

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Markley Dennis Circuit Court Judge

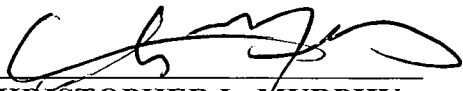
Case No.: 2013-CP-10-1646

Lloyd Wright Appellant
v.
State of South Carolina Respondent

NOTICE OF APPEAL

Lloyd Wright appeals the order the Honor Markley Dennis dated June 14, 2014, denying his PCR application. The order was received July 7, 2014. Attached is a copy.

July 7, 2014
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S.C. SUPREME COURT


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STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 Lloyd Wright, #304199,)
)
 Applicant,)
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 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 2013-CP-10-1646

ORDER OF DISMISSAL

FILED
 2014 JUN 19 AM 9:11
 JULIE HENSLEY STRONG
 CLERK OF COURT

BY _____
 Presiding Judge: The Honorable R. Markley Dennis
 Applicant's Attorney: Christopher L. Murphy, Esquire
 Respondent's Attorney: Ashleigh R. Wilson, Esquire
 Trial Counsel: James Smiley, Esquire
 Laree Hensley, Esquire
 Date of Hearing: April 15, 2014
 Court Reporter: Deborah Garrison

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed March 19, 2013. The Respondent made its Return on December 3, 2013. An evidentiary hearing on the matter was convened on April 15, 2014 at the Charleston County Courthouse. The Applicant was present at the hearing and represented by Christopher L. Murphy, Esquire. Ashleigh R. Wilson, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

Also present and testifying was James Smiley, Esquire, and Laree Hensley, Esquire. The Court had before it the trial transcript, the Charleston County Clerk of Court records, the Applicant's records from the South Carolina Department of Corrections, the Applicant's

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return with

application, the Respondent's Return, and two exhibits submitted by the Respondent¹. The Court notes that at the start of the Applicant's evidentiary hearing, the Applicant made no objection to this post-conviction relief matter being heard by the Honorable R. Markley Dennis who signed an Order substituting James Smiley, Esquire as counsel for the Applicant on the underlying charges challenged in this application for post-conviction relief.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Charleston County Clerk of Court. The Applicant was indicted at the December 2007 term of the Charleston County Grand Jury for possession with intent to distribute cocaine base- third offense (2007-GS-10-13898) and possession with intent to distribute within proximity of a school (2007-GS-10-13899). He was represented by James Smiley, Esquire, and Laree Hensley, Esquire.

On May 18-20, 2009, the Applicant proceeded to trial and was found guilty. He was sentenced by the Honorable Kristi L. Harrington to two concurrent life sentences.

A Notice of Appeal was filed on the Applicant's behalf at the South Carolina Court of Appeals. Lanelle Durant, Esquire of the South Carolina Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals affirmed the Applicant's convictions and sentences. State v. Wright, Op. No. 11-UP-363 (S.C. Ct. App. June 30, 2011). The Applicant filed a Petition for Writ of Certiorari in the South Carolina Supreme Court which was denied on January 25, 2013 and the Remittitur was issued thereafter.

¹ State's Exhibit 1- sentencing sheet for Applicant's 1998 conviction for Possession of Cocaine within Proximity of a School (1997-GS-10-4942), State's Exhibit 2- sentencing sheet for Applicant's 2002 conviction for Possession with Intent to Distribute Heroin within Proximity of a School (2002-GS-10-1126).

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ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. Trial counsel failed to object to use of an incident report that was not filed by the officer.
 - b. Trial counsel failed to present a coherent argument to the judge and jury based on the defense of police fabrication which rendered the Applicant's trial fundamentally unfair.
 - c. Trial counsel failed to challenge the chain of custody on the grounds the State did not lay the proper foundation.
2. Prosecutorial misconduct.
 - a. Violation of Rule 5 and Brady

At the hearing, the Applicant proceeded solely on the allegation of ineffective assistance of counsel for counsel's failure to advise the Applicant that life without parole would be mandatory if the Applicant was convicted after trial. This Court finds no evidence, testimony, or argument was presented at the evidentiary hearing in support of any other allegations raised by the Applicant, therefore, this Court deems all allegations not addressed by the Court in this Order abandoned by the Applicant.

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. Sec. 17-27-80 (2003).

Summary of Testimony

The Applicant was present and testified he met with counsel twice before trial while in jail. He testified he bonded out of jail and hired Lisa Gay, Esquire. He testified he later retained James Smiley, Esquire, to represent him. The Applicant testified he reviewed discovery with trial counsel. The Applicant testified counsel never discussed any defenses with him and he did not have any defense. He testified at trial counsel would argue the chain of custody was not complete.

The Applicant testified he was offered a plea to a 25 year sentence shortly before trial He testified he now understands strike offenses. He testified he did not know that life without parole was mandatory. He testified his previous attorney- Gay, told him about life without parole and that if he did not plead guilty the State would seek life without parole. He testified he did not speak with trial counsel about life without parole and thought the Court had discretion in sentencing. The Applicant testified he thought he could 10 to 30 years or life without parole. The Applicant testified had he understood life without parole was mandatory he would have taken the plea offer for 25 years.

Also present and testifying was trial counsel- James Smiley, Esquire. Counsel testified he has been practicing exclusively criminal law since 1993. Counsel testified he has known the Applicant for a while. He testified he met with the Applicant when he was first arrested. He testified the Applicant retained Lisa Gay then the Applicant's family later came to him in January 2009 before trial. Counsel testified he was retained to obtain a favorable plea offer for the Applicant.

Counsel testified he met with the Applicant at least six times prior to trial and communicated well with the Applicant. He testified he filed Brady and Rule 5 motions on the

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Applicant's behalf. He testified he reviewed the discovery material received from the State with the Applicant. He testified the key to the Applicant's case was a video of the Applicant selling drugs to an undercover officer. Counsel testified he discussed with the Applicant the elements of the charges he was facing and what the State was required to prove to convict the Applicant. Counsel testified his investigation in the case included watching the video of the buys and reviewing the discovery from the State. He testified the Applicant did not give him any witnesses or leads to investigate.

Counsel testified he discussed with the Applicant his version of facts which was that he did not recall making the sale. He testified the State's evidence against the Applicant included a video of the sale, identification of the Applicant by an undercover police officer, and testimony from two other agents who heard and saw the buy. Counsel testified the Applicant also had several other pending buys which the State would have taken to trial if the Applicant was found not guilty at trial on this buy. Counsel testified his only defense was to show the jury the State messed up. He testified the Applicant's name was not used in the video so he also planned to argue at trial the Applicant was not the target of the sale.

Counsel testified the Applicant's previous attorney was served with a notice of the State's intention to seek life without parole. Counsel testified that from the beginning the Applicant knew if he was convicted he was facing life without parole because of his prior convictions. He testified received certified copies of the prior convictions from the State and reviewed them with the Applicant. He testified the Applicant's first conviction was a 1997 conviction for possession with intent to distribute cocaine within proximity of a school and his second conviction was a 2002 conviction for possession with intent to distribute heroin within proximity of a school. Counsel testified based on his review of the certified convictions the Applicant was eligible for

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life without parole. Counsel testified he discussed with the Applicant the outcome if he was convicted at trial and he told the Applicant he would get a life sentence. Counsel testified he believed the Applicant was aware of the mandatory nature of the life sentence and that it would be without parole.

Counsel testified the Applicant was offered a plea to a 25 year sentence. He testified the Applicant wanted to plead guilty to a first offense and the State would not agree to that. Counsel testified the Applicant rejected the plea offer and the offer was taken off the table when the Applicant proceeded to trial. Counsel testified he has notes in his file about discussing a 15 year plea offer, but had no indication it was a formal offer from the State. Lastly, counsel testified the Applicant understood he was not in a good position going into trial.

Laree Hensley, Esquire, was also present to testify. Counsel testified she assisted James Smiley, Esquire, during the Applicant's trial. She testified she assisted Smiley with research and note taking. She testified she did not review any discovery or cross-exam any witnesses.

Ineffective Assistance of Counsel

The Applicant alleges counsel was ineffective for failing to advise him of the mandatory nature of a life without parole sentence he would receive if convicted at trial. This Court finds the Applicant has failed to carry his burden of proving counsel's performance was deficient in this regard and that prejudice resulted from counsel's performance. In a PCR action, "the burden of proof is on the applicant to prove his allegation by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For the Applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective

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performance. See Strickland v. Washington, 466 U.S. 668 (1984), Porter v. State, 368 S.C. 378, 383,629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. 115, 117-118, 386 S.E.2d 624, 625 (1989). "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 v. Washington, 466 U.S. 668).

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds that Applicant's attorneys demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, 466 U.S. at 668; Butler, 286 S.C. 441, 334 S.E.2d 813. This Court further finds counsel adequately conferred with the Applicant, conducted a proper investigation, and provided thorough representation. This Court finds that counsel's representation did not fall below an objective standard of reasonableness.

This Court finds the Applicant failed to carry his burden of proving counsel failed to advise him of the mandatory nature of his life without parole sentence. This Court also finds the Applicant was eligible for a sentence of life without parole based on his two prior drug convictions and counsel's advice to the Applicant of such was proper. In 1998, the Applicant pled guilty to possession with intent to distribute cocaine within proximity of a school (1997-GS-10-4942) and received a six year sentence, suspended to five years probation to be served after the completion of YOA parole on another indictment (State's Exhibit 1). In 2002, the Applicant pled guilty to possession with intent to distribute cocaine within proximity of a school (200-GS-

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10-1126) and received a two years sentence (State's Exhibit 2). Pursuant to S.C. Code § 17-25-45(C)(2), both of the Applicant's prior proximity offenses are classified as serious. The convictions challenged by the Applicant in this application are also both serious offense which would constitute a third strike pursuant to S.C. Code § 17-25-45(B).

This Court does not find credible the Applicant's testimony that he was not aware of the mandatory nature of a life without parole sentence based on his prior convictions. This Court finds credible counsel's testimony that he reviewed with the Applicant his prior convictions and told him if he was convicted at trial he would be facing a life sentence. Considering the serious nature of a life sentence, it is unlikely trial counsel or the Applicant's previous counsel did not discuss with the Applicant the serious nature of the mandatory life sentence he was facing. This Court finds the Applicant has failed to carry his burden of proving counsel provided ineffective assistance of counsel.

All Other Allegations

As to any and all allegations that were raised in the application and not specifically addressed in this Order, this Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant abandoned such allegations.

CONCLUSION

Based on all the forgoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His

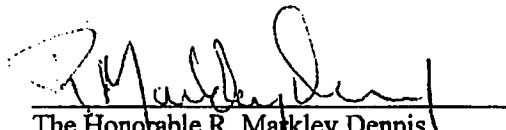
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attention is directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 13th day of June, 2014


The Honorable R. Markley Dennis
Presiding Judge
9th Judicial Circuit

Moncks Corner, South Carolina.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Markley Dennis Circuit Court Judge

Case No.: 2013-CP-10-1646

Lloyd Wright Appellant
v:
State of South Carolina Respondent

PROOF OF SERVICE

I CERTIFY that I have served PROOF OF SERVICE on counsel of record for Respondent by delivering a copy via U.S. Mail First-Class postage prepaid on the 7th day of July, 2014, addressed as follows:

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Attorney for Respondent


APRIL JENNINGS

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July 7, 2014

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S.C. SUPREME COURT

The Honorable Daniel E. Shearouse
Clerk of South Carolina Supreme Court
Supreme Court Building
1231 Gervais Street
Columbia, South Carolina 29201

Re: *Lloyd Wright v. State of South Carolina*
Case No.: 2013-CP-10-1646


Dear Mr. Shearouse:

Enclosed for filing, please find an original and two copies of Mr. Wright's Notice of Appeal the denial of her application for Post Conviction Relief. If you find everything in order, please file the original and return the clocked in copies in the enclosed self addressed envelope.

Please note I was appointed and copy the Office of Appellate Defense who will handle the appeal. Please call if you have any questions.

With kindest regards, I am

Sincerely,



Christopher L. Murphy

CLM:ah

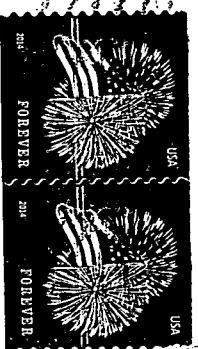
Enclosures

c: Mr. Lloyd Wright
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CHARLESTON SC 294

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