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RECEIVED

NOV 24 2014

S.C. SUPREME COURT

November 20, 2014

Via Regular Mail

Mr. Daniel E. Shearouse
Clerk, The S.C. Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re: LYNN LARRY HUNT v. State

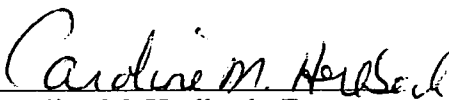
Dear Mr. Shearouse:

Enclosed you will find the original Notice of Appeal in the above matter along with Proof of Service upon the Respondents. The Notice has been filed with the Greenville County Clerk of Court.

These matters are being referred to the Office of Appellate Defense in that we were participating as Court appointed counsel at trial.

Thank you for your attention to this matter.

Yours very truly,


Caroline M. Horlbeck, Esq.

Enclosure

cc: Office of the Attorney General
Office of Appellate Defense

THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

NOV 24 2014

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
THE HONORABLE JAMES R. BARBER, III

S.C. SUPREME COURT

CA No. 2013-CP-23-4184

LYNN LARRY HUNT,

APPELLANT,

vs.

STATE OF SOUTH CAROLINA

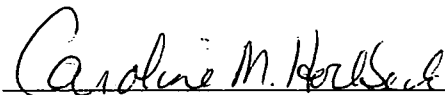
RESPONDENT.

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMMER
2014 NOV 12 PM 12 10

NOTICE OF APPEAL

Appellant LYNN LARRY HUNT, appeals from the Order of the Honorable James R. Barber, III, Circuit Court Judge clocked October 21, 2014

Respectfully submitted,



Caroline M. Horlbeck, Esq.
101 Whitsett St
Greenville, SC 29601

Date: November 11, 2014

Other Counsel of Record: Karen Ratigan, Esq.
Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Lynn Larry Hunt,

Appellant,

-vs-

State of South Carolina,

Respondent.

IN THE SUPREME COURT

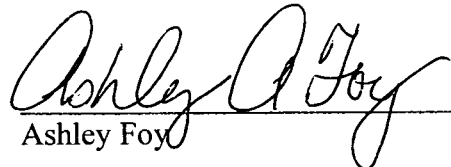
C.A. No. 2013-CP-23-4184

CERTIFICATE OF SERVICE

This is to certify that I am an employee in the law office of Caroline M. Horlbeck, attorneys for Applicant, and that I have this day caused to be served upon the person(s) named below Applicant's Notice of Appeal by placing copies of same in the United States mail, with adequate postage thereon, addressed as follows:

Ms. Lorie French
S.C. Office of Appellate Defense
P.O. Box 11433
Columbia, SC 29211

Karen Ratigan, Esq.
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211


Ashley Foy

Greenville, South Carolina

November 20, 2014

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
C.A. No. 2013-CP-23-4184

Lynn Larry Hunt,
a/k/a Larry Lynn Hunt,
S.C.D.C. No. 169197,

Applicant,

v.

State of South Carolina,

Respondent.

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMMER
2014 OCT 21 AM 11 57

ORDER OF DISMISSAL

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 was held on August 28, 2014 at the Greenville County Courthouse. The Applicant was present and represented by Caroline Horlbeck, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified at the PCR hearing. Also testifying was the Applicant's trial counsel, Daniel J. Farnsworth, Sr., 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, and the appellate records.

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 June 2011 term of the Greenville County Grand Jury for armed robbery (2011-GS-23-1871), attempted murder (2011-GS-23-1872), and possession of a weapon during commission of

a violent crime (2011-GS-23-1873). He was represented by Daniel J. Farnsworth, Sr., Esquire.

After the State brought the case to trial, the Applicant was found guilty. On February 8, 2012, the Applicant was found guilty. The Honorable D. Garrison Hill sentenced the Applicant to consecutive terms of fifteen years for armed robbery and thirty years for attempted murder. Judge Hill levied a concurrent sentence of five years for possession of a weapon during commission of a violent crime.

A notice of appeal was filed at the South Carolina Court of Appeals. Robert M. Pachak, Esquire of the South Carolina Commission on Indigent Defense, Division of Appellate Defense perfected the appeal in the form of an Anders¹ brief. The Court of Appeals dismissed the appeal. State v. Hunt, Op. No. 2013-UP-031 (S.C. Ct. App. filed Jan. 16, 2013). The remittitur was sent on February 1, 2013.

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. Failed to “conscientiously discharge his professional responsibilities while he was handling my case.”
 - b. Failed to “effectively challenge the arrest and seizure of Applicant.”
 - c. Failed to “act as my diligent conscientious advocate.”
 - d. “Failed to give me his complete loyalty.”
 - e. Did not “have my best interest in mind while he supposed to be investigating and preparing my case.”
 - f. Failed to “serve my cause in good faith.”
 - g. Neglected “the necessary investigations and the preparation of my case.”
 - h. Did not “do the necessary factual investigations on my behalf.”
 - i. Did not “do the necessary legal research.”
 - j. Did not “conscientiously gather any information to protect my rights.”

¹ Anders v. California, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967).

- k. Did not “try to have my case settled in a matter that would have been to my best advantage.”
- l. Did not “advise me of all my rights to take any of the actions that were necessary to protect preserve them knowing that I was not versed in the law.”
- m. “[K]nowing I was illtiterate in the law properly ascertained whether or not I actually understood or comprehended all of the issues that were involed in my case.”
- n. “[N]ever properly consulted with me or kept me infromed with what was going on as far as my case.”
- o. “[N]ever explained to me or discussed with me of any of the elements of the crime charge.”
- p. “[N]ever made any attempt to ascertain whether or not I actually knew the elements to the crime charge were.”

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).

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 only one meeting with trial counsel but several meetings with his investigator. The Applicant stated he and trial counsel did not discuss the elements of the charges or the evidence, but did review his version of events. The Applicant stated he had an alibi defense and gave trial counsel the names and addresses of those people. The Applicant stated trial counsel did speak to one of his potential alibi witnesses, Donald Dixon, but he did not realize Dixon would not be testifying at his trial. The Applicant stated he wanted a competency evaluation and that he told trial counsel in their meeting that he had undergone a previous evaluation.

Trial counsel testified he filed discovery motions, received those materials, and reviewed them with the Applicant. Trial counsel testified his investigator would have brought the Applicant a copy of his discovery materials at the jail. Trial counsel testified he had at least four meetings with the Applicant. Trial counsel testified he discussed the charges, elements, and penalties with the Applicant, who denied committing the crimes. Trial counsel testified the Applicant never said he had an alibi. Trial counsel testified Dixon's name is in his file but he does not recall whether he or his investigator visited Dixon. Trial counsel testified, however, that his general practice is to investigate a potential alibi. Trial counsel testified he did not recall the Applicant mentioning a prior competency evaluation. Trial counsel testified the Applicant

never told him of any prior mental health history and that there were no problems communicating with the Applicant.

This Court finds the Applicant failed to meet his burden of proving trial counsel did not adequately meet with him to prepare the case. Trial counsel testified he had at least four meetings with the Applicant (and that his investigator also met with the Applicant). Trial counsel testified the Applicant was provided with a copy of his discovery materials, and that they reviewed the charges, elements, and penalties in this case. This Court finds trial counsel's testimony is credible. This Court further finds trial counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his representation. This Court finds the Applicant has failed to show what else trial counsel should have done to better prepare his case for trial. See Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (holding applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial).

This Court finds the Applicant failed to meet his burden of proving trial counsel should have investigated his alibi witness. While the Applicant stated he asked trial counsel to investigate Donald Dixon as his alibi witness, trial counsel testified they did not discuss an alibi defense. Trial counsel testified his general practice would have been to send his investigator to interview potential alibi witnesses. This Court finds trial counsel's testimony is credible. Regardless, as Dixon did not testify at the PCR hearing, this Court cannot speculate as to whether his testimony would have been helpful to the defense case. See Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (the South Carolina Supreme Court "has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish

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 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

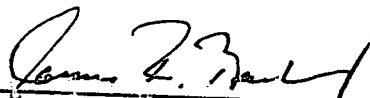
Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient and the Applicant was not prejudiced by counsel’s representation. Therefore, this 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 2nd day of OCTOBER, 2014.



James R. Barber, III
Presiding Judge
Thirteenth Judicial Circuit

COLUMBIA, South Carolina.

CAROLINE M. HORLBECK

Attorney At Law
101 WHITSEY ST.
GREENVILLE, SOUTH CAROLINA 29601.



Via Regular Mail

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