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April 23, 2014

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

RECEIVED

APR 28 2014

Re: Carmichael Flowers v. State
2012-CP-21-2215

S.C. SUPREME COURT

Dear Clerk of Court,

Please find attached Notice of Appeal, Proof of Service and Order in the above referenced case. Please file a copy and return a stamped copy in the enclosed envelope.

Thank you for your assistance in this matter.

Sincerely,

Tristan M. Shaffer

CC: Connie Reel-Shearin
Josh Thomas
Kimberly McCall
Carmichael Flowers

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

Michael G. Nettles, Circuit Court Judge

Case No. 2012-CP-21-2215

Carmichael Flowers # 335945,

Petitioner,

v.

The State of South Carolina,

Respondent.

RECEIVED


APR 28 2014

S.C. SUPREME COURT

NOTICE OF APPEAL

Petitioner appeals the order dismissing his post-conviction relief action signed by the Honorable Michael G. Nettles on March 7, 2014. This order was filed on March 10, 2014 and received by Petitioner on March 30, 2014.¹

April 23, 2014


Tristan M. Shaffer
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(803) 820-0727
SC Bar # 77565
Attorney for Petitioner

Other Counsel of Record:
Josh Thomas
South Carolina Attorney General's Office
P.O. Box 11549
Columbia, South Carolina 29211
Attorney for Respondent

¹ This order was originally mailed to Counsel's old address was not received by counsel until March 30, 2014.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

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APR 28 2014

S.C. Supreme Court

Carmichael Flowers # 335945,

Petitioner,

v.


The State of South Carolina,

Respondent.

Proof of Service

I certify that on this day, I have served a copy of the Notice of Appeal in the above captioned case on Respondent by depositing it in the United States mail with postage prepaid and addressed to the Attorney for Respondent as listed below.

April 23, 2014


Tristan M. Shaffer
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Attorney for Petitioner

Other Counsel of Record:
Josh Thomas
South Carolina Attorney General's Office
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Attorney for Respondent

STATE OF SOUTH CAROLINA
 COUNTY OF *Florence*
 IN THE COURT OF COMMON PLEAS

FORM 4: JUDGMENT IN A CIVIL CASE
FILED
 CASE NO. *2012 CP-21-2215*
 2014 MAR 11 PM 2:27

Conanichal Trevor Flowers # 335919 PLAINTIFF(S)
 STATE OF SOUTH CAROLINA DEFENDANT(S)
 FLORENCE COUNTY

Submitted by: _____ Attorney for: Plaintiff Defendant
 or
 Self-Represented Litigant

- DISPOSITION TYPE (CHECK ONE)**
- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
 - DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
 - ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
 - ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
 - DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.
 Additional information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge _____ Judge Code _____ Date _____

VERIFIED: A TRUE COPY
 Clerk of Court
 Clerk of Court C.P. & G.S.
 FLORENCE COUNTY, S.C.

For Clerk of Court Office Use Only

This judgment was entered on the 10 day of MAR, 20 14 and a copy mailed first class or placed in the appropriate attorney's box on this 12 day of MAR, 20 14 to attorneys of record or to parties (when appearing pro se) as follows:

Tristram Shaffer
P.O. Box 176
Chapin, S.C. 29036
ATTORNEY(S) FOR THE PLAINTIFF(S)

Joshua L. Thomas
P.O. Box 11549
Columbia, S.C. 29211-1549
ATTORNEY(S) FOR THE DEFENDANT(S)
Connie Reel-Sheerin
CLERK OF COURT

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF FLORENCE)
)
)
 CARMICHAEL TREVON FLOWERS,)
 # 335945,)
)
 Applicant,)
)
 v.)
)
)
 STATE OF SOUTH CAROLINA)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 TWELFTH JUDICIAL CIRCUIT

CASE NUMBER: 2012-CP-21-02215

ORDER

FILED
 2014 MAR 10 AM 11:05
 CONNIE REEL-SHEARIN
 CLERK OF COURT C.P. & G.S.
 FLORENCE COUNTY, SC

This matter is before the Court by way of an Applicant for Post-Conviction Relief (PCR) filed on June 17, 2011, by Carmichael Trevon Flowers (Flowers). The State of South Carolina (Respondent) filed a Return to Applicant's PCR application on or about August 22, 2012. The Court convened a hearing in Florence County on February 10, 2014, at which time Flowers was present and represented by Tristan M. Shaffer, Esquire. Joshua L. Thomas, Esquire, of the South Carolina Attorney General's office, represented Respondent.

BACKGROUND

Flowers was indicted at the March 2009 term of the Florence County Grand Jury for malicious injury to real property, malicious injury to personal property, criminal domestic violence of a high and aggravated nature, and kidnapping (2009-GS-21-00126). Subsequently, the court appointed Scott Floyd, Esquire, to represent Flowers. In July 2008, a jury found Flowers not guilty of kidnapping, criminal domestic violence of a high and aggravated nature, but guilty of the lesser-included offense of criminal domestic violence, and guilty of both malicious injury charges.

CERTIFIED: A TRUE COPY
 Connie Reel Shearin
 CLERK OF COURT C.P. & G.S.
 FLORENCE COUNTY, S.C.

The Honorable Ralph King Anderson sentenced Flowers to the following consecutive terms of imprisonment: ten years on the malicious injury to real property charge; five years on the malicious injury to personal property charge; and thirty days on the CDV charge. Flowers appealed his conviction; however, the court of appeals affirmed his conviction in August 2011. Flowers remains incarcerated by the South Carolina Department of Corrections.

ISSUES PRESENTED

Flowers alleges in his application that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of [Trial] Counsel"; and
2. "Ineffective Assistance of Appellate Counsel."

STANDARD OF REVIEW

The Sixth Amendment of the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amen. VI; Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.E.2d 674 (1984); Holden v. State, 393 S.C. 565, 713 S.E.2d 611 (2011). A defendant is also entitled to effective assistance of appellate counsel. Tisdal v. State, 357 S.C. 474, 594 S.E.2d 166 (2004).

In a post-conviction relief action, 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, 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, 80 L.E.2d at 692; Butler, 334 S.E.2d 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, 80 L.E.2d 674. 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 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, 80 L.E.2d 674). 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.

SUMMARY OF TESTIMONY

Flowers testified that his trial counsel was ineffective for the following: (a) failed to notify Flowers of a plea offer; (b) failed to investigate; and (c) failed to raise common law marriage defense.

First, Flowers stated that Floyd never discussed the State's plea offer. Floyd, an attorney with twenty-six years of experience, testified that he always discusses plea offers, written and oral, with defendants. While Floyd could not produce a written plea offer from his file, he averred that he is confident that he discussed the State's offer to dismiss the kidnapping charge with Flowers. The Court also heard testimony that Flowers denied the kidnapping and criminal domestic violence charges in their entirety, developed a defense strategy with Floyd prior to trial, supplied Floyd with potential witnesses, and remained adamant about proceeding to trial.

Second, Flowers claimed that Floyd failed to investigate the allegations and potential witnesses. Flowers stated that he provided Floyd with the names of several potential witnesses that could aid in his defense at trial. Specifically, Flowers mentioned, *inter alios*, Starling Burgess, Nat Mitchell, Jason Jacobs, Leroy Brown, and a woman simply referred to as Von. Flowers contended that these witnesses, if called to testify, would have testified in support of Flowers' defense to the CDV and malicious injury charges. The Court also heard testimony that Floyd met with Flowers on multiple occasions prior to trial to discuss Flowers' charges, their elements, and potential defenses. Flowers admitted that he damaged the inside of the home, but maintained that he was only responsible for a portion of the damage.

Third, Flowers sought to mitigate the extent of the alleged damage that he and the victim married by common law, and as such, he could not be found guilty of the malicious injury charges. Flowers testified that he cohabited with the victim—while she was still married—in South Carolina starting in 2007. He claimed that they shared checking accounts, the title to a vehicle, and a P.O. Box; and held themselves out as a married couple by, *inter alias*, attending church together and referring to each other as husband and wife when meeting with realtors. However, the Court discovered that the victim always maintained that she was not married to Flowers, that she stated to Flowers in 2008 that she was “ready for the rings,” and that Floyd was unable—after speaking to every witness Flowers provided and in conducting his own investigation—to find a witness that would corroborate this claim.

ANALYSIS

The Court has reviewed the record in its entirety, heard the testimony and arguments presented at the PCR hearing, and reviewed the relevant case law. The Court has further had the opportunity to observe each witness who testified at the hearing and to pass upon his or her

credibility, weighing 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).

I. Ineffective Assistance During Plea Negotiations

A defendant is entitled to effective assistance of counsel during plea negotiations as well as at trial. Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1996). The Supreme Court of South Carolina recently adopted a case-by-case approach in determining whether counsel's failure to inform defendant of a plea bargain prejudices the defendant. Davis v. State, 381 S.C. 601, 675 S.E.2d 416 (2009). In *Davis*, the court determined that a case-by-case approach would help the courts achieve the ultimate goal of assessing whether but for counsel's deficient performance a defendant would have accepted the State's proposed plea-bargain and that the defendant would have benefitted from the offer. Id. In doing so, the court concluded that a defendant is still required to establish actual prejudice. Id.

In the case at hand, even assuming *in arguendo* that Floyd did not discuss the State's plea offer with Flowers, the Court finds Flowers claim for relief is without merit. The Court reaches this conclusion for several reasons. First, Flowers never averred that he would have accepted a plea offer in this case. Secondly, it appears that Flowers discussed the kidnapping charge with Floyd prior to trial and denied his involvement. Thirdly, this Court finds Floyd's testimony that he discussed the plea offer with Flowers credible. Finally, unlike the defendant in *Davis*, Flowers cannot argue that he was prejudiced by proceeding to trial; it appears that the plea offer only concerned the kidnapping charge, was an offer for a six-year sentence, and the jury found Flowers not guilty with respect to the kidnapping charge. Therefore, Flowers' is denied relief under this claim.

II. Ineffective Assistance for Failing to Investigate

Flowers claims that Floyd was ineffective for failing to interview and call several witnesses, and failing to investigate the evaluations the State presented to establish the extent of damage done to the victim's real and personal property. This Court finds this allegation is without merit.

To establish counsel failed to prepare adequately for trial, applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel more fully prepared. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998); Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998) (failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result)); 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). Additionally, an applicant's testimony regarding what a witness would have testified to at trial is insufficient to meet burden of showing prejudice in counsel's failure to call witness. Glover v. State, 218 S.C. 496, 458 S.E.2d 538 (1995).

Here, it is uncontroverted that Floyd searched for every witness Flowers named; many of whom Floyd found and interviewed. It appears that Floyd subpoenaed several of these witnesses for Flowers' trial. It further appears that Floyd, bound by ethics, dismissed one potential witness because she offered to perjure herself on Flowers' minutes before Flowers' trial. This Court finds that Floyd, despite the allegation, reviewed the State's pictures and estimates with Flowers prior to trial. Moreover, at Flowers' PCR hearing, Flowers did not present any evidence or a witness regarding an alternative evaluation for the damage he did or did not cause, or his

ownership interest in any real or personal property he was convicted of damaging. Instead, Flowers only suggested that the figures used to calculate the destruction he caused were inflated and his friends Nat Mitchell and Leroy Brown would have testified that had an ownership interest in some of the property. Therefore, this Court finds that Flowers has failed to overcome the burden of proof necessary for this Court to grant relief.

III. Ineffective Assistance Regarding Common Law Marriage Claim

Flowers asserts that he and the victim were married under common law. As such, Flowers contends that Floyd was deficient for failing to investigate or establish this mitigating fact at trial.

To establish counsel failed to prepare adequately for trial, applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel more fully prepared. Jackson, 329 S.C. 345, 495 S.E.2d 768; Moorehead, 329 S.C. 329, 496 S.E.2d 415. An applicant's testimony regarding what a witness would have testified to at trial is insufficient to meet burden of showing prejudice in counsel's failure to call witness. Glover, 218 S.C. 496, 458 S.E.2d 538. Additionally, in order to show prejudice from the failure to contact an allegedly favorable witness, a PCR applicant must present the testimony of that witness at the PCR hearing. Id.

Here, Flowers testified that he believed he and the victim were married under common law. In support of this claim, Flowers stated that the couple held themselves out as married to the public, shared several bills and a P.O. Box, and cohabited for several years. Floyd testified that Flowers claimed to be married to the victim by common law in their initial meeting. However, Floyd also testified that, knowing the legal elements required for common law marriage, was skeptical of the veracity of Flowers' claim. Nonetheless, Floyd investigated this

matter; still, he found neither viable proof nor a witness to corroborate Flowers claim. It also appears the victim vehemently denied a marriage, common law or otherwise, to Flowers at trial. While not dispositive—but certainly supportive of Floyd’s understanding of the law—the Court notes that this issue was adjudicated soon after Flowers’ trial; The Honorable A. E. Morehead III found that a common law marriage did not exist between Flowers and the victim in this matter. Therefore, because Flowers did not present any evidence and Floyd thoroughly investigated the veracity of Flowers’ claim of common law marriage, this Court denies Flowers’ request for relief.

IV. All Other Allegations

As to any other allegations raised in the application or at the hearing in this matter and not specifically addressed in this order, the Court finds Flowers failed to present sufficient evidence regarding such allegations. Accordingly, the Court finds Flowers has abandoned any such allegations.

CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant Carmichael Trevon Flowers has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, the Court denies and dismisses with prejudice this application for post-conviction relief.

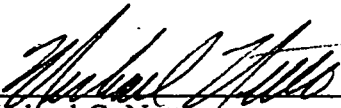
The Court notes that Flowers must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. *See* Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an applicant has a right to appellate counsel’s assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRPC, provides that if the applicant wishes to

seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on the applicant's behalf. This Court directs Applicant to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief is DENIED.
2. That Applicant be remanded to the custody of the Department of Corrections to complete the remainder of his sentence.

AND IT IS SO ORDERED this 7 day of March, 2014.

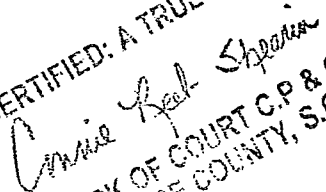


Michael G. Nettles
Presiding Judge, Twelfth Judicial Circuit

Spencer, South Carolina

2014 MAR 10 AM 11:05
CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

FILED

CERTIFIED: A TRUE COPY

CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.


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first class


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