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PRC.

March 7, 2014

Via Regular Mail
Mr. Daniel E. Shearouse
Clerk, The S.C. Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re: *JOHN HAGOOD v. State*

Dear Mr. Shearouse:

Enclosed you will find the original Notice of Appeal in the above matter along with Proof of Service upon the Respondents. The Notice has been filed with the Greenville County Clerk of Court.

These matters are being referred to the Office of Appellate Defense in that we were participating as Court appointed counsel at trial.

Thank you for your attention to this matter.

Yours very truly,

Caroline Horlbeck
Caroline M. Horlbeck, Esq.

Enclosure

cc: Office of the Attorney General
Office of Appellate Defense

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
THE HONORABLE G. Edward Welmaker

CA No. 2012-CP-23-5600

JOHN HAGOOD,

APPELLANT,

vs.

STATE OF SOUTH CAROLINA

RESPONDENT.

NOTICE OF APPEAL

Appellant JOHN HAGOOD, appeals from the Order of the Honorable G. Edward Welmaker, Circuit Court Judge clocked February 17, 2014.

Respectfully submitted,

Caroline M. Horlbeck

Caroline M. Horlbeck, Esq.
101 Whitsett St
Greenville, SC 29601

Date: March 4, 2014

Other Counsel of Record: Karen Ratigan, Esq.
Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211

STATE OF SOUTH CAROLINA	)	**IN THE SUPREME COURT**
	)	
COUNTY OF GREENVILLE	)	
	)	**C.A. No. 2012-CP-23-5600**
JOHN HAGOOD,	)	
	)	
APPELLANT,	)	
	)	
-vs-	)	**CERTIFICATE OF SERVICE**
	)	
	)	
STATE OF SOUTH CAROLINA	)	
	)	
RESPONDENT.	)	
	)	

This is to certify that I am an employee in the law office of Caroline M. Horlbeck, attorneys for Applicant, and that I have this day caused to be served upon the person(s) named below Applicant's Notice of Appeal by placing copies of same in the United States mail, with adequate postage thereon, addressed as follows:

Ms. Loriene French
S.C. Office of Appellate Defense
1205 Pendleton St., Suite 306
Columbia, SC 29201

Karen Ratigan, Esq.
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

Ashley Foy
Ashley Foy

Greenville, South Carolina

March 17th, 2014

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) C.A. No. 2012-CP-23-5600
)
John Allen Hagood,)
S.C.D.C. #123067,)
)
Applicant,)
)
v.)
) **ORDER OF DISMISSAL**
State of South Carolina,)
)
Respondent.)

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed August 29, 2012. The Respondent made its return on March 28, 2013. An evidentiary hearing into the matter was convened on December 17, 2013 at the Greenville County Courthouse. The Applicant was present at the hearing and represented by Caroline Horlbeck, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's trial counsel, Amanda Lackland Wicker, Esquire. The Court had before it the trial transcript, the Greenville County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, the return, and the appellate records.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted at the May 2010 term of the Greenville County Grand Jury for grand larceny (2010-GS-23-3443) and first-degree burglary (2010-GS-23-3444). He was represented by Amanda Lackland

Wicker, Esquire.

After the State took the case to trial, the Applicant was found guilty. On February 9, 2011, the Honorable C. Victor Pyle, Jr. sentenced the Applicant to concurrent terms of life imprisonment without parole for first-degree burglary and ten years for grand larceny, third or greater property offense.

A notice of appeal was filed at the South Carolina Court of Appeals. Elizabeth A. Franklin-Best, Esquire of the South Carolina Office of Appellate Defense perfected the appeal. The Court of Appeals affirmed the Applicant's convictions and sentences. State v. Hagood, Op. No. 2012-UP-407 (S.C. Ct. App. filed July 11, 2012).

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:[1]

1. Ineffective assistance of counsel:
   a. "[F]ailed to argue correct probable cause for traffic stop."
   b. "[F]ailed to hire handwriting expert to prove of confession and Miranda signatures were fake."

In an "Amended Petition for Post Conviction Relief" filed by PCR counsel on June 21, 2013, the Applicant makes the following allegations:

1. Ineffective assistance of trial counsel:
   a. Allowed the State to introduce an involuntary statement by the Applicant purporting to be a confession to the crimes and failing to object to the admission of same.
   b. Failed to put the State's case through adversarial testing.
   c. Failed to challenge probable cause.
   d. Failed to preserve the Applicant's Fourth Amendment issues.

[1] While the Applicant filed a document captioned "Applicant's Amendment to Original PCR Application" on April 25, 2013, as it was filed while the Applicant was represented by counsel, this Court will not consider it. See Rule 11(a), SCRCP; Jones v. State, 348 S.C. 13, 14, 558 S.E.2d 517, 517 (2002) (holding there is no constitutional right to hybrid representation either at trial or on appeal).

e. Failed to argue section 17-25-45 violated the Equal Protection Clause.
f. Failed to argue that the discretion given to the solicitor's office by section 17-25-45 regarding service of notice of intent to seek life without parole is arbitrary and capricious.
g. Failed to request a jury instruction that the Applicant faced a mandatory sentence of life without parole.
h. Failed to argue that the Applicant's Sixth Amendment rights were violated in that he was not advised of the possibility of life without parole at the time of his prior conviction.
i. Failed to argue that the Applicant's conviction and sentence were in violation of the United States Constitution and South Carolina laws.
j. Failed to object to the use of his prior unclassified convictions to enhance his sentence to life without parole.

2. Ineffective assistance of appellate counsel:
   a. Raised an issue that was not preserved for appeal.

In an "Amended Petition for Post Conviction Relief" filed by PCR counsel on December 17, 2013, the Applicant makes the following allegations:

1. Ineffective assistance of trial counsel:
   a. Failed to adequately and effectively argue the Applicant's statement was not knowingly and voluntarily made.
   b. Failed to preserve the Applicant's objection to the introduction of the Applicant's statement during the trial.
   c. Failed to adequately and effectively challenge the existence of reasonable suspicion to stop the Applicant and probable cause to arrest the Applicant.
   d. Failed to make a motion to suppress.
   e. Failed to request that the court instruct the jury that the Applicant faced a sentence of life without parole if convicted at trial.
   f. Failed to argue that the Applicant as not informed of life without parole by eligibility by previous attorneys.

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 Trial 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).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). "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 v. Washington, 466 U.S. 668, 104 S. Ct. 2052).

The Applicant stated he met with trial counsel five times and that they reviewed the evidence. The Applicant stated they also discussed the traffic stop and his version events. The Applicant stated the officer said he did not stop at a stop sign, but that there was not stop sign there. The Applicant stated trial counsel did not make a motion to suppress the evidence. The Applicant stated he never made a statement to police but that Officer Ballenger was writing things down and asking him questions. The Applicant stated he has limited reading and writing abilities and that, while he signed a document, it was not read to him. The Applicant stated trial

counsel did not request a jury instruction that he faced a sentence of life imprisonment without parole if he was convicted. The Applicant stated there was a plea offer for twenty-five years and that he discussed it with trial counsel but the offer was for something he did not do.

Trial counsel testified she filed discovery motions, received discovery materials, and reviewed those items with the Applicant. Trial counsel testified this included reviewing two statements. Trial counsel testified they also discussed the Applicant's version of the events surrounding the traffic stop – and that he contended there was no stop sign. Trial counsel testified she made a motion to suppress, which was ruled upon by the trial judge. Trial counsel testified the consent to search the Applicant's home was given by his wife and that several items from the burglary were found. Trial counsel testified they discussed the damaging effect of the State's evidence against the Applicant. Trial counsel testified the Applicant explained the circumstances surrounding the statements given to Officers Ballenger and Burgess and that she challenged the statements before trial. Trial counsel testified one of the statements was self-serving and did not object to it at trial because of trial strategy. Trial counsel testified the officers denied any promises were made to the Applicant. Trial counsel testified they discussed the notice of intent to seek life imprisonment without parole (LWOP) and that this would be an automatic sentence if the Applicant was found guilty at trial. Trial counsel testified she discussed the twenty-five year plea offer with the Applicant and that he rejected it.

This Court finds the Applicant's testimony is not credible, while also finding trial counsel's testimony is credible. This Court finds trial counsel filed discovery motions and reviewed all of the discovery materials with the Applicant. This Court further finds trial counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in her representation.

This Court finds the Applicant failed to meet his burden of proving trial counsel did not properly handle the issues surrounding the traffic stop. Trial counsel stated the Applicant said there was no stop sign on the road in question. This Court notes trial counsel made a motion to suppress and that this motion was argued before trial. The Applicant testified at this hearing that there was no stop sign. (Trial transcript, pp.52-64). The trial judge found there was probable cause for a traffic stop and that the evidence would be admitted. (Trial transcript, p.64). The Applicant has failed to articulate what more trial counsel should have done to challenge the traffic stop and suppress the evidence from his car.

This Court finds the Applicant failed to meet his burden of proving trial counsel did not properly challenge the statements in his case. The Applicant gave two written statements – one to Officer Ballenger and one to Officer Burgess. (Trial transcript, pp.137-38; pp.167-69). The trial judge conducted a pre-trial Jackson v. Denno[2] hearing and found both statements were voluntary. (Trial transcript, pp.23-50). At trial, the Burgess statement indicated the Applicant did not know the laptop he had purchased had been stolen. (Trial transcript, pp.137-38). Trial counsel testified she did not object to the admission of this statement because it reinforced her trial strategy. This Court finds that, based on the defense put forth at trial, this was a valid strategic decision. See Roseboro v. State, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995) (finding where trial counsel articulates a valid reason for employing a certain strategy, such conduct should not be deemed ineffective assistance of counsel). Trial counsel did not object to the admission of the Ballenger statement at trial – in which the Applicant admitted to breaking into the victim's home and stealing several items. (Trial transcript, pp.167-69). This Court, however, does not find this was deficient or prejudicial because the statement had been ruled to

[2] 378 U.S. 368, 84 S. Ct. 1774, 12 L. Ed. 2d 908 (1964).

have been given voluntarily and the Applicant failed to present any credible evidence or testimony that this ruling would have been reversed on appeal. Further, this Court notes the State presented strong evidence of the Applicant's guilt, as the stolen items were found in his car and home. See Geter v. State, 305 S.C. 365, 367, 409 S.E.2d 344, 346 (1991) (concluding reasonable probability of a different result does not exist when there is ample evidence of guilt.

This Court finds the Applicant failed to meet his burden of proving trial counsel did not properly handle the issues surrounding the notice of LWOP. Trial counsel testified she discussed the LWOP notice with the Applicant when they reviewed the twenty-five year plea offer. Trial counsel testified they discussed what the LWOP notice would mean if the Applicant was found guilty at trial. This Court finds trial counsel's testimony is credible. This Court also finds that, while the Applicant argues trial counsel should have requested a jury charge regarding the automatic imposition of an LWOP sentence upon conviction, he has failed to present any precedent to support such a jury charge. This Court finds the Applicant has failed to meet his burden of proving trial counsel should have requested this charge. This Court also finds the Applicant has failed to meet his burden of proving trial counsel should have made a constitutional argument against the imposition of the LWOP sentence. This Court further finds there is no merit to the Applicant's argument that his attorneys from his previous criminal convictions should have advised him that those convictions could be used at a later date to impose an LWOP sentence.

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

This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by trial counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

Ineffective Assistance of Appellate Counsel

This Court notes the Applicant raised the issue of ineffective assistance of appellate counsel in his first "Amended Petition for Post Conviction Relief." The Applicant, however, did not present any evidence or testimony on this issue at the PCR hearing. As such, this Court finds the Applicant has abandoned this issue.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and

2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 30 day of June, 2014.

G. Edward Welmaker
Presiding Judge
Thirteenth Judicial Circuit

Richland, South Carolina.

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Attorney At Law
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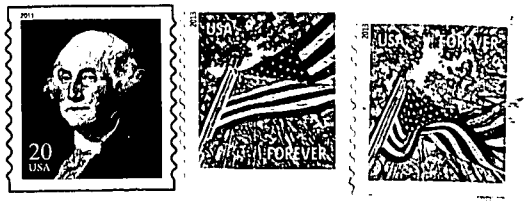
GREENVILLE, SOUTH CAROLINA 29601



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