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"Success is all that matters"

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April 22, 2015

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APR 24 2015

Supreme Court of South Carolina
Post Office Box 11330
Columbia, SC 29211

S.C. Supreme Court

RE: Anthony Edwards #295387 v. State of South Carolina
Case No.: 2013-CP-16-528

Dear Clerk of Court:

Enclosed please find an original and one copy of a Notice of Appeal, along with the Order we are appealing in the above referenced matter. If you would, please file the Notice of Appeal and return a clocked copy to me in the envelope provided.

Please be advised that I have been court appointed to represent Mr. Edwards in this matter.

Thank you for your assistance in this matter. If you have any questions or concerns, please feel free to contact my office.

With kind regards,



Tristan M. Shaffer

TMS/dke
Encl.

cc: Joshua L Thomas, Esquire
Darlington County Clerk of Court
Loreen French
Anthony Edwards

SUPREME COURT OF SOUTH CAROLINA

APPEAL FROM DARLINGTON COUNTY
In The Court of Common Pleas

Honorable Eugene C. Griffith, Jr.,
Common Pleas Judge of the Fourth Judicial Circuit

Case No.: 2013-CP-16-528

Anthony Edwards #295387,

Petitioner,

v.


State of South Carolina,

Respondent.

NOTICE OF APPEAL

Petitioner appeals the Order of Dismissal of the Honorable Eugene C. Griffith, Jr. dated March 30, 2015, filed April 6, 2015 and received by Petitioner on April 17, 2015.

April 22, 2015



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APR 24 2015

S.C. Supreme Court

SUPREME COURT OF SOUTH CAROLINA

APPEAL FROM DARLINGTON COUNTY
In The Court of Common Pleas

Honorable Eugene C. Griffith, Jr.,
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APR 24 2015

S.C. Supreme Court

Case No.: 2013-CP-16-528

Anthony Edwards #295387, Petitioner,

v.

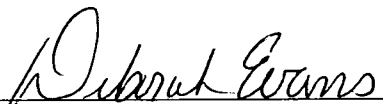
State of South Carolina, Respondent.

CERTIFICATE OF SERVICE

I, Deborah Evans, do hereby certify that I am an employee of Axelrod & Associates, P.A., in Myrtle Beach, South Carolina, and that I have this date served the Petitioner's Notice of Appeal upon the Respondent, by depositing a copy of same in the United States Mail, postage prepaid, addressed as follows:

Joshua L. Thomas, Esquire S.C. Office of the Attorney General Post Office Box 11549 Columbia, SC 29211	Anthony Edwards #295387 Lee Correctional Institution 990 Wisacky Highway Bishopville, SC 29010
Darlington County Clerk of Court 1 Public Sq., Rm B4 Darlington, SC 29532-3213	Loreen French Appellate Defense 1330 Lady Street Columbia, SC 29201

April 22, 2015
Myrtle Beach, South Carolina


Deborah Evans
Paralegal to Tristan M. Shaffer

COPY

STATE OF SOUTH CAROLINA)
COUNTY OF DARLINGTON)

IN THE COURT OF COMMON PLEAS
FOR THE FOURTH JUDICIAL CIRCUIT

Anthony Edwards, #295387,)
)
Applicant,)

Case No. 2013-CP-16-528

v.)

ORDER OF DISMISSAL

State of South Carolina,)
)
Respondent.)

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SCOTT B. SUGGS
CLERK OF COURT/RMC
DARLINGTON COUNTY, SC

This matter comes before the Court by way of an Application for Post-Conviction Relief filed January 25, 2013. Respondent made a timely Return on or about May 29, 2014. The Court convened an evidentiary hearing into the matter on January 20, 2015, at the Darlington County Courthouse. Applicant was present at the hearing and represented by Tristan M. Shaffer, Esquire. Joshua L. Thomas, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's trial counsel, J. Richard Jones, Esquire, also testified. The Court had before it a copy of the trial transcript, the records of the Darlington County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, and the pleadings in this matter. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Darlington County Clerk of Court. In April 2009, the Darlington County Grand Jury indicted Applicant for murder (2009-GS-16-644), possession of a weapon during the commission of a violent crime (2009-GS-16-643), possession of a pistol by a person

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DARLINGTON COUNTY, SC

convicted of a crime of violence (2009-GS-16-645), and carrying a pistol on premises that sell or serve alcohol (2009-GS-16-646). J. Richard Jones, Esquire (“trial counsel”), and Daniel T. Jordan, Esquire, represented Applicant. On October 10, 2011, Applicant proceeded to trial before the Honorable Howard P. King and a jury. On October 12, 2011, the jury found Applicant guilty of voluntary manslaughter, possession of a weapon during the commission of a violent crime, possession of a pistol by a person convicted of a crime of violence, and carrying a pistol on premises that sell or serve alcohol. Judge King sentenced Applicant to concurrent terms of eighteen years for voluntary manslaughter, five years for possession of a weapon during the commission of a violent crime, five years for possession of a pistol by a person convicted of a crime of violence, and three years for carrying a pistol on premises that sell or serve alcohol.

Applicant filed a timely notice of appeal. Robert M. Dudek, Esquire, of the Office of Appellate Defense, perfected the appeal with the filing of an Anders¹ brief. The South Carolina Court of Appeals dismissed Applicant’s appeal on March 12, 2013. State v. Edwards, Op. No. 2013-UP-106 (S.C. Ct. App. filed March 12, 2013). The Court of Appeals returned the remittitur to the circuit court on April 3, 2013.

II. ALLEGATIONS

In his application, Applicant alleged he is being held in custody unlawfully for the following reasons:

1. “Ineffective Assistance of Trial Counsel”
 - a. “Failure to Investigate”
 - b. “Failure to Investigate and Prepare for Denno Hearing”
 - c. “Failure To Object To Introduction of Prior ABWIK Or Offer To Stipulate To It”
 - d. “Trial Counsel’s failure to Request For a Charge Of Involuntary Manslaughter, instead or along with

¹ Anders v. California, 386 U.S. 738 (1967).

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- manslaughter charge”
- e. “Counsel’s failure to Consult With Client Concerning His Decision To Request A Charge On Voluntary Manslaughter”
2. “Ineffective Assistance of Appellate Counsel”
 - a. “Counsel’s failure to challenge insufficiency of the evidence and elements to support the charge of voluntary manslaughter”

At the evidentiary hearing, Applicant proceeded on the following allegations:

1. Ineffective assistance of trial counsel for requesting a voluntary manslaughter charge.
2. Due Process Clause violation because no evidence supports his voluntary manslaughter conviction.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the evidentiary hearing. The Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. The 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).

A. Summary of Testimony

Trial counsel testified he was appointed to represent Applicant in his role as a public defender. He recalled meeting with Applicant on several occasions. Trial counsel testified he shared the State’s discovery response with Applicant and discussed Applicant’s version of events. Trial counsel recalled Applicant was friends with the owner of the nightclub where the shooting occurred, and was attempting to assist the owner in removing the victim from the club. Trial counsel testified Applicant alleged the victim pulled a knife on him and fought him in the club’s kitchen shortly before the shooting. Trial counsel testified he believed the facts of the case entitled Applicant to a voluntary manslaughter instruction. He recalled Applicant giving a

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statement that he was acting in self-defense. However, he believed the evidence of the fight in the kitchen and of the victim returning to the club supported a voluntary manslaughter instruction. He testified he was concerned with the possibility of the jury convicting Applicant of murder, and the voluntary manslaughter instruction gave the jury "an out" to find Applicant not guilty of murder even if they did not believe he was acting in self-defense. Trial counsel also testified he discussed the voluntary manslaughter option with Applicant at trial.

Applicant testified he only met with trial counsel twice. He did recall trial counsel explaining the elements of voluntary manslaughter to him. Applicant testified he did not think voluntary manslaughter was appropriate because he was not upset at the time he shot. However, he admitted he did not tell trial counsel to decline the voluntary manslaughter charge.

B. Ineffective Assistance of Trial Counsel

In a post-conviction relief action, Applicant bears the burden of proving the allegations in the application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of trial counsel as a ground for relief, Applicant must prove trial 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." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether trial counsel provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The Court strongly presumes trial counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland,

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466 U.S. at 690). Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The Court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove trial counsel's performance was deficient. Id. Under this prong, the Court measures trial counsel's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, trial counsel's deficient performance must have prejudiced 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. at 117-18, 386 S.E.2d at 625.

~~The Court finds Applicant failed to meet his burden to prove trial counsel ineffective for~~
requesting a voluntary manslaughter charge. Regarding this allegation, the Court finds trial counsel's testimony credible, and Applicant's not credible. Trial counsel testified he believed the evidence at trial supported the voluntary manslaughter instruction. "Voluntary manslaughter is the unlawful killing of a human being in sudden heat of passion upon sufficient legal provocation." State v. Starnes, 388 S.C. 590, 596, 698 S.E.2d 604, 608 (2010) (citing State v. Wharton, 381 S.C. 209, 672 S.E.2d 786 (2009)). A trial court must charge the lesser included offense of voluntary manslaughter where there is any evidence to support the charge. Id.

Here, Applicant and the victim engaged in a fight shortly before the shooting. (Trial Tr. p. 104, lines 25-p. 106, line 18). Applicant gave a statement to police where he indicated the victim "instigat[ed] him" and he "blanked out" prior to the shooting. (Trial Tr. p. 300, lines 18-

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21).² This evidence supports trial counsel's opinion that voluntary manslaughter was appropriate under the facts of this case. See State v. Knoten, 347 S.C. 296, 304-07, 555 S.E.2d 391, 395-97 (2001). Furthermore, trial counsel testified he chose to request the voluntary manslaughter instruction to give the jury an alternative verdict if they believed Applicant did not act in self-defense, but also did not act with malice, when shooting the victim. Cf. Abney v. State, 408 S.C. 41, 47, 757 S.E.2d 544, 547 (Ct. App. 2014), cert. denied (Jan. 15, 2015) (acknowledging counsel should make strategic decisions regarding lesser-included offenses that are in client's best interest). Accordingly, the Court finds trial counsel was not deficient in requesting a jury instruction on the lesser included offense of voluntary manslaughter.

Furthermore, the Court finds trial counsel's decision to request the lesser-included offense did not prejudice Applicant. Self-defense is an absolute defense to either murder or voluntary manslaughter. The jury clearly did not accept Applicant's self-defense theory in this case. Thus, the jury would have convicted Applicant of murder had trial counsel not requested the voluntary manslaughter instruction. Because trial counsel's request resulted in Applicant being convicted of a lesser offense, he cannot demonstrate prejudice from counsel's actions.

C. Due Process Violation

The Court finds Applicant failed to prove his allegation that his conviction for voluntary manslaughter violates due process because there is no evidence to support the conviction. Initially, the Court finds this issue is not properly addressed in post-conviction relief. "[T]he Uniform Post-conviction Procedure Act 'shall not be construed to permit collateral attack on the

² The Court notes Applicant gave a recorded statement, which was played for the jury but not transcribed in the record. (Trial Tr. p. 214, lines 5-6). The substance of the statement was repeated by the State in closing arguments, and Applicant has not taken issue with the State's characterization of Applicant's statements about being instigated and blanking out.

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ground that the evidence was insufficient to support a conviction.” Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1975) (quoting Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973)). Here, trial counsel made a motion for a new trial after the verdict, arguing there was insufficient evidence to support the verdict. (Trial Tr. p. 367, lines 4-13). Accordingly, this issue was more appropriately addressed in Applicant’s direct appeal, and cannot be raised in collateral review. S.C. Code Ann. § 17-27-20(b) (post-conviction relief “is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or of direct review of the sentence or conviction.”); see also Simmons, 264 S.C. at 423, 215 S.E.2d at 885 (“It is uniformly held that an application for post-conviction relief is not a substitute for an appeal.”).

Nevertheless, the Court would find Applicant has not demonstrated a due process violation in this case. A conviction may be unconstitutional when it rests upon no evidence at all. Thompson v. City of Louisville, 362 U.S. 199, 206 (1960). However, as noted above, the record supports the charge of voluntary manslaughter in this case. Accordingly, Applicant’s conviction is supported by the evidence adduced at trial.

D. 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, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

IV. CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application.

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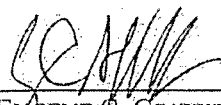
Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from his attorney's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRPC, provides that if Applicant wishes to seek appellate review, his attorney must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

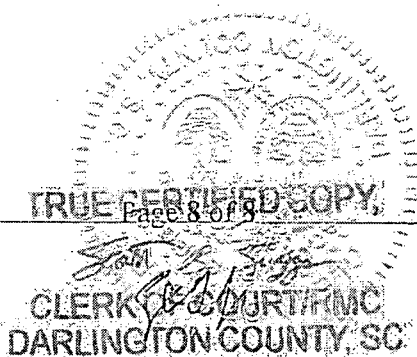
1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 30th day of March, 2015.


EUGENE C. GRIFFITH JR.
Presiding Judge

Newberry, South Carolina

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CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.



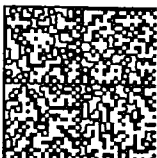
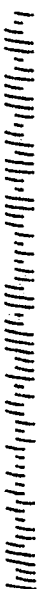
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