

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

RECEIVED

JAN 20 2015

Letitia H. Verdin, Circuit Court Judge

S.C. Supreme Court

Case No. 2013-CP-23-06255

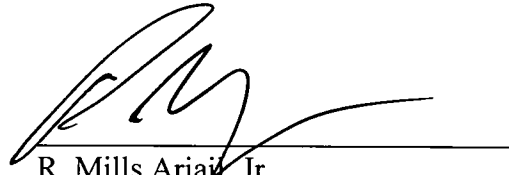
Willie James Poole,..... Appellant,

v.

State of South Carolina Respondent.

NOTICE OF APPEAL

Appellant appeals the Honorable Letitia H. Verdin's Order of Dismissal dismissing Appellant's application for post-conviction relief. On December 8, 2014, the Honorable Letitia H. Verdin signed an order dismissing Appellant's application for post-conviction relief with prejudice. Appellant, through counsel, received written notice of entry of this order on December 20, 2014. A copy of the Honorable Letitia H. Verdin's Order of Dismissal is attached.



R. Mills Arias, Jr.
Attorney at Law
11 North Irvine St., Suite 11
Greenville, SC 29601
Telephone (864) 232-9390
Facsimile (864) 232-9392
Attorney for Willie James Poole

Greenville, South Carolina
January 13, 2015

Other Counsel of Record and Interested Parties:

Karen C. Ratigan, Esq.
Assistant Attorney General
PO Box 11549
Columbia, SC 29211

Greenville County Clerk's Office
Greenville County Courthouse
305 East North Street
Greenville, SC 29601

SC Commission of Indigent Defense
Division of Appellate Defense
PO Box 11433
Columbia, SC 29211-1433

Willie James Poole SCDC# 270914
Perry Correctional Institution
430 Oaklawn Road
Pelzer, SC29669

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

JAN 20 2015

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

S.C. Supreme Court

Letitia H. Verdin, Circuit Court Judge

Case No.2013-CP-23-06255

Willie James Poole,..... Appellant,

v.

State of South Carolina Respondent.

CERTIFICATE OF SERVICE

I, Denise Tanner LaBeck, paralegal to R. Mills Ariail, Jr., do hereby certify that on this January 13, 2015, I served upon the below named Respondents copies of the **NOTICE OF APPEAL** by depositing copies of the same via U.S. Mail, postage prepaid, Registered Mail in an envelope addressed as set forth herein below:

Karen C. Ratigan, Esq.
Assistant Attorney General
PO Box 11549
Columbia, SC 29211
Attorney for the State of South Carolina

Greenville County Clerk's Office
Greenville County Courthouse
305 East North Street
Greenville, SC 29601

Willie James Poole SCDC# 270914
Perry Correctional Institution
430 Oaklawn Road
Pelzer, SC 29669

SC Commission of Indigent Defense
Division of Appellate Defense
PO Box 11433
Columbia, SC 29211-1433

Denise Tanner LaBeck
Denise Tanner LaBeck

January 13, 2015

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

JUDGMENT IN A CIVIL CASE
CASE NO: 2013CP2306255

FILED-OFFICE OF CLERK OF COURT
GREENVILLE COUNTY, SC
PAUL B. WICKENSIMER
2014 DEC 19 PM 4:14

Willie James Poole vs. South Carolina State Of

CHECK ONE:

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

- ACTION DISMISSED (CHECK REASON):**
 - SCRCP (Vol. Nonsuit); Rule 43(k), SCRCP (Settled); Rule 12(b), SCRCP; Rule 41(a).
 - Other: _____

- ACTION STRICKEN (CHECK REASON):**
 - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 - Other: _____
 - Rule 40(j) SCRCP; Bankruptcy;

- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 - Affirmed; Reversed; Remanded;
 - Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; Statement of Judgment by the Court;

Dated at Greenville, South Carolina, this .

Court Reporter:

PRESIDING JUDGE - Letitia H Verdin

This judgment was entered on the . and a copy mailed first class this . to attorneys of record or to parties (when appearing pro se) as follows:

R. Mills Ariail Jr. 11 North Irvine Street, Suite 11
Greenville, SC 29601

ATTORNEY(S) FOR THE PLAINTIFF(S)

Karen Christine Ratigan PO Box 11549 Columbia,
SC 29211

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court
- Clerk of Court

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Willie Poole, S.C.D.C. No. 270914,)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS

C.A. No. 2013-CP-23-625

2014 DEC 19 PM 4 44

FILED-COURT CLERK, JRT
 GREENVILLE CO, S.C.
 PAUL B. PETERSON, CLERK

ORDER OF DISMISSAL

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed November 19, 2013. The Respondent made its return on May 28, 2014. A hearing into the matter was held on October 21, 2014 before Judge Letitia H. Verdin at the Greenville County Courthouse. The Applicant was present and represented by R. Mills Ariail, Jr., 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 plea counsel, C. Timothy Sullivan, Esquire. The Court had before it the transcript of the guilty plea hearing; the Greenville County Clerk of Court records, including the arrest warrant, indictment and sentencing sheet; the Applicant's South Carolina Department of Corrections Records; the PCR Application; and the Return.

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 May 2010 term of the Greenville County Grand Jury for armed robbery (2010-GS-23-3428A). He was represented by C. Timothy Sullivan, Esquire.



After the State called the case to trial, the Applicant was found guilty. On April 27, 2011, the Honorable Edward W. Miller sentenced him to twenty five (25) years.

A Notice of Appeal was timely filed at the South Carolina Court of Appeals. Elizabeth A. Franklin-Best, 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 sentenced. State v. Poole, Op. No. 2013-CP-268 (S.C. Ct. App. June 19, 2013). The remittitur was sent July 9, 2013.

ALLEGATIONS

In this application, the Applicant alleges that he received ineffective assistance of counsel and that during trial the Assistant Solicitor committed prosecutorial misconduct.

Regarding the ineffective assistance of counsel claim, the Applicant particularly alleges the following:

- a. Failure to make timely objections throughout the course of the trial;
- b. Failure to fully investigate and call relevant witnesses;
- c. Failure to adequately cross-examine;
- d. Failure to request a necessary jury instruction; and
- e. Failure to properly prepare the Applicant to testify as requested.

During his PCR hearing, the Applicant proceeded solely on his ineffective assistance claim, particularly items (b) and (e).

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 (2013).

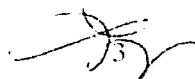


Ineffective Assistance of Counsel

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, 686 (1984); Porter v. State, 368 S.C. 378, 629 S.E.2d 353, 356 (2006). Regarding the first prong, the Applicant must in essence show that counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56 (1985). 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, 466 U.S. at 686).

Furthermore, the decisions and advice of trial counsel should be assessed for reasonableness under all the circumstances, with heavy deference given to counsel's judgment. Simpson v. Moore, 367 S.C. 587, 597, 627 S.E.2d 701, 706 (2006). A criminal defense attorney has a duty to conduct a reasonable investigation so that he may discover all reasonably available mitigation evidence, as well as any reasonably available evidence tending to rebut evidence produced by the state. McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 361 (2008). There is a strong presumption that adequate assistance of counsel was rendered, and that reasonable care



was exercised—particularly in the arena of professional judgments. Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 597 (2007).

a. Failure to make timely objections throughout the course of the trial.

An examination of the trial record reveals that Applicant's trial counsel made timely and appropriate objections throughout the course of the proceeding. During the PCR hearing, the Applicant did not point to any specific instance in which his counsel failed to object. The PCR Application provides no further evidence on this subject. To the extent that the Applicant in his application for PCR was referring to the issues raised in his direct appeal, this Court finds that his arguments are unpersuasive. Therefore, the Applicant has failed to meet his burden of proof on this issue.

b. Failure to fully investigate and call relevant witnesses.

The Applicant claims that witnesses existed who could have provided an alibi, or who could have called the credibility of the State's witnesses into question. Additionally, the Applicant claims that there was a potential witness who was in the courtroom throughout his trial who would have testified that the Applicant had taken no part in the planning of the armed robbery, though he was present when it occurred. However, the other witness was not disclosed to Applicant's trial counsel and during his PCR hearing the Applicant admitted that he did not know the whereabouts of this witness.

The Applicant's trial counsel claimed that the Applicant wanted to provide an alibi, but had never received a name of such a witness. Additionally, trial counsel's examination of the State's discovery materials did not reveal any other possible witnesses. Trial counsel further testified that the Applicant's written confession of the crime had a substantial effect upon his investigation and subsequent trial strategy. In light of these facts, this Court finds that the



Applicant failed to meet his burden of proving that his trial counsel failed to adequately investigate and call additional witnesses.

c. Failure to adequately cross-examine.

The Applicant claims that his trial counsel did not adequately demonstrate the bias of the State's witnesses during the course of the trial. He alleges that at least one of the State's witnesses was offered a reduced sentence in exchange for his testimony at trial, and this point should have been more prominently brought out at trial. An examination of the trial transcript reveals that trial counsel conducted a cross examination of all of the State's witnesses. (Trial Tr. 56-58, 63-64, 71-72, 81-87, 107-24, 158-66.) Further, these cross examinations focused on the witnesses' credibility and inconsistent statements. (E.g., Trial Tr. 107-24.) A specific agreement, if one existed, was not brought out during the cross examination of any witness.

The Applicant's trial counsel testified at the PCR hearing that he felt that each witness' credibility had been sufficiently impeached. Trial counsel further testified that he did not recall any deal being made with a witness who testified at trial. This Court finds that such determinations relating to cross examination strategy are entitled to strong deference in accordance with Simpson v. Moore, 367 S.C. at 597, 627 S.E.2d at 706. In light of the record contained in the trial transcript and the testimony presented at the PCR hearing, this Court finds no error in trial counsel's cross examination of the State's witnesses.

d. Failure to request a necessary jury instruction.

The Applicant claims that his trial counsel did not request a necessary jury instruction for his case. However, the trial transcript reflects that at the appropriate time trial counsel requested that the jury be charged with accessory after the fact in addition to or in lieu of the armed robbery charge. (Trial Tr. 166-67, 169.) The trial Court denied the Applicant's request on the



grounds that it was not a lesser included offence to the indicted offense. (Trial Tr. 169.) The Applicant's trial counsel noted his objection to this decision on the record, and the Court continued to discuss the charge. (Id.) This issue was not raised during the Applicant's PCR hearing. Further, there is no indication of what jury charge was should have been requested by the Applicant's trial counsel. This Court's examination of the trial record does not yield any further information as to an essential jury charge which was not requested or used in this case.

In the absence of any evidence supporting this contention, this Court finds that the Applicant has failed to meet his burden of proving that an additional jury instruction should have been requested. This Court further notes that while trial attorneys may request particular jury charges, the Court ultimately determines which charges to include or to exclude. Therefore, PCR will not be granted on this ground.

e. Failure to properly prepare the Applicant to testify as requested.

The Applicant claims that he told his attorney that he wished to testify at trial, and that he wished to be prepared for this testimony by his attorney. However, there is no evidence of this request in the trial transcript, and nothing presented at the PCR hearing supports this claim. After the presentation of the State's case, the trial Court discussed with the Applicant his constitutional right to testify in his own defense. (Trial Tr. 167.) The Court then permitted the Applicant to take a twenty minute break to discuss the merits of testifying with his trial counsel. (Trial Tr. 168.) After this break, the Defendant indicated that he did not wish to testify, and confirmed that he had been given adequate time to make this decision and that he fully understood his decision. (Trial. Tr. 168-69.)

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test—that trial counsel failed to render reasonably effective assistance under



prevailing professional norms. The Applicant failed to present specific and compelling evidence that trial counsel committed wither errors or omissions in his representation of the Applicant. This Court also finds that 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, 351 S.C. at 389, 570 S.E.2d at 174.

Prosecutorial Misconduct

To prevail on a claim of prosecutorial misconduct, a defendant must show that the prosecutor’s remarks or conduct were, in fact, improper, and that such remarks or conduct prejudiced the defendant to such an extent as to deprive the defendant of a fair trial. 21 Am. Jur. 2d Criminal Law § 429 (2014). In South Carolina, prosecutorial misconduct may occur through intentional or unintentional conduct of the State’s attorney. State v Inman, 395 S.C. 539, 559, 720 S.E.2d 31, 42 (2011). Where prosecutorial misconduct is identified, a court must take steps to cure the error. The prejudicial effect of prosecutorial misconduct is determined by (1) the cumulative effect of such misconduct; (2) the strength of the properly admitted evidence of the defendant’s guilt; and (3) the curative actions taken by the court. Inman, 395 S.C. at 565, 720 S.E.2d at 45.

The Applicant claims that the State failed to correct false evidence that it knowingly presented at trial. However, the Applicant provided no other evidence to support this contention. Additionally, this Court finds no evidence of prosecutorial misconduct within the trial transcript. Therefore, the Applicant has not proved that prosecutorial misconduct occurred, and he is not entitled to post-conviction relief



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. Furthermore, this Court finds no evidence of prosecutorial misconduct. 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 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.

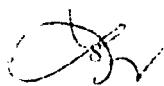
IT IS THEREFORE ORDERED:

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 8 day of ^{Dec.}~~November~~, 2014.



Letitia H. Verdin
Circuit Court Judge
Thirteenth Judicial Circuit



R. MILLS ARIAIL, JR.
ATTORNEY AT LAW

11 NORTH IRVINE STREET, SUITE 11 • GREENVILLE, SC 29601
PHONE 864.232.9390 • FAX 864.232.9392 • E-MAIL MILLS@RMALAWOFFICE.COM

RECEIVED

January 13, 2015

JAN 20 2015

Via US Mail

Daniel Shearouse
Clerk of Court
South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

S.C. SUPREME COURT

Re: *Notice of Intent to Appeal from Willie James Poole vs. State of South Carolina*
C.A. No.: 2013-CP-23-06255

Dear Mr. Shearouse:

I was Court Appointed in the above referenced matter, and I expect that appellate defense will handle the appeal and petition for certiorari. On behalf of my client, enclosed for filing please find the Notice of Appeal and proof of service. I've enclosed a copy of the Honorable Letitia H. Verdin's Order of Dismissal to be challenged on appeal. By copy of this letter, I am also serving my client, counsel for the State of South Carolina, the South Carolina Commission of Indigent Defense - Appellate Defense Division and the Greenville County Clerk's Office.

Thank you for your assistance in this matter and if you have any questions, please feel free to contact me.

Sincerely,
LAW OFFICE OF R. MILLS ARIAIL, JR.
Attorney at Law


R. Mills Ariail, Jr.

RMAjr/dl
Enclosures (as stated)

cc: Greenville County Clerk's Office
Greenville County Courthouse
305 East North Street
Greenville, SC 29601

Karen C. Ratigan
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211-11549

Willie James Poole SCDC# 270914
Perry Correctional Institution
430 Oaklawn Road
Pelzer, SC 29669

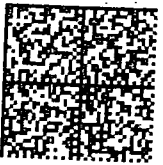
SC Commission of Indigent Defense
Division of Appellate Defense
PO Box 11433
Columbia, SC 29211-1433

RECEIVED

JAN 20 2015

S.C. SUPREME COURT

Priority Mail
ComBasPrice



02 1P
0000563972 JAN 14 20
MAILED FROM ZIP CODE 29601

UNITED STATES POSTAGE
PITNEY BOWES
\$005.32

ARIAIL, JR.

STREET, SUITE 11
E, SC 29601

Daniel Shearouse
Clerk of Court
South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211