TALLEY Law Firm, P.A.

Scott F. Talley
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March 11, 2014

Daniel Shearouse,
Clerk of Court,
Supreme Court of South Carolina,
P.O. Box 11330,
Columbia, SC 29211

Suzanne White
Assistant Deputy Attorney General
PCR Division
PO Box 11549
Columbia, SC 29211

RE: Delonte Carroll v. State of South Carolina
Case No.: 2012-CP-42-3628

Mr. Shearouse and Ms. White,

Please find enclosed Mr. Carroll's Notice of Appeal from his denial of Post Conviction Relief on November 15, 2013. Also find enclosed Proof of Service. I was appointed to represent Mr. Carroll on his post conviction relief hearing. If there any issues, please don't hesitate to contact me.

Sincerely,

LWBarnwell

Lauren W. Barnwell
TALLEY LAW FIRM, PA
2500 Winchester Place
Suite 100
Spartanburg, SC 29301

Cc:
Office of Appellate Defense
PO Box 11433
Columbia, SC 29211-1433

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

[In The Supreme Court]

APPEAL FROM SPARTANBURG COUNTY

Court of Common Pleas

Robin B. Stilwell, Circuit Court Judge

Case No. 2012-CP-42-3628

Delonte B. Carroll, #347422 Petitioner,

v.

State of South Carolina, Respondent.

NOTICE OF APPEAL

Delonte B. Carroll appeals the Order denying him post conviction relief. The hearing was heard by the Honorable Robin Stilwell on November 15, 2013. The Order was filed March 6, 2014 and Petitioner received written notice of the Order on March 10, 2014.

March 11, 2014

Lauren W. Barnwell
Bar No.: 73614
Talley Law Firm
2500 Winchester Place
Spartanburg, SC 29301
864-595-2966
Attorney for Petitioner (appointed for PCR)

Other Counsel of Record:
Suzanne White, Esq.
S.C. Attorney General's Office
PO Box 11549
Columbia, SC 29211
Attorney for Respondent

THE STATE OF SOUTH CAROLINA

In The Supreme Court

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Robin B. Stilwell, Circuit Court Judge

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Delonte B. Carroll, #347422 Petitioner,

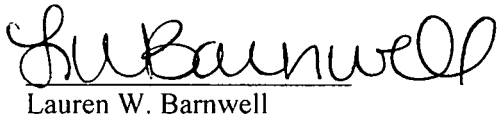
v.

State of South Carolina, Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the State of South Carolina by depositing a copy of it in the Unites states Mail, postage prepaid, on March 11, 2014, addressed to Suzanne White, Esq., Attorney General's Office P.O. Box 11549, Columbia SC 29211.

March 11, 2014



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In The Supreme Court

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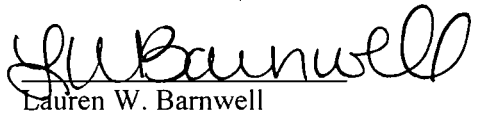
March 11, 2014



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Attorney for Respondent

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	2012-CP-42-3628
Delonte Carroll, #347422,	)	
	)	
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 27, 2012. The Respondent made its Return on or about August 19, 2013. An evidentiary hearing into the matter was convened on November 15, 2013, at the Spartanburg County Courthouse. The Applicant was present at the hearing and was represented by Lauren W. Barnwell, 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. Robert Hall, Esquire, also testified. This Court also had before it a copy of the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the Return, 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 Spartanburg County Clerk of Court. He was indicted at the July 2010 term of the Spartanburg County Grand Jury for assault with intent to kill (2010-GS-42-4266), and two charges of armed robbery and possession of weapon during commission

of a violent crime (2010-GS-42-4267, and -4268, counts one and two) . The Applicant was represented by Robert B. Hall, Esquire. On August 22, 2011, the Applicant pled guilty before the Honorable J. Derham Cole and was sentenced to confinement for twenty years for armed robbery[1].

Applicant appealed his conviction and sentence, but the South Carolina Court of Appeals dismissed the appeal for a failure to demonstrate any issues raised and ruled upon by the plea judge. The Remittitur was issued on December 1, 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 investigate;
   b. Counsel failed to communicate and properly advise;
   c. Counsel failed to request Applicant's mental health records to establish mental incompetency.

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,

[1] Indictment 2010-GS-42-4267, count two of 2010-GS-42-4268, and the charge of assault with intent to kill were *nolle prossed* pursuant to Applicant's plea agreement.

"[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), SCRCP). 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).

At this hearing, Applicant testified that he met with Counsel twice. Applicant testified that their first meeting lasted only five to seven minutes and their second meeting was right before trial was scheduled. Applicant testified that he was never given a preliminary hearing.

Applicant testified that he never had an opportunity to review any discovery materials. However, he testified that he did see the forensic report and knew that no gunshot residue was found on his hands. Applicant testified that he never saw the indictment and never understood why he was being charged with armed robbery since the victim said that his co-defendant, Ms. White, had the gun. Applicant testified that Counsel told him the State offered to let Applicant plead to armed robbery with no recommendation. However, Applicant testified that he believed the plea was to a robbery charge, not armed robbery. Applicant testified that Counsel informed him that if they went to trial, Applicant would be found guilty on all charges. Applicant testified that he told Counsel of a prior car accident and mental health issues to look into. Applicant also testified that he asked Counsel to file a direct appeal based upon the fact that Applicant had no gun and no awareness that Ms. White had a gun.

Counsel testified that he was unsure of the date of his first meeting with the Applicant, but believes they met before a bond reduction hearing. Counsel testified that Applicant did not have a preliminary hearing and had been indicted within a month of his arrest. Counsel testified that his notes indicate he met with Applicant on August 10, 2010, and discussed issues regarding the gunshot residue, videotape evidence, and issues with lineups. Counsel testified that he then has notes indicating that he went to visit Applicant in November 2010, at which time he took discovery materials and reviewed them with Applicant. Counsel testified that he discussed the options of trial versus plea with Applicant and reviewed the charge of armed robbery with Applicant. At the time, Counsel testified that there were no offers. Counsel testified that the case was set for trial sometime in July or August 2011. Counsel testified that he met with Applicant on August 5, 2011, at which time they reviewed discovery materials again, including the fact that both of the victims stated that his co-defendant had the gun. Counsel testified that

he explained the concept of "hands of one, hands of all" with Applicant. Once the case was set for trial, Counsel testified that he approached the State again to see if they had an offer and even approached them with an offer to plead to purse snatching. Counsel testified that the case was going to be a trial until the State made their offer in mid-August 2011. Counsel testified that he discussed the issue of whether the court or jury would believe that Applicant did not know there was a gun at the time of the robbery. Further, Counsel testified that he explained the difference between a common law robbery and armed robbery to Applicant.

This Court finds the testimony of Counsel to be more credible than the testimony of the Applicant. First, this Court finds that Applicant's allegation that Counsel did not meet with him enough or review discovery materials with him is not credible. After reviewing the transcript of the hearing, this Court finds it clear that Counsel had reviewed and explained the facts and evidence, as well as the options that Applicant had in terms of how the Applicant wanted continue. This Court notes that the Applicant did have options other than pleading guilty, but this Court also recognizes that none of the other options were likely satisfactory in the eyes of the applicant. Therefore, this court finds that, "[the] brevity of time spent in consultation, without more, does not establish that counsel was ineffective." Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980). To establish counsel was inadequately prepared, an Applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel been more fully prepared. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998); Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial). The Applicant failed to point to any specific matters Counsel failed to discover, or any defenses that could have been pursued had Counsel spent more time with

Applicant or conducted any additional investigation. Furthermore, the Applicant failed to show any prejudice that may have resulted from Counsel's alleged inadequate preparation. Accordingly, this allegation is dismissed.

This Court also finds that the Applicant failed to meet his burden of proof of establishing that Counsel should have investigated his mental status. This Court finds that there was no evidence of mental health issues or incompetency presented during Applicant's testimony and responses to questions during the hearing indicates that he had no issues understanding what was happening at the plea or PCR hearing. Therefore, this claim is dismissed.

Applicant alleged that Counsel provided incorrect advice as to the charge Applicant was pleading guilty to. In Hill v. Lockhart, 474 U.S. 52 (1985), the United States Supreme Court held that the two-part standard adopted in Strickland v. Washington, supra, for evaluating claims of ineffective assistance of counsel applies, as well, to guilty plea challenges based on ineffective assistance of counsel. To meet the Court's "prejudice" requirement, a criminal defendant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill at 59. Not only did the Applicant fail to establish how Counsel offered incorrect advice, but the Applicant has failed to establish that he would have proceeded to trial, but for, these alleged deficiencies of Counsel. This Court finds that Counsel provided sound advice to Applicant, in particular as it relates to the law of "hands of one, hands of all," and the fact that the Applicant did not have a reasonable defense. Therefore, this claim is 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

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 5 day of March, 2014.

Robin B. Stilwell
Presiding Judge

FILED
CLERK OF COURT
SPARTANBURG, S.C.
2014 MAR -6 PM 2:10
M. HOPE BLACKLEY

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