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RECEIVED

June 6, 2015

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S.C. SUPREME COURT

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

Re: Curtis Wilkie v. State 2012-CP-42-1581; Frank Beckham v. State 2013-CP-42-0884

Dear Mr. Shearouse:

Please find enclosed the Notices of Appeal and Proofs of Service for Curtis Wilkie and Frank Beckham in their appeals from the dismissals of their Post Conviction Relief Actions.

If you have questions or concerns, please do not hesitate to contact me.

Sincerely,



Brandt Rucker, Esq.

ENCLOSURES

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

The Honorable Roger L. Couch, Circuit Court Judge

Case No. 2012-CP-42-1581

State of South Carolina

Respondent,

v.

Curtis Antonio Wilkie,
#345673

Appellant.

Notice of Appeal

Curtis Antonio Wilkie appeals the order of the Honorable Roger L. Couch dated April 23, 2015. Appellant received written notice of entry of this order on April 30, 2015.

May 29, 2015

Sincerely,

s/ 

Brandt Rucker
Attorney for Appellant Curtis
Antonio Wilkie
522 North Church Street
Greenville, South Carolina 29601
(864) 271-9925
Attorney for Appellant.

cc:
Other Counsel of Record:

Suzanne White
Office of the South Carolina Attorney General
P.O. Box 11549
Columbia, S.C. 29211

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

The Honorable Roger L. Couch, Circuit Court Judge

Case No. 2012-CP-42-1581

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Respondent,

v.

Curtis Antonio Wilkie,
#345673

Appellant.

Proof of Service

I certify that I have served the Notice of Appeal, on the State of South Carolina by depositing a copy of those documents in the United States Mail, postage prepaid, on May 29, 2015, addressed to its attorney of record, Suzanne White Office of the South Carolina Attorney General, P.O. Box 11549, Columbia, S.C. 29211.

June 6, 2015

Sincerely,

s/ 

Brandt Rucker

Attorney for Appellant Curtis

Antonio Wilkie

522 North Church Street

Greenville, South Carolina 29601

(864) 271-9925

Attorney for Appellant

cc:

Other Counsel of Record:

Suzanne White
Office of the South Carolina Attorney General
P.O. Box 11549

Columbia, S.C. 29211

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)
)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Curtis Antonio Wilkie, #345673,)
)
Applicant,)
)

2012-CP-42-1581

v.)
)

ORDER OF DISMISSAL

State of South Carolina,)
)
Respondent.)
)

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This matter comes before the Court by way of an Application for Post-Conviction Relief filed April 12, 2012. The Respondent made its Return on or about March 27, 2014. An evidentiary hearing into the matter was convened on September 16, 2014, at the Spartanburg County Courthouse. The Applicant was present at the hearing and was represented by J. Brandt Rucker, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. Robert Hall, Esquire, also testified. This Court also had before it a copy of the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the Return, the plea transcript, the Appellate records and exhibits introduced by Applicant.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. The Applicant was indicted at the March 2011 term of the Spartanburg County Grand Jury for one count of armed

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robbery (11-GS-42-1842) and one count of attempted burglary, 1st degree (11-GS-42-1841). He was represented by Robert Hall, Esquire. On April 15, 2011, the Applicant pled guilty as indicted. He was sentenced by the Honorable J. Mark Hayes II to confinement for concurrent periods of twenty five (25) years for each charge. Judge Hayes also ruled that these sentences are to run concurrently with an eight (8) year sentence imposed by Greenville County for a separate conviction.

A timely notice of appeal was filed on Applicant's behalf, but the South Carolina Court of Appeals dismissed the appeal on June 22, 2011, for failing to show the Court that any issue was raised or ruled upon by the circuit court judge. The Remittitur was returned on July 8, 2011.

ALLEGATIONS

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

1. Ineffective assistance of counsel, in that;
 1. "Trial counsel failed to protect my constitutional rights"
2. Prosecutorial misconduct, in that;
 1. "Presented fraudulent testimony and evidence to the courts"
3. Violation of due process, in that;
 1. "6th 10th and 14th Constitutional Violations"
 2. "denied due process and equal protection"

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SPARTANBURG COUNTY
M. HOPE BLACKLEY

At the hearing, Applicant voluntarily abandoned the allegation of prosecutorial misconduct.

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. This Court found the testimony of Counsel to be more credible than the testimony of Applicant as to all allegations raised at the hearing.

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), SCRCP). 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, the 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. 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."

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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).

Applicant testified that he only met with Counsel one time and Counsel offered a plea during that meeting. Applicant testified that the meeting lasted approximately fifteen minutes. Applicant testified that Counsel explained the charges to Applicant and suggested that Applicant plead guilty, but Counsel never reviewed any discovery materials with Applicant. Applicant alleged that he only saw the discovery materials once he was in the Department of Corrections. Applicant introduced Exhibit #1, Rule 5/Brady motion and Exhibit #2, letter from Counsel with discovery materials dated March 9, 2012, in support of his claim. Applicant testified that he thinks Counsel should have more fully investigated the case, including reviewing the incident reports and victim statements. Yvonne Mitchell's statement was introduced as Exhibit #3. Applicant testified that he believes the statement was favorable for him because Ms. Mitchell does not implicate Applicant. Mitchell only specifically names and implicates Applicant's co-defendant, Eddie Pilcher. Applicant testified that he did not believe that Counsel ever spoke with Mitchell. Applicant also testified that the victims' statements only indicate that they were robbed by three black males. Applicant introduced Exhibit #4, which was a statement by Elizabeth Joy. Applicant alleged that had Counsel investigated the case, Counsel would have found that Joy's statement contradicted the other co-defendant's (Jonathan Goss) statement.

Applicant testified that he said everything that his attorney advised him to say at the plea because Counsel indicated that Applicant would receive a life sentence if he did not plead guilty. Applicant testified that Counsel failed to protect Applicant's constitutional rights. However, Applicant did acknowledge that during the plea he agreed with the State's recitation of the facts

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and was advised of the potential sentence he faced. Applicant apologized to the court and victims and stated that he understood he would "do time." Applicant also acknowledged that he did have prior charges of a similar nature from Greenville County. Applicant testified that he believed that he would receive a lesser sentence than he received and that was the only reason he pled guilty. Applicant testified that Counsel misadvised him that he would be pleading to attempted burglary and that a portion of that sentence could be suspended. Applicant asserted that Counsel failed to protect the Applicant's constitutional rights.

Counsel testified that he met with the Applicant multiple times. Those meetings, which were documented in Counsel's file on Applicant included:

1. December 20, 2010 - reviewed discovery materials and discuss preliminary hearing;
2. February 2, 2011 - discussed a potential conflict of interest;
3. February 17, 2011 - met with Applicant and Applicant's Greenville County counsel to discuss cooperation and charge classifications;
4. April 6, 2011 - discussed Applicant's cooperation, possible concurrent terms or suspended sentence and ten year mandatory minimum, requested copy of all discovery materials, which Counsel provided through jail mail;
5. April 7, 2011 - met with Applicant in jail to discuss possible plea offer;
6. April 12, 2011 - communicated with the State regarding plea and the fact that no victims would be present for the plea and the State would make no recommendation but also advised Applicant as to possible sentence if proceeded to trial;
7. April 15, 2011 - date of guilty plea.

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Counsel testified that he did review all discovery materials with the Applicant; however, Counsel testified that there were no victim or witness statements connected with these charges, only the investigative reports. Ms. Mitchell was the girlfriend of a co-defendant and provided information after the robberies. Counsel testified that the Applicant was implicated in the crimes by both co-defendants, who also each reported that the Applicant had a pistol at the robberies. Counsel testified that he was not familiar with the statement of Elizabeth Joy, but speculated that it was a statement related to one of Applicant's Greenville County charges. Counsel testified that he did not recall speaking with the victims of either case, but was grateful they did not appear at the plea to speak.

Counsel testified that had discussed the potential sentence and benefits of pleading guilty versus a trial with Applicant fully. Counsel testified that the Applicant always indicated his willingness to cooperate with the State and never indicated that he did not understand any advice or information. In fact, Counsel stated that the Applicant was cooperating in regards to the Greenville County charges as well. Counsel also testified that he did not ever promise the Applicant a particular sentence. Counsel testified that he did discuss the possibility of the judge suspending a portion of Applicant's sentence because until the ruling in State v. Jacobs, 399 S.C. 584, 589, 713 S.E.2d 621, 624 (2011), which held that a sentence for a conviction of first-degree burglary may not be suspended, the belief was that the sentence could be suspended. However, Counsel testified that he never promised Applicant that the sentence would be suspended.

This Court finds that the Applicant's allegations that Counsel did not conduct an adequate pre-trial investigation or prepare enough for trial are without merit. The "brevity of time spent in consultation, without more, does not establish that counsel was ineffective." Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980). To establish counsel was inadequately prepared, an Applicant

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must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel been more fully prepared. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998); Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (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).

This Court notes that Counsel has years of experience representing clients on similar charges and remains updated on case law through research. The Applicant failed to point to any specific matters Counsel failed to discover, or any defenses that could have been pursued had Counsel been more fully prepared or had completed additional investigation prior to the resolution of the case. Although he alleged that Counsel was ineffective for failing to investigate the witness statements and incident reports, Applicant failed to produce any evidence that would have supported his claim that Counsel was ineffective for performing additional investigation. This Court finds that the documents submitted by the Applicant as exhibits fail to support his claim that the outcome of his case would have been different had Counsel completed additional investigation into these documents. Furthermore, the Applicant failed to show any prejudice that may have resulted from Counsel's alleged inadequate preparation or lack of investigation.

In making a fair assessment of attorney performance, a court must make every effort to "eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel challenged conduct, and to evaluate the conduct from counsel's perspective at the time." Strickland v. Washington, 466 U.S. 668, 689, 104 S. Ct. 2052, 2065, 80 L. Ed. 2d 674 (1984).

There is a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance and the "defendant must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy." Id. Further, with

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respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985). As indicated by Applicant during his testimony, the Applicant pled guilty, but his primary concern at the PCR hearing was that he received a lengthier sentence than he wished for. This Court finds that the Applicant never indicated that he would have proceeded to trial, but for the alleged deficiencies of Counsel. This Court finds that he failed to meet his burden of proof and denies Applicant's claims.

Summary

This Court finds in regards to the allegation of ineffective assistance of counsel, Applicant's testimony as a whole was not credible. This Court further finds Counsel adequately conferred with the Applicant, conducted a proper investigation, was thoroughly competent in his representation, and that Counsel's conduct does not fall below the objective standard of reasonableness.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that 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 Counsel's performance. This Court concludes the Applicant has not met his burden of proving Counsel failed to render reasonably effective assistance. See Fraser supra. Therefore, this allegation is denied.

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CONCLUSION

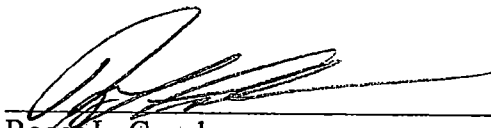
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court cautions Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel 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 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

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.

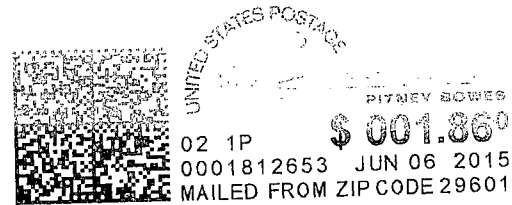
AND IT IS SO ORDERED this 23rd day of April, 2015.



Roger L. Couch
Presiding Judge

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Brandt Rucker
Attorney at Law, L.L.C.
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