

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

S.C. Supreme Court

J. Ernest Kinard, Circuit Court Judge

Case No. 2012-CP-29-0004

Rodney Thompson,

Petitioner,

v.

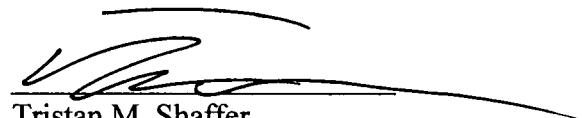
The State of South Carolina,

Respondent.

NOTICE OF APPEAL

Petitioner appeals the order dismissing his post-conviction relief action signed by the Honorable J. Ernest Kinard on October 22, 2013. This order was filed on October 30, 2013 and received by Petitioner on April 29, 2014.¹

May 29, 2014



Tristan M. Shaffer
120 Gantt Street
Lexington, South Carolina 29072
(803) 820-0727
SC Bar # 77565
Attorney for Petitioner

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

¹ Based on conversations with Suzanne White, the order was likely mailed to Counsel's old address. According to the certificate of service the Order was mailed to Mr. Shaffer on April 25, 2014.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

J. Ernest Kinard, Circuit Court Judge

Case No. 2012-CP-29-0004

Rodney Thompson,

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.

May 29, 2014



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SC Bar # 77565
Attorney for Petitioner

Other Counsel of Record:
Suzanne White
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S.C. Supreme Court



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S.C. Supreme Court

May 29, 2014

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

Re: Rodney Thompson v. State
2012-CP-29-0004

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: Lancaster County Clerk of Court
Suzanne White
Kimberly McCall
Rodney Thompson

STATE OF SOUTH CAROLINA
COUNTY OF LANCASTER

) IN THE COURT OF COMMON PLEAS
) SEVENTH JUDICIAL DISTRICT

Rodney Thompson,

)

2012-CP-29-0004

Applicant,

)

vs.

)

CERTIFICATE OF SERVICE BY MAIL

State of South Carolina,

)

Respondent.

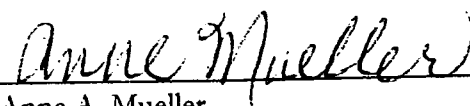
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1. I am an employee of the Respondent in the above-captioned action.
 2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
 3. I have this day served a copy of the Order of Dismissal in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Mr. Tristan M. Shaffer, Esquire
Shaffer Law Firm
120 Gantt Street
Lexington, South Carolina 29072

DATED this 25th day of April, 2014


Anne A. Mueller
Legal Assistant for the Respondent

STATE OF SOUTH CAROLINA)
COUNTY OF LANCASTER)
Rodney Thompson #345452,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT

2012-CP-29-0004

ORDER OF DISMISSAL

FILED
CLERK OF COURT
LANCASTER, SC
2013 OCT 30 PM 2:21

This matter comes before the Court by way of an Application for Post-Conviction Relief filed January 3, 2012. The Respondent made its Return on or about June 6, 2012. An evidentiary hearing into the matter was convened on February 4, 2013, at the Lancaster County Courthouse. The Applicant was present at the hearing and was represented by Tristan M. Shaffer, 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. Michael Lifsey, Esquire, also testified. This Court also had before it a copy of the records of the Lancaster 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 Lancaster County Clerk of Court. The Applicant was indicted at the June 2010 term of the Lancaster County Grand Jury for murder (2010-GS-29-0838). He was represented by Mike Lifsey, Esquire. On March 28, 2011, the Applicant pled

guilty to the lesser included offense of voluntary manslaughter. He was sentenced by the Honorable Brooks P. Goldsmith to confinement for a period of twenty-four (24) years. The Applicant did not appeal his guilty plea or sentence.

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. "Attorney did not interview any witnesses,"
 - b. "Attorney had large case load [and] could not represent [Applicant],"
 - c. Applicant had tactical and strategic disagreements with Counsel, and
 - d. Counsel failed to request substitute counsel.

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, "[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), SCRPC). 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).

Applicant alleged that Counsel was ineffective for failing to interview witnesses, lacking time to prepare for Applicant's case, and for disagreements with Applicant. Applicant testified that he received a sentence of twenty-four years for voluntary manslaughter. Applicant claimed that following the victim threatening to kill Applicant with a wrench, Applicant went to a third party's home, where the third party got Applicant high, gave him a gun, and took him back to the victim's home, where Applicant shot the victim. Applicant testified that he had given a statement to police regarding the case, but that he was still high when he gave the statement. However, Applicant acknowledged that the statement date was the 31st of the month, while the

incident had occurred on the night of the 27th. Applicant also stated that he told the police where the gun was located, but never told anyone about where or who he had gotten the gun from. Applicant testified that Officer Billy Hilton was the one who took his statement, but Hilton was a friend of his family, so Applicant did not realize that Hilton was not trying to help Applicant out.

Applicant also Applicant testified that he only met with Counsel twice, once a few days following his arrest and once at the jail. Applicant testified that he thought he had a good chance at trial, but Counsel told Applicant that he could receive a sentence of life. Applicant testified that he would have wanted to go to trial had Counsel talked with Applicant more and gone over possible defenses for trial.

Counsel testified that he met the Applicant shortly after the arrest, but because there was no discovery, the discussion focused on Applicant's background and Counsel telling Applicant to make any more statements. Counsel indicated that he had a copy of a letter in his file, dated April 27, 2010, which he sent along with a copy of discovery to Applicant. Counsel testified that he met with the Applicant approximately four times. Counsel testified that he also met with the Applicant on April 27th, at which time the Applicant explained the prior altercation with the victim and the fact that the Applicant left the scene of the altercation, smoked crack, got a gun, and shot the victim. However, Counsel testified that the Applicant would not say where he got the gun from or who he gave the gun to following the shooting.

Counsel testified that he would have certainly tried the case, but he did not think that the facts of the case amounted to self-defense or even voluntary manslaughter. Further, Counsel testified that between the facts and the Applicant's confession, the State felt that they had a solid case. Counsel testified that he did receive a plea offer on March 17, 2011, to allow the Applicant to plead to voluntary manslaughter with a range of twenty to thirty years. Counsel testified that

he did try to negotiate a lesser deal, but the Solicitor would not agree. Counsel also testified that he reviewed the options with the Applicant and has notes where he showed the Applicant the sentence range for murder, along with the fact that it is day for day, and the sentence possibilities if Applicant pled guilty. Counsel testified that even though he has a significant caseload, he did feel that he enough time to investigate and prepare for this particular case.

This Court finds the testimony of Counsel to be more credible than the testimony of the Applicant. The Applicant's allegations that Counsel did not conduct an adequate investigation, interview witnesses, or meet with him enough are without merit. Following testimony and review of the transcript, it is clear that Counsel had prepared for and discussed the Applicant's case with him. 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). When claims of ineffective assistance of counsel are based on lack of preparation time, an Applicant challenging his conviction must also show specific prejudice resulting from counsel's alleged lack of time to prepare. United States v. Cronin, 466 U.S. 648, 104 S.Ct. 2039 (1984); U. S. v. LaRouche, 896 F.2d 815 (4th Cir. 1990).

The Applicant failed to point to any specific matters Counsel failed to discover, witnesses that could have helped the case, or any defenses that could have been pursued had Counsel prepared more or had more time to work on Applicant's case. Furthermore, the Applicant failed

to show any prejudice that may have resulted from Counsel's alleged inadequate preparation or lack of meetings. Accordingly, these allegations are dismissed.

Regarding Applicant's allegation that Counsel failed to request substitute counsel, this Court finds that Applicant failed to offer any evidence or testimony in support of this claim. Therefore, the Applicant has failed to meet his burden of proof and 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

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his

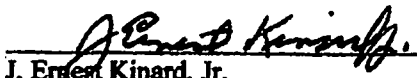
application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

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), SCRPC, 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 22 day of Oct, 2013.



J. Ernest Kinard, Jr.
Presiding Judge



Tristan Shaffer
120 Gantt Street
Lexington, SC 29072

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