

R. MILLS ARIAIL, JR.
ATTORNEY AT LAW

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February 13, 2015

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FEB 18 2015

S.C. SUPREME COURT

Via US Mail

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

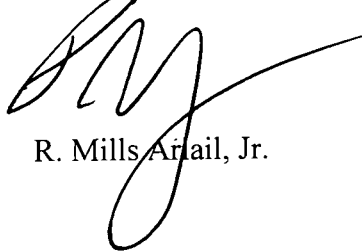
**Re: *Notice of Intent to Appeal from Randy Blythe vs. State of South Carolina C.A.
No.: 2013-CP-39-914***

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 Eugene C. Griffith'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 Pickens 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: Pickens County Clerk's Office
Pickens County Courthouse
214 East Main Street
Pickens, SC 29671

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

Randy Blythe SCDC# 233219
Perry Correctional Institution
430 Oaklawn Road Q1B-213
Pelzer, SC 29669

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

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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

Eugene C. Griffith, Jr., Circuit Court Judge

Case No. 2013-CP-39-914

Randy Blythe,..... Appellant,

v.

State of South Carolina Respondent.

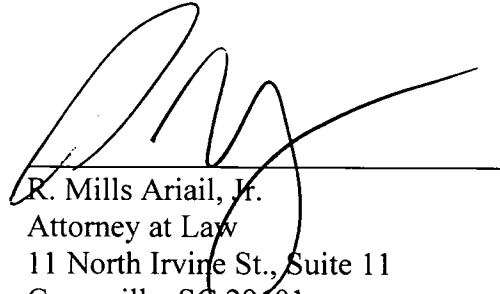
NOTICE OF APPEAL

Appellant appeals the Honorable Eugene C. Griffith's Order of Dismissal dismissing Appellant's application for post-conviction relief. On January 29, 2015, the Honorable Eugene C. Griffith 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 February 5, 2015. A copy of the Honorable Eugene C. Griffith's Order of Dismissal is attached.

RECEIVED

FEB 18 2015

S.C. SUPREME COURT



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Telephone (864) 232-9390
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Attorney for Randy Blythe

Greenville, South Carolina
February 13, 2015

Other Counsel of Record and Interested Parties:

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SC Commission of Indigent Defense
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Randy Blythe SCDC# 233219
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THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

Eugene C. Griffith Jr., Circuit Court Judge

Case No. 2013-CP-39-914

Randy Blythe,..... Appellant,

v.

State of South Carolina Respondent.

CERTIFICATE OF SERVICE

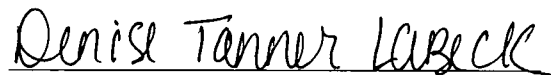
I, Denise Tanner LaBeck, paralegal to R. Mills Ariail, Jr., do hereby certify that on this February 13, 2015, I served upon the below named Respondents copies of the **NOTICE OF APPEAL** by depositing copies of the same via U.S. Mail, postage prepaid, Registered Mail in an envelope addressed as set forth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

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

Pickens County Clerk's Office
Pickens County Courthouse
214 East Main Street
Pickens, SC 29671

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Division of Appellate Defense
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Denise Tanner LaBeck

February 13, 2015

STATE OF SOUTH CAROLINA)
)
 COUNTY OF PICKENS)
)
 Randy Blythe, Jr.,)
 S.C.D.C. No. 233219,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2013-CP-394914
 CLERK OF COURT
 PICKENS COUNTY
 SOUTH CAROLINA

2015 FEB -2 A 10:30

ORDER OF DISMISSAL

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed July 23, 2013. The Respondent made its return on April 9, 2014. An evidentiary hearing into the matter was held on December 15, 2014 at the Pickens 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 trial counsel, Dorothy A. Manigault, Esquire. The Court had before it the trial transcript, the Pickens County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, the return, the appellate records, and Applicant's Exhibit 1.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Pickens County Clerk of Court. The Applicant was indicted at the March 2010 term of the Pickens County Grand Jury for distribution of cocaine base (2010-GS-39-0352) and distribution of cocaine base within proximity of a school (2010-GS-39-0353).

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He was represented by Dorothy A. Manigault, Esquire.

After the State brought the case to trial, the Applicant was found guilty. On January 25, 2011, the Honorable G. Edward Welmaker sentenced the Applicant to concurrent terms of 22 years for distribution of cocaine base, third offense and 10 years for distribution of cocaine base within proximity of a school.

A notice of appeal was filed at the South Carolina Court of Appeals. Breen R. Stevens, 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. Blythe, Op. No. 2013-UP-098 (S.C. Ct. App. filed March 13, 2013). The Remittitur was sent on April 3, 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 investigate.
 - b. Failed to adequately argue Miranda violation.
2. Miranda right violation:
 - a. "Agent Jason Lovell and Officer Mills fail to Mirandize me during questioning."
3. Chain of custody violation:
 - a. "A link in the chain was broken."

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 that, while trial counsel objected and raised a Miranda issue at trial, she did not argue he was subjected to “the functional equivalent” of an interrogation. The Applicant stated trial counsel did not ask about the lack of records used for the chain of custody of the money used in this case. The Applicant stated trial counsel should have challenged the chain of custody of the drugs because the weight (1) was not established before it was placed in the drop box and (2) was not listed in his indictments.

Trial counsel testified she was retained in this case and filed discovery motions. Trial

counsel testified she received discovery materials and reviewed them with the Applicant. Trial counsel testified she also reviewed the charges, elements, and sentence ranges and that the Applicant relayed his version of events. Trial counsel testified the defense in this case was that the officers could not have seen the Applicant because the tint on the window was too dark. Trial counsel testified the Applicant never denied driving the car or selling drugs. Trial counsel testified she negotiated a lot on these charges and the Applicant rejected the State's ten-year offer several times. Trial counsel testified she explained to the Applicant that there was no Miranda issue in this case, as he sent for the officers and initiated the conversation. Trial counsel testified there were no issues with the chain of custody of the money used in this case. Trial counsel testified the weight of the drugs were not important because they were dealing with a sale.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have made a different Miranda challenge in this case. A Jackson v. Denno hearing was held before trial began. Trial counsel argued the Applicant's statement to police officers was not voluntary when he was interrogated. (Trial transcript, p.92; p.94). The trial judge ruled the statement was voluntarily made. (Trial transcript, p.95). This Court finds trial counsel properly made a Miranda challenge in this case. Regardless, while the Applicant argues trial counsel should have specifically argued he was subjected to the "functional equivalent" of an interrogation, the Court of Appeals addressed this issue on direct appeal and concluded it was without merit. State v. Blythe, Op. No. 2013-UP-098 (S.C. Ct. App. filed March 13, 2013).

This Court finds the Applicant failed to meet his burden of proving trial counsel did not properly challenge the chain of custody of either the money or the drugs. Trial counsel testified (1) she did not believe there were issues with the chain of custody of the money and (2) the

weight of the drugs were unimportant. As to both allegations, this Court finds the Applicant has merely speculated that his case would have benefited from challenges to the chain of custody but has not provided any compelling evidence or testimony in support of this theory. As such, the Applicant has failed to meet his burden of proof. See, e.g., 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). Regardless, the Applicant cannot demonstrate any prejudice in this regard, as the State presented overwhelming evidence of his guilt. See Geter v. State, 305 S.C. 365, 367, 409 S.E.2d 344, 346 (1991) (concluding reasonable probability of a different result does not exist when there is overwhelming evidence of guilt).

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 either errors or omissions in her representation of the Applicant. 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.

Sentence Credit

The Applicant stated he did not receive the proper amount of time-served credit.

Trial counsel testified the Applicant made bond and was released, but accrued new charges and was sent back to jail. Trial counsel testified the Applicant had other charges pending when he went to trial. Trial counsel testified he could not receive time-served credit on

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these charges.

Regardless, this Court notes that, aside from two matters specifically mentioned in the statute, post-conviction relief is a proper avenue of relief only when the Applicant mounts a collateral attack challenging the validity of his conviction or sentence. Al-Shabazz v. State, 338 S.C. 354, 367, 527 S.E.2d 742, 749 (2000). A credit-related claim or challenge to other conditions of confinement are administrative matters and, thus, cannot be raised in a post-conviction relief proceeding. Id. at 369, 527 S.E.2d at 750. Here, the Applicant complains his sentence has not been properly calculated. The statutory right to sentence related credits is a protected "liberty" interest under the Fourteenth Amendment, entitling an inmate to minimal due process to ensure the state-created right was not arbitrarily abrogated. See Wolff v. McDonnell, 418 U.S. 539, 94 S. Ct. 2963, 41 L. Ed. 2d 935 (1974). Because the South Carolina Department of Corrections' disciplinary and grievance procedures are consistent with the standards delineated in Wolff, inmates may seek review of such claims under the Administrative Procedures Act. Al-Shabazz, 338 S.C. at 369, 527 S.E.2d at 750. This issue is dismissed.

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

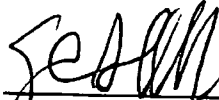
representation. Therefore, this PCR application must be denied and dismissed with prejudice.

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 29th day of January, 2015.



Eugene C. Griffith, Jr.
Presiding Judge
Thirteenth Judicial Circuit

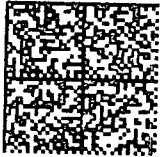
Newberry, South Carolina.

[REDACTED]
R. MILLS ARIAIL, JR.

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Via US Mail

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