



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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

March 5, 2012

RECEIVED

MAR - 5 2012

Ms. April P. Herron
Circuit Court Reporter
P O Box 17675
Greenville, SC 29606

S.C. Supreme Court

Dear Ms. Herron:

Please provide us with the following transcript:

Marcus Dewayne Robinson v. State of South Carolina Case #: 10-CP-23-02153

County: Greenville Date of Trial: November 9, 2011

Presiding Judge: Edward W. Miller

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,

Sharon A. Graham
Administrative Coordinator

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

PCR

Law Office of Lawrence W. Crane

101 WHITSETT STREET
GREENVILLE, SOUTH CAROLINA 29601

LAWRENCE W. CRANE, ESQ.
ELIZABETH P. WIYGUL, ESQ.
CAROLINE M. HORLBECK, ESQ.

TELEPHONE (864) 235-2900
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January 28, 2012

Via Regular Mail

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

Re: MARCUS ROBINSON v. State

Dear Mr. Shearouse:

Enclosed you will find the original Notice of Appeal in the above matter along with Proof of Service upon the Respondents. The Notice has been filed with the Greenville County Clerk of Court.

These matters are being referred to the Office of Appellate Defense in that we were participating as Court appointed counsel at trial.

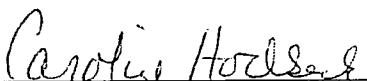
Thank you for your attention to this matter.

Yours very truly,

RECEIVED

JAN 31 2012

S.C. SUPREME COURT


Caroline M. Horlbeck, Esq.

Enclosure

cc: Office of the Attorney General
Office of Appellate Defense

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
THE HONORABLE EDWARD W. MILLER

CA No. 2010-CP-23-2153

MARCUS ROBINSON,
APPELLANT,
vs.
STATE OF SOUTH CAROLINA
RESPONDENT.

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMMER
2012 JAN 18 P 2:07

NOTICE OF APPEAL

Appellant MARCUS ROBINSON, appeals from the Order of the Honorable Edward W. Miller, Circuit Court Judge clocked December 29, 2011 .

Respectfully submitted,

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JAN 8 1 2012

S.C. SUPREME COURT

Caroline M. Horlbeck
Caroline M. Horlbeck, Esq.
101 Whitsett St
Greenville, SC 29601

Date: January 9, 2012

Other Counsel of Record: Karen Ratigan, Esq.
Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE SUPREME COURT

Marcus D. Robinson,)
)
Appellant,)

C.A. No. 2010-CP-23-2153

-vs-)

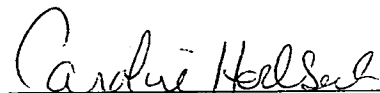
CERTIFICATE OF SERVICE

State of South Carolina,)
)
Respondent.)

This is to certify that I am an employee in the law office of Lawrence W. Crane, attorneys for Applicant, and that I have this day caused to be served upon the person(s) named below Applicant's Notice of Appeal by placing copies of same in the United States mail, with adequate postage thereon, addressed as follows:

Ms. Lorie French
S.C. Office of Appellate Defense
1205 Pendleton St., Suite 306
Columbia, SC 29201

Karen Ratigan, Esq.
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211



Caroline M. Horlbeck

Greenville, South Carolina

January 28, 2012

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

JUDGMENT IN A CIVIL CASE
CASE NO: 2010CP2302153

RECEIVED
CLERK OF COURT
2011 DEC 29 PM 12:22

Marcus Robinson vs. South Carolina State Of

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), SCRPC: Rule 41(a).
SCRPC (Vol. Nonsuit): Rule 43(k), SCRPC (Settled): Other: _____

- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC: 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 29th day of December, 2011.

Court Reporter:

PRESIDING JUDGE - Edward W Miller

This judgment was entered on the 29th day of December, 2011, and a copy mailed first class this 29th day of December, 2011, to attorneys of record or to parties (when appearing pro se) as follows:

~~Marcus Robison~~ Kershaw Corr Insti 4848
Goldmine Hwy Kershaw, SC 29067

Caroline M.W. Horlbeck Law Offices Of Lawrence
W. Crane 101 Whitsett Street Greenville, SC 29601

Karen Christine Ratigan Attorney Generals Office
Po Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

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

186chen IV. 46082
R-2010-02451

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
Marcus Dewayne Robinson,)
S.C.D.C. No. 302759,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
C.A. No. 2010-CP-23-2153

ORDER OF DISMISSAL

REC'D
CLERK OF COURT
SEP 29 2011
PM 12:22

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed March 16, 2010. The Respondent made its return on May 28, 2010. An evidentiary hearing into the matter was convened on November 9, 2011 at the Greenville County Courthouse. The Applicant was present at the hearing and represented by Caroline Horlbeck, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's counsel at his re-sentencing hearing, Randall L. Chambers, Esquire. The Court had before it the records of the Greenville County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the Respondent's return, the prior PCR records, and the transcript of the re-sentencing hearing.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Greenville County Grand Jury indicted the Applicant at the September 2003 term of General Sessions for

trafficking crack cocaine (2003-GS-23-6556, count 1) and possession of a weapon during the commission of a violent crime (2003-GS-23-6556, count 2). Daniel Farnsworth, Esquire represented the Applicant.

On June 15, 2004, the Applicant pled guilty to trafficking crack cocaine (28 or more grams), second offense. The Honorable John C. Few sentenced the Applicant to twenty (20) years imprisonment. The Applicant did not file an appeal.

The Applicant filed a PCR application on April 27, 2005 (2005-CP-23-2742). A hearing was held at the Greenville County Courthouse on November 15, 2005. The Honorable D. Garrison Hill denied relief in an order dated February 6, 2006. The Applicant filed a notice of appeal at the South Carolina Supreme Court. In an opinion filed November 24, 2008, the Supreme Court reversed Judge Hill's order and remanded for re-sentencing on the trafficking charge. Robinson v. State, 380 S.C. 201, 669 S.E.2d 588 (2008).

On March 10, 2009, the Applicant appeared in court for re-sentencing. He was represented at that hearing by Randall L. Chambers, Esquire. The Honorable G. Edward Welmaker sentenced the Applicant to eleven (11) years imprisonment for trafficking crack cocaine (28 or more grams), first offense. The Applicant did not file an appeal.

ALLEGATIONS

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

1. Ineffective assistance of counsel.
2. Judicial 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. 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).

The Applicant stated he believed that he was going to be re-sentenced to trafficking crack cocaine (0-28 grams), first offense even though he acknowledged his original guilty plea was for the weight of 28-100 grams. The Applicant stated counsel told him that, as he had already served five (5) years, he would receive time-served. The Applicant stated he spoke to counsel again on the day of the re-sentencing hearing and counsel told him that, while he would be pleading guilty to trafficking crack cocaine (28-100 grams), he would still be sentenced to time-served. The Applicant stated he was surprised when the State informed the judge there was no recommendation.

Counsel testified he never told the Applicant he would receive a sentence of time-served.

Counsel testified the Applicant could not have received a time-served sentence because the minimum sentence was seven (7) years. Regardless, counsel testified he would have advised the Applicant that he would receive credit for the time he had served. Counsel testified he advised the Applicant there was no sentence recommendation from the State.

Regarding the Applicant's claim of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds the Applicant's testimony is not credible, while also finding counsel's testimony is credible. This Court finds counsel would not have advised the Applicant that he would receive a sentence of time-served because, while the Applicant had served five (5) years on this charge, the mandatory minimum sentence he could receive was seven (7) years. Rather, this Court finds counsel advised the Applicant that he would receive credit for the five (5) years he had already served. This Court notes there was no sentence recommendation from the State¹ and that counsel had explained to the Applicant that he was pleading guilty without a recommendation.

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. 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 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

¹ Transcript, p.4.

present any evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

CONCLUSION

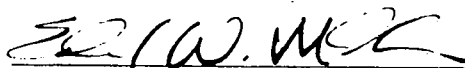
Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his sentencing proceeding. Counsel was not deficient in any manner and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 20 day of December, 2011.



Edward W. Miller
Presiding Judge
Thirteenth Judicial Circuit

Del, South Carolina.

Lawrence W. Crane

Attorney At Law

101 WHITSETT STREET
GREENVILLE, SOUTH CAROLINA 29601

Marcus
Robinson

Via Regular Mail

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

