

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

D. Garrison Hill, Circuit Court Judge

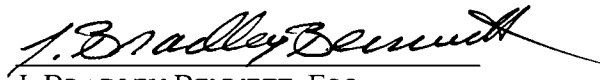
Case No. 2012-CP-23-06281

State of South Carolina..... Respondent,
v.
Jaques Jamar Sullivan..... Appellant.

NOTICE OF APPEAL

Jaques Jamar Sullivan hereby appeals the order of the Honorable D. Garrison Hill, dated August 13, 2014, which dismissed his civil application for post-conviction relief in the Circuit Court. Appellant received written notice of the entry of this order on September 2, 2014.

September 10, 2014
Greenville, South Carolina


J. BRADLEY BENNETT, ESQ.
SALVINI & BENNETT, LLC
101 W. Park Ave.
Greenville, SC 29601
Telephone No. (864) 232-5800
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Attorney for Appellant

Other Counsel of Record:

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S.C. ATTORNEY GENERAL'S OFFICE
P.O. Box 11549
Columbia, SC 29211
Telephone No. (803) 734-3737
Attorney for Respondent

RECEIVED

SEP 15 2014

S.C. SUPREME COURT

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PROOF OF SERVICE

I certify that, on September 10, 2014, I served a copy of the Notice of Appeal in this action, dated September 10, 2014, on counsel of record by mailing the Notice to them to their address as so stated below, and mailed to the Greenville County Clerk of Court, 305 E. North Street, Greenville, SC 29601-2121, and by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed.

September 10, 2014
Greenville, South Carolina



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Telephone No. (803) 734-3737
Attorney for Respondent

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

JUDGMENT IN A CIVIL CASE
CASE NO: 2012CP2306281

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2014 AUG 14 PM 3 09

Jaques Jamar Sullivan 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), SCRPC;
 - Rule 41(a),
 - SCRPC (Vol. Nonsuit);
 - Rule 43(k), SCRPC (Settled);
 - Other: _____
- ACTION STRICKEN (CHECK REASON):**
 - Rule 40(j) SCRPC;
 - 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 - D Garrison Hill

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:

Joseph Bradley Bennett Salvini & Bennett, LLC
101 W. Park Ave. Greenville, SC 29601

Karen Christine Ratigan PO Box 11549 Columbia,
SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

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

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
Jaques Jamar Sullivan,)
S.C.D.C. #335849,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)

IN THE COURT OF COMMON PLEAS
C.A. No. 2012-CP-23-6281


ORDER OF DISMISSAL

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENHIZER
2014 AUG 14 PM 3 09

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed October 1, 2012. The Respondent made its return on May 2, 2013. An evidentiary hearing was convened on April 22, 2014 at the Greenville County Courthouse. The Applicant was present and represented by J. Bradley Bennett, 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: (1) Pamela Stewart, (2) the Applicant's trial counsel, Daniel J. Farnsworth, Sr., Esquire, and (3) assistant solicitor Allen O. Fretwell, 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, the appellate records, and Applicant's Exhibits 1-3.¹

¹ At the conclusion of the hearing, this Court allowed trial counsel until May 15, 2014 to determine if he had a file for Julia Marie Anderson. This Court then stated PCR counsel would have an additional ten days in which to file a brief on the issue of conflict of interest. Trial counsel submitted an affidavit (dated



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 March 2009 term of the Greenville County Grand Jury for trafficking cocaine (2008-GS-23-7026, count 1), possession of a weapon during the commission of a violent crime (2008-GS-23-7026, count 2) and possession of marijuana (2009-GS-23-7027). He was represented by Daniel J. Farnsworth, Sr., Esquire.

After the State brought the case to trial, the Applicant was found guilty. On July 15, 2009, the Honorable Edward W. Miller sentenced the Applicant to concurrent terms of twenty-five years for trafficking cocaine, five years for possession of a weapon during the commission of a violent crime, and time-served for possession of marijuana, second offense. Judge Miller also levied a consecutive sentence of six months for criminal contempt.

A notice of appeal was filed at the South Carolina Court of Appeals. J. Falkner Wilkes, Esquire, perfected the appeal. The Court of Appeals affirmed the Applicant's convictions and sentences. State v. Sullivan, Op. No. 2011-UP-446 (S.C. Ct. App. filed Oct. 11, 2011). The Remittitur was sent on October 27, 2011.

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. "Trial counsel had a conflict of interest, that was not disclosed to me until after my conviction."
 - b. "Trial counsel was unprepared for trial."
 - c. "Trial counsel failed to investigate, obtain and review the

May 15, 2014) that he was unable to locate the file. The affidavit is attached to this order. PCR counsel declined to file a brief.

- discovery/evidence in my case prior to trial.”
- d. “Trial counsel failed to review the discovery/evidence with me prior to trial.”
 - e. “Trial counsel failed to make appropriate and necessary objections to inadmissible evidence at trial.”
 - f. “Trial counsel failed to call necessary witnesses at trial.”
 - g. “Trial counsel failed to file necessary and appropriate motion(s) to challenge any wire-tap(s)/recordings in this matter.”
 - h. “Trial counsel failed to challenge an illegal search and seizure in my case.”
 - i. “Trial counsel failed to appropriately represent me at the forfeiture hearing following my conviction.”
 - j. “I was denied the right to a fair trial when the trial court denied my motion for a continuance to enable me to retain alternate trial counsel.”
2. Ineffective assistance of appellate counsel.
- a. “Appellate counsel failed to raise appropriate and/or reviewable issues on appeal.”

At the PCR hearing, the Applicant proceeded solely upon the issue of whether trial counsel had a conflict of interest in this case.

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. § 17-27-80 (2003).

Ineffective Assistance of Counsel

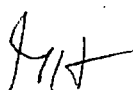
The Applicant alleges he received ineffective assistance of counsel. In a PCR action, “[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

JH

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 he had several meetings with trial counsel and told him what happened on the day in question. The Applicant stated, however, that they did not review discovery materials and that he never received full discovery from trial counsel. The Applicant stated trial counsel mentioned – at the end of June 2009 – that his case started because of Julia Marie Anderson. The Applicant stated a confidential informant testified at his trial and that this informant was in business with Anderson. The Applicant stated trial counsel never said he had previously represented Anderson and that the Applicant did not learn this until 2012. The Applicant stated he would have asked for a new attorney if he had known trial counsel previously represented Anderson. The Applicant admitted he had asked for trial counsel to be relieved at one point because trial counsel was not truthful – but could not recall at the PCR hearing how counsel was untruthful.

Pamela Stewart, the Applicant's girlfriend, stated she sat in on a few meetings with trial counsel and the Applicant before trial. Stewart stated she overheard a conversation trial counsel

A handwritten signature in black ink, appearing to be 'JMT', located at the bottom center of the page.

had with the Applicant in which he stated this prosecution stemmed from Julia Marie Anderson's case. Stewart stated she obtained a copy of the Applicant's file from trial counsel in February 2012 and a July 12, 2009 letter² had Julia Anderson handwritten across it.

Trial counsel testified he filed discovery motions and received full discovery from the State. Trial counsel testified he reviewed the discovery materials with the Applicant. Trial counsel testified they knew this was a confidential informant case, as there was a tape of the conversation between the informant and the Applicant. Trial counsel testified there was strong evidence against the Applicant and that he did not hear any kind of defense from the Applicant. Trial counsel testified he could not recall when he would have represented Anderson. Upon cross-examination and review of Applicant's Exhibits 2 and 3, trial counsel stated he represented Anderson on two charges but could not say whether or not it was before the Applicant's trial. Trial counsel testified Anderson was not involved with this case. Trial counsel testified he did not recall telling the Applicant his case started with Anderson and noted he did not believe he would speak with one client about another. Trial counsel testified the handwritten notation on Applicant's Exhibit 1 was not his handwriting and that he did not recognize the handwriting.

Assistant solicitor Allen Fretwell testified he received trial counsel's discovery motions and provided all of the discovery materials to him (except for an audio recording on a pending trafficking charge, which trial counsel could come and review). Fretwell testified Anderson was not involved with the Applicant's case. Fretwell testified the notation on Applicant's Exhibit 1 was not his handwriting and that he did not recognize the handwriting. Fretwell testified he had a copy of Exhibit 1 in his file, and there was no handwriting on it.

This Court finds the Applicant failed to meet his burden of proving trial counsel had a

² Applicant's Exhibit 1.



conflict of interest in this case. Initially, this Court finds trial counsel to be credible in his assertion that he did not recall discussing Anderson with the Applicant and that he would not discuss one client with another. Regardless, an applicant alleging his conviction was unlawful due to a conflict of interest from counsel's representation bears the burden of showing that a potential conflict actually materialized into a realized conflict adversely affecting counsel's performance. See Jackson v. State, 329 S.C. 345, 354, 495 S.E.2d 768, 773 (1998) (citing Cuyler v. Sullivan, 446 U.S. 335, 100 S. Ct. 1708, 64 L. Ed. 2d 333 (1980)); Padgett v. State, 324 S.C. 22, 27, 484 S.E.2d 101, 103 (1997). While Applicant's Exhibits 2-3 indicate trial counsel once represented Anderson, the Applicant failed to present any evidence that this representation occurred either before or during trial counsel's representation of the Applicant. Assistant solicitor Fretwell testified Anderson was not involved in this case, and the Applicant failed to present any evidence to the contrary. Further, while Applicant's Exhibit 1 had the words "Julia Anderson" handwritten at the top of the page, neither trial counsel nor assistant solicitor Fretwell could identify this handwriting. This Court finds the Applicant has failed to demonstrate either that there was an actual conflict of interest in this case or that it affected trial counsel's representation of the Applicant.³

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. 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

³ It is especially difficult to demonstrate how the Applicant could have suffered any prejudice, as the State presented overwhelming evidence of the Applicant's guilt. See Geter v. State, 305 S.C. 365, 367, 409 S.E.2d 344, 346 (1991) (concluding reasonable probability of a different result does not exist when there is overwhelming evidence of guilt).

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 13 day of AUG., 2014.

D. Garrison Hill

D. Garrison Hill
Presiding Judge
Thirteenth Judicial Circuit

Greenville, South Carolina.

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

AFFIDAVIT

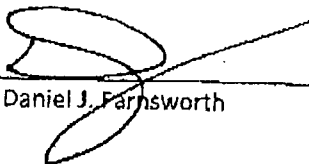
Personally appeared before me the undersigned, Daniel J. Farnsworth, who first being duly sworn states;

That he previously represented Julia Anderson on separate incidents, one a drug possession charge and the other involving, I believe, a drug charge.

That in the past several years the undersigned's files have been moved from one office to another and back and to his son's office and back to his home.

That during that period some files have been thrown away because they had ended, some due to age, and others being misplaced or lost.

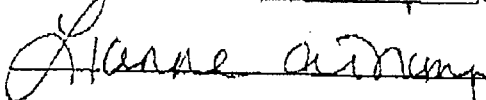
That finally the undersigned was unable to find the Julia Anderson files.



Daniel J. Farnsworth

Sworn to before me this

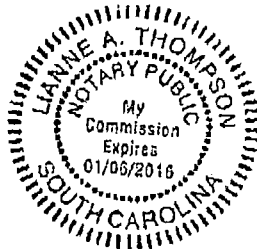
the 15 day of May, 2014



Lianne A. Thompson

Notary Public for South Carolina

My commission expires: 1/6/16





Salvini & Bennett, LLC
Attorneys at Law

101 W. Park Avenue
Greenville, SC 29601
864.232.5800 OFFICE
864.232.5888 FAX

September 10, 2014

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SEP 15 2014
S.C. SUPREME COURT

VIA U.S. MAIL ONLY

Daniel E. Shearhouse
CLERK OF COURT
SUPREME COURT OF SOUTH CAROLINA
P.O. Box 11330
Columbia, SC 29211

IN THE MATTER OF: Jaques Jamar Sullivan vs. State of South Carolina
Case No.: 2012-CP-23-06281

Dear Clerk of Court:

Enclosed please find a NOTICE OF APPEAL, our CERTIFICATE OF SERVICE on the parties in this matter, and our CERTIFICATE OF SERVICE upon the Greenville County Clerk of Court on behalf of Mr. Jaques Jamar Sullivan in the above entitled matter. Also, enclosed please find two copies for filing and a check of \$100.00 for the filing fee. Please return the two filed copies to our office in the envelope provided herein, postage fully paid thereon.

If you have any questions regarding this correspondence, or need anything further from me at this time, please do not hesitate to contact me.

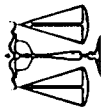
Kindest regards,

J. BRADLEY BENNETT, ESQ.

JBB/lks

Encl.

cc: Karen Ratigan, Esq.
Jaques Sullivan



Salvini & Bennett, LLC
Attorneys at Law

101 W. Park Avenue Greenville, SC 29601

Daniel E. Shearhouse
CLERK OF COURT
SUPREME COURT OF SOUTH CAROLINA
P.O. Box 11330
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