

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM YORK COUNTY
Court of Common Pleas

ALISON R. LEE, Circuit Court Judge

Civil Action Number: 2014-CP-46-00274

RECEIVED

AUG 13 2015

S.C. Supreme Court

Jerome Watson #317794,

Petitioner,

v.

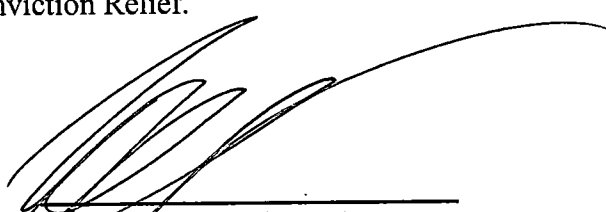
STATE OF SOUTH
CAROLINA,

Respondent.

NOTICE OF APPEAL

The Petitioner above appeals the order of the Honorable Alison Renee Lee, filed July 14, 2015 denying his application for Post-Conviction Relief.

August 13, 2015



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THE STATE OF SOUTH CAROLINA
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Jerome Watson #317794,

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State of South Carolina,

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PROOF OF SERVICE

I certify that I have served the Notice of Appeal in the above captioned case on the following individuals by depositing a copy of it in the United States Mail, postage prepaid, on August 13, 2015, addressed to:

David Hamilton, Clerk of Court
York County Court of Common Pleas
Post Office Box 649
York, South Carolina 29745

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August 13, 2014



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Attorney for Appellant

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2014-CP-46-00274

Jerome Watson, #317794

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : Plaintiff Defendant or Self-Represented Litigant

DISPOSITION TYPE (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 (formal order to follow) Statement of Judgment of the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : _____

FILED-RECEIVED
2015 JUL 14 AM 9:29
DAVID HAMILTON
C.C.P. & CS
YORK COUNTY, SC

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge Al Gene Lee Judge Code 2118 Date 7/7/2015

For Clerk of Court Office Use Only

This judgment was entered on the 14th day of July, 2015 and a copy mailed first class or placed in the appropriate attorney's box on this 14th day of July, 2015 to attorneys of record or to parties (when appearing pro se) as follows:

W. Michael Hemlepp, Jr.
ATTORNEY(S) FOR THE PLAINTIFF(S)

J. Rutledge Johnson
ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court David Hamilton

Columbia City Attorneys Office
P.O. Box 667 Columbia SC 29202
3027 S. Parham Rd York SC 29745

P.O. Box 11549
Columbia SC 29211

STATE OF SOUTH CAROLINA
COUNTY OF YORK

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2015 JUL 14 AM 9:29

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Jerome Watson, #317794,

DAVID W. HILTON
C.C.P. & GS
YORK COUNTY, SC

Case No. 2014-CP-46-00274

Applicant,

v.

State of South Carolina,

Respondent.

ORDER OF DISMISSAL

This matter comes before the Court by way of an application for post-conviction relief. Applicant filed the application on February 4, 2014. The State made its Return and moved to dismiss the application on May 19, 2014. A hearing was convened November 18, 2014 at the York County Courthouse. Applicant was present at the hearing and was represented by counsel, W. Michael Hemlepp, Jr., Esquire. Respondent was represented by Assistant Attorney General J. Rutledge Johnson. After reviewing all testimony and evidence presented at the hearing, along with a review of all records provided to the Court, this Court finds that there are no constitutional deprivations or other grounds on which to grant relief and denies and dismisses this application with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. Applicant was indicted by the April 2010 term of the York County Grand Jury for Possession with Intent to Distribute Heroin. Erik Delaney, Esquire, represented Applicant on his charges. On April 28, 2010, Applicant proceeded to a jury trial before the Honorable John C. Hayes III. Applicant was found guilty and sentenced to confinement for thirty years for Possession with Intent to Distribute Heroin, 3rd Offense. A notice of appeal was filed on Applicant's behalf. The South Carolina Court of Appeals affirmed the Applicant's conviction and sentence. See *State v. Watson*, Op. No. 2013-UP-312 (filed July 3, 2013). The Remittitur was issued on July 19, 2013.

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully based on allegations of ineffective assistance of counsel. Applicant also

argues that the trial court lacked subject matter jurisdiction and that there was a conflict of interest.

SUMMARY OF TESTIMONY PRESENTED AT EVIDENTIARY HEARING

At the evidentiary hearing, Applicant testified on his own behalf. The State presented testimony from trial counsel, Erik Delaney and Ashley Anderson. This Court had before it Applicant's trial transcript, the records from the York County Clerk of Court regarding the subject conviction, and Applicant's records from the South Carolina Department of Corrections.

Applicant testified first on his own behalf. Applicant is 53 years old and graduated high school. He was arrested for Possession with Intent to Distribute Heroin in 2009, incarcerated, and released on bond after approximately ten months. While incarcerated, Delaney was appointed to represent him, with Anderson assisting, although he did not ever discuss the case with Anderson. Delaney and Applicant met once while he was in jail, but they did not discuss the case in detail.

After Applicant was released on bond, he testified that he went to Delaney's office twice. Applicant stated he was offered pleas of 10 and 12 years, both of which he rejected, and decided he wanted to proceed to trial. Prior to trial, he was offered a plea of 14 years, which he again rejected. Applicant testified that he was under the impression that 15 years was the maximum sentence that could be imposed, and that he was very surprised when he was sentenced to 30 years imprisonment. Applicant stated that neither of his attorneys ever told him the maximum sentence, and that if he knew it was 30 years, he would have taken the plea offer of 10 years.

Applicant presented at the hearing a letter he wrote to Delaney on July 28, 2010, which was admitted as Applicant's Exhibit 1. Applicant stated he wrote this letter because he did not understand why he was sentenced to 30 years. The letter states that he was under the impression that 15 years was the maximum sentence that could be imposed and Delaney never advised him otherwise. The letter also states that Delaney admitted to Applicant that he was not fully informed of the possible consequences. The letter requests Delaney to send Applicant something in writing stating that he did not properly inform him of the possible penalty. Applicant also had an issue during his trial regarding the State's use of expert testimony by an employee of the Solicitor's Office. Applicant testified that this person testified about various quantities of heroin and what quantities a user generally possesses, but the witness was not a user of heroin.

ad #2

Applicant acknowledged on cross examination that he has prior convictions for Possession with Intent to Distribute Heroin, Possession of Heroin, Possession of Crack Cocaine, and Conspiracy related to heroin. Applicant never had any discussion with counsel about how his prior convictions would impact sentencing. This offense was his first in South Carolina, and he did not think his prior record from New Jersey applied for enhancement purposes.

Delaney testified that he has been practicing criminal law for approximately eight years and was appointed to represent Applicant between September 24, 2009 and October 26, 2009. He received all discovery in the case and discussed it with Applicant. Delaney researched Applicant's prior criminal history, was aware the charge was a 3rd Offense, and explained that to Applicant. He stated that to the best he could recall, he explained to Applicant that the minimum sentence was 10 years and the maximum sentence was 30 years for his charge; therefore, he advised Applicant he should take the plea deals offered.

At trial, Delaney's main strategy was to establish that Applicant was a user, not a seller or dealer. Delaney objected to the State's witness being allowed to testify and being qualified as an expert. He acknowledged he did not object specifically to testimony regarding the amounts associated with Possession with Intent to Distribute Heroin and Possession of Heroin, which the South Carolina Court of Appeals said in its Order was not preserved. Delaney testified that at the time, he thought his general objection would cover the issue. Delaney acknowledged that the expert's testimony had an impact on the jury, but he did not think it outweighed other testimony presented, and he did not know if it changed the outcome of the case.

On cross examination, Delaney stated that he now works in the Union County Public Defender's office. He could not recall the number of cases he had at the time of Applicant's trial, but he admitted his case load was heavy. While at the York County Public Defender's office, he tried approximately 20 cases, with approximately 10 to 12 of those cases being related to drugs. He admitted his file did not reflect any notations of talking with Applicant about potential sentences. He did not recall receiving Applicant's Exhibit 1, Applicant's letter. He acknowledged that the expert's testimony was a material fact at the trial, and his entire defense was that Applicant was a user, not a seller. ad #3

Anderson testified that she only assisted Delaney, who was appointed counsel, at Applicant's trial. She did not meet with Applicant before trial preparations. She did meet with Applicant at some point, likely about the content of his testimony. Anderson recalled being

surprised that the State was going to present expert testimony because the witness was not on the State's original witness list. The Defense's intent was to object to the expert being called because of the lack of notice and the fact that the expert had not been subject to sequestration.

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, 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.

Applicant submits Delaney rendered ineffective assistance of counsel. In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). 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 (1984). Claims of ineffective assistance of counsel are evaluated under a two-prong test. See *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, the court measures an attorney's performance by its "reasonableness under professional norms." *Id.* at 117, 386 S.E.2d at 625. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Butler, supra*. The Applicant must overcome this presumption to receive relief. *Cherry, supra*. 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." *Id.* at 117-18, 386 S.E.2d at 625.

Applicant testified that he did not know the maximum sentence for his charge was 30 years. Delaney testified he explained the Applicant the possible sentences. This Court finds the testimony of Delaney more credible than the testimony of the Applicant on this issue. Applicant also testified at trial before the jury that the police told him multiple times he was "gonna do thirty years." Transcript of Record at 197-98 (April 26-28, 2010). Therefore, the Applicant was fully informed of the possible sentences that could have been imposed and his plea options, this

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Court finds that Counsel's performance did not fall below the standard required and denies the application on this basis.

Applicant also alleges Delaney was ineffective in that he did not appropriately object to the State's expert testimony regarding how much heroin a dealer, as opposed to a user, would likely possess. The testimony was provided by a witness who was the commander of the local drug unit. This witness was totally unrelated to the transaction and was offered at trial by the State to serve purely as an expert witness based upon his experience in narcotics cases. The Court of Appeals stated in its Opinion that Applicant failed to preserve this issue for appellate review because, while he did object at other times to the expert's testimony, he was "silent when...[the expert] addressed the quantity of heroin a user or a dealer might possess." *State v. Watson*, Op. No. 2013-UP-312 (filed July 3, 2013). This Court finds that Delaney's failure to object does not constitute ineffective assistance of counsel. Delaney did object multiple times to the admission of the expert testimony, specifically, to the fact that the witness was not on the State's witness list, that he had no personal involvement in the case, and that he should not be qualified as an expert. Delaney testified at the hearing that he intended for his objections to cover all aspects of the testimony, including the testimony about the quantity of heroin a dealer, as opposed to a user, might possess. This Court finds that Delaney's performance was reasonable given the numerous objections he made; therefore, it was not deficient. Additionally, the testimony the expert witness provided was appropriate. Expert testimony is allowed to establish how drugs are packaged and used. *See generally State v. Robinson*, 396 S.C. 577, 586, 722 S.E.2d 820, 825 (Ct. App. 2012) *aff'd as modified*, 410 S.C. 519, 765 S.E.2d 564 (2014) (allowing similar expert testimony).

Furthermore, sufficient evidence was presented at trial to establish Applicant's guilt. S.C. Code Ann. § 44-53-370 provides that possession of more than two grains of heroin is prima facie evidence of guilt of possession with intent to distribute heroin, and the evidence presented at trial established that Applicant had more than two grains of heroin in his possession. Additionally, the arresting officers testified that they were patrolling an area known for drug transactions. They testified that Applicant's behavior, specifically the way he situated his parked car and the fact that he was at a restaurant but not purchasing any food, was consistent with the behavior of someone who is dealing drugs. Finally, the officers testified that they saw an interaction in the parking lot between Applicant and another man that could have been a hand to

ad #5

hand transaction. See Transcript of Record at 98-100 (April 26-28, 2010). Therefore, even if Delaney's performance was deficient for failing to object, it was not prejudicial. This Court finds that Counsel's performance did not fall below the standard required and denies this application on this basis.

Applicant also argued in his application that the trial court lacked subject matter jurisdiction. The South Carolina Supreme Court has established that "[t]he court of general sessions has subject matter jurisdiction to try criminal cases." *State v. Smalls*, 364 S.C. 343, 346, 613 S.E.2d 754, 756 (2005). The case law is clear that the trial judge had subject matter jurisdiction over Applicant's case. To the extent that Applicant's argument is related to issues raised at trial regarding his indictments, the South Carolina Court of Appeals addressed these issues in its Opinion. See *State v. Watson*, Op. No. 2013-UP-312 (filed July 3, 2013).

Applicant's last basis in his Application was that there was a conflict of interest. This issue was not raised or discussed at the hearing; therefore, this Court finds that it was abandoned.

CONCLUSION

Based on all of the foregoing, this Court finds that 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 is denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a Notice of Appeal within thirty 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 post-conviction relief. Rule 71.1(g), SCRCR, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on an applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.


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ORDER

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief shall be denied and dismissed with prejudice; and
2. The Applicant shall remain remanded to the custody of the State.

AND IT IS SO ORDERED.



ALISON RENEE LEE
Presiding Judge

July 7, 2015
Columbia, South Carolina

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