

GRAHAM LAW

Shining a Light on Safety. Guiding the Way to Justice.
July 3, 2014

Edward L. Graham
Diane M. Rodriguez, RN-JD
J. Layton Ruffin

RECEIVED

JUL 07 2014

S.C. SUPREME COURT

The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
1231 Gervais St.
Columbia, SC 29201

RE: Carlton J. Hamilton, #262583 v. State of South Carolina
C/A No.: 2012-CP-45-0646

Dear Mr. Shearouse,

Enclosed for filing please find the original, plus two copies of a Notice of Appeal in the above-referenced case, along with the following:

1. Proof of Service on Respondent;
2. A copy of each of the Orders which are to be challenged on appeal; and
3. Our firm check for \$100.00 for the filing fee.

Please return the file-stamped copies to me in the self-addressed, stamped envelope also enclosed for your convenience.

Please note that under Rule 602(e)(1), SCACR, I am automatically relieved as appellate counsel for the accused, without obtaining leave to withdraw, after serving and filing the Notice of Appeal for Carl Hamilton. A copy of this notice is being sent to the Division of Appellate Defense of the Office of Indigent Defense. I will remain available to assist in any way to ensure the appeal is perfected.

With kindest personal regards, I am

Yours very truly,

J. Layton Ruffin

JLR/cah

Encl.

cc: Daniel Gourley, Esquire

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM WILLIAMSBURG COUNTY
Court of Common Pleas

George C. James, Jr., Circuit Court Judge

Case No. 2012-CP-45-646

RECEIVED

JUL 07 2014

S.C. SUPREME COURT

Carlton J. Hamilton, #262583

Appellant,

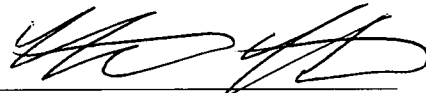
v.

State of South Carolina

Respondent.

NOTICE OF APPEAL

Carlton J. Hamilton appeals the Order denying Appellant's application for post-conviction relief, and dismissing it with prejudice, by the Honorable George C. James, Jr., dated May 16, 2014, received by counsel on July 2, 2014, with the certificate of service dated July 1, 2014.



J. Layton Ruffin, SC Bar No.: 78267
GRAHAM LAW FIRM, P.A.
Post Office Box 550
Florence, SC 29501
(843) 662-3281
Attorney for Appellant

Other Counsel of Record:

Daniel Gourley,
Assistant Attorney General
Rembert C. Dennis Building
P.O. Box 11549
Columbia, SC 29211

Attorney for Respondent, State of South Carolina

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM WILLIAMSBURG COUNTY
Court of Common Pleas

George C. James, Jr., Circuit Court Judge

Case No. 2012-CP-45-646

Carlton J. Hamilton, #262583

Appellant,

v.

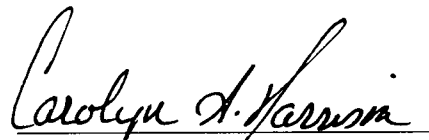
State of South Carolina

Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the above Respondent by depositing a copy of it in the United States Mail, postage prepaid, on July 3, 2014, addressed to their attorney of record:

Daniel Gourley,
Assistant Attorney General
Rembert C. Dennis Building
P.O. Box 11549
Columbia, SC 29211
Attorney for Respondent, State of South Carolina



Carolyn A. Harrison
Paralegal to:
J. Layton Ruffin
383 W. Cheves St.
Florence, SC 29501
(843) 662-3281-T

July 3, 2014

STATE OF SOUTH CAROLINA)
 COUNTY OF WILLIAMSBURG)
)
 Carlton J. Hamilton, #262583,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE THIRD JUDICIAL CIRCUIT

Case No. 2012-CP-45-646

ORDER OF DISMISSAL

SUMTER COUNTY
 CLERK OF COURT
 2013 APR 10 10 52 AM
 300 W. BROAD ST.
 SUMMERVILLE, SC 29586

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on November 29, 2012. Respondent made its return on April 10, 2013. An evidentiary hearing into the matter was convened on February 26, 2014, at the Sumter County Courthouse. Applicant was present at the hearing and was represented by John Layton Ruffin, Esquire. Respondent was represented by Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

The records before this Court indicate Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Williamsburg County Clerk of Court. Applicant was true bill indicted at the August 2011 term of the Williamsburg County Grand Jury for Attempted Assault and Battery of a High and Aggravated Nature; Failure to stop for Blue Light and Siren; and Resisting Arrest. William LeGrand Carraway, Esquire, represented him. Applicant pled guilty as indicted on May 8, 2012, before the Honorable Clifton Newman. Judge Newman sentenced Applicant to ten years imprisonment for the lesser included offense of Assault and Battery - First Offense, three years for Failure to

stop for Blue Lights, and one year for Resisting Arrest all without negotiations or recommendations. Applicant did not file a direct appeal.

ALLEGATIONS

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully based on:

1. Ineffective assistance of counsel
 - a. "Counsel's prejudice was evidence in his lack of communication w/me."
 - b. "Insanity or other mental condition at time of offense"
 - i. "The original Judge ordered a mental examination."
2. "Prosecutorial misconduct"
 - a. "The Solicitor knew of the Mental health order and changed Judges."

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. The State presented testimony from plea counsel, William Legrand Carraway, Esquire (Counsel). This Court also had before it a copy of plea transcript, the Williamsburg County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, and the return.

During the evidentiary hearing, Applicant testified he was forty-five years old. Applicant stated he met with Counsel approximately four times prior to his guilty plea. Applicant stated he did not review any discovery material with Counsel prior to his guilty plea. Applicant testified he did not give his Counsel any leads or witnesses to investigate on his behalf. Applicant stated he was expelled in middle school. Applicant stated he was diagnosed with bi-polar disorder. Applicant further stated he received treatment in the 1980's at the Medical University of South Carolina. Applicant stated he has visual and auditory issues. Applicant stated he sees dead

people. Applicant stated in the late 1990's to early 2000's he received medical treatment in a mental health center in Charleston, South Carolina. Applicant stated he had a mental health evaluation in 2009. Applicant stated, following his evaluation, he was receiving psychiatric treatment and received new medication. Applicant stated his bi-polar disorder progressively got worse. Applicant stated he did not understand what took place during his guilty plea. Applicant stated his attorney told him what to say during the plea proceedings. Applicant stated, since the guilty plea, he has received new medication and is in a stable mental condition. Applicant stated he has never been incarcerated at Gilliam psychiatric hospital.

Following both direct and cross examination, this Court questioned Applicant regarding his medication. In response to this Court's questions, Applicant stated he is currently taking various prescription drugs including Risperdal. Applicant stated that he is taking his medication consistently.

Following Applicant's testimony, William Legrand Carraway (Counsel), Esquire was called to testify by the State. Counsel stated he has been practicing law for twenty-two years. Counsel stated he was appointed to represent Applicant and met with him four times prior to his plea. Counsel stated he filed Rule 5 and Brady motions. Counsel stated he reviewed all discovery material with Applicant prior to his plea. Counsel stated he reviewed Applicant's version of events. Counsel stated the State had "overwhelming" evidence of guilt against Applicant. Specifically, Counsel stated that Applicant had stolen a large semi-truck loaded with scrap iron. Counsel stated Applicant attempted to sell the scrap iron, but the potential buyer called the police. Counsel stated Applicant fled the scene and a high speed chase ensued. Counsel stated Applicant was eventually stopped, fled, and later arrested.

Additionally, Counsel stated they appeared before the Honorable R. Ferrell Cothran, Jr.,

for a hearing in 2009. Counsel stated Judge Cothran ordered Applicant receive a mental health evaluation. Counsel stated the evaluation revealed Applicant was criminally responsible and had the capacity to conform to the requirements of the law. Counsel testified Applicant insisted that he was evaluated a second time. However, Counsel stated Applicant was unable to provide any records, and Counsel could not locate any records of a second mental health evaluation. Counsel stated that he did not have any problems communicating with Applicant during the course of his representation.

INEFFECTIVE ASSISTANCE OF COUNSEL

Counsel was ineffective for failing to communicate with him and failing to urge the plea court for a mental health evaluation.

This Court finds Applicant's allegation that Counsel was ineffective for failing to communicate with him and failing to urge the plea court for a mental health evaluation to be meritless. During the evidentiary hearing, Applicant stated he is forty-five years old. He testified he was diagnosed with bi-polar disorder in middle school and that auditory and visual hallucinations started in 1982. He claimed he sees dead people and hears people talking when no one is around. Applicant stated he was treated at MUSC where he was prescribed medication and received treatment in the late 90s or early 2000s. Applicant did not recall what the treatment was for, but he went voluntarily. He was in prison from 2009-2011 and was given medications while incarcerated. When he was released, he was supposed to take medications, but when he was caught on the instant charges, he had been off his medicine for about a week. Applicant said he was frustrated, in a bad mood, hallucinating, and wanted to hurt someone.

Applicant further testified he does not really remember pleading guilty to Assault and Battery – First Degree, Failure to stop for Blue Light, and Resisting Arrest. He said he was frustrated and “down” at the time. He claims that when he met with Counsel about four times,

they never went over the evidence against him and Counsel just told him to plead guilty. He testified he does not recall waiving his rights or telling the plea Judge (The Honorable Clifton Newman) he was satisfied with his attorney. He also claims his lawyer told him to plead guilty because he was making the Judge mad.

However, Counsel testified the evidence against the Applicant was overwhelming. Counsel testified he took the Applicant before the Honorable R. Ferrell Cothran, Jr., to see about getting an evaluation in 2011, because Judge Cothran had ordered a mental health evaluation in the case arising out of criminal charges in 2009. Judge Cothran heard the request. The Applicant told Judge Cothran that he'd had more problems since 2009 and had been to another mental health facility. The Applicant and his family could not give Judge Cothran any names of facilities where Applicant had been treated. Judge Cothran ruled that if the Applicant or his family could locate his records, he would consider ordering another evaluation. However, the Applicant and his family could not identify any facilities from which to request the necessary medical records. Counsel agreed that he did not obtain any mental health records from SCDC from the 2009-2011 incarceration.¹

PCR counsel points to Judge Newman's question at the plea hearing of "What makes you guilty?" and the Applicant's response "My family" as evidence that the Applicant was not competent or otherwise entered the plea involuntarily (page 19). However, this Court finds that the colloquy in its entirety establishes that Judge Newman followed up on that response by closely questioning the Applicant about the entire sequence of events and why the Applicant was pleading guilty. The plea transcript reveals that Judge Newman was fully aware of the Applicant's mental health history. Judge Newman went over the facts of the case in detail, and

¹ Applicant's 2009-2011 medical records were not introduced at the PCR hearing. Therefore, there was no evidence presented to this Court of what those records might reveal.

there is no evidence that the Applicant was not competent at the time of the plea. There is no evidence that the Applicant did not know legal right from legal wrong at the time of the offense, and there is no evidence he could not conform his conduct accordingly. On the contrary, there is evidence that the Applicant knew what he had done was wrong in his attempt to flee Don's Scrap Iron when he was caught with the stolen rig. While Judge Newman did have to spend more time than usual going over the facts with the Applicant that certainly does not establish the plea was involuntary and it does not establish ineffective assistance of counsel. Ultimately, it was clear that the plea was entered freely and voluntarily.

Furthermore, plea counsel provided competent representation in light of the overwhelming evidence against Applicant. Harris v. State, 377 S.C. 66, 79, 659 S.E.2d 140, 147 (2008) (no prejudice where there is overwhelming evidence of guilt). During the evidentiary hearing, Counsel characterized the State's evidence against Applicant as "overwhelming." The plea transcript reveals Applicant attempted to sell stolen scrap metal to Don's Car Crushing. Applicant eventually became suspicious and fled the scene traveling approximately eighty (80) miles per hour. A high speed chase ensued resulting in Applicant crashing into a tree. Applicant then exited the car and ran into the woods. Applicant was arrested two weeks later. In light of this overwhelming evidence, the Court agrees with plea counsel's advice that a guilty plea was in Applicant's best interest. See Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009) (Applicant must show "something that would have affected counsel's advice to [the Applicant] to accept the plea bargain offered or that would have caused [the Applicant] to decline to accept it").

This Court finds Counsel's actions were reasonable in the circumstances, and did not fall below professional norms of reasonableness. Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing

Strickland). Furthermore, Applicant has failed to show he was prejudiced such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Therefore, this Court finds this allegation should be denied and dismissed with prejudice.

PROSECUTORIAL MISCONDUCT

Initially, this Court notes that PCR Counsel rested on the arguments raised in the PCR application and no testimony or evidence was presented during the evidentiary hearing. This Court finds Applicant's allegation of Prosecutorial Misconduct to be without merit. As previously stated above, Counsel testified he took the Applicant before the Honorable R. Ferrell Cothran, Jr., to see about getting an evaluation in 2011, because Judge Cothran had ordered a mental health evaluation in the case arising out of criminal charges in 2009. Judge Cothran heard the request. The Applicant told Judge Cothran that he'd had more problems since 2009 and had been to another mental health facility. The Applicant and his family could not give Judge Cothran any names of facilities where Applicant had been treated. Judge Cothran ruled that if the Applicant or his family could locate his records, he would consider ordering another evaluation. However, the Applicant and his family could not identify any facilities from which to request the necessary medical records. Counsel agreed that he did not obtain any mental health records from SCDC from the 2009-2011 incarceration.² Since Applicant has failed to present any evidence to support his claim of Prosecutorial Misconduct, this Court finds the allegation should be denied and dismissed with prejudice.

² Applicant's 2009-2011 medical records were not introduced at the PCR hearing. Therefore, there was no evidence presented to this Court of what those records might reveal.

CONCLUSION

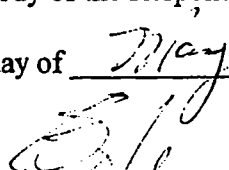
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of appeal within thirty 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 post-conviction relief. Rule 71.1(g), SCRCP, 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. Applicant 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 16 day of May, 2014.



GEORGE C. JAMES, JR.
Presiding Judge
Third Judicial Circuit


_____, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG
IN THE COURT OF COMMON PLEAS

CARLTON J. HAMILTON, #262583

Applicant,

v.

STATE OF SOUTH CAROLINA,


Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Order of Dismissal** has been served upon the applicant by mailing one (1) copy in the United States mail, postage prepaid, addressed to:

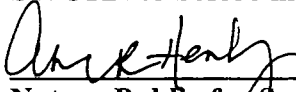
**John Layton Ruffin, Esquire
Graham Law Firm, PA
383 W. Cheves St.
Florence, SC 29501**

This 1st day of July, 2014.



Caroline Kaiser, Legal Assistant
For Respondent

SWORN to before me this 1st day of July, 2014.



Notary Public for South Carolina.
My Commission Expires: 7/18/2018



GRAHAM LAW

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Florence, SC 29501

The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
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Columbia, SC 29201



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