



Division of Appellate Defense
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Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

March 22, 2012

RECEIVED

MAR 22 2012

S.C. Supreme Court

Ms. Desiree R. Allen
Court Services Manager
1015 Sumter Street
Columbia, SC 29201

Dear Ms. Allen:

Please provide us with the following transcript:

Joseph Jennings v. State of South Carolina Case #: 10-CP-43-01141

County: Sumter Date of Trial: October 25, 2011

Presiding Judge: R. Ferrell Cothran, Jr.

To ensure prompt payment, please sign and complete the enclosed CID FORM 3500 and include the original criminal case number (Indictment number) where the space is provided.

Please number the lines on the paper from 1-25, and include any and all recorded motions, pre and post-trial. Additionally, please transcribe the jury selection, and the State and defense counsel's opening and closing arguments.

If you are aware of any co-defendants or if the Attorney General's Office has already requested a transcript, please let us know.

Sincerely,


Loriene French
Legal Services Coordinator

cc: S.C. Supreme Court
Attorney General's Office

The Brooks Law Offices, LLC

Charles T. Brooks, III
Attorney

309 Broad Street
Sumter, South Carolina 29150
Post Office Box 3512, Sumter, SC 29151
Post Office Box 291226, Columbia, SC 29229
OFFICE: (803) 418-5708
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Email: cbrooks@ctbrooks.com

Irma R. Brooks
Attorney

PCR

February 15, 2012

South Carolina Supreme Court
PO Box 11330
Columbia, SC 29211

RE: Joseph Jennings v State of South Carolina
Case No. 2010-CP-43-1141

Dear Sir or Madam:

Enclosed herewith you will find the **Notice of Appeal, Order of Dismissal**, along with a **Proof of Service** in reference to the above named Applicant.

If you have any questions or concerns, please contact my office at the number stated above.

With kind regards, I am

Sincerely,



Charles T. Brooks, III
CTB/jlb

Enclosed as stated

Cc: Robert Corney, Office of Attorney's General
South Carolina Office of Appellate Defense
Joseph Jennings, 288765

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FEB 16 2012

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM SUMTER COUNTY
Court of Common Pleas
Honorable R. Ferrell Cothran, Jr., Circuit Court Judge

Case No: 2010-CP-43-1141

Joseph Jennings, Appellant
S.C.D.C. No.: 288765

v.

The State Respondent

NOTICE OF APPEAL

Joseph Jennings appeals his Denial for Post Conviction Relief in this case. The Order of Dismissal was imposed and signed by the Honorable R. Ferrell Cothran, Jr., on February 3, 2012, which I, Charles T. Brooks, III, received on February 14, 2012

February 15, 2012

RECEIVED

FEB 15 2012

S.C. SUPREME COURT


Charles T. Brooks, III
309 Broad Street
Post Office Box 3512
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(803) 418-5708
Attorney for Appellant

Other Counsel on Record:
Robert Corney, Esquire
Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-3970

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM SUMTER COUNTY
Court of Common Pleas
Honorable R. Ferrell Cothran, Jr., Circuit Court Judge

Case No: 2010-CP-43-1141

Joseph Jennings.....Appellant
S.C.D.C. No.:288765

v.

The State.....Respondent

PROOF OF SERVICE

I, the undersigned, do hereby certify that on this 15th day of February, 2012, I served the foregoing **Notice of Appeal, Order of Dismissal**, as well as **Proof of Service** in this matter by depositing a true copy of it in the United States Mail, postage prepaid, on February 15, 2012 addressed to the following as indicated below:

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

South Carolina Office of Appellate Defense
1330 Lady Street, Suite 401
PO Box 11589
Columbia, SC 29211-1589

Office of Attorney's General
Attn: Robert D. Corney, Esquire
Post Office Box 11549
Columbia, South Carolina 29211-1549

Joseph Jennings, 288765
Evans Correctional Institution
610 Highway 9 West
Bennettsville, South Carolina,29512

Dated: February 15, 2012



Charles T. Brooks, III
Attorney for the Appellant
309 Broad Street
Sumter, South Carolina 29150
(803) 418-5708

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

RECORDED
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IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Joseph Jennings, #288765,

Applicant,

v.

State of South Carolina,

Respondent.

JAMES J. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

2010-CP-43-1141 CERTIFIED TRUE COPY
OF ORIGINAL FILED

Sherry H. How
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

ORDER OF DISMISSAL

This matter comes before the Court by way of an Application for Post-Conviction Relief filed May 27, 2010. The Respondent made at Return on January 28, 2011. A hearing was convened on October 25, 2011, before this Court to review the issue at hand. The Applicant was present at the hearing and was represented by Charles T. Brooks, III, Esquire. The Applicant testified on his own behalf; also testifying was Timothy Murphy, Esq., the Applicant's guilty plea counsel. The Respondent was represented by Rob D. Corney and J. Rutledge Johnson of the South Carolina Attorney General's Office.

This Court had before it the records of the Sumter County Clerk of Court, the guilty plea transcript, and the Applicant's records from the South Carolina Department of Corrections.

PROCEDURAL HISTORY

The records before this Court indicate the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. The Applicant was indicted at the September 2007 term of the Sumter County Grand Jury for murder, misprision of a felony (2007-GS-43-0672) and at the May 2009 term of the Sumter

County Grand Jury for armed robbery, assault and battery with intent to kill, possession of a firearm or knife during the commission of a violent crime, burglary 1st degree, and resisting arrest (2009-GS-43-1057). Timothy Murphy, Esquire, represented him. On January 19, 2010, the Applicant entered an Alford plea of guilty to misprision of a felony and armed robbery. North Carolina v. Alford, 400 U.S. 25, 91 S.Ct. 160 (1970). The Honorable George C. James, Jr. sentenced him to a negotiated term of ten (10) years imprisonment on each charge, sentences to be served concurrently. The Applicant did not appeal his conviction or sentence.

In his current application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Applicant not being credited for time served.

At the PCR hearing, the Respondent moved to dismiss the Applicant's application pursuant to Al-Shabazz v. State because the Applicant's allegation is not cognizable in a post-conviction relief application. 338 S.C. 354, 527 S.E.2d 742 (2000).

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.

Credit for time served

The Applicant alleges he has not received credit for time served while awaiting trial for misprision of a felony. 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. A credit-related claim or challenge to other conditions of confinement does not fall into that category. Id.

In every case in computing the time served by a prisoner, full credit against the sentence shall be given for time served prior to trial and sentencing. Provided, however, that credit for time served prior to trial and sentencing shall not be given... **when the prisoner is serving a sentence for one offense and is awaiting trial and sentence for a second offense in which case he shall not receive credit for time served prior to trial** in a reduction of his sentence for the second offense.

Allen v. State, 339 S.C. 393, 395, 529 S.E.2d 541, 542 (2000) (emphasis added).

At the PCR hearing, the Applicant testified that he was arrested on a murder charge on which he spent five hundred and fifty-six (556) days in jail. He was then released on bond. The Applicant also testified and admitted that he was arrested on charges of armed robbery, assault and battery with intent to kill, possession of a firearm or knife during the commission of a violent crime, burglary 1st degree, and resisting arrest after he was out on bond for the first charge. He claimed that he spent six hundred and ten (610) days in jail on the second set charges before his Alford plea. The Applicant then testified that he was under the impression that he would receive full credit for one thousand one hundred and sixty-six (1,166) days in jail for both sets of charges.

The Applicant's defense counsel, Timothy Murphy, took the stand and testified that the Applicant was released on bond pursuant to an agreement to testify on the State's behalf concerning the murder/misprision of a felony charge. He also testified that the Applicant was subsequently arrested on the second set of charges. Mr. Murphy entered into plea negotiations with the State which ultimately culminated in the Applicant pleading, pursuant to Alford, to a ten-year prison sentence on both the misprision of a felony and armed robbery charges on the day of trial set for the

armed robbery charge. All other charges were nolle prossed in exchanged for the Applicant's pleas. Mr. Murphy, further, testified that he did not understand credits for time served under the South Carolina Department of Corrections guidelines as well as he should, but told the Applicant to assume he (the Applicant) would serve the entire sentence. While Mr. Murphy testified that the credits for time served might have induced the Applicant to plead guilty to the misprision of a felony, he (Mr. Murphy) did not think the credits influenced the Applicant's decision to plead to armed robbery. It was the victim of the armed robbery showing up to testify at the trial that heavily influenced the Applicant pleading to the armed robbery.

This Court finds that whether the South Carolina Department of Corrections will accord the Applicant credit for his jail time is a collateral consequence of his plea. Furthermore, the Court finds the Applicant was arrested on the armed robbery set of charges after he was on bond for the misprision of a felony charge. As such, according to Allen, the Applicant should not receive credit for time served for the misprision of a felony charge as to reduce his sentence for armed robbery. Accordingly, this allegation is dismissed.

Other Allegations

No other allegations were raised at the PCR hearing. Therefore, any additional allegations are deemed waived because no evidence was presented.

CONCLUSION

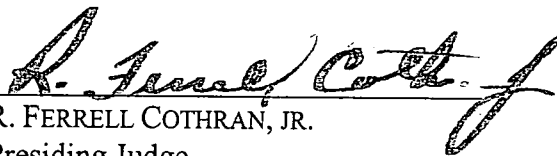
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

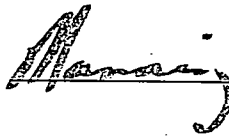
This Court advises Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order to secure the appropriate appellate review. His attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely filed.

IT IS THEREFORE ORDERED:

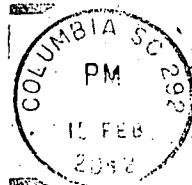
1. That the Application for Post-Conviction Relief must be DENIED AND DISMISSED WITH PREJUDICE; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 3 day of Feb, 2012


R. FERRELL COTHRAN, JR.
Presiding Judge
Third Judicial Circuit

, South Carolina.

CHARLES T. BROOKS, III
THE BROOKS LAW OFFICE, LLC
POST OFFICE BOX 3512
SUMTER, S. C., 29151



South Carolina Supreme Court
PO Box 11330
Columbia, SC 29211

*Joseph
Jennings*

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