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November 17, 2014

South Carolina Supreme Court
PO Box 11330
Columbia, SC 29211

RE: Goodman vs. State of SC
2014-CP-45-198

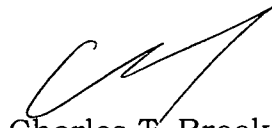
Dear Sir or Madam:

Enclosed herewith you will find the **Notice of Appeal, Order of Dismissal, Order for Austin Review** along with a **Proof of Service** in reference to the above named Applicant.

If you have any questions or concerns, please contact my office at the number stated above.

With kind regards, I am

Sincerely,



Charles T. Brooks, III
CTB/srw

RECEIVED

NOV 19 2014

Enclosed as stated

S.C. SUPREME COURT

cc: Daniel Gourley, Office of Attorney's General
South Carolina Office of Appellate Defense
Edmond Goodman, 271444

THE STATE OF SOUTH CAROLINA
In the Supreme Court

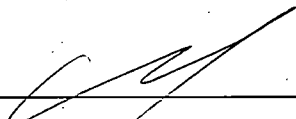
APPEAL FROM WILLIAMSBURG COUNTY
Court of Common Pleas
Honorable R. Ferrell Cothran, Jr., Circuit Court Judge

Case No: 2012-CP-15-0296

Edmond Goodman.....Appellant
S.C.D.C. 271444
v.
The State Respondent

NOTICE OF APPEAL

Edmond Goodman, appeals his Denial for Post Conviction Relief in this case. The order of Dismissal was imposed and signed by the Honorable R. Ferrell Cothran, Jr., January 14, 2014. This Order is followed by an Order for Austin Review signed by the Honorable Clifton B. Newman, which I, Charles T. Brooks, III, received on November 17, 2014.


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Attorney for Appellant

Other Counsel on Record:
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Assistant Attorney General
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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM WILLIAMSBURG COUNTY
Court of Common Pleas
Honorable R. Ferrell Cothran, Jr., Circuit Court Judge

Case No: 2012-CP-15-0296

Edmond Goodman.....Appellant
S.C.D.C. 271444
v.
The State..... Respondent

PROOF OF SERVICE

I, the undersigned, do hereby certify that on this 17th day of November, 2014, I served the foregoing **Notice of Appeal, Order of Dismissal, Order for Austin Review** as well as **Proof of Service** in this matter by depositing a true copy of it in the United States Mail, postage prepaid, on November 17, 2014, addressed to the following as indicated below:

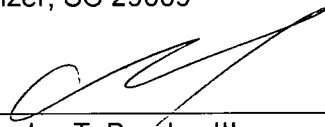
South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

South Carolina Office of Appellate Defense
1330 Lady Street, Suite 401
PO Box 11589
Columbia, SC 29211-1589

Office of Attorney's General
Attn: Daniel Gourley, Esquire
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Edmond Goodman, 271444
Perry Correctional Institution
430 Oaklawn Road
Pelzer, SC 29669

Dated: November 17, 2014


Charles T. Brooks, III
Attorney for the Appellant
309 Broad Street
Sumter, South Carolina 29150
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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	THIRD JUDICIAL CIRCUIT
COUNTY OF WILLIAMSBURG)	
)	
EDMOND GOODMAN, 271444)	2014-CP-45-198
)	
Applicant,)	
)	
vs.)	ORDER FOR AUSTIN REVIEW
)	
)	
STATE OF SOUTH CAROLINA,)	
)	
Defendant.)	
)	

This matter comes before the Court by way of an Application for Post-Conviction Relief dated April 21, 2014. The Court is advised that the Respondent has waived its right to file a Return in this matter. The sole relief sought by the Applicant in this current Application is an AUSTIN REVIEW of his previously filed Post-Conviction Relief filed on June 8, 2012 and amended on July 8, 2013 (docketed at 2012-CP-45-296). The Applicant's substituted counsel, Charles T. Brooks, III, advises this Court that due to the Applicant's misinterpretation of Rule 227(C) SCRAP, he did not file a Notice of Appeal for the Order of Dismissal filed in this case on January 21, 2014.

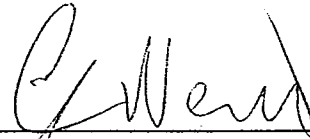
Counsel advises this Court that he has now discussed this matter with the Clerk of Court for the Supreme Court of South Carolina and is advised that the Court does wish for counsel to file a Notice of Appeal where the dismissal was issued due to either the successive nature of the Application or the Applicant's failure to comply with the statute of limitations found in S. C. Code Ann. 17-27-45 (A). Counsel will file a new Application for Post-Conviction Relief on behalf of this client in order to secure a belated PCR appeal through the guidelines and procedures set forth by the Supreme Court in

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Austin v. State, 305 S. C. 453 (1991). Counsel for the Respondent has consented to the sole relief sought in the current Application for Post Conviction Relief and it is noted on record at this hearing.

Accordingly, this Application for Post-Conviction Relief is granted. The Applicant is hereby afforded the opportunity to appeal the Order of Dismissal issued in his previous Post-Conviction Relief case docketed at 2012-CP-45-296 by filing a Notice of Appeal from this Order.

AND IT IS SO ORDERED.



Clifton B. Newman
Circuit Court Judge

This 1st day of November, 2014

STATE OF SOUTH CAROLINA)
COUNTY OF WILLIAMSBURG)

Edmond Goodman, #271444,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Case No. 2012-CP-45-0296

ORDER OF DISMISSAL

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on June 8, 2012 and amended on July 8, 2013. Respondent made its amended return on August 1, 2013. An evidentiary hearing into the matter was convened on December 16, 2013, at the Sumter County Courthouse. Applicant was present at the hearing and was represented by David P. Caraker, Esquire. Respondent was represented by Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

The records before this Court indicate the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Williamsburg County Clerk of Court. The Applicant was true billed indicted at the December 2008 term of the Williamsburg County Grand Jury for Murder and Possession of a Weapon during a Violent Crime (08-GS-45-253). William LeGrand Carraway, Esquire, represented him. Applicant proceeded to a jury trial before the Honorable Michael G. Nettles. On March 18, 2009, Judge Nettles sentenced Applicant to thirty years for Murder and five years for Possession of a Weapon during a Violent Crime with all sentences to run concurrent.

A timely Notice of Appeal was filed on Applicant's behalf by Elizabeth A. Franklin-Best, Esquire. The South Carolina Court of Appeals affirmed Applicant's conviction. State v. Goodman, Op. No. 2011-UP-541 (Ct. App. filed December 5, 2011). The Remittitur was issued on May 7, 2012.

ALLEGATIONS

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following allegations:

1. Ineffective assistance of trial counsel.
 - a. "Counsel failed to properly investigate and prepare for trial."
 - b. "Counsel Failed to call witnesses relevant to the defense theory of the case."
 - c. "Counsel failed to properly investigate present evidence, cross examination and make motions to suppress evidence."
 - d. "Counsel failed to make objections during critical points of trial."
 - e. "Counsel failed to argue and preserve legal issues for appellate review."
 - f. "Counsel failed to properly conduct discovery and obtain information relevant to the defense of the case."
2. Ineffective assistance of appellate counsel
 - a. "Appellate counsel failed to properly research case and present proper issues including, but not limited to, the denial of presenting a cognizable appeal issue that could have only been raised on direct review."
3. Due Process Violation

Applicant filed an Amended Post-Conviction Relief Application on July 8, 2013 alleging he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel.
 - a. "Defense counsel failed to object to a faulty jury instruction, thus failing to preserve the matter for appeal."
 - b. "Defense counsel failed to object to State's exhibits 28 and 29. These are two graphic and unfairly prejudicial photographs which depict the deceased, with blood around his head, and coming out of his ear."
2. Due Process Violation
 - a. "Applicant's right to due process was violated when the trial court charged the jury on the permissive inference of malice, as this shifted the burden to

the applicant to prove that his actions reduced the alleged crime from murder to manslaughter.”

At the start of the hearing, Applicant indicated to the Court that he would be proceeding solely on the allegations raised in his amended PCR application.

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant presented testimony from plea counsel, William LeGrand Carraway, Esquire (Counsel). Additionally, Applicant testified on his own behalf. This Court also had before it a copy of guilty plea hearing, the Williamsburg County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, and the return.

Applicant called Counsel to testify. Counsel stated he was a public defender in Williamsburg County for approximately 18 years at the time of Applicant's trial. Counsel stated he was appointed in the case. Counsel could not recall the number of times he met with Applicant, but felt he was fully prepared for trial. Counsel stated he filed for and reviewed the discovery material with Applicant prior to his trial. Counsel stated he reviewed Applicant's version of the facts. Counsel further stated Applicant gave him no witnesses or leads to investigate. However, Counsel stated he interviewed several witnesses who were present the night of the incident. Counsel stated those witnesses were called by the State during their case in chief. Counsel stated the case dealt with who shot Jerome White (Victim) and under what circumstances. Counsel testified it was his strategy to argue self-defense because Victim possessed a gun at the time of the shooting. Counsel stated an argument occurred between Applicant and Victim and multiple witnesses claimed Applicant pulled out a gun and shot

Victim. Counsel stated that he did not object to several different photo's being introduced at trial because he viewed the photos prior to the start of trial. Counsel stated he objected to the States exhibits 28 and 29 being introduced prior to the start of the trial. Counsel stated he was under the impression that the solicitor was not introducing the states exhibit 28 and 29. Counsel stated he was unaware at the time of trial that states exhibits 28 and 29 were being moved into evidence and would have objected to their introduction had he realized it. Counsel stated that although he would have objected, it was within the discretion of the trial judge to admit the photo's into evidence. Counsel further stated the trial judge commented that he felt the photo's probative value outweighed their prejudicial value. Counsel stated he has had more gruesome photos introduced into evidence over his objection in previous cases. Counsel stated he did not see any reason to object to the inference of malice charge given by the trial judge during jury instruction.

Following Counsel's testimony, Applicant testified on his own behalf. Applicant stated he met with Counsel one time. Specifically, Applicant testified he met Counsel for the first time the morning of his trial. Applicant stated they picked a jury and recessed for the day. Applicant stated the following morning he moved to have counsel relieved. Applicant stated his motion was denied. Applicant stated he did not discuss the evidence or view the photos with Counsel prior to his trial. Applicant stated he did not go over any type of defense 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. Specifically, this Court finds that Counsel's testimony is very credible

while Applicant's testimony is less credible. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). 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, (1984); Butler, 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, 286 S.C. 441, 334 S.E.2d 813 (1985). Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. 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.

INEFFECTIVE ASSISTANCE OF COUNSEL

Counsel was ineffective for failing to object to a faulty jury instruction regarding the implied inference of malice.

This Court finds Applicant's allegation that he was denied effective assistance of counsel for failing to object to a faulty jury instruction is without merit. This Court finds Counsel testified he did not feel there was any reason to object to the jury charge as given by the trial judge. Applicant argued Counsel should have objected to the implied inference of malice charge given by the trial court. See State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009) (holding jury charge instructing that malice may be inferred from the use of a deadly weapon is no longer good law in South Carolina where evidence is presented that would reduce, mitigate, excuse or justify the homicide). The court held that the ruling in Belcher would not apply to convictions challenged on post-conviction relief. Id. at 810. Additionally, Applicant was found guilty of his charges on March 18, 2009, some seven months prior to the Belcher decision. Counsel cannot be "clairvoyant or anticipate changes in the laws which were not existent at the time of trial." See Gilmore v. State, 314 S.C. 453, 445 S.E.2d 454 (1994). Therefore, this Court finds this allegation should be denied and dismissed with prejudice.

Counsel failed to object to the introduction of state exhibit's 28 and 29.

This Court finds Applicant's allegation that he was denied effective assistance of counsel for failing to object to state's exhibit's 28 and 29 is without merit. Counsel stated that he did not object to several different photo's being introduced at trial because he viewed the photos prior to the start of trial. Counsel stated he objected to the states exhibits 28 and 29 being introduced prior to the start of the trial. Counsel stated he was under the impression that the solicitor would not be moving to introduce states exhibit 28 and 29 during trial. Counsel stated he was unaware

at the time of trial that the states exhibits 28 and 29 were being moved into evidence and would have objected to their introduction had he realized it. Counsel stated that although he would have objected, it was within the discretion of the trial judge to admit the photo's into evidence. Counsel further stated the trial judge commented that he felt the photo's probative value outweighed their prejudicial value. Counsel stated he has had more gruesome photos introduced into evidence over his objection in previous cases. This Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test – that plea counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific evidence and compelling evidence that Counsel committed either errors or omissions to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. Any prejudice Applicant suffered due to Counsel's alleged deficiency is merely speculative because Applicant failed to introduce into evidence states exhibit 28 or 29 during the PCR hearing. See Dempsey v. State, 363 S.C. 365, 610 S.E.2d 182 (2005) (finding any prejudice defendant suffered due to his counsel's failure to subpoena victim's grandfather to testify at trial was merely speculative due to the fact that grandfather did not testify at defendant's post-conviction relief hearing). Therefore, this Court finds this allegation should be denied and dismissed with prejudice.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that plea counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that plea 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 plea counsel's performance.

The Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance.

ALL OTHER ALLEGATIONS

Except as discussed above, this Court finds that the Applicant affirmatively waived the remaining allegations set forth in his application at the hearing. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

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 notes that that Applicant must file and serve a notice of appeal within thirty 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 post-

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