.S. at 678, 105 S.Ct. 3375). The State must disclose Brady evidence even when a criminal defendant does not specifically request the evidence. Id. (citing United States v. Agurs, 427 U.S. 97, 107, 96 S.Ct. 2392, 49 L.Ed.2d 342 (1976)). "Rule 5 permits inspection of evidence in the State's possession which [is] material to the preparation of his defense or [is] intended for use by the prosecution as evidence in chief at the trial, or were obtained from or belong to the defendant" upon request by the defendant. Rule 5(a)(1)(C), SCRCrP." Hyman v. State, 397 S.C. 35, 47, 723 S.E.2d 375, 381 (2012) (internal quotations and citations omitted). Here, counsel's representation was vigorous and competent. The issue was properly raised and ruled upon by the trial judge. This Court finds Applicant has produced no credible evidence to substantiate this allegation. Therefore, this allegation is denied and dismissed.

D.

Except as discussed above, this Court finds that the Applicant affirmatively abandoned the remaining allegations set forth in his application at the hearing. 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 forgoing, 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 for post-conviction relief. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of intent to appeal within thirty (30) days from receipt of this Order to secure the appropriate appellate review. See Rule 203, SCACR. Rule 71.1(g), SCRCP; Bray v. State, 336 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant's counsel to file and serve notice of appeal. The Applicant's attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely filed.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief is denied and dismissed with prejudice; and

2. Applicant is remanded to the custody of Respondent.

IT IS SO ORDERED this 17th day of February, 2014.

FRANK R. ADDY, Jr.
Presiding Judge
Eleventh Judicial Circuit

Greenwood, South Carolina

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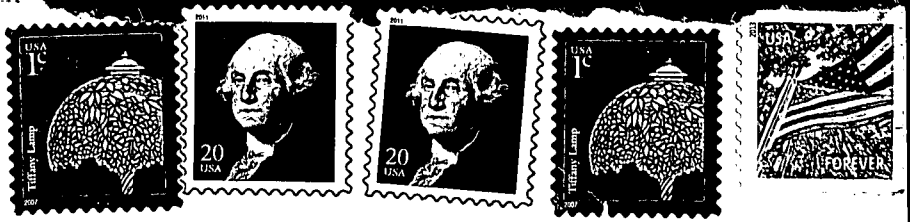

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