STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Daniel D. Hall, Circuit Court Judge

Case No. 2014-CP-23-0129

Travell Levone Hill, ... Respondent,

v.

State of South Carolina, ... Petitioner.

NOTICE OF APPEAL

The State of South Carolina appeals the Honorable Daniel D. Hall's order filed March 19, 2015 and granting post-conviction relief to the Respondent. The State received notice of entry of the order on March 24, 2015. The State, however, could not file a notice of appeal until Judge Hall ruled upon both of the parties' Rule 59(e) motions. Judge Hall filed a supplemental order on June 8, 2015, which the State received on June 12, 2015. A copy of each order is attached to this notice.

Respectfully submitted,

ALAN WILSON
Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General
S.C. Bar # 68331

P.O. Box 11549
Columbia, S.C. 29211
(803) 734-3737

By: 

Attorneys for Petitioner

Columbia, South Carolina

July 2, 2015

Other counsel of record:

C. Rauch Wise, Esquire
305 Main Street
Greenwood, SC 29646

STATE OF SOUTH CAROLINA
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APPEAL FROM GREENVILLE COUNTY
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The Honorable Daniel D. Hall, Circuit Court Judge

Case No. 2014-CP-23-0129

Travell Levone Hill, ... Respondent,

v.

State of South Carolina, ... Petitioner.

PROOF OF SERVICE

I, Karen C. Ratigan, Counsel for the Petitioner, certify that I have today served the within notice of appeal upon the Respondent by depositing a copy of it in the United States Mail, postage prepaid, addressed to his attorney of record:

C. Rauch Wise, Esquire
305 Main Street
Greenwood, SC 29646

I further certify that all parties required by Rule to be served have been served this 2nd day of July, 2015.

KAREN C. RATIGAN
S.C. Bar. #68331
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737
Attorney for Petitioner

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	C.A. No. 2014-CP-23-0129
COUNTY OF GREENVILLE)	
)	
Travell Levone Hill,)	
S.C.D.C. No. 340055,)	
)	
Applicant,)	**SUPPLEMENTAL ORDER**
)	
v.)	
)	
State of South Carolina,)	ENTERED COMPUTER
)	
Respondent.)	

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed January 9, 2014. A PCR hearing was held on February 18, 2015 at the Greenville County Courthouse. The Applicant was present and represented by C. Rauch Wise, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent. By order filed March 19, 2015, this Court granted relief on a single issue. This supplemental order is to address the remaining issues that were raised at the PCR hearing.

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 October 2008 term of the Greenville County Grand Jury for trafficking cocaine (208-GS-23-6996). He was represented by Christopher T. Posey, Esquire.

After the State brought the case to trial, the Applicant was found guilty. On March 31, 2010, the Honorable G. Edward Welmaker sentenced the Applicant to 27 years imprisonment.

A notice of appeal was filed at the South Carolina Court of Appeals. Kathrine H. Hudgins, Esquire of the South Carolina Commission on Indigent Defense, Division of Appellate

Defense perfected the appeal. The Court of Appeals affirmed the Applicant's conviction and sentence. State v. Hill, Op. No. 2013-UP-198 (S.C. Ct. App. filed May 15, 2013). The Remittitur was sent on June 4, 2013.

ALLEGATIONS

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

1. Ineffective assistance of trial counsel:
   a. Failed to properly preserve for review the issue concerning whether the search of the automobile the Applicant was driving was legal.
   b. Failed to object to "charge on the facts given by the trial judge."
   c. Not effective in "cross examining Trya [sic] Rogers as to the potential sentence she was facing concenring [sic] her pending drug charges."
   d. Not effective in "investigating the case and obtaining the cell phone erecords [sic] of Tyra Rogers."

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 and 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). In order to prove prejudice, an applicant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). "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 v. Washington, 466 U.S. 668, 104 S. Ct. 2052).

This Court finds the Applicant failed to meet his burden of proving trial counsel did not object to an alleged charge on the facts. The Applicant stated trial counsel should have objected when the trial judge stated the jury could draw an inference in this case because he controlled the car. Trial counsel testified he did not see a problem with the trial judge's jury charges on actual or constructive possession. This Court has examined the jury charges for actual and constructive possession. (Trial transcript, pp.166-67). This Court finds the charges contain proper statements of law and, as such, trial counsel was not deficient in not making an objection. See Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (finding the applicant bears the burden of proving the allegations in their PCR application).

This Court finds the Applicant failed to meet his burden of proving trial counsel did not effectively cross-examine Tyra Rogers. The Applicant stated trial counsel should have questioned Rogers about her pending charge and potential sentence she faced. The Applicant stated Rogers testified at his trial that she did not have a plea agreement with the State but that she ultimately pled guilty to possession. Trial counsel testified both the State and Rogers denied

there was a plea deal in place at the time of trial. Trial counsel testified he did not cross-examine Rogers about her potential sentence because this particular trial judge frowned upon this question. Trial counsel testified he was not surprised to later learn that Rogers pled guilty to possession. Initially, this Court finds credible trial counsel's testimony that the State denied there were any agreements in place with Rogers for her testimony. This Court notes trial counsel questioned Rogers about her pending charges. (Trial transcript, pp.117-19). This Court notes trial counsel also questioned Rogers about whether she had any agreement with the State in exchange for her testimony and she said she did not. (Trial transcript, pp.117-19). Trial counsel's belief at the time of trial was that Rogers did not have an agreement with the State. This Court finds the Applicant has failed to meet his burden of proving any agreement with the State was in place when Rogers testified. The mere fact that she later pled guilty to a lesser charge does not satisfy the Applicant's burden. Trial counsel is not expected to be clairvoyant. See Strickland v. Washington, 466 U.S. at 690, 104 S. Ct. at 2066 ("[A]a court deciding an actual ineffectiveness claim must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct.").[1]

This Court finds the Applicant failed to meet his burden of proving trial counsel did not obtain Rogers' cell phone records. The Applicant stated trial counsel should have obtained these records prior to trial because they are now unavailable. This Court finds the Applicant failed to

[1] This Court further finds trial counsel made a strategic decision not to ask Rogers about the potential sentence she faced. Trial counsel testified he was familiar with State v. Mizzell, 349 S.C. 326, 563 S.E.2d 315 (2002), but that this particular trial judge did not like this line of questioning. Trial counsel testified this was a "know your judge" issue with this judge that he had seen before and opted not to question Rogers on the subject. This Court finds this was a valid strategic decision. See Roseboro v. State, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995) (finding where trial counsel articulates a valid reason for employing a certain strategy, such conduct should not be deemed ineffective assistance of counsel). Regardless, this Court also finds the Applicant failed to demonstrate any resulting prejudice.

meet his burden of proving trial counsel failed to properly investigate the case and obtain Rogers' cell phone records. The Applicant has failed to articulate why these records were important for his defense and how he was prejudiced by the lack of said records. See Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (holding 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).

As to these issues, this Court finds the Applicant failed to prove the first prong of the Strickland test – that trial counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that trial 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 trial counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance on these issues. 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

This Order serves to rule upon issues not addressed in this Court's original order. Those issues are all denied and dismissed. The ruling in the original order, however, is still in effect. This Court advises the parties that a notice of intent to appeal must be filed within thirty (30)

days from the receipt of this Order. See Rules 203, 206, 243, SCACR.

AND IT IS SO ORDERED this 1st day of June, 2015.

Daniel D. Hall
Presiding Judge
Thirteenth Judicial Circuit

York, South Carolina.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF ~~YORK~~ Greenville	)	Case No.: 2014-CP-23-0129
Travell L. Hill, SCDC #340055,	)	
Applicant,	)	
v.	)	**ORDER**
State of South Carolina,	)	
Respondent.	)	ENTERED COMPUTER

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2015 MAR 19 AM 11 39

This matter comes before the Court by way of an Application for Post-Conviction Relief filed January 9, 2014. The Respondent made its Return on or about May 28, 2014. An evidentiary hearing into the matter was heard by the undersigned on February 18, 2015, at the Greenville County Courthouse in Greenville, South Carolina. C. Rauch Wise, Esquire, represented the Applicant. Karen C. Ratigan, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. Also testifying was witness Christopher T. Posey, Esquire. This Court also had before it a copy of the transcript of the Applicant's guilty plea, both parties' briefs to the Court of Appeals, the records of the Greenville County Clerk of Court, and the Applicant's records from the South Carolina Department of Corrections.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Greenville County Clerk of Court. The Applicant was indicted at the October 2008 term of the Greenville County Grand Jury for Trafficking

Cocaine (2008-GS-23-06996). Christopher T. Posey, Esquire, represented him at trial. On March 30, 2010, Hill proceeded to jury trial before the Honorable G. Edward Welmaker. The jury returned a verdict of guilty and Judge Welmaker sentenced Hill to confinement for a period of twenty-seven (27) years for Trafficking Cocaine.

A timely Notice of Intent to Appeal was filed on April 8, 2008, and an appeal was perfected. A brief was filed on the Applicant's behalf pursuant to Anders v. California, 386 U.S. 738 (1967) on July 6, 2011. On February 3, 2012, the Court of Appeals issued an order denying counsel's motion to be relieved and directed counsel submit a brief as to several unanswered issues. The Appellant submitted another brief to the Court of Appeals on June 15, 2012. An appeal was heard by the Court of Appeals on May 6, 2013, and the Court issued an unpublished opinion, State v. Travell Hill, Op. No. 2013-UP-198 (filed May 15, 2013.) The Remittitur was sent on June 4, 2013.

The Applicant then filed an application for post-conviction relief on January 9, 2014. A Return was filed by the South Carolina Attorney General's Office on May 28, 2014. An evidentiary hearing was convened on February 18, 2015, at Greenville County Courthouse in Greenville County. The Applicant was present and represented by C. Rauch Wise, Esquire. The Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Trial counsel was not effective in that he failed to properly preserve for review the issue concerning the legality of the automobile search.
2. Trial counsel was not effective in that he failed to object to charge on the facts given by the trial judge in violation of Article V, Sec. 21 of the Constitution of the State of South Carolina.

3. Trial counsel was not effective in cross-examining Tyra Rodgers as to the potential sentence she was facing concerning her pending drug charges.
4. Trial counsel was not effective in investigating the case and obtaining the cell phone records of Tyra Rodgers.

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 (2003).

Ineffective Assistance of Counsel as to Preserving an Objection for Review

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) (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).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel. 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." 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 the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). 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. Kimmelman v. Morrison, 477 U.S. 365, 106 S.Ct. 2574, 91 L.Ed.2d 305 (1986).

For an objection to be preserved for appellate review, the objection must be made at the time the evidence is presented. Allegro, Inc. v. Scully, 400 S.C. 33, 44, 733 S.E.2d 114, 120 (2012); State v. Johnson, 363 S.C. 53, 58, 609 S.E.2d 520, 523 (2005). Unless an objection is made at the time the evidence is offered and a final ruling is made, the issue is not preserved for review. State v. Hughes, 336 S.C. 585, 521 S.E.2d 500 (1999); State v. Schumpert, 312 S.C. 502, 435 S.E.2d 859 (1993). Because the evidence developed during trial may warrant a change in the ruling, the losing party must renew his objection at

trial when the evidence is presented in order to preserve the issue for appeal. State v. Burton, 326 S.C. 605, 486 S.E.2d 762 (Ct. App. 1997). In most cases, "[m]aking a motion in limine to exclude evidence at the beginning of trial does not preserve an issue for review because a motion in limine is not a final determination. The moving party, therefore, must make a contemporaneous objection when the evidence is introduced." State v. Forrester, 343 S.C. 637, 642, 541 S.E.2d 837, 840 (2001) quoting State v. Simpson, 325 S.C. 37, 479 S.E.2d 57 (1996).

Summary of Facts and Testimony

Applicant alleges ineffective assistance of defense counsel because defense counsel failed to properly preserve for review the issue concerning the legality of the automobile search. The trial court heard a motion in limine concerning the search of the vehicle driven by the Applicant and the motion to suppress the evidence was denied at that time. Defense counsel failed to renew the objection at the time the drugs were introduced at trial against Mr. Hill and therefore, the issue was lost on appeal.

On or about February 19, 2008, Trooper Richard S. Chasteen with the South Carolina Highway Patrol stopped a burgundy SUV on Interstate 85 for following too closely and impeding traffic. Applicant Hill was the driver and Tyra Rodgers was the passenger. The vehicle was rented pursuant to a rental agreement signed in Virginia to Lenise Martin, the only identified authorized driver according to the rental agreement. Trooper Chasteen issued a warning ticket and then asked Hill for permission to search the vehicle. Hill denied permission to search. Trooper Chasteen had called for back-up. Trooper Bennie Dowis arrived at the scene along with a drug dog.

Trooper Chasteen testified that both Hill and Rodgers appeared nervous and did not

make eye contact during the stop. Trooper Chasteen asked Hill to step out of the vehicle. Hill told the trooper that they had were travelling from Chesapeake, Virginia to Atlanta, Georgia to party and see a friend. Rodgers told the trooper that Hill was her boyfriend and that they were travelling to Atlanta to buy shoes and visit family.

Trooper Chasteen testified, "Immediately after issuing the warning or explaining and issuing the warning, [he] asked Mr. Hill for consent to search his vehicle." Hill did not consent to the search. After Hill refused to consent to the search of the vehicle, Trooper Chasteen asked Rodgers to step out of the vehicle. Trooper Dowis then allowed his drug dog to perform a sniff search of the vehicle, to which the dog alerted on the vehicle. Trooper Chasteen then told Hill and Rodgers that their vehicle was going to be searched based on probable cause. Trooper Chasteen searched the vehicle and found a pair of shoes in a bag and cocaine under the carpet on the front passenger side floorboard. Both Hill and Rodgers were arrested and charged with trafficking cocaine.

Prior to trial, Hill's attorney defense counsel moved to suppress the drug evidence based on an unlawful search and seizure. The trial judge held a suppression hearing. Hill's attorney argued that Officer Chasteen did not develop a reasonable articulable suspicion of criminal activity during the traffic stop, the stop ended when Hill was given the warning ticket, and Hill should not have been asked for consent to search the vehicle because the vehicle was not rented in his name. The State asserted that Hill did not have standing to challenge the search because Hill was not authorized to drive the vehicle, and that Officer Chasteen developed a reasonable articulable suspicion of criminal activity during the course of the stop, which warranted Hill's detention and the use of the drug detection dog for the sniff search of the vehicle.

At the conclusion of the hearing, the trial judge ruled that Hill did not have standing to challenge the search. Further, the trial judge determined Hill's detention was justified under the totality of the circumstances because he found the factors observed by Officer Chasteen during the stop established a reasonable articulable suspicion of criminal activity. Based on those findings, the trial judge denied Hill's suppression motion.

During trial, Trooper Chasteen and Trooper Dowis testified about the circumstances of the traffic stop and their discovery of Hill's cocaine. Following their testimony, Rodgers testified about the stop and the events leading up to it. Defense counsel failed to object to any of this testimony during the trial.

On appeal, Appellant Hill argued that the trial judge erred in (1) denying this motion to suppress the drug evidence because his Fourth Amendment rights were violated when Officer Chasteen did not have reasonable suspicion that he was engaged in serious criminal activity so as to warrant continued detention after issuing the traffic citation, and (2) finding that Hill lacked standing to challenge the lawfulness of the search and seizure of the car Hill was driving. The Court of Appeals found that the lower court was affirmed pursuant to Rule 220(b) of the South Carolina Appellate Court Rules stating that, "every point distinctly stated in the case which is necessary to the decision of the appeal and fairly arising upon the record of the court must be stated in writing and must, with the reason for the court's decision, be preserved in the record of the case." See Rule 220(b), South Carolina Appellate Court Rules (SCACR). Further the opinion stated that the appellate court need not review the remaining issues when its determination of another issue is dispositive. See Futch v. McAllister Towing of Georgetown, Inc., 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999). Therefore, the Court of Appeals did not render a decision based

on err of the trial court, but simply affirmed the lower court's decision since the appellant failed to preserve the issues on appeal during his trial.

During the Post-Conviction Relief Hearing, defense counsel testified that he did not object to the introduction of evidence relating to the traffic stop and the discovery of Hill's cocaine because of his belief that the trial judge would again rule against his motion to suppress. Defense counsel testified that he had tried numerous drug cases in front of the trial judge, and that from his experience, knew that the trial judge would suppress the evidence, consistent with his ruling in the pretrial evidence suppression hearing. As a result, defense counsel testified that he did not object to the admission of the cocaine when it was being introduced at trial.

It is well established in South Carolina case law that in order to preserve an objection for appeal, the objection must be made at the time the evidence is presented at trial; otherwise, the issue is precluded from being raised on appeal. Further, even if a trial court rules on a motion in limine at a pretrial hearing, this issue is not preserved for review because a motion in limine is not a final determination. Here, defense counsel failed to make an objection to the admission of the cocaine when it was introduced at trial. Despite his knowledge of the trial judge and despite the court denying defense counsel's motion in limine to suppress the cocaine, he must object during trial when evidence of the cocaine is presented in order to preserve the issue for review. Defense counsel failed to protect the record on a matter that substantially jeopardized Hill's rights on appeal. Therefore, defense counsel's performance was deficient, satisfying the first prong of Strickland.

As for the second prong of the test, defense counsel's deficient performance prejudiced Hill such that there is a reasonable certainty that, but for his errors, the result of

the proceeding would have been different. Had defense counsel objected to the admissibility of the cocaine at trial, then that issue would have been preserved for appeal. Since he failed to object, the Court of Appeals refused to review the case. Therefore, defense counsel's failure to object prevented Hill from effectively appealing his case.

Based on all of the information in the record and the testimony during trial, the Court finds that Applicant has proven by a preponderance of the evidence that his defense attorney's representation was not reasonable under the professional norms, and that this deficient performance did prejudice the Applicant such that there is a reasonable probability that, but for defense counsel's errors, the result on appeal would have been different.

Accordingly, this Court finds that the Applicant has proven the first prong of the Strickland test – that trial counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant presented specific and compelling evidence that trial counsel committed the error of failing to object to inclusion of material evidence during his representation of the Applicant.

This Court also finds that the Applicant has proven the second prong of Strickland - that he was prejudiced by trial counsel's performance. But for defense counsel failing to object, the issue would have been preserved on appeal, allowing the Court of Appeals the opportunity to review the issue of admissibility of the cocaine at Mr. Hill's trial. This Court concludes the Applicant has met his burden of proving counsel failed to render reasonably effective assistance. See Frasier *supra*, Butler, *supra*; and Cherry, *supra*. Therefore, the application is granted as to ineffective assistance of counsel for failure to object to the introduction of cocaine at trial.

Other Allegations

As to the allegations that (1) trial counsel was not effective in that he failed to object to charge on the facts given by the trial judge in violation of Article V, Sec. 21 of the Constitution of the State of South Carolina, (2) trial counsel was not effective in cross-examining Tyra Rogers as to the potential sentence she was facing concerning her pending drug charges, and (3) trial counsel was not effective in investigating the case and obtaining the cell phone records of Tyra Rogers, this Court finds that the Applicant failed to present any probative evidence regarding such allegations. Accordingly, this Court finds that the Applicant waived such allegations and failed to meet his burden of proof by preponderance of evidence regarding such allegations. Accordingly, they are denied and dismissed with prejudice.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has established constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief is granted as to the allegation of ineffective assistance of counsel regarding the failure to timely object to the admission of cocaine during trial. All other allegations are denied and dismissed with prejudice.

This Court advises Applicant that as to all denied allegations of this proceeding, 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 227 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief is granted as to the allegation of ineffective assistance of counsel regarding the failure to timely object to the admission of cocaine during trial.

2. That the Application for Post-Conviction Relief as to all other allegations must be denied and dismissed with prejudice.

AND IT IS SO ORDERED.

Daniel D. Hall
Presiding Circuit Court Judge

2-25, 2015
York, South Carolina

FILED - CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2015 MAR 19 PM 11 39

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 2014CP2300129

Travell Hill *vs.* State Of South Carolina

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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ 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 19th day of March, 2015.

Court Reporter:

PRESIDING JUDGE - Daniel D Hall

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:

Clarence Rauch Wise 305 Main St. Greenwood, SC 29646

ATTORNEY(S) FOR THE PLAINTIFF(S)

Karen Christine Ratigan PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE DEFENDANT(S)

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

ALAN WILSON
ATTORNEY GENERAL

July 2, 2015

The Honorable Daniel E. Shearouse
Clerk of the South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re: Travell Levone Hill, Respondent v. State, Petitioner
Case No. 2014-CP-23-0129

Dear Mr. Shearouse:

Enclosed for filing is a notice of appeal in the above case. Also enclosed are the following:

1. A copy of both the order of dismissal and the supplemental order.
2. Proof of service of notice of appeal on the Respondent.
3. A letter ordering the PCR transcript from the court reporter.

Sincerely,

Karen C. Ratigan
Senior Assistant Deputy Attorney General

cc: C. Rauch Wise, Esquire
South Carolina Department of Corrections
Greenville County Clerk of Court
Solicitor Walt Wilkins
Office of Appellate Defense
Trisha Allen, Victim Services