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JUL 21 2014

THE STATE OF SOUTH CAROLINA
In the Supreme Court

S.C. Supreme Court

APPEAL FROM WILLIAMSBURG COUNTY
Court of Common Pleas
Honorable R. Ferrell Cothran, Jr., Circuit Court Judge

Case No: 2012-CP-45-0562

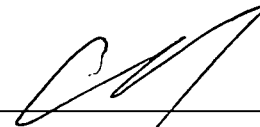
Gerline Pressley.....Appellant
S.C.D.C. 350981

v.

The State.....Respondent

NOTICE OF APPEAL

Gerline Pressley, appeals his Denial for Post Conviction Relief in this case. The order of Dismissal was imposed and signed by the Honorable W R. Ferrell Cothran, Jr., July 7, 2014, which I, Charles T. Brooks, III, received on July 16, 2014.



Charles T. Brooks, III
309 Broad Street
Post Office Box 3512
Sumter, South Carolina, 29151
(803) 418-5708
Attorney for Appellant

Other Counsel on Record:
Daniel Gourley, Esquire
Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-3970

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Gerline Pressley.....Appellant
S.C.D.C. 350981

v.

The State.....Respondent

PROOF OF SERVICE

I, the undersigned, do hereby certify that on this 18th day of July 2014, I served the foregoing **Notice of Appeal, Order of Dismissal**, as well as **Proof of Service** in this matter by depositing a true copy of it in the United States Mail, postage prepaid, on July 18, 2014, addressed to the following as indicated below:

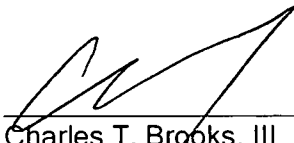
South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

South Carolina Office of Appellate Defense
1330 Lady Street, Suite 401
PO Box 11589
Columbia, SC 29211-1589

Office of Attorney's General
Attn: Daniel Gourley, Esquire
Post Office Box 11549
Columbia, South Carolina 29211-1549

Jerline Pressley, 350981
Leath Correctional Institution
2809 Airport Road
Greenwood, South Carolina 29649

Dated: July 18, 2014


Charles T. Brooks, III
Attorney for the Appellant
309 Broad Street
Sumter, South Carolina 29150
(803) 418-5708

The Brooks Law Office, LLC

CHARLES T. BROOKS, III, ATTORNEY AT LAW

IRMA R. BROOKS, ATTORNEY AT LAW

309 BROAD STREET ~ SUMTER, SOUTH CAROLINA 29150
POST OFFICE BOX 3512 ~ SUMTER, SOUTH CAROLINA 29151
(803) 418-5708

FAX: (803) 934-9618 TOLL FREE: (877) 770-8792

Email: cbrooks@ctbrooks.com

July 17, 2014

RECEIVED

JUL 21 2014

S.C. Supreme Court

South Carolina Supreme Court
PO Box 11330
Columbia, SC 29211

RE: Jerline Pressley, 350981 v State of South Carolina
2012-CP-45-0562

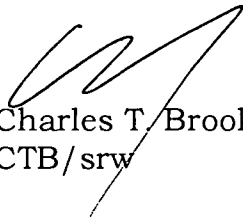
Dear Sir or Madam:

Enclosed herewith you will find the **Notice of Appeal, Order of Dismissal**, along with a **Proof of Service** in reference to the above named Applicant.

If you have any questions or concerns, please contact my office at the number stated above.

With kind regards, I am

Sincerely,



Charles T. Brooks, III
CTB/srw

Enclosed as stated

cc: Daniel Gourley, Office of Attorney's General
South Carolina Office of Appellate Defense
Jerline Pressley, 350981

STATE OF SOUTH CAROLINA)
COUNTY OF WILLIAMSBURG)
Jerline Pressley, #350981,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Case No. 2012-CP-45-0562

ORDER OF DISMISSAL

FILED
2013 APR 11 PM 4:02
CLERK OF COURT

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on October 23, 2012.¹ Respondent made its return on April 10, 2013. An evidentiary hearing into the matter was convened on May 27, 2014, at the Sumter County Courthouse. Applicant was present at the hearing and was represented by Charles T. Brooks, III, 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 that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Williamsburg County Clerk of Court. The Applicant was true bill indicted at the October 2010 term of the Williamsburg County Grand Jury for attempted murder; assault and battery of a high and aggravated nature; possession of a weapon during violent crime; and assault and battery—second degree. (2010-GS-45-0231). William LeGrand Carraway, Esquire, represented Applicant. Applicant proceeded to trial and on May 17, 2012, Applicant was found guilty as indicted. The Honorable George C. James, Jr., sentenced Applicant to sixteen years imprisonment for

¹ The application was received by Respondent on January 29, 2013.

attempted murder and five years imprisonment for possession of a weapon during violent crime; with all sentences to run concurrently. No direct appeal was filed.

ALLEGATIONS

In her current Application, Applicant alleges that she is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel.

During the evidentiary hearing, Applicant alleged that Trial Counsel was ineffective for failing to meet and discuss the case with her. Applicant further alleged that Trial Counsel was ineffective for failing to examine a self-defense claim.

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on her own behalf. Additionally, Applicant called William LeGrand Carraway (hereinafter "Trial Counsel"), her brother, Larry Pressley (hereinafter "Larry"), and her sister, Alberta Pressley (hereinafter "Alberta"). This Court also had before it a copy of the trial transcript, the Williamsburg County Clerk of Court records, Applicant's South Carolina Department of Correction records, the PCR application, and return.

During the evidentiary hearing, Applicant stated that she was fifty-seven years old and no prior criminal record. Applicant stated she finished the tenth or eleventh grade. Applicant stated she had had various jobs including house keeper and electrician. Applicant stated Trial Counsel was appointed through the Williamsburg County Public Defender's Office. Applicant stated she had no meetings with Trial Counsel prior to going to trial. Applicant stated she was out on bond prior to her trial and tried to contact Trial Counsel on two or three occasions. Applicant stated she attended roll call and Trial Counsel refused to speak with her during that time. Applicant

stated she never talked about any possible defenses with Trial Counsel. Applicant stated she did not review any discovery material, discuss any defenses, or discuss any possible witnesses or leads. Applicant stated she became fed up with Trial Counsel's representation and could not "bother with him anymore."

Applicant stated she was convicted of shooting her brother, Roosevelt (hereinafter "Victim"). Applicant stated Victim was also known as "Big Shot." Applicant stated Victim had threatened multiple members of her family including, Alberta, Larry, and Margie (Applicant's second sister). Applicant stated Victim would always "cuss them out." Applicant recalled that Victim had previously pulled a gun on Larry and turned gas on in his house to attempt to blow him up.

Applicant stated Victim had previously requested her to give him three thousand dollars for her house that she lived in. Applicant stated she paid Victim twenty five hundred for various bills. Applicant stated Victim had previously threatened her on multiple occasions. Applicant stated Victim had been in trouble on previous occasions. Applicant stated she does not understand why Victim wanted to kill her.

Applicant recalled testifying at trial. Applicant recalled testifying that she and Victim were having legal issues over their mother's property. Applicant explained that her mother had recently passed and left all their property to Victim. Applicant stated Victim had filed an eviction notice, which required Applicant to move off the property. Applicant stated she had lived on the property for majority of her life. Applicant recalled the day of the shooting, she was looking for a tree that she had previously given her deceased mother.

Applicant stated Victim pulled up and told her that he was going to kill her. Applicant stated that Victim went to the mailbox and turned around and had a gun in his hand. Applicant

stated Victim told her that he was going to burry her. Applicant stated she was able to knock the gun out of Victim's hands and then she picked the gun up and shot Victim. Applicant stated she feared Victim would go into the house and get another gun and shoot her. Applicant stated she was not aware of what she was doing at the time. Applicant stated she and her brother were the only two people in the yard during the shooting. Applicant stated Alberta was in the house and did not come outside until five minutes after the shooting occurred. Applicant stated Alberta was a co-defendant in the trial. Applicant stated that the shooting took place on June 20, 2010 down in Williamsburg at 96 Abbey lane. Applicant stated that she was able to tell the jury her side of the story. Applicant further recalled testifying during trial that she and Victim used to get along and that she loved Victim. During the evidentiary hearing, Applicant admitted to shooting Victim.

Following Applicant's testimony, Trial Counsel was called to testify. Trial Counsel stated that he was appointed to represent Applicant. Trial Counsel could not recall the amount of time he met with Applicant prior to her trial. Trial Counsel stated that they discussed the possibility of a self-defense claim and that is what he argued during trial. Trial Counsel stated that he spoke with Alberta but she was not out in the yard during the shooting. Trial Counsel stated that Alberta was the only family member he was able to talk to because none of the other family members were available.

Trial Counsel stated that he did not feel sorry for Victim. Trial Counsel stated Victim was not a nice person and what he was doing to Applicant was wrong. Trial Counsel stated Victim called Applicant various names and had a poor reputation throughout the community. Trial Counsel stated that he was never told that Victim was terrorizing and attempting to kill other members of Applicant's family. Trial Counsel stated their mom deeded her property to

Victim. Trial Counsel stated shortly after their mother deceased, Victim served eviction papers on Applicant. Trial Counsel stated Applicant had been living on her mother's property for most of her life.

Trial Counsel stated the day of the shooting Victim stated he checked the mail and heard a "pop." Trial Counsel stated Victim then turned around and saw Applicant holding a .22 caliber rifle and began to shoot at him. Trial Counsel stated that it was argued during trial that Applicant shot Victim until there were no more bullets left in the gun. Trial Counsel stated Victim testified that Applicant continued to shoot him as he went up the steps. Trial Counsel stated Victim testified that Alberta came out of the house and told him that he was going to die today.

Trial Counsel stated Applicant argued that Victim approached her with a gun and she was able to knock it out of his hands. Trial Counsel stated Applicant argued that she picked up the gun and shot Victim out of self-defense. Trial Counsel concluded that stand your ground case law was not applicable given the factual context of this case. Trial Counsel further stated that they were able to present Applicant's side of the story to the jury.

Following Trial Counsel's testimony, Larry testified on Applicant's behalf. Larry stated that he was Applicant's brother. Larry stated they called Victim "Big Shot." Larry stated that he did not attend Applicant's trial. Larry stated Victim had previously threatened him by pointing a gun at him and turning gas on in his house. Larry stated these incidents took place years prior to Applicant shooting Victim. Larry stated he filed a police report against Victim for pointing a gun or turning the gas on in his house, but did not have any documentation with him. Larry stated he never spoke with Trial Counsel about Applicant's case. However, Larry stated he never sought out Trial Counsel or attempted to speak with him about Applicant's case. Larry

stated that he did not realize he needed to speak with Trial Counsel, despite feeling it would have been important for him to testify at trial.

Following Larry's testimony, Alberta was called to testify by Applicant. Alberta testified that Victim had previously threatened her and others. Alberta stated it was common knowledge throughout her family that Victim was a threatening person. Alberta stated she filed complaints with the Sheriff's office but never pressed formal charges. Alberta stated that she did not have a copy of the incident reports. Alberta further stated that no one contacted Trial Counsel about Victim's interactions with other family members.

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 at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony accordingly. Specifically, this Court finds Trial Counsel's testimony credible and Applicant's testimony not credible. Additionally, this Court finds Applicant's family member's (Larry and Alberta) testimony self-serving and not credible. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

INEFFECTIVE ASSISTANCE OF COUNSEL

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). 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, (1984); Butler, 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, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use 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, 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.

Trial Counsel was ineffective for failing to meet and discuss her case.

This Court finds Applicant's allegation that Trial Counsel was ineffective for failing to meet and discuss her case is without merit. This Court finds Trial Counsel's testimony credible while Applicant's testimony is not credible. Trial Counsel stated that he was appointed to represent Applicant. Trial Counsel could not recall the amount of time he met with Applicant prior to her trial. Trial Counsel stated that they discussed the possibility of a self-defense claim and that is what he argued during trial. Trial Counsel stated that he spoke with Alberta but she was not out in the yard during the shooting. Trial Counsel stated that Alberta was the only

family member he was able to talk to because none of the other family members were available. 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, this Court finds Applicant has failed to allege sufficient evidence to meet her burden of proving that she was prejudiced by Counsel's alleged ineffectiveness.

Trial Counsel was ineffective for failing to argue self-defense.

This Court finds Applicant's allegation that Trial Counsel was ineffective for failing to argue self-defense is without merit. This Court finds Trial Counsel's testimony credible, while Applicant's testimony is not credible. Trial Counsel stated the day of the shooting Victim stated he checked the mail and heard a "pop." Trial Counsel stated Victim then turned around and saw Applicant holding a .22 caliber rifle and began to shoot at him. Trial Counsel stated that it was argued during trial that Applicant shot Victim until there were no more bullets left in the gun. Trial Counsel stated Victim testified that Applicant continued to shoot him as he went up the steps. Trial Counsel stated Victim testified that Alberta came out of the house and told him that he was going to die today.

Trial Counsel stated Applicant argued that Victim approached her with a gun and she was able to knock it out of his hands. Trial Counsel stated Applicant argued that she picked up the gun and shot Victim out of self-defense. Trial Counsel stated he was able to present Applicant's version of events and paint Victim as a individual with a poor reputation. Additionally, a review of the transcript reveals Trial Counsel requested a jury charge on self-defense, but was ultimately denied. (Tr. p. 403- 413). Based on the foregoing, 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, this Court finds

Applicant has failed to allege sufficient evidence to meet her burden of proving that she was prejudiced by Counsel's alleged ineffectiveness.

ALL OTHER ALLEGATIONS

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

CONCLUSION

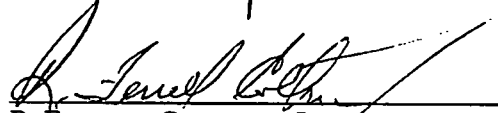
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that 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.

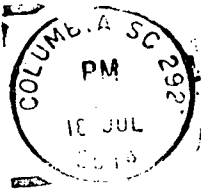
AND IT IS SO ORDERED this 7 day of July, 2014.



R. FERRELL COTHRAN, JR.
Presiding Judge
Third Judicial Circuit

Manning, South Carolina

THE BROOKS LAW OFFICES, LLC
309 BROAD STREET
P.O. BOX 3512
SUMTER, S.C. 29151



**South Carolina Supreme Court
PO Box 11330
Columbia, SC 29211**

29211 11330 75099

