

## Lowcountry Law Office

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August 13, 2014

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

**RECEIVED**

AUG 15 2014

**S.C. SUPREME COURT**

RE: Dashaud S. Luck v. State of South Carolina, Case No.: 2013-CP-10-3400

Dear Mr. Shearhouse:

Enclosed for filing is the Notice of Appeal (original and clocked copy) in the above Post Conviction Relief (PCR) case. Also enclosed are the following:

- (1) Proof of service of the Notice of Appeal on the respondent;
- (2) The Order of Dismissal &
- (3) A Request for Representation on Appeal.

The Applicant-Appellant was represented by me as an indigent pursuant to my contract with the South Carolina Commission on Indigent Defense (SCCID) to handle PCR cases. By copy of this letter, I am forwarding a duplicate set of documents to the SCCID.

The Request for Representation on Appeal and the Affidavit in Support thereof are signed by me as attorney for Applicant-Appellant. If you need anything further, do not hesitate to contact me. Thank you for your time and attention to this matter.

Sincerely,

Rodney D. Davis  
South Carolina Bar #: 12396  
4000 Faber Place Drive, Suite 300  
Charleston, SC 29405  
(843) 323-4353  
[Davis@LowcountryLawOffice.com](mailto:Davis@LowcountryLawOffice.com)

CC: Ashleigh Wilson  
Assistant Attorney General

Kimberly McCall  
Appellate Division, SCCID

RECEIVED

AUG 15 2014

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

S.C. SUPREME COURT

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Case No.: 2013-CP-10-3400

Dashaud S. Luck, Appellant,

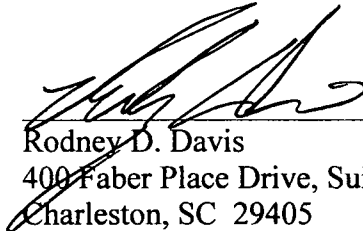
v.

State of South Carolina, Respondent.

NOTICE OF APPEAL

Dashaud Luck appeals the denia of his Post Conviction Relief application in this case. The Application for relief was denied, following an evidentiary hearing before the Honorable R. Markley Dennis, Jr. on April 16, 2014.

August 12, 2014

  
Rodney D. Davis  
400 Faber Place Drive, Suite 300  
Charleston, SC 29405  
(843) 323-4353  
Davis@LowcountryLawOffice.com  
Attorney for Appellant

Other Counsel of Record:  
Ashleigh Wilson, Assistant Attorney General  
Office of the Attorney General, State of South Carolina  
P.O. Box 11549  
Columbia, SC 29211-1549  
Attorney for Respondent

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Case No.: 2013-CP-10-3400

Dashaud S. Luck,

Appellant,

v.


State of South Carolina,

Respondent.

NOTICE OF APPEAL

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August 12, 2014

  
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Rodney D. Davis  
400 Faber Place Drive, Suite 300  
Charleston, SC 29405  
(843) 323-4353  
Davis@LowcountryLawOffice.com  
Attorney for Appellant

Other Counsel of Record:  
Ashleigh Wilson, Assistant Attorney General  
Office of the Attorney General, State of South Carolina  
P.O. Box 11549  
Columbia, SC 29211-1549  
Attorney for Respondent

FILED  
2014 AUG 13 AM 11:46  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

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Case No.: 2013-CP-10-3400

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Dashaud S. Luck,

Appellant,

v.

State of South Carolina,

Respondent.

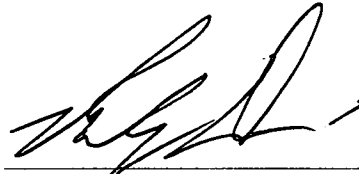
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PROOF OF SERVICE

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I certify that I have served the Notice of Appeal on the State by mailing a copy of it to the address of record, Ashleigh Wilson, P.O. Box 11549, Columbia, South Carolina 29211-1549, on August 13, 2014.

August 13, 2014



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Rodney D. Davis  
400 Faber Place Drive, Suite 300  
Charleston, SC 29405  
(843) 323-4353  
Davis@LowcountryLawOffice.com  
Attorney for Appellant

Other Counsel of Record:  
Ashleigh Wilson, Assistant Attorney General  
Office of the Attorney General, State of South Carolina  
P.O. Box 11549  
Columbia, SC 29211-1549  
Attorney for Respondent

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STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )  
 )  
Dashaud S. Luck, #351475, )  
 )  
 )  
Applicant, )  
 )  
v. )  
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State of South Carolina, )  
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Respondent. )  
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IN THE COURT OF COMMON PLEAS  
2013-CP-10-3400

**ORDER OF DISMISSAL**

FILED  
2014 JUL 16 PM 3:32  
JULIE J. HARRIS, CLERK OF COURT

Presiding Judge: The Honorable R. Markley Dennis  
Applicant's Attorney: Rodney D. Davis, Esquire  
Respondent's Attorney: Ashleigh R. Wilson, Esquire  
Trial Counsel: Mark Archer, Esquire  
Date of Hearing: April 16, 2014  
Court Reporter: Deborah Garrison

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed June 11, 2013 and amended on March 27, 2014. The Respondent made its Return on December 4, 2013. An evidentiary hearing into the matter was convened on April 16, 2014 at the Charleston County Courthouse. The Applicant was present at the hearing and represented by Rodney Davis, Esquire. Ashleigh R. Wilson, Esquire, of the South Carolina Attorney General's Office represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Applicant's defense counsel, Mark Archer, Esquire, also testified at the hearing. This Court had before it the guilty plea and trial transcripts, the records of the Charleston County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the PCR applications, and Respondent's Return thereto.

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## PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Charleston County. The Applicant was indicted at the April 2009 term of the Charleston County Grand Jury for armed robbery (2009-GS-10-3022) and possession of a weapon during the commission of a violent crime (2009-GS10-3023). Mark Archer, Esquire, represented the Applicant. The Applicant was tried in his absence on May 12, 2011. The Applicant was sentenced on July 9, 2012 by the Honorable Deadra L. Jefferson to confinement for five (5) years for possession of a weapon and ten (10) years for armed robbery. The sentences are to run concurrent. On July 9, 2012, the Applicant also pled guilty to two other charges- possession of marijuana with intent to distribute (2012-GS-10-5064) and failure to stop for a blue light (2012-GS-10-5063). The Applicant was sentenced to two (2) years for PWID marijuana and one (1) year for failure to stop. The sentences are to be served concurrently. The Applicant did not appeal his convictions or sentences.

## ALLEGATIONS

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

1. Ineffective assistance of counsel.
  - a. Failure to render adequate representation during my absence at trial.
2. Violation of due process.
  - a. Unknowingly and unwillingly tried in his absence.

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

1. The Applicant's trial attorney provided ineffective assistance of counsel in failing to fully investigate, analyze and advise his client prior to entering the guilty pleas.
2. The Applicant felt undue pressure to make a decision on a plea offer to avoid future consequences, including but not limited to, an undue delay in resolving his cases,

- excessive incarceration and/or consecutive sentences.
3. The Applicant believed his trial attorney was insufficiently prepared to advise him to plead guilty under Alford for a variety of reasons including:
    - a. Failing to fully investigate the evidence and witnesses in the case.
    - b. Failure to obtain any discovery.
    - c. Failing to provide full discovery to the Applicant.
    - d. Failure to have the green plant-like material evidence analyzed.

At the hearing, the Applicant withdrew all allegations raised in his amended application with regard to his guilty plea. The Applicant proceeded solely on the claim that counsel was ineffective for failing to notify him about trial and for failing to require the State prove notice was given to the Applicant prior to proceeding in his absence. This Court finds the Applicant presented no testimony or evidence with regard to any other claims raised in his application. This Court deems any remaining allegations not addressed 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 his or her 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).

#### **Summary of Testimony**

The Applicant was present and testified he was represented by Mark Archer. He testified he paid counsel to represent him at a guilty plea and met with him three times. The Applicant testified he did not discuss the case going to trial with counsel and counsel did not request a fee to represent the Applicant at trial. The Applicant testified if counsel called him they would meet

up and talk. He testified he did not receive notice of his trial and counsel never informed him about trial. The Applicant testified he was out on bond at the time and did not have a working phone. The Applicant testified he reviewed the trial transcript and is alleged to have given a statement to police. He testified if he had been present at trial he would have told counsel to move to suppress his statement because the detective threatened to arrest his mother if he did not give a statement. The Applicant testified his mother was present at trial.

Mark Archer, Esquire, testified he has been practicing criminal law for forty years. He testified he was contacted by the Applicant shortly after arrest and retained a year after arrest. Counsel testified he met with the Applicant four or five times. He testified he filed Brady and Rule 5 motions on the Applicant's behalf. He testified he discussed with the Applicant the elements of the charges he was facing and what the State was required to prove. Counsel testified he also discussed with the Applicant his version of the facts.

Counsel testified he met with the Applicant before his first scheduled court appearance. He testified he lost contact and the Applicant disappeared after that meeting. Counsel testified he felt responsible for the Applicant not showing up and he may have scared the Applicant about the consequences of going to prison. He testified he was looking for the Applicant, but was unable to find him. Counsel testified he was unable to give notice to the Applicant about trial because he was unable to get in touch with him. He testified he figured the Applicant did not want to be found. Counsel testified he was doubtful that the Applicant did not have notice of his trial.

Counsel testified the Applicant confessed to the armed robbery and a witness recognized his voice from the store video. Counsel testified he had ample time to prepare for trial and felt he did a great job under the circumstances at trial. He testified the theory he presented at trial was

that the Applicant lied in his confession because police threatened to arrest his mother.

**Ineffective Assistance of Counsel**

The Applicant alleges that he received 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.

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, 466 U.S. 668. The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test to evaluate 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.” Id. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. 668). 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.” Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

Regarding the Applicant’s claims of ineffective assistance of counsel, this Court finds the

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Applicant has failed to meet his burden of proof. This Court finds that Applicant's attorney 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 conferred with the Applicant as best he could, conducted a proper investigation, and provided thorough representation. This Court finds that counsel's representation did not fall below an objective standard of reasonableness.

The Applicant alleges counsel was ineffective for failing to notify him about trial. The Applicant also alleges trial counsel was ineffective for failing to require the State prove notice was given prior to proceeding in his absence. This Court finds these allegations are without merit. It is well established that, although the Sixth Amendment of the United States Constitution guarantees the right of an accused to be present at every stage of his trial, this right may be waived, and a defendant may be tried in his absence. State v. Fairey, 374 S.C. 92, 99, 646 S.E.2d 445, 448 (Ct. App. 2007). A trial judge must determine a criminal defendant voluntarily waived his right to be present at trial in order to try the defendant in his absence. State v. Patterson, 367 S.C. 219, 229, 625 S.E.2d 239, 244 (Ct. App. 2006). A judge must make findings of fact on the record that the defendant (1) received notice of his right to be present and (2) was warned he would be tried in his absence should he fail to attend. Id. A notice of the term of court in which a defendant will be tried is sufficient notice to enable the defendant to make an effective waiver of his right to be present at trial. Ellis v. State, 367 S.C. 257, 261, 227 S.E.2d 307, 306 (1976). A bond form that provides notice that a defendant can be tried in absentia may serve as the requisite warning that he may be tried in absence should he fail to appear. Fairey, 374 S.C. at 101, 646 S.E.2d at 449.

This Court finds counsel provided credible testimony that he attempted to contact the Applicant to notify him of the trial date, but was unable to locate the Applicant. Counsel testified he tried reaching the Applicant by phone which was his normal method of communicating with the Applicant. Counsel testified he was in contact with the Applicant's mother and stepfather who claimed they also had been unable to contact the Applicant. The record reflects counsel also requested a continuance prior to trial to gain more time for the Applicant to appear. This Court finds counsel's attempts to contact the Applicant prior to trial were adequate and did not result in deficient performance.

This Court finds counsel was not ineffective for failing to require the State to prove notice was given to the Applicant prior to proceeding to trial in his absence. This Court finds the State presented adequate proof of notice of trial to the Applicant prior to proceeding in the Applicant's absence. During the pre-trial hearing, the State presented to the Court copies of roster notices sent to the Applicant's last known address. (T. 13:2-15:1, 16:19-25). This Court finds the State's presentation of evidence was not objectionable and was sufficient to establish proof of notice to the Applicant.

This Court also finds the trial court made the requisite findings on the record before proceeding to trial in the Applicant's absence. Before proceeding in the Applicant's absence, the trial court found the Applicant was given notice by personal mail to his last known address. (T. 3:9-11). The Court also found the Applicant's bond acknowledgement form warned the Applicant that if he failed to appear the trial would proceed in his absence. (T. 12:23-13:16). This Court finds the trial judge properly evaluated the waiver of the Applicant's right to be present at trial prior to proceeding in the Applicant's absence.

This Court also finds the Applicant has failed to carry his burden of proving prejudice resulted from his absence. This Court finds counsel provided excellent representation of the Applicant at trial despite the Applicant's absence. This Court finds the Applicant has failed to carry his burden of proving counsel performance was deficient and that it affected the outcome of his proceeding.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test, specifically 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 while representing the Applicant. The Applicant failed to show that counsel's performance was deficient. Therefore, this Court need not address prejudice. Applicant's complaints concerning counsel's performance are without merit and are denied and dismissed.

#### **All Other Allegations**

As to any and all allegations that were raised in the application in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence or testimony regarding such allegations. Accordingly, this Court finds the Applicant abandoned such allegations. Therefore, they are hereby denied and dismissed.

#### **CONCLUSION**

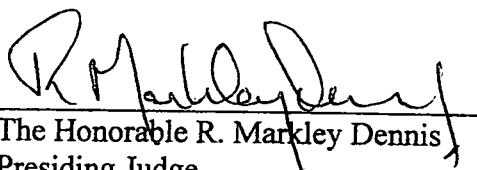
Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient in any manner, nor was the Applicant prejudiced by counsel's representation. Therefore, this application for PCR 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 written notice of entry of this Order to secure appropriate appellate review. His attention is also 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 served and 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 10<sup>th</sup> day of July, 2017

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

Moncks Corner, South Carolina.

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )  
 )  
DASHAUD S. LUCK, )  
Applicant. )  
 )  
-versus- )  
 )  
STATE OF SOUTH CAROLINA, )  
 )  
Respondent. )

IN THE SUPREME COURT OF SOUTH CAROLINA

Case No.: 2013-CP-10-3400

REQUEST FOR REPRESENTATION ON APPEAL

FILED  
AUG 13 AM 11:46  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_

On behalf of the request of the above-named Applicant, to be represented by the South Carolina Commission of Indigent Defense, Appellate Division (SCCID), the undersigned attorney would show unto this Honorable Court that:

1. He is the attorney for the Applicant-Appellant in the above captioned case. The Applicant-Appellant was in custody during and taken into custody immediately following the Post Conviction Relief (PCR) hearing and was not available to personally sign this request;
2. The Applicant-Appellant was represented by the undersigned attorney as an indigent, pursuant to a contract with the SCCID;
3. The Applicant-Appellant has been informed that he may request assistance from the SCCID Appellate Division in perfecting his appeal;
4. A timely Notice of Intent to Appeal has been filed on the Applicant-Appellant's behalf;
5. The Applicant-Appellant has been informed that nothing requires SCCID Appellate Division to pursue this appeal unless that office's Chief Attorney is satisfied that there is arguable merit to this appeal and that he cannot afford to hire an attorney.

At this time, the Applicant-Appellant requests the aid of the SCCID Appellate Division in perfecting his appeal to the South Carolina Court of Appeals.

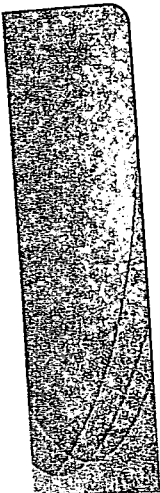
Respectfully Submitted,

  
Rodney D. Davis  
South Carolina Bar #: 12396

August 13, 2014  
Charleston, South Carolina.



Lowcountry Law Office  
 Rodney D. Davis  
 4000 Faber Place Drive, Suite 300  
 Charleston, SC 29405



1A  
 1B

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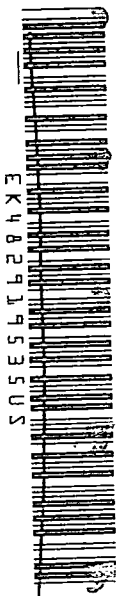
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