

IN THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

APPEAL FROM YORK COUNTY
Court of Common Pleas

OCT 07 2014

J. Ernest Kinard, Jr., Presiding in York County **S.C. SUPREME COURT**

Case No. 2013-CP-4603624

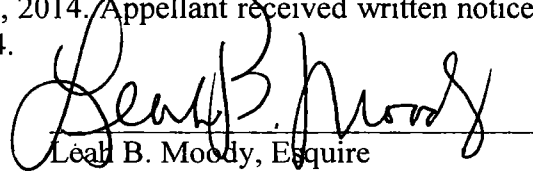
Lentavis Baxter, Appellant,

v.

State of South Carolina, Respondent.

NOTICE OF APPEAL

Lentavis Baxter appeals the order of the Honorable J. Ernest Kinard, Jr., dated September 3, 2014 and mailed on September 26, 2014. Appellant received written notice of entry of the final order on September 29, 2014.



Leah B. Moody, Esquire
Law Office of Leah B. Moody, LLC
235 E. Main Street, Suite 115
Post Office Box 1015
Rock Hill, South Carolina 29731

Other Counsel of record:
Suzanne White, SC Attorney General's Office
Rembert C. Dennis Building
Post Office Box 11549
Columbia, South Carolina 29211-1549
(803) 734-3970

**IN THE STATE OF SOUTH CAROLINA
In The Supreme Court**

**APPEAL FROM YORK COUNTY
Court of Common Pleas**

J. Ernest Kinard, Jr., Presiding in York County

Case No. 2013-CP-4603624

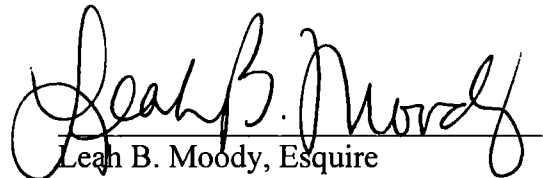
Lentavis Baxter, Appellant,

v.

State of South Carolina, Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Suzanne White by depositing a copy of it in the United States Mail, postage prepaid, on October 2, 2014 addressed to its attorney of record, Suzanne White, Post Office Box 11549, Columbia, South Carolina, 29211-1549.


Leah B. Moody, Esquire
Law Office of Leah B. Moody, LLC
235 E. Main Street, Suite 115
Post Office Box 1015
Rock Hill, South Carolina 29731

October 2, 2014

cc Lentavis Baxter
Suzanne White, Esq.
Hope Blackley, Clerk of Court, Spartanburg County
Sharon Graham, SCCID

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)
))
Lentavius Denard Baxter, #353613,)
))
Applicant,)
))
v.)
))
State of South Carolina,)
))
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

2013-CP-46-3624

ORDER OF DISMISSAL

DAVID HAMPTON
C.C. S.S.
YORK COUNTY, SC

2014 SEP 26 AM 9:24

FILED-RECEIVED

This matter comes before the Court by way of an Application for Post-Conviction Relief filed November 26, 2013. The Respondent made its Return on February 5, 2014. An evidentiary hearing into the matter was convened on August 7, 2014, at the Moss Justice Center in York, SC. Leah Moody, Esquire represented the Applicant. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, Lenard Baxter and Applicant testified on Applicant's behalf. Phillip Jamieson, Esquire also testified. This Court had before it a copy of the records of the York County Clerk of Court, records from the South Carolina Department of Corrections, the application, the State Return and the guilty plea transcript.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. Applicant was indicted at the February 2011 term of the York County Grand Jury for Assault and Battery, 1st degree (2011-GS-46-0438), Criminal Sexual Conduct, 1st degree (2011-GS-46-0440) and Possession of a Knife during the

Commission of a Violent Crime (2011-CP-46-440A). Philip Jamieson, Esquire, represented him. On December 20, 2012, the Applicant pled guilty to Assault and Battery, 1st degree as indicted and Criminal Sexual Conduct, 2nd degree as a lesser included offense before the Honorable John C. Hayes, III and was sentenced, pursuant to a negotiated sentence, to twelve (12) years for each charge to run concurrently.

A notice of appeal was filed on Applicant's behalf. The South Carolina Court of Appeals issued an order dismissing Applicant's appeal for failure to provide a sufficient explanation as required by Rule 203(d)(1)(B)(iv) SCACR. The Remittitur was issued on December 11, 2013.

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

1. "Ineffective Counsel"
 - i. "Attorney failed to investigate facts"
2. "Illegal indictment SCRCR Rule 6 §1,2,3"
 - i. "SCRCR states must be indicted(sic) within 90 days of arrest"

At the hearing, the Applicant proceeded on his claim of ineffective assistance of counsel.

SUMMARY OF TESTIMONY

Applicant testified Counsel failed to investigate whether Applicant has been indicted twice for the same charges. Applicant also testified Counsel failed to interview witnesses, failed to investigate whether the sex between Applicant and Victim was consensual and failed to pursue a motion for a speedy trial. Applicant claimed he always told Counsel he wished to pursue a trial. Applicant also claimed he had a strained relationship with Counsel. Additionally, Applicant testified he rejected a plea offer from the State, but decided to accept the twelve-year offer after speaking with

his parents on the day he was scheduled to go to trial. Applicant further claimed Counsel never explained what sentences the charges carried and did not discuss anything with Counsel before his guilty plea.

On cross-examination, Applicant admitted that nobody promised him anything or threatened him to plead guilty. Applicant admitted that he pled guilty freely and voluntarily. Applicant also admitted that the plea judge advised him of his constitutional rights and that he waived those in order to plead guilty. Applicant agreed with the facts as stated by the solicitor during the guilty plea and was satisfied with Counsel's representation. After a discussion with the PCR court, Applicant admitted that he at least knew the sentences that Assault and Battery, 1st degree and Criminal Sexual Conduct, 2nd degree carried, as the plea judge advised him of such sentences.

Lenard Baxter, Applicant's father, testified that he advised Applicant that he supported whatever decision Applicant made concerning this case. Mr. Baxter also testified Counsel wanted him to speak with Applicant in aiding Applicant's decision to pursue a trial or accept a plea offer. Mr. Baxter further stated Applicant expressed that he wanted a trial. Mr. Baxter lastly stated he did not threaten Applicant to plead guilty.

Counsel testified he was appointed to represent Applicant. He stated he received two briefcases full of discovery documents. Counsel testified he hired a private investigator and a medical expert. Counsel also testified he met with Applicant around 16-18 times in consultation. Counsel stated he was fully prepared for trial and that the defense in this case was consent between Applicant and Victim.

Counsel stated the original offer from the State was twelve years, but Applicant rejected this offer. Counsel testified it was Applicant's decision to accept the offer of twelve years on the day he

was scheduled for trial. Counsel testified the State re-offered the twelve years and that he asked Applicant's parents to speak with Applicant about this case. Counsel also testified he did not threaten Applicant or promise anything to get him to plead guilty.

Counsel testified he interviewed every witness he could find that was listed in the discovery materials and that he even found a witness who was willing to testify that he overheard Victim speaking with Applicant about trading drugs for sex. Counsel also stated that Applicant wanted a trial, but realized the risks were too great and so, Applicant accepted the plea offer.

Counsel further testified that at a minimum, Applicant would have been convicted of the Assault and Battery, 1st degree based on the injuries to Victim, including stab-wounds. Applicant's co-defendant also gave a statement to police that Applicant possessed a knife during the incident and held it to Victim's throat. Counsel stated that all of Applicant's charges carried over 100 years' incarceration. Again, Counsel testified that it was Applicant's decision to plead guilty and that Counsel did not threaten Applicant.

On cross-examination, Counsel testified Applicant's co-defendant proceeded to trial and received a thirty (30) years sentence for the same crimes. Counsel also testified he advised Applicant that he would most likely be convicted of at least the Assault and Battery, 1st degree due to the severity of the injuries to Victim. Counsel then stated the State renewed the twelve-year offer when Counsel disclosed to the State that he had located a witness who would have testified that Victim offered Applicant sex for drugs, tending to show the sex between the two was consensual. Counsel testified he also hired a medical doctor who would have testified that the injuries to Victim's genitalia could have occurred even during consensual sex.

Counsel then testified he believed the offer from the State was extremely reasonable and that the risks of trial were too great; however, the decision to accept the plea offer and plead guilty was Applicant's. Counsel stated he discussed the witnesses he planned to call at trial with Applicant and Applicant understood to what they would testify. Additionally, Counsel stated Applicant wrote him and expressed concern with Counsel's representation; however, there were two prior hearings where Applicant wanted Counsel relieved, but when the judge advised Applicant that if he fired Counsel that Applicant would proceed without counsel, Applicant chose to proceed with Counsel.

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. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

Ineffective Assistance of Counsel

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) (citing Rule 71.1(e), SCRPC). 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, 104 S.Ct. 2052, 2064 (1984); Butler v. State, 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, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985).

This Court finds Counsel provided effective assistance of counsel in this case. Counsel advised Applicant of all of the charges and the sentences the charges carried. Counsel also negotiated with the State in Applicant's best interest. This Court finds Applicant was charged with many different crimes and had a difficult decision to make: accept the plea offer and receive a certain and definite sentence or proceed to trial and face unknown consequences. This Court finds Applicant made the decision on his own accord with the help of learned counsel. Additionally, this Court finds Applicant made this decision freely and voluntarily without any threats or promises from anyone else. Furthermore, this Court finds that it was ultimately the Applicant's decision to plead guilty.

This Court finds the Applicant's testimony regarding Counsel's ineffectiveness is not

credible while also finding Counsel's testimony is credible. This Court finds the Applicant has failed to meet his burden of proving counsel's performance was deficient or that he was prejudiced thereby. Accordingly, this allegation is denied.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – 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 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 Counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. Therefore, these allegations are denied.

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 notifies the Applicant that he must file and serve a notice of appeal within thirty (30) 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 PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention 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!



J. Ernest Kinard, Jr.
Presiding Circuit Court Judge
Sixteenth Judicial Circuit

9/3, 2014

Beaufort, South Carolina

PCR

Law Office of Leah B. Moody, LLC

235 East Main Street
Post Office Box 1015
Rock Hill, South Carolina 29731
lbmatty@comporium.net

Phone: (803) 327-4192

Fax: (803) 329-1344

October 1, 2014

RECEIVED

OCT 07 2014

S.C. SUPREME COURT

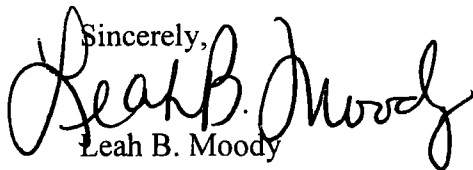
Mr. Daniel E. Shearouse
The Supreme Court of South Carolina
Post Office Box 11330
Columbia, South Carolina 29221

RE: Lentavis Baxter v. State of South Carolina
Case No.: 2013-CP-4603624

Dear Mr. Shearouse:

The York County Court of Common Pleas appointed my office to represent Lentavis Baxter in his Post-Conviction Relief action. Please find enclosed for filing the original and two (2) copies of the Notice of Appeal, Proof of Service and one (1) copy of the Order of Dismissal in the above-referenced case. Please return the clocked copies to me in the enclosed self-addressed, stamped envelope.

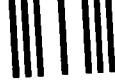
Thank you for your assistance with this matter.

Sincerely,

Leah B. Moody

LBM/srm

Enclosures

cc Lentavis Baxter
Suzanne White, Esquire
Sharon Graham, SCCID
David Hamilton, Clerk of Court, York County



USPS
FIRST-CLASS
FROM 29730
OCT 02 2014
stamps.com

07479892



Law Office of Leah B. Moody, LLC
Post Office Box 1015
Rock Hill, South Carolina 29730

TO:

The Honorable Daniel E. Shearouse
The Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211-1330