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AJ

STATE OF SOUTH CAROLINA)
 COUNTY OF GEORGETOWN)
)
 Ronnie W. Wilson, # 235803,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FIFTEENTH JUDICIAL CIRCUIT

2011-CP-22-614

ORDER OF DISMISSAL

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FILED
 GEORGETOWN COUNTY, S.C.
 2012 SEP 24 PM 4:31
 ALISA Y. WHITE
 CLERK OF COURT

S.C. Supreme Court

This matter comes before the Court by way of an Application for Post-Conviction Relief filed May 4, 2011. Respondent made a timely Return. The Court convened an evidentiary hearing into the matter on August 31, 2012, at the Georgetown County Courthouse. The Applicant was present at the hearing and was represented by Louis Hutto, Esquire. Tyson Andrew Johnson, Sr., Esquire of the South Carolina Attorney General's Office represented Respondent.

At the hearing, the Applicant testified on his own behalf. Also testifying was Reuben C. Goude, Esquire. This Court had before it the PCR Application, the State's Return, the records of the County Clerk of Court, the transcript, and the Applicant's records from the South Carolina Department of Corrections.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to convictions from Georgetown County. The Applicant was indicted in July 2007 for criminal domestic violence of a high and aggravated nature ("CDVHAN") (2007-GS-22-737) and kidnapping (2007-GS-22-740). C. Reuben Goude, Esquire, represented the Applicant. On November 26-29,

2007, the Applicant was tried and convicted pursuant to a jury trial before the Honorable Paul M. Burch. Judge Burch sentenced the Applicant to 22 years for kidnapping and 10 years, concurrent, for CDVHAN. A notice of appeal was timely filed, and Kathrine H. Hudgins, Esquire, represented the Applicant on appeal. The South Carolina Court of Appeals affirmed the conviction on August 11, 2010. See State v. Wilson, 389 S.C. 579, 698 S.E.2d 862 (2010). The case was remitted to the circuit court on September 2, 2010

ALLEGATIONS

In his Application, Mr. Wilson alleges that his custody is unlawful for the following reason(s):

- (1) Violation of U.S. Constitutional Rights – 5th, 6th, 12th, and 14th Amendments, to include:
 - a. Unsigned warrants;
 - b. Ineffective assistance of counsel;
 - c. Prosecutorial misconduct;
 - d. Perjury; and
 - e. Inflammatory statement – impression on the minds of the jurors.

The Applicant states he is seeking to have his sentence vacated.

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. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. '17-27-80.

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) (citing Rule 71.1(e), SCRPC). 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, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 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, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, 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, supra). 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. “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).

Unsigned Warrants

Applicant testified his counsel was ineffective because counsel failed to quash warrants which Applicant claims were unsigned by a magistrate. On cross examination Applicant was shown a copy of two warrants which he conceded had a signature on them, but then upon further examination he claimed that any signatures appearing on the warrants were forged. Applicant provided no further evidence or proof of the forgery besides his own opinion. Applicant seems to consider the unsigned "Defendants' Copy" as some sort of fatal error – this is not the case. Counsel made a motion to quash or dismiss, and the trial court ruled on the motion that the defects, if any, were cured by the indictment. Transcript, P. 25.

Inconsistent statements by witnesses

Applicant testified his counsel was ineffective for failing to object to many inconsistent statements and "perjury statements" by the prosecution witnesses. However, Applicant could not establish prejudice deriving from any of the statements he complained of. Counsel is not required to object to every potentially objectionable but likely harmless statement at trial. Counsel indicated he chose not to object to certain statements to as not to drill it into the jury's heads, and that it was his trial strategy to not bring it up and highlight it to the jury. This was clearly a reasonable trial strategy by counsel and Applicant has failed to prove prejudice inuring from these claims.

Jury selection

Applicant complained about counsel's selection of the jury, his excusal of certain jurors and seating of others. Counsel indicated that it was Applicant who insisted on choosing each juror, and that as each juror was up for decision, Applicant would indicate whom to seat and whom to strike.

Applicant complained that counsel failed to call Mrs. Monica Wilson as a witness, but counsel indicated that it was Applicant who told him whom to subpoena. Counsel's testimony

articulated a reasonable trial strategy in the face of a client who attempted to direct the entire conduct of the trial, despite counsel's competent advice.

In reviewing all of Applicant's claims, I find that counsel's performance was not deficient under these circumstances. In reaching this conclusion, this Court finds counsel's testimony credible and gives it great weight. This Court does not find Applicant's testimony credible. For these reasons, I find that counsel was not ineffective with regard to his investigation, representation, or trial of this matter. I find that counsel was not deficient in this respect, nor was applicant prejudiced by any alleged deficiency. Further, I find counsel's trial preparation and actions were reasonable under prevailing professional norms, and therefore this claim is denied.

Other Allegations

No other allegations were raised or testified to at the PCR hearing. Therefore, any additional allegations raised in the PCR Application or amendment are deemed waived because no evidence was presented.

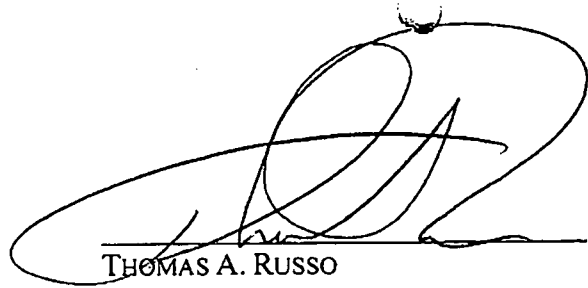
CONCLUSION

Based on 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 is denied and dismissed with prejudice.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be DENIED AND DISMISSED WITH PREJUDICE; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 10th day of Sept., 2012.



THOMAS A. RUSSO
Presiding Judge
15th Judicial Circuit

Florence South Carolina.

STATE OF SOUTH CAROLINA)
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COUNTY OF GEORGETOWN)
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RONNIE W. WILSON, #235803)
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IN THE COURT OF COMMON PLEAS

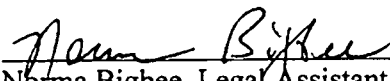
2011-CP-22-614

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a filed copy of the Order of Dismissal in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Louis H. Hutto, III, Esquire
P.O. Box 1826
Pawleys Island, SC 29585

DATED this 26TH day of September, 2012.



Norma Bigbee, Legal Assistant
For Respondent