

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

G. Thomas Cooper, Circuit Court Judge

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JAN 02 2015

S.C. Supreme Court

Case No.: 2013-CP-08-0843

Clifford Ramsey,

Appellant,

v.

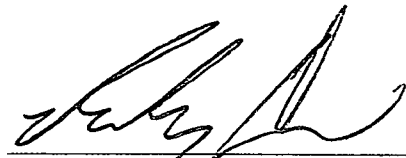
State of South Carolina,

Respondent.

NOTICE OF APPEAL

Clifford Ramsey appeals the denial of his Post Conviction Relief application in this case. The Application for relief was denied, following an evidentiary hearing before the Honorable G. Thomas Cooper on September 8, 2014.

12/30, 2014



Rodney D. Davis
400 Faber Place Drive, Suite 300
Charleston, SC 29405
(843) 323-4353
Davis@LowcountryLawOffice.com
Attorney for Appellant

Other Counsel of Record:
Ashleigh Wilson, Assistant Attorney General
Office of the Attorney General, State of South Carolina
P.O. Box 11549
Columbia, SC 29211-1549
Attorney for Respondent

MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

TSM
2014 DEC 31 AM 10:52
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THE STATE OF SOUTH CAROLINA
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Clifford Ramsey,

Appellant,

v.

State of South Carolina,

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PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the State by mailing a copy of it to the address of record, Ashleigh Wilson, P.O. Box 11549, Columbia, South Carolina 29211-1549, on 12/30, 2014.

12/30, 2014



Rodney D. Davis
400 Faber Place Drive, Suite 300
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(843) 323-4353
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P.O. Box 11549
Columbia, SC 29211-1549
Attorney for Respondent

MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

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STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

Clifford Antonio Ramsey, #350632,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

2013-CP-08-0843

CLERK OF COURT
BERKELEY COUNTY, SC

2014 DEC -2 AM 11:55

ORDER OF DISMISSAL

Presiding Judge:
Applicant's Attorney:
Respondent's Attorney:
Plea Counsel:
Date of Hearing:
Court Reporter:

The Honorable G. Thomas Cooper
Rodney Davis, Esquire
Ashleigh R. Wilson, Esquire
Roger Dixon, Esquire
September 10, 2014
Joyce C. Rueger

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed April 8, 2013. The Respondent made its Return on October 10, 2013. An evidentiary hearing into the matter was convened on September 10, 2014 at the Charleston County Courthouse. The Applicant was present at the hearing and represented by Rodney Davis, Esquire. Ashleigh R. Wilson, Esquire, of the South Carolina Attorney General's Office represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. The Applicant's plea counsel, Roger Dixon, Esquire, also testified at the hearing. This Court had before it the guilty plea transcript, the records of the Berkeley County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the PCR application, and the Respondent's Return thereto.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Berkeley County Clerk of Court. The Applicant was indicted at the March 2012 term of the Berkeley County Grand Jury for burglary-first degree (2012-GS-08-0429) and possession of a weapon during the commission of a violent crime (2012-GS-08-0430). Roger Dixon, Esquire, represented the Applicant. On April 23, 2012, the Applicant pled guilty as indicted. The Honorable R. Markley Dennis, Jr. sentenced the Applicant to confinement for seventeen (17) years for burglary and five (5) years for possession of a weapon during the commission of a violent crime. The sentences were to run concurrently. The Applicant did not appeal his convictions or sentences.

ALLEGATIONS

The Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. Counsel failed to file a Notice of Appeal when an appeal was requested by his client.

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 his or her 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).

Summary of the Testimony

The Applicant was present at the hearing and testified he dropped out of high school in 9th grade and did not complete his GED. The Applicant testified he was represented by Roger Dixon on the charges he challenges in his application. He testified he and Dixon did not discuss his right to appeal. The Applicant testified after he pled guilty and was sentenced he was taken into custody. He testified he was transported to the county jail and then transported to the Department of Corrections two or three days after his guilty plea. He testified he had no conversations with Dixon after his guilty plea. He testified he learned of his right to appeal from another inmate in the prison. The Applicant testified he did not try to get in touch with plea counsel after his guilty plea. He testified he never told plea counsel that he wanted to appeal his guilty plea.

Roger Dixon, was present and testified he was retained to represent the Applicant in April 2011. Counsel testified he met with the Applicant frequently and was aware that he had a 9th grade education. He testified he was a teacher for fifteen (15) years and never perceived the Applicant had a lack of understanding during their discussions. Counsel testified he had long conversations with the Applicant and he did not feel the Applicant had any problems comprehending the essential facts of his case.

Counsel testified he discussed with the Applicant all of his rights including his right to appeal. He testified they talked about the Applicant's right to appeal and the potential sentences he was facing at the courthouse during the Applicant's trial. He testified the Applicant never indicated he wanted to appeal. Counsel testified there were no meritorious issues for the Applicant to raise on appeal from his guilty plea. Counsel testified the Applicant was removed quickly after his guilty plea and he did not meet with the Applicant after his plea. He testified he

did not file an appeal on the Applicant's behalf.

Ineffective Assistance of Counsel

The Applicant alleges that he received ineffective assistance of counsel. 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.

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).

Courts use a two-pronged test to evaluate 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." Id. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. 668). 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." Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness

and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243-44 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)). When a defendant pleads guilty on the advice of counsel, the plea may only be attacked through a claim of ineffective assistance of counsel. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2002) (citations omitted).

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds that Applicant's attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, 466 U.S. at 668; Butler, 286 S.C. 441, 334 S.E.2d 813. This Court further finds counsel adequately conferred with the Applicant, advised him of his constitutional rights, and provided thorough representation. This Court finds that counsel's representation did not fall below an objective standard of reasonableness.

This Court finds that trial counsel was not ineffective for failing to file an appeal. The United States Supreme Court has rejected a "bright-line rule that counsel must always consult with the defendant regarding an appeal." Roe v. Flores-Ortega, 528 U.S. 470, 480, 120 S. Ct.

1029, 1036, 145 L. Ed. 2d 985 (2000). They instead held that "counsel has a constitutionally imposed duty to consult with the defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing." Id. "[A]lthough not determinative, a highly relevant factor in this inquiry will be whether the conviction follows a trial or a guilty plea, both because a guilty plea reduces the scope of potentially appealable issues and because such a plea may indicate that the defendant seeks an end to judicial proceedings." Id.

This Court finds this allegation is without merit and the Applicant has failed to carry his burden of proving he did not freely and voluntarily waive his right to appeal. This Court finds counsel provided credible testimony that he conferred with the Applicant prior to his guilty plea about his right to appeal. This Court finds further counsel provided credible testimony that after consulting with the Applicant about his right to appeal, the Applicant never indicated his desire to pursue an appeal of his guilty plea. Counsel also testified he did not see any meritorious issues to raise on appeal from the Applicant's guilty plea. This Court finds there is no evidence that rational defendant would want to appeal his guilty plea or that the Applicant ever indicated to counsel that he wanted to appeal. This Court finds most telling the Applicant's own testimony that he never expressed his desire to appeal to counsel. This Court finds counsel consulted with the Applicant about his right to appeal and never received an express instruction from the Applicant regarding appealing his guilty plea. This Court finds the Applicant freely and voluntarily waived his right to appeal.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test, specifically 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 while representing the Applicant. The Applicant failed to show that counsel's performance was deficient. Therefore, this Court need not address prejudice. Applicant's complaints concerning counsel's performance are without merit and are denied and dismissed.

All Other Allegations

As to any and all allegations that were raised in the application in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant abandoned such allegations. Therefore, they are hereby denied and dismissed.

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 guilty plea and sentencing proceedings. Counsel was not deficient in any manner, nor was the Applicant prejudiced by counsel's representation. Therefore, this application for PCR 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 written notice of entry of this Order 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 served and 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 24 day of November, 2014



The Honorable G. Thomas Cooper
Presiding Judge
9th Judicial Circuit

Columbia, South Carolina.



State of South Carolina
The Circuit Court of the Fifth Judicial Circuit

G. Thomas Cooper, Jr.
Judge

Post Office Box 192
1701 Main Street, Room 323
Columbia, SC 29202-0192
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Fax: (803) 576-1741
gcooperj@sccourts.org

November 24, 2014

The Honorable Mary P. Brown
Lancaster County Clerk of Court
P.O. Box 1809
Lancaster, SC 29721

RE: Clifford Antonio Ramsey v. State of SC C/A No: 2013-CP-08-0843

Dear Ms. Brown:

Please find enclosed for filing an Order in the above captioned case. I have included a copy, and if possible, please timestamp and return it to Judge Cooper's chambers for our records.

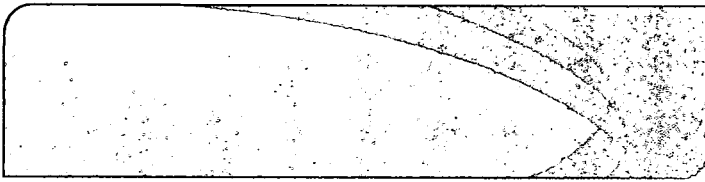
Very truly yours,

A handwritten signature in black ink, appearing to read "Alicia Olive".

Alicia Olive
Law Clerk to the Honorable G. Thomas
Cooper, Jr.

GTCJr.:aao

Enclosure



Lowcountry Law Office

4000 Faber Place Drive, Suite 300

Charleston, SC 29405

Phone: 843-323-4353 Fax: 843-323-4101

E-Mail: Davis@LowcountryLawOffice.com

December 29, 2014

RECEIVED

JAN 02 2015

S.C. Supreme Court

The Honorable Daniel E. Shearhouse
Clerk, Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

RE: Clifford Ramsey v. State of South Carolina, Case No.: 2013-CP-08-0843

Dear Mr. Shearhouse:

Enclosed for filing is the Notice of Appeal (original and clocked copy) in the above Post Conviction Relief (PCR) case. Also enclosed are the following:

- (1) Proof of service of the Notice of Appeal on the respondent;
- (2) The Order of Dismissal &
- (3) A Request for Representation on Appeal.

The Applicant-Appellant was represented by me as an indigent pursuant to my contract with the South Carolina Commission on Indigent Defense (SCCID) to handle PCR cases. By copy of this letter, I am forwarding a duplicate set of documents to the SCCID.

The Request for Representation on Appeal and the Affidavit in Support thereof are signed by me as attorney for Applicant-Appellant. If you need anything further, do not hesitate to contact me. Thank you for your time and attention to this matter.

Sincerely,

Rodney D. Davis

South Carolina Bar #: 12396

4000 Faber Place Drive, Suite 300

Charleston, SC 29405

(843) 323-4353

Davis@LowcountryLawOffice.com

CC: Ashleigh Wilson
Assistant Attorney General

Kimberly McCall
Appellate Division, SCCID

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)
CLIFFORD A. RAMSEY,)
Applicant.)
-versus-)
STATE OF SOUTH CAROLINA,)
Respondent.)

IN THE SUPREME COURT OF SOUTH CAROLINA

Case No.: 2013-CP-08-0843

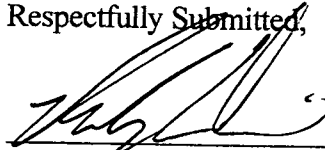
REQUEST FOR REPRESENTATION ON APPEAL

On behalf of the request of the above-named Applicant, to be represented by the South Carolina Commission of Indigent Defense, Appellate Division (SCCID), the undersigned attorney would show unto this Honorable Court that:

1. He is the attorney for the Applicant-Appellant in the above captioned case. The Applicant-Appellant was in custody during and taken into custody immediately following the Post Conviction Relief (PCR) hearing and was not available to personally sign this request;
2. The Applicant-Appellant was represented by the undersigned attorney as an indigent, pursuant to a contract with the SCCID;
3. The Applicant-Appellant has been informed that he may request assistance from the SCCID Appellate Division in perfecting his appeal;
4. A timely Notice of Intent to Appeal has been filed on the Applicant-Appellant's behalf;
5. The Applicant-Appellant has been informed that nothing requires SCCID Appellate Division to pursue this appeal unless that office's Chief Attorney is satisfied that there is arguable merit to this appeal and that he cannot afford to hire an attorney.

At this time, the Applicant-Appellant requests the aid of the SCCID Appellate Division in perfecting his appeal to the South Carolina Court of Appeals.

Respectfully Submitted,


Rodney D. Davis
South Carolina Bar #: 12396

MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

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FILED

12/31, 2014
Charleston, South Carolina.

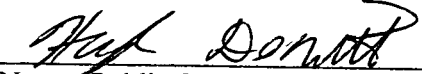
STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

VERIFICATION

PERSONALLY appeared before me, Rodney D. Davis, being first duly sworn,
deposes and says that he has read the foregoing *Request for Representation on Appeal* and
the same is true of his knowledge except those matters alleged on information and belief, and
as to those matters, he believes them to be true.


Rodney D. Davis
South Carolina Bar #: 12396

SWORN to and subscribed to me
this 30 day of December, 2014.


Notary Public for South Carolina
My Commission expires My Commission Expires May 05, 2024

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BERKELEY COUNTY, SC

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