

THE STATE OF SOUTH CAROLINA
In The Supreme Court
APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

RECEIVED

OCT 24 2014

S.C. Supreme Court

W. Jeffery Young, Circuit Court Judge

Civil Action Number: 2013-CP-29-499

ROSHUNE CARELOCK
#292483,

Petitioner,

v.

STATE OF SOUTH
CAROLINA,

Respondent.

NOTICE OF APPEAL

The Petitioner above appeals the order of the Honorable W. Jeffery Young, dated August 28, 2014, and served upon the Petitioner October 14, 2014, denying his application for Post-Conviction Relief.

October 22, 2014



W. Michael Hemlepp, Jr.
3027 S. Paraham Road
York, South Carolina 29745
803-718-0956
legal@p-3-solutions.com
Attorney for Appellant

Other Counsel of Record:
J. Croom Hunter
OFFICE OF THE ATTORNEY GENERAL
1000 Assembly Street, Suite 518
Columbia, South Carolina 29201
803-734-1867

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LANASTER COUNTY
Court of Common Pleas

W. Jeffery Young, Circuit Court Judge

Civil Action Number: 2013-CP-29-499

RECEIVED

OCT 24 2014

S.C. Supreme Court

Roshune Carelock #292483,

Petitioner,

v.

State of South Carolina,

Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal in the above captioned case on the following individuals by depositing a copy of it in the United States Mail, postage prepaid, on October 2, 2014, addressed to:

Jeff Hammond, Clerk of Court
Lancaster County Court of Common Pleas
1904 North Main Street
Lancaster, South Carolina 29720

Croom Hunter, Esq.
Office of the Attorney General
1000 Assembly Street, Suite 518
Columbia, South Carolina 29201

Roshune Carelock #292483
Post Office Box 2039
Ridgeland, SC 29936

October 22, 2014

A handwritten signature in black ink, appearing to read 'W. Michael Hemlepp, Jr.', written in a cursive style.

W. Michael Hemlepp, Jr.
3027 S. Paraham Road
York, South Carolina 29745
803-718-0956
legal@p-3-solutions.com
Attorney for Appellant

STATE OF SOUTH CAROLINA)
COUNTY OF LANCASTER)
Roshune Carelock, #292483,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE SIXTH JUDICIAL CIRCUIT

Case No. 2013-CP-29-0499

ORDER OF DISMISSAL

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on April 2, 2013. Respondent made its return on December 18, 2013. An evidentiary hearing into the matter was convened on July 29, 2014, at the Lancaster County Courthouse. Applicant was present at the hearing and was represented by W. Michael Hemlepp, Jr., Esquire. Respondent was represented by Assistant Attorney General J. Croom Hunter of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lancaster County Clerk of Court. The Applicant was indicted for Assault and Battery with Intent to Kill ("ABWIK") (2007-GS-29-0848). The Applicant was represented by William Frick, Esquire. Following a jury trial, Applicant was convicted of the lesser offense of Assault and Battery of a High and Aggravated Nature ("ABHAN"). He was sentenced by the Honorable Brooks P. Goldsmith to confinement for a period of ten (10) years.

FILED
OFFICE OF CLERK
OF COURT
LANCASTER, SC
SEP 11 PM 2:15

A timely Notice of Appeal was filed. Following the submission of a brief pursuant to Anders v. California, 386 U.S. 738 (1967), the South Carolina Court of Appeals dismissed the appeal. State v. Carelock, Op. No. 2012-UP-287 (filed May 9, 2012). The Remittitur was sent on May 25, 2012.

ALLEGATIONS

At the post-conviction relief hearing, Applicant proceeded to argue his confinement is unlawful based upon the following grounds:

1. Ineffective assistance of counsel.
 - a. "Counsel failed to investigate case, question witnesses, & make objections."
2. "Trial judge erred in denying credit for time served."

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. Applicant also presented testimony from trial counsel, William P. Frick, Esquire (Counsel). This Court also had before it a copy of the trial transcript, the Lancaster County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, the appellate records, and the return.

During the evidentiary hearing, Applicant testified that he was represented at trial by William P. Frick (Counsel). Applicant testified he is innocent of the charge for which he was convicted. Applicant testified he was charged with ABWIK, but the jury convicted him of ABHAN. Applicant testified he never met with Counsel until the Friday before his trial. Applicant testified he was incarcerated leading up to the trial. Applicant testified Counsel did not adequately investigate his alibi defense. Applicant testified that the victim identified him at trial as the shooter. Applicant testified the testimony from the EMS worker should not have been admitted. Applicant testified the EMS worker testified that the victim told her cousin that

Applicant was the shooter. Applicant testified he was unaware of the existence of the statement until after the trial began. Applicant testified Counsel did object to the testimony, but he should have objected in a different way. Applicant testified the trial judge should have given him credit for his time served prior to trial. Applicant testified Counsel did not effectively argue Applicant was entitled to the time.

On cross-examination, Applicant admitted Counsel did call three alibi witnesses to testify on Applicant's behalf. Applicant admitted all three of these witnesses testified Applicant was with them the night of the shooting. Applicant also admitted the victim identified him as the person she saw at her door seconds before she was shot. Applicant further admitted the victim identified him by the tattoo on his neck and by name. Applicant testified he had no prior relationship with the victim. Applicant then testified the victim's boyfriend shot Applicant's cousin the night before the victim was shot at her home.

Following Applicant's testimony, William P. Frick, Esquire (Counsel) testified. Counsel testified he has been practicing law for twelve years, all of which has been criminal practice. Counsel testified he was assigned Applicant's case while working for the Sixth Circuit Public Defender's Office. Counsel testified he received discovery and went over the facts of the case with Applicant. Counsel testified Applicant's case was pending for a long time before it went to trial. Counsel testified he represented Applicant for around three years. Counsel testified he did not recall discussing Applicant's case with the solicitor's office. Counsel testified the most detailed conversation he had with Applicant was the Friday prior to trial. Counsel testified that generally, the General Sessions trial list for each term of court has thirty cases on it. Counsel testified that of those thirty, usually between three and five cases are called. Counsel testified he would have found out Applicant's case was being called for trial sometime the week before the

trial list was generated. Counsel testified that at that point, letters would be sent from his office to clients alerting them they needed to come to roll call, and that they needed to make an appointment with their attorney to discuss the upcoming case. Counsel testified these letters are generated one or two weeks prior to roll call. Counsel testified Applicant never made an appointment to meet with him. Counsel testified he was adequately prepared to try Applicant's case. Counsel testified he conducted a Neil v. Biggers hearing and a Jackson v. Denno hearing at the beginning of Applicant's trial. Counsel testified he also argued a Rule 404(B) motion before the trial judge. Counsel testified he was provided a witness list by the solicitor at trial, as is standard practice. Counsel testified he was unaware the EMS worker was going to testify as to what she overheard the victim tell her cousin. Counsel testified the testimony came as a surprise. Counsel testified he had no reason to believe the EMS worker was going to testify to a conversation she overheard. Counsel testified the solicitor did not realize she was going to testify about the conversation until the day of the trial. Counsel testified he had a good relationship with the solicitor, and the solicitor would have alerted him about the EMS worker's statement when he found out about it. Counsel testified they had an in-camera hearing on the matter, and the trial judge ruled the solicitor did not violate any rules, and the victim's statement was material. Counsel testified he did object to the EMS worker's statement, but the trial judge overruled his objection. Counsel testified he moved for a continuance at the beginning of trial, but it was denied by the trial judge. Counsel testified he did not move for a continuance after the EMS worker's testimony because he did not think the trial judge would grant it. Counsel testified his trial strategy was to argue Applicant was not the shooter. Counsel testified he moved for a directed verdict at the end of the State's case, which he renewed at the appropriate time. Counsel testified he asked the judge to give Applicant credit for time served, and that Counsel thought

Applicant was entitled to the time he served on his probation revocation. Counsel testified he did not ask the trial judge, on the record, to reconsider his decision regarding credit for time served.

INEFFECTIVE ASSISTANCE OF COUNSEL

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel 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, 80 L.Ed.2d 674, 692 (1984); Butler, 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). The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 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, 88 L.Ed. 2d 203 (1985).

This Court finds Applicant failed to demonstrate that Counsel's performance was deficient in any way. This Court further finds that Applicant presented no evidence to show any prejudice resulting from Counsel's representation. Additionally, this Court finds Counsel's testimony credible and Applicant's testimony not credible.

This Court finds that Counsel met with Applicant an adequate number of times prior to the guilty plea. This Court further finds Counsel obtained discovery from the solicitor and went over it with Applicant. This Court further finds that Counsel thoroughly investigated and prepared Applicant's case. This Court finds Counsel presented three alibi witnesses on Applicant's behalf. This Court further finds Counsel's actions in regard to the EMS worker's statement were proper and well within the standards of reasonableness for a defense attorney. This Court finds Counsel did object to the EMS worker's testimony. This Court finds further that even if the EMS worker's statements were erroneously admitted, Applicant can show no prejudice due to the overwhelming eyewitness evidence against Applicant. This Court finds Counsel's decision to limit any further argument over the EMS worker's testimony to be valid trial strategy. This Court notes that the jury chose to find Applicant's alibi defense wholly not credible in light of the victim's testimony identifying Applicant as the person who shot her. This Court finds Counsel properly argued a number of motions in an attempt to provide Applicant with the best possible defense. This Court finds that in light of the victim's eyewitness testimony identifying Applicant as the shooter, there is little more Counsel could have done to provide competent representation. This Court further notes that Applicant was not convicted of ABWIK; rather, he was convicted of the lesser-included offense of ABHAN. As such, this Court finds Counsel's performance was far from deficient. This Court finds further that the trial judge was

well within his authority to deny Applicant credit for any time spent incarcerated prior to trial due to his probation revocation. Furthermore, this Court finds Applicant's time-served claim is not a cognizable ground for relief because his pretrial incarceration was due to his probation being revoked for another conviction. Section 23-13-40 mandates a prisoner be given credit for all time served prior to trial unless one of two exceptions exist: 1) either the prisoner was an escapee or 2) **the prisoner was already serving a sentence on one offense.** See Allen v. State, 339 S.C. 393, 395, 529 S.E.2d 541, 542 (2000) (emphasis added). Finally, this Court finds Counsel's representation of Applicant and handling of this case were well within the standards required for effective representation.

Accordingly, this Court finds Applicant did not demonstrate any deficiencies in Counsel's representation. This Court finds that because Counsel's representation was well within the range of competence required in criminal cases, Applicant has further failed to make any showing that but for Counsel's alleged deficiencies, the result of Applicant's case would have been any different.

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, the Court finds Applicant failed to present sufficient evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application.

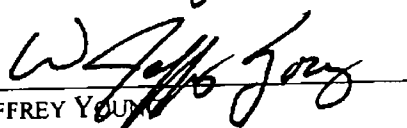
Plea counsel rendered effective assistance in regard to the claims raised by Applicant. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt 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, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRPC, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on 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 28 day of Aug, 2014.



W. JEFFREY YOUNG
Presiding Judge
Sixth Judicial Circuit

Sumter, South Carolina

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

ROSHUNE CARELOCK, #292483,

Applicant,

v.

STATE OF SOUTH CAROLINA,

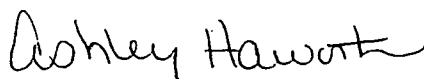
Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Order of Dismissal** has been served upon the applicant by mailing one (1) copy in the United States mail, postage prepaid, addressed to:

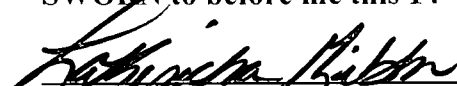
**Mr. William Michael Hemlepp Jr., Esquire
W. Michael Hemlepp, Jr., Attorney at Law
3027 S. Paraham Road
York, SC 29745**

This 14th day of October, 2014.



Ashley Haworth, Legal Assistant
For Respondent

SWORN to before me this 14th day of October, 2014.


Notary Public for South Carolina.

My Commission Expires: 6/29/2020