THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
HONORABLE ROBIN B STILWELL

Case No.: 2013-CP-23-04175

ORLANDO PARKER,	)	
	)	
PETITIONER,	)	
	)	
vs.	)	**AMENDED NOTICE OF APPEAL**
	)	
STATE OF SOUTH CAROLINA	)	
	)	
RESPONDENT.	)	
	)	

The Petitioner, Orlando Parker, hereby appeals the Honorable Robin B. Stilwell's August 1, 2014, order denying post-conviction relief to the Petitioner. A copy of the order on appeal is attached to this notice.

Respectfully submitted,

Brian P. Johnson, Esq.
522 North Church Street
Greenville, SC 29601
Attorney for Petitioner

Date: September 10, 2014
Other counsel of record: Karen Ratigan
P.O. Box 11549/Columbia, SC 29211

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
HONORABLE ROBIN B STILWELL

Case No.: 2013-CP-23-04175

ORLANDO PARKER,	)	
	)	
PETITIONER,	)	
	)	
vs.	)	**PROOF OF SERVICE**
	)	
STATE OF SOUTH CAROLINA	)	
	)	
RESPONDENT.	)	
	)	

I, Brian P. Johnson, Esq., certify that I have today (September 5, 2014) served the within notice of appeal upon the Respondent by depositing a copy in the United States Mail, postage prepaid, addressed to the attorney of record, Karen Ratigan, at P.O. Box 11549/Columbia, SC 29211.

Respectfully submitted,

Brian P. Johnson, Esq.
522 North Church Street
Greenville, SC 29601
Attorney for Petitioner

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 2013CP2304175

FILED
2014 AUG 5 AM 9 56
PAUL B. WICKENSIMER
GREENVILLE CO. S.C.
CLERK OF COURT

Orlando Parker *vs.* South Carolina State Of

CHECK ONE:

☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ ACTION DISMISSED (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ ACTION STRICKEN (*CHECK REASON*): ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☐ Statement of Judgment by the Court:

Dated at Greenville, South Carolina, this .

Court Reporter:

PRESIDING JUDGE - Robin B Stilwell

This judgment was entered on the , and a copy mailed first class this , to attorneys of record or to parties (when appearing pro se) as follows:

Brian P. Johnson 522 North Church Street Greenville, SC 29601

ATTORNEY(S) FOR THE PLAINTIFF(S)

Karen Christine Ratigan PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court - Clerk of Court

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
Orlando Parker,)
S.C.D.C. No. 346628,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)

IN THE COURT OF COMMON PLEAS
C.A. No. 2013-CP-23-4175

FILED
CLERK OF COURT
GREENVILLE CO. S.C.
PAUL D. WICKENSIMER
2014 AUG 5 AM 9 56

ORDER OF DISMISSAL

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed August 2, 2013. The Respondent made its return and partial motion to dismiss on April 8, 2014. An evidentiary hearing into the matter was convened on June 18, 2014, at the Greenville County Courthouse. The Applicant was present at the hearing and represented by Brian P. Johnson, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying were Sha-Tana Alexander and the Applicant's trial counsel, Richard H. Warder, Esquire. The Court had before it the trial transcript, the Greenville County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, the return and partial motion to dismiss, and the appellate records.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted at the April 2010 term of the Greenville County Grand Jury for Trafficking Cocaine (2009-GS-

23-6279). He was represented by Richard H. Warder, Esquire.

After the State brought the case to trial, the Applicant was found guilty. On June 23, 2011, the Honorable Edward W. Miller sentenced the Applicant to thirty years imprisonment for Trafficking Cocaine, 400 or more grams.

A notice of appeal was filed at the South Carolina Court of Appeals. Jeffrey Falkner Wilkes, Esquire perfected the appeal. The Court of Appeals affirmed the Applicant's conviction and sentence. State v. Parker, Op. No. 2013-UP-180 (S.C. Ct. App. filed May 8, 2013). The Court of Appeals denied the Applicant's subsequent petition for rehearing by order dated June 20, 2013. The remittitur was sent on July 30, 2013.

ALLEGATIONS

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

1. Ineffective assistance of trial counsel:
   a. Failed to investigate:
      i. Failed to investigate "the questioning by the D.E.A."
      ii. Failed to investigate "the police car which would have revealed the police car was equipt with a radar detector when the prosecution based it's lawful stop arguement on the pacing of Applicant's vehicle."
   b. Failed to research and investigate the State's witnesses:
      i. The presence of the Georgia Deputy Sheriff Michael Broce "was unauthorized and violates South Carolina Code of Law Sections 23-1-210 and 23-23-40."
      ii. Failed to object to Broce "not having any paperwork authorizing him to act as a law enforcement agent in the state of South Carolina."
   c. Failed to object to "inadmissible hearsay and character evidence testimony regarding Applicant's demeanor."
   d. Failed to prepare the Applicant to testify in his own defense.
   e. "[M]ade harmful statements contradictory to Applicant's testimony and fact in closing."
2. Trial court error:
   a. Trial court erred in admitting testimony about the Applicant's

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"nonverbal behavior."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record 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).

For an 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 performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (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, 117-18, 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, 104 S. Ct. 2052).

The Applicant stated trial counsel should have investigated the traffic stop and subpoenaed the records of the police car. The Applicant stated trial counsel should have

obtained DEA records, as he and his co-defendant were taken to DEA headquarters after their arrest. The Applicant stated this would have revealed information trial counsel could have used to impeach his co-defendant. The Applicant stated deputies from Georgia were involved in the search and arrest, but did not have written authorization to act in South Carolina. The Applicant stated trial counsel should have argued that he was never read his Miranda[1] rights.

Sha-Tana Alexander, the Applicant's co-defendant, stated she and the Applicant were taken to DEA headquarters after they were arrested. Alexander stated she told them the drugs were hers (even though they were not), but that she was never asked about this at trial.

Trial counsel testified he was aware of the DEA's involvement, but could not recall if he knew the Applicant had gone to the DEA office. Trial counsel testified he did not believe he knew whether the co-defendant initially told the DEA the drugs were hers and that he would have questioned her about this. Trial counsel testified he was aware (from the discovery materials) that two of the arresting officers were from Georgia. Trial counsel testified he was not aware if they were active participants. Trial counsel testified he did not believe he could make a successful objection or motion based on some of the officers being from Georgia. Trial counsel testified he would have looked into the issue such as whether the Applicant was given his Miranda rights.

This Court finds the Applicant failed to meet his burden of proving trial counsel did not properly investigate the events after the traffic stop. This Court finds that, while the Applicant argues trial counsel should have subpoenaed the police car's records (to determine if there was in-car audio or video) and the DEA records, the Applicant did not produce such records at the PCR hearing. As such, this Court cannot speculate as to whether these records would have

[1] Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602 (1966).

assisted the defense case. See Palacio v. State, 333 S.C. 506, 513, 511 S.E.2d 62, 66 (1999) (holding that, since the contents of challenged documents were not presented at the PCR hearing, the Applicant could not demonstrate how the failure of counsel to obtain these documents prejudiced the defense).

This Court finds the Applicant failed to meet his burden of proving trial counsel should have impeached Alexander with a statement she had given to the DEA. While the Applicant and Alexander stated she originally told the DEA the drugs were hers, trial counsel testified he was unaware of this statement because he would have questioned her about it. This Court finds trial counsel's testimony is credible. This Court notes trial counsel is an experienced criminal defense attorney and certainly would have attempted to impeach a co-defendant in a joint trial with a prior statement claiming ownership of the drugs. This Court also notes Alexander was questioned at trial about the fact that she initially lied to the officer. (Trial transcript, pp.156-57). The jury, therefore, had this information before them in assessing her credibility. See Craven v. Cunningham, 292 S.C. 441, 443, 357 S.E.2d 23, 25 (1987) ("The credibility of witnesses is for the triers of fact."). Regardless, this Court finds the Applicant cannot prove prejudice because he failed to produce any records that such a statement had been given. See id. Further, the State presented overwhelming evidence of guilt. See Franklin v. Catoe, 346 S.C. 563, 570 n. 3, 552 S.E.2d 718, 722 n. 3 (2001) (finding overwhelming evidence of guilt negated any claim that counsel's deficient performance could have reasonably affected the result of defendant's trial).

This Court finds the Applicant failed to meet his burden of proving trial counsel should have objected to testimony from the Georgia law enforcement officers. The record is clear that two deputies from Butts County, Georgia were working with officers from the Greenville Police Department on the day in question. Each Georgia deputy was riding in a car with a Greenville

Officer. While Officer Blair (from Greenville) and Deputy Broce (from Georgia) were involved in the stop of the vehicle and initiated the search, Officers Estes and Reider (from Greenville) and another Georgia deputy were also involved in parts of the search and securement of evidence. While the Applicant argues S.C. Code Ann. § 23-1-210 and § 23-23-40 were violated, this Court find this argument is without merit. Officers from different jurisdictions are allowed to take part in joint operations. See State v. Hammond, 270 S.C. 347, 242 S.E.2d 411 (1978) (City of Greenville officers executed a warrant in the county – but outside city limits – yet the Court found no jurisdictional defect as the warrant was properly obtained and Greenville County Sheriff deputies were present); Kirby v. Bento, 426 F.2d 258 (5th Cir. 1970) (officers from one Texas town executed a warrant in another but the Court found no jurisdictional violations due to the properly obtained warrant and presence of local law enforcement); cf. State v. Boswell, 391 S.C. 592, 707 S.E.2d 265 (2011) (finding Lexington County officers could not conduct a warrantless search and arrest in Calhoun County without the involvement, assistance, or presence of Calhoun County law enforcement officers). The Georgia deputies were not the instigators or primary investigators in this case. This Court notes, in fact, that this case could have been brought without the participation of the Georgia deputies. The Applicant cannot prevail upon his claim that the involvement of the Georgia deputies was unlawful or rendered his stop, search, and seizure inadmissible.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have argued he was never given Miranda warnings. This Court finds there would have been no arguable basis for trial counsel to have argued for suppression of the evidence due to a Miranda violation. The Applicant and his co-defendant were stopped on the interstate for speeding and following another vehicle too closely. (Trial transcript, p.89). After an officer asked the

Applicant about the marijuana smell emanating from the vehicle, he indicated his co-defendant had marijuana on her person. (Trial transcript, p.91; p.93; p.95; pp.126-27). The co-defendant removed a package of marijuana from the front of her pants and the Applicant and co-defendant were handcuffed and placed in custody. (Trial transcript, pp.95-96; pp.127-28). The officers searched the vehicle and ultimately found 1998.10 grams of cocaine in a speaker box in the trunk. (Trial transcript, pp.97-103; pp.128-30; p.139). There was no need for the Applicant to have been given Miranda warnings when his vehicle was stopped. See State v. Peele, 298 S.C. 63, 65-66, 378 S.E.2d 254, 255-56 (1989) (citation omitted) ("[R]outine traffic stops do not constitute custodial interrogation for purposes of the Miranda rule."). The officers had probable cause to search the vehicle based upon the marijuana smell they detected during this routine traffic stop. As Miranda did not attach at this time, the cocaine cannot be viewed as the result of any Miranda violation. Regardless, even assuming arguendo Miranda did apply, the cocaine would not have been suppressed because of a Miranda violation. See United States v. Patane, 542 U.S. 630 (2004) (finding the failure to give a suspect Miranda warnings does not require suppression of the physical fruits of the suspect's unwarned but voluntary statements).

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that trial counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that trial 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 trial counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

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 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 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 filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and

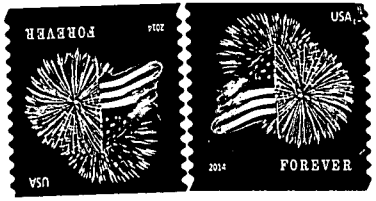
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 1 day of April, 2014.

Robin B. Stilwell
Presiding Judge
Thirteenth Judicial Circuit

Greer, South Carolina.

Law Office of Brian P. Johnson, LLC
522 North Church Street
Greenville, SC 29601



Supreme Court of South Carolina
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