

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable James R. Barber, III, Circuit Court Judge

Case No. 2013-CP-23-4182

RECEIVED

NOV - 7 2014

S.C. Supreme Court

Michael Milledge, Respondent,

v.

State of South Carolina, Petitioner.

NOTICE OF APPEAL

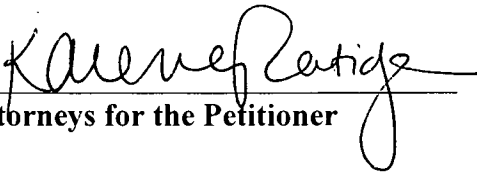
The State of South Carolina appeals the Honorable James R. Barber, III's order dated October 17, 2014 and filed October 28, 2014 granting post-conviction relief to the Respondent. The State received notice of entry of the order on October 31, 2014. A copy of the order on appeal is attached to this notice.

Respectfully submitted,

ALAN WILSON
Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General
S.C. Bar # 68331

P.O. Box 11549
Columbia, S.C. 29211
(803) 734-3737

By: 
Attorneys for the Petitioner

Columbia, South Carolina

November 7, 2014

Other counsel of record:

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

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PROOF OF SERVICE

I, Karen C. Ratigan, Counsel for the Petitioner, certify that I have today served the within notice of appeal upon the Respondent by depositing a copy of it in the United States Mail, postage prepaid, addressed to his attorney of record:

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

I further certify that all parties required by Rule to be served have been served this 7th day of November, 2014.



KAREN C. RATIGAN
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737
Attorney for the Petitioner

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 MICHAEL MILLEDGE,)
 S.C.D.C. No. 340057,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2013-CP-23-04182

**ORDER GRANTING
 POST-CONVICTION RELIEF**

FILED-CLERK OF COURT
 GREENVILLE CO. S.C.
 PAUL B. WICKENSIMMER
 2014 OCT 28 AM 11 46

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 on April 8, 2014. An evidentiary hearing into the matter was convened on August 28, 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 was the Applicant's trial counsel, Randall L. Chambers, Esquire. The Court had before it a copy of the guilty trial transcript, the records of the Greenville County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the return.

PROCEDURAL HISTORY

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant at the September 2007 term of General Sessions for

trafficking crack cocaine (2007-GS-23-7445, count 1), possession of a weapon during commission of a violent crime (2007-GS-23-7445, count 2), possession of ecstasy (2007-GS-23-7445), and possession with intent to distribute (PWID) cocaine (2007-GS-23-7447). Randall L. Chambers, Esquire represented the Applicant.

After the State brought the case to trial, the Applicant was found guilty. On March 24, 2010, the Honorable Robin B. Stilwell sentenced the Applicant to concurrent terms of twenty-five years for trafficking crack cocaine, third offense, five years for possession of a weapon during the commission of a violent crime, one year for possession of ecstasy, second offense, and twenty-five years of PWID cocaine, third offense.

A notice of appeal was filed at the South Carolina Court of Appeals. LaNelle C. DuRant, Esquire of the South Carolina Commission on Indigent Defense, Division of Appellate Defense perfected the appeal. The Court of Appeals affirmed the Applicant's convictions and sentences. State v. Milledge, Op. No. 2013-UP-273(S.C. Ct. App. Filed June 19, 2013). The Remittitur was sent on July 9, 2013.

ALLEGATIONS

At the time of the PCR Hearing, counsel for the Applicant informed the Court that they would proceed on just two of the allegations in his application. As such, the Applicant alleged he was being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel:
 - a. Failed to renew pre-trial motion to suppress when the evidence was entered at trial.
 - b. Failed to move for a mistrial after juror 13 submitted a note to the trial judge during the trial.

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 the witnesses who testified at the hearing, and closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

I find that trial counsel failed to render reasonably effective assistance under prevailing professional norms by failing to renew his *in limine* motion to suppress when evidence was admitted at trial. See Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984); McHam v. State, 404 S.C. 465, 474 (2013) (stating "failure to renew [a] Fourth Amendment objection constitute[s] deficient performance that satisfies the first prong of the Strickland test."). Furthermore, viewing the totality of the circumstances, I find that the limited factors asserted by the officers as providing justification for the pat down search do not give rise to the level of reasonable and articulable suspicion required by the Fourth Amendment. See State v. Tindall, 388 S.C. 518, 698 S.E.2d 203 (2010); State v. Moore, 404 S.C. 634, 746 S.E.2d 342 (Ct. App. 2013). As such, the applicant has satisfied the second prong of the Strickland test—prejudice. Under the circumstances, "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." McHam, 404 S.C. at 475 (quoting Strickland, 466 U.S. at 694, 104 S.Ct. at 2052).

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant's application for Post-Conviction Relief shall be granted.

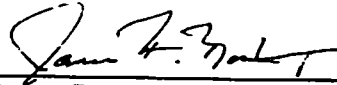
IT IS THEREFORE ORDERED:

1. That the Applicant's application for post-conviction relief be

granted; and

2. That the Applicant be given a new trial.

AND IT IS SO ORDERED this 17 day of DECEMBER, 2014.



James R. Barber III
Presiding Judge
Thirteenth Judicial Circuit

Columbia, South Carolina



ALAN WILSON
ATTORNEY GENERAL

November 7, 2014

The Honorable Daniel E. Shearouse
Clerk of the South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

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S.C. Supreme Court

Re: Michael Milledge, Respondent v. State, Petitioner
Case No. 2013-CP-23-4182

Dear Mr. Shearouse:

Enclosed for filing is a notice of appeal in the above case. Also enclosed are the following:

1. A copy of the order which is to be challenged on appeal.
2. Proof of service of notice of appeal on the Respondent.
3. A letter ordering the PCR transcript from the court reporter.

Sincerely,

Karen C. Ratigan
Senior Assistant Deputy Attorney General

cc: Brian P. Johnson, Esquire
South Carolina Department of Corrections
Greenville County Clerk of Court
Solicitor Walt Wilkins
Office of Appellate Defense
Trisha Allen, Victim Services