



ALAN WILSON
ATTORNEY GENERAL

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APR 22 2014

S.C. Supreme Court

April 22, 2014

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

Re: **Melvin Daniel, Respondent v. State, Petitioner**
Case No. 2010-CP-15-0805

Dear Mr. Shearouse:

Enclosed for filing is a Notice of Appeal in the above case. Also enclosed are the following:

1. A copy of the order which is to be challenged on appeal.
2. Proof of service of notice of appeal on the Respondent.
3. A letter ordering the PCR transcript from the court reporter.

Sincerely,

Ashleigh R. Wilson
Assistant Attorney General

cc: Gerald A. Maree, Esquire
South Carolina Department of Corrections
Colleton County Clerk of Court
Solicitor I. McDuffie Stone, III
Office of Appellate Defense
Trisha Allen, Victim Services

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APR 22 2014

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

S.C. Supreme Court

The Honorable James R. Barber, III, Circuit Court Judge

Case No. 2010-CP-15-0805

Melvin Daniel,.....Respondent,

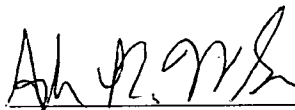
v.

State of South Carolina,.....Petitioner.

NOTICE OF APPEAL

The State of South Carolina appeals the order of the Honorable James R. Barber, III dated March 31, 2014 and filed April 2, 2014 granting Post-Conviction Relief in the above referenced matter. The Petitioner received written notice of entry of this order on April 9, 2014.

April 22, 2014



Ashleigh R. Wilson
Office of the Attorney General
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(803) 734-4037
SC Bar #100269
Attorney for the Petitioner

Other Counsel of Record:
Gerald A. Maree, Esquire
P.O. Box 1202
Walterboro, SC 29488
Attorney for Respondent

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APR 22 2014

S.C. Supreme Court

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal From Colleton County
The Honorable James R. Barber, III, Circuit Court Judge

MELVIN DANIEL

Respondent,

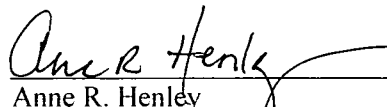
v.

STATE OF SOUTH CAROLINA,

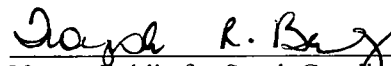
Petitioner.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Petitioner's Notice of Appeal has been served upon opposing counsel, Gerald A. Maree, this 22nd day of April 2014.


Anne R. Henley
Legal Assistant

SWORN to before me this
22nd day of April, 2014.

 (L.S.)
Notary Public for South Carolina.
My Commission Expires: 8/22/2022

STATE OF SOUTH CAROLINA)
)
COUNTY OF COLLETON)
)
MELVIN DANIEL, II #323062,)
)
APPLICANT,)
)
VS.)
)
STATE OF SOUTH CAROLINA,)
)
RESPONDENT.)
_____)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

CASE NUMBER: 2010-CP-15-805

ORDER

2014 APR -2 PM 2:51
PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS

DATE OF HEARING: FEBRUARY 20, 2014
PRESIDING JUDGE: JAMES R. BARBER, III
ATTORNEY FOR APPLICANT: GERALD A. MAREE
ATTORNEY FOR RESPONDENT: ASHLEIGH R. WILSON
COURT REPORTER: RUTH MOTT

This case is before the Court pursuant to an Application for Post Conviction Relief (PCR) originally filed by Melvin Daniel, II (hereinafter referred to as the Applicant) on August 2, 2010. The Applicant was tried and convicted for the charge of Homicide by Child Abuse by a Colleton County jury on July 18, 2007. He received a sentence of twenty years imprisonment. His Application alleges ineffective assistance by his trial counsel, Harris Beach. His Application was modified by his PCR counsel pursuant to the filing of two subsequent Supplemental Applications filed August 2, 2013 and February 18, 2014, respectively. Present at the hearing were the Applicant along with his attorney Gerald A. Maree of the Colleton County Bar; Applicant's witnesses Andrew Grimes, Esquire, Dr. Mark Shuman, a Forensic Pathologist from Miami, Florida and Applicant's former trial counsel, Harris Beach, Esquire. Ashleigh R. Wilson, Esquire of the South Carolina Attorney General's Office appeared on

behalf of the Respondent.

During the presentation of his case, counsel for the Applicant voluntarily withdrew several of the enumerated grounds alleged in his PCR application. The grounds that were actually presented to the Court for consideration were as follows:

1. Defense trial counsel erroneously stipulated to the admission of prejudicial photographs of the deceased child into evidence.
2. Defense trial counsel failed to procure expert testimony to benefit the Applicant, and/or failed to properly cross-examine the state's expert witnesses with medical literature.
3. Defense trial counsel failed to request a lower/shorter sentence for the Applicant during sentencing, and further failed to file a Post Trial Motion for Reconsideration of Sentencing.

I find that Applicant's ground concerning the admission of photographs of the deceased child into evidence lacks merit. I further find that the Applicant failed to establish how his trial counsel's stipulation to a portion of the state's proposed photographic evidence was prejudicial to his defense.

I find that Applicant's ground concerning the failure of trial counsel to request a lower/shorter sentence for the Applicant or to file a Post Trial Motion for Reconsideration of Sentencing is without merit. I further find that the Applicant failed to establish how his trial counsel's failure to request a shorter sentence or to file a post trial motion concerning same was prejudicial to his defense or his sentencing.

I find that the Applicant's ground concerning the failure of trial counsel to procure

or retain expert testimony favorable to the Applicant during his criminal trial convincing and with merit. Trial counsel for the Applicant testified that his only attempt to procure the services of an expert consisted of him having a conversation with his personal physician about the case. He testified during examination by Applicant's PCR counsel that he was aware of an Order Authorizing Funds For Expert Services that was issued by the Honorable Daniel F. Pieper on December 14, 2004. Although the Order authorized up to Fifteen Thousand Dollars (\$15,000) for obtaining the services of a medical expert, he indicated that he did not utilize any of the funds towards the defense of the Applicant's case. He was later recalled as a witness by the State after the Applicant had concluded its case. During direct and cross examinations, Mr. Beach admitted that the testimony given by the Applicant's expert would have been beneficial to the Applicant's criminal trial. He agreed that having an expert at the Applicant's criminal trial would have assisted in the preparation of cross-examining the State's experts. He further agreed that having an expert testify at trial would have assisted him in attempting to mitigate the testimony of the State's experts.

Dr. Mark Shuman, a board certified forensic pathologist, rendered expert testimony in the field of forensic pathology that was favorable to the Applicant. Dr. Shuman testified that in preparation of his testimony he reviewed the autopsy and coroner's reports; examined forensic slides pertaining to the autopsy; examined post mortem photographs of the deceased; examined autopsy photographs; reviewed the voluntary statement given by the Applicant prior to arrest; and reviewed portions of the trial transcript. He testified that there were several medical studies in existence prior to

the Applicant's criminal trial in July, 2007 that demonstrated children could have fatal accidental falls from short distances. He testified that according to these studies several children who suffered accidental fatal short distance falls sustained very similar head injuries as the child in this case. He further testified that the Applicant's statement given to law enforcement was consistent with the nature of the injuries sustained by the child. He testified to a reasonable degree of medical certainty that accidental head trauma, not abusive head trauma, was the cause of death of the child in this case. He stated that he was court certified as an expert in forensic pathology at the time Applicant was tried in 2007, and that the testimony he gave at this hearing would have been substantially the same if he had been retained as an expert during Applicant's criminal trial.

THEREFORE, I CONCLUDE AS FOLLOWS:

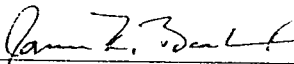
1. Trial counsel's performance was deficient and this deficiency prejudiced the Applicant's defense resulting in the Applicant receiving ineffective assistance of counsel. *Strickland v. Washington*, 466 U.S. 688, 104 S. Ct 2052, 80 L.Ed.2d 674 (1984). Specifically, I conclude that trial counsel's failure to retain an expert or experts to testify for the Applicant at trial constituted deficient performance. I further conclude that this deficiency prejudiced the Applicant's defense in the following particulars:

- A. Trial counsel testified that the testimony given by Dr. Mark Shuman would have assisted the defense in preparation of the testimony of the State's medical experts at trial;
- B. Trial counsel testified that the testimony given by Dr. Mark

Shuman would have assisted the defense in mitigating the testimony of the State's medical experts at trial.

2. I hereby grant the Applicant's application for Post Conviction Relief, and further order the Applicant's conviction for Homicide by Child Abuse (Case No. 04-GS-15-0400) vacated and the case remanded to the county of its origin, Colleton County, for further disposition including rearraignment, retrial, custody, bail, or discharge.

IT IS SO ORDERED.



James R. Barber, III
Circuit Court Judge

31st day of March, 2014
Columbia, SC