

The South Carolina Court of Appeals

Mayron Rashad Gilree, #340603,

Appellant,

v.

State of South Carolina,

Respondent.

The Honorable Frank R. Addy, Jr.
Spartanburg County
Trial Court Case No. 2011-CP-42-00240

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APR 23 2012

S.C. Supreme Court

ORDER

The appeal in the above captioned matter is transferred to the South Carolina Supreme Court under the filing provisions of Rule 243 of the South Carolina Appellate Court Rules.

IT IS SO ORDERED.

JOHN CANNON FEW, CHIEF JUDGE
For The Court

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina

cc: Stephen C. Wofford, Esq.
Chief Appellate Defender Robert M. Dudek
Assistant Attorney General Suzanne H. White
The Honorable Daniel Shearouse

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FILED

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Frank R. Addy Jr., Circuit Court Judge

Case No. 2011-CP-42-0240

The State

Respondent.

v.

Mayron Rashad Gilree

Appellant.

NOTICE OF APPEAL

Mayron Rashad Gilree appeals the order of the Honorable Frank R. Addy, Jr. dated March 27, 2012. Appellant received written notice of entry of this order on April 4, 2012.

April 9, 2012

s/ Stephen C. Wofford
Law Office of Stephen C. Wofford, LLC
Post Office Box 85
Chesnee, South Carolina 29323
(864) 406-9278
Attorney for Appellant

Other Counsel of Record:
Suzanne H. White
Assistant Attorney General
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211-1549
Attorney for Respondent
(803) 734-3737

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S.C. Supreme Court

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

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APR 23 2012

Frank R. Addy, Jr., Circuit Court Judge
S.C. Supreme Court

Case No. 2011-CP-42-0240

The State

Respondent.

v.

Mayron Rashad Gilree

Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Suzanne H. White by depositing a copy of it in the United States Mail, postage prepaid, on September 15, 2000, addressed to his attorney of record, Suzanne H. White, Post Office Box 11549, Columbia, South Carolina 29211-1549 on April 5, 2012.

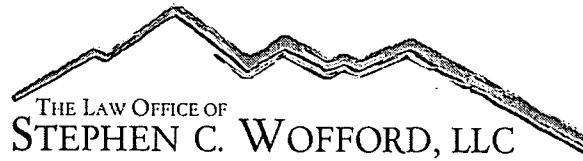
April 9, 2012

s/ Stephen C. Wofford
Law Office of Stephen C. Wofford, LLC
Post Office Box 85
Chesnee, South Carolina 29323
(864) 406-9278
Attorney for Appellant

RECEIVED

APR 11 2012

SC Court of Appeals



April 9, 2012

The Honorable Jenny Abbott Kitchens
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Mayron Rashad Gilree, v. State of South Carolina, Appellant, Case No. 2011-CP-42-0240


Dear Ms. Kitchens:

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

- (1) Proof of service of the notice of appeal on the respondent.
- (2) A copy of the order, which is to be challenged on appeal.

With kindest regards, I remain,

Sincerely,


Stephen C. Wofford

cc: Suzanne H. White, SC Attorney General's Office
Mr. Robert Michael Dudek, SC Commission on Indigent Defense
Mayron Rashad Gilree

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APR 11 2012
SC Court of Appeals

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STATE OF SOUTH CAROLINA)
 COUNTY OF SPARTANBURG)
 Mayron Rashad Gilree, #340603,)
 Applicant,)
 v.)
 State of South Carolina,)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 SEVENTH JUDICIAL CIRCUIT

2011-CP-42-0240

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 SC Court of Appeals

ORDER OF DISMISSAL

This matter comes before the Court by way of an Application for Post-Conviction Relief filed January 20, 2011. The Respondent made its Return on or about December 16, 2011. An evidentiary hearing into the matter was convened on January 30, 2012, at the Spartanburg County Courthouse. The Applicant was present at the hearing and was represented by Stephen C. Wofford, 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. The Applicant's mother, Diane Brown, also testified on Applicant's behalf. Also testifying was Andrea L. Price, Esquire ("Counsel"). 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 appellate records, and the guilty plea transcript.

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 July 2009 term of the Spartanburg County Grand Jury for murder and possession of a weapon during the commission of a violent crime (09-GS-42-4013, count 1 & count 2).

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Applicant was represented by Andrea L. Price, Esquire. On April 30, 2010, the Applicant pled guilty to the lesser-included offense of voluntary manslaughter¹. Applicant was sentenced by the Honorable J. Mark Hayes II to confinement for twenty years.

A timely notice of appeal was filed and the South Carolina Court of Appeals dismissed the Applicant's appeal on July 12, 2010. The Remittitur was returned on August 5, 2010.

ALLEGATIONS

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

1. Ineffective assistance of counsel, in that;
 - a. Counsel failed to arrange with the Solicitor a three (3) year plea agreement as promised,
 - b. Counsel misdirected Applicant to plead guilty.

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. 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(c) SCRCPP). 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

¹ Count 2 of the indictment, possession of a weapon during the commission of a violent crime, was dismissed in

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the 29th, Counsel coerced Applicant's family to pressure him into pleading guilty and promised Applicant that he would receive a sentence of only three years if he pled.

Applicant's mother, Ms. Brown, testified that she met with Counsel and another attorney, Mr. Cheeks, on the 29th and they told her that the Applicant could receive three months, three weeks, probation, or he could be going home if he pled guilty. So, Ms. Brown testified that she met with the Applicant following that conversation and told him to plead guilty.

Counsel testified that she met with the Applicant in July 2009 twice and then met with him in September 2009 to convey to him the plea offer from the Solicitor's offer, at which time the Applicant rejected the offer. Counsel testified that by April 2010, the case had been placed on the trial docket. Counsel testified that she had discussed potential defenses with the Applicant for trial and the fact that a witness stated that the Applicant left the home and came back with a gun would not work in his favor for self-defense. Counsel testified that because of the witness statements, she did not believe that the Applicant would be successful if he had proceeded to trial. Counsel testified that she never told the Applicant or family that the Applicant would receive a three year sentence, but did go over the sentencing range for voluntary manslaughter with both. Counsel did, however, testify that she promised the Applicant that she would ask the judge to sentence him to the minimum. Counsel further testified that had the Solicitor's office given her a specific number for the sentence, she would have asked for confirmation in writing and it would be listed as a negotiated sentence on the sentencing sheet. Counsel testified that Mr. Cheeks did arrange for Applicant's family to be able to visit with him at the jail on the 29th and his family wanted him to plead.

In Hill v. Lockhart, 474 U.S. 52 (1985), the United States Supreme Court held that the two-part standard adopted in Strickland v. Washington, supra, for evaluating claims



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ineffective assistance of counsel applies, as well, to guilty plea challenges based on ineffective assistance of counsel. To meet the Court's "prejudice" requirement, a criminal defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pled guilty and would have insisted on going to trial. The Applicant failed to prove that he would have proceeded to trial, but for the deficient performance of Counsel.

This Court finds that the Applicant was aware of and informed of the charges to which he was pleading guilty. Although the situation was difficult because the victim was also a family member, this Court finds that Counsel was prepared and had researched the case for trial. This Court also finds that Counsel reviewed discovery materials, including the investigative reports and witness statements with the Applicant, and discussed possible defenses. This Court also finds that Counsel is an experienced attorney who was prepared for and effectively represented Applicant at his guilty plea. Although he wanted a plea offer to a lesser charge or alternatively a lesser sentence, this Court finds no deficiency in Counsel's representation of Applicant. This Court finds that the Applicant has failed to meet his burden of proof as to this claim; therefore, this claim is denied and dismissed.

Summary

This Court finds in regards to the allegation of ineffective assistance of counsel, Counsel's testimony is most credible. This Court further finds counsel adequately conferred with the Applicant, was thoroughly competent in her 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

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Counsel committed either errors or omissions in her 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. See Frasier supra. Therefore, this allegation is denied.

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.



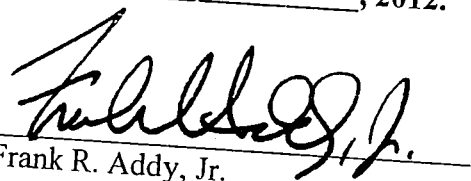
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HOPEWELL COUNTY

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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 27th day of March, 2012.

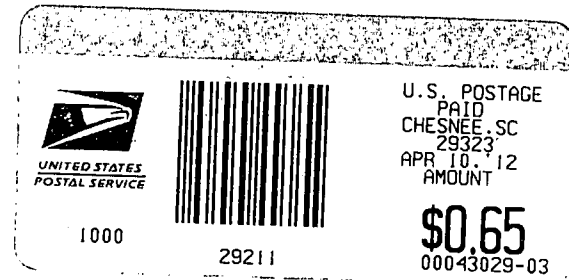


Frank R. Addy, Jr.
Presiding Judge

Aenwood, South Carolina

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M. HOPE BLACKLEY

Stephen C. Wofford
PO Box 85
Chesnee, SC 29323



The Honorable Jennifer Abbott Kitchens
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

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