

R. MILLS ARIAIL, JR.
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May 12, 2015

RECEIVED

MAY 18 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

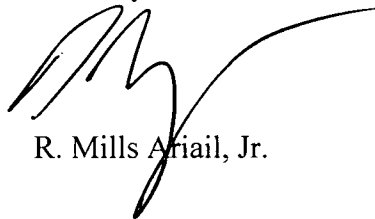
Re: Notice of Intent to Appeal from Humberto Alonso Garcia vs. State of South Carolina C.A. No.: 2014-CP-23-4293

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 Edward W. Miller'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

Humberto Alonso Garcia SCDC#
Ridgeland Correctional Institution
Post Office Box 2039
Ridgeland, South Carolina 29936

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

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MAY 18 2015

THE STATE OF SOUTH CAROLINA
In The Supreme Court

S.C. Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Case No. 2014-CP-23-4293

Humberto Alonso Garcia,..... Appellant,

v.

State of South Carolina Respondent.

NOTICE OF APPEAL

Appellant appeals the Honorable Edward W. Miller's Order of Dismissal dismissing Appellant's application for post-conviction relief. On May 6, 2015, the Honorable Edward W. Miller 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 May 11, 2015. A copy of the Honorable Edward W. Miller's Order of Dismissal is attached.



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Facsimile (864) 232-9392
Attorney for Humberto Alonso Garcia

Greenville, South Carolina
May 12, 2015

Other Counsel of Record and Interested Parties:

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MAY 18 2015

THE STATE OF SOUTH CAROLINA
In The Supreme Court

S.C. Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Case No. 2014-CP-23-4293

Humberto Alonso Garcia,..... 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 May 12, 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

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Denise Tanner LaBeck
Denise Tanner LaBeck

May 12, 2015

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

JUDGMENT IN A CIVIL CASE
CASE NO: 2014CP2304293

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2015 MAY 7 PM 2 57

Humberto Alonso Garcia 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):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- 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 - Edward W. Miller

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

Karen Christine Ratigan PO Box 11549 Columbia,
SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

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

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Humberto Alonso Garcia,)
 S.C.D.C. No. 359253,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 C.A.No. 2014-CP-23-4293

FILED-CLERK OF COURT
 GREENVILLE CO. S.C.
 PAUL B. WICKENSIMER
 2015 JAN 7 PM 2 57

ORDER OF DISMISSAL

ENTERED COMPUTER

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed August 4, 2014. The Respondent made its return on November 22, 2014. An evidentiary hearing was held on April 22, 2015 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, Robert E. Ianaurio, Esquire. The Court had before it the transcript of the guilty plea hearing, the Greenville County Clerk of Court records, the South Carolina Department of Corrections records, the PCR application, the return, 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 Greenville County Clerk of Court. The Applicant was indicted at the September 2013 term of the Greenville County Grand Jury for two counts of trafficking cocaine (2012-GS-23-4984, -4985). He was represented by Robert E. Ianaurio, Esquire.

On March 12, 2014, the Applicant pled guilty. The Honorable Lee S. Alford sentenced

the Applicant to concurrent terms of 12 years on each count of trafficking cocaine, 28-100 grams. The Applicant did not appeal.

ALLEGATIONS

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

1. Ineffective assistance of counsel.
 - a. "My lawyer could have made a better argument about the car not being in my name, and the fact that I did not know the drugs were in the car."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court had the opportunity to review the record in its entirety and heard the testimony and arguments presented at the PCR hearing. This Court 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). 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, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

The Applicant stated he and plea counsel reviewed the State's evidence and his version of events. The Applicant stated they reviewed the statement he gave to police and the fact that he consented to searches of his vehicle and residence. The Applicant stated plea counsel did not discuss potential search and seizure issues with him. The Applicant stated he would have received a lesser sentence if plea counsel did more work on his case.

Plea counsel testified he filed discovery motions, received those materials, and reviewed them. Plea counsel testified he had at least six meetings with the Applicant at the jail, and that his associate also had meetings with the Applicant. Plea counsel testified he and the Applicant reviewed his version of events and that it was harmful to the case that the searches were undertaken with the Applicant's consent. Plea counsel testified he did not believe there was a viable argument to be made to suppress the evidence. Plea counsel testified the Applicant pled guilty the morning of trial and that, while there was a pending motion to reveal the identity of the confidential informant, if the informant was produced at trial, there was no chance of winning. Plea counsel testified he spoke with the Applicant and the Applicant decided to plead guilty.

This Court notes the Applicant admitted to the plea judge both that he was guilty and that the facts recited by the solicitor were true. (Plea transcript, p.11; p.14). The Applicant also told the plea judge that he understood the trial rights he was waiving in pleading guilty, was satisfied with counsel, and had not been coerced in any way. (Plea transcript, pp.7-10).

This Court finds the Applicant failed to meet his burden of proving plea counsel did not discuss potential search and seizure issues. Plea counsel testified he had several meetings with the Applicant and discussed the case. Plea counsel testified they specifically discussed both the Applicant's statement and the fact that he consented to the searches of his vehicle and residence. Plea counsel testified there was no viable argument to be made to suppress the evidence. This Court finds plea counsel's testimony is credible. This Court further finds the Applicant has failed to articulate what Fourth Amendment challenge should have been made in this case. Regardless, this Court finds that, given the undisputed facts in this case, the Applicant cannot prove he was prejudiced by the lack of a suppression motion because such a motion would have been unsuccessful. See Sikes v. State, 323 S.C. 28, 30, 448 S.E.2d 560, 562 (1994) ("When the defendant claims that counsel's failure to articulate a Fourth Amendment claim was ineffective assistance, defendant must show that such claim is meritorious and that the verdict would have been different absent the evidence that should have been excluded.") (citation omitted).

This Court finds the Applicant failed to meet his burden of proving plea counsel should have done more work on his case. This Court finds this allegation must be denied because the Applicant failed to articulate what further investigation or arguments plea counsel could have made in this case. See Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998) (finding the failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result). While the Applicant argued that additional work on his case would have yielded a lesser sentence, this Court notes it is the judge who determines sentencing, not the parties. See In re M.B.H., 387 S.C. 323, 326, 692 S.E.2d 541, 542 (2010) ("A trial judge has broad discretion in sentencing within statutory limits.").

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that plea counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that plea counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by plea 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.

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 guilty plea and sentencing proceedings. Counsel was not deficient in any manner 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: 6 day of May, 2015.



Edward W. Miller
Presiding Judge
Thirteenth Judicial Circuit

W. Miller, South Carolina.

R. MILLS ARIALL, JR.

11 NORTH IRVINE STREET, SUITE 11
GREENVILLE, SC 29601

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