

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

RECEIVED

AUG 20 2015

Dameon Myers

2012CP2201132

In Propria Persona Petitioner,

S.C. Supreme Court

NOTICE OF APPEAL

RECEIVED
JUL 15 2015

SC Court of Appeals

vs.

STATE OF SOUTH CAROLINA

Respondent.

I, Dameon Myers, am now giving timely notice of my intent to appeal the decision of Judge Nettles on May 13, 2015. I do not completely comprehend his judgment and/or decision; however my PCR was denied without substantive issues being resolved.

I do not have a copy of the final judgement and/or decision because one has not yet been served upon me.

July 5, 2015.
~~June~~

Dameon Myers

Dameon Myers

In Propria Persona Petitioner

Inmate # 279666

Lieber Correctional Institution

P.O. Box 205

Ridgeville, SC 29472

CERTIFICATE OF SERVICE

I, Dameon Myers, certify that a copy of the foregoing was served upon the following:

Joshua L. Thomas

P.O. Box 11549

Columbia, South Carolina 29211

RECEIVED
JUL 15 2015
SC Court of Appeals

RECEIVED

AUG 20 2015

S.C. Supreme Court

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN
DAMEON H. MYERS
 PLAINTIFF V.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2012-CP-22-1132

STATE OF SOUTH CAROLINA
 DEFENDANT

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

PLAINTIFF'S ATTORNEY:
DAMEON H. MYERS #279666
ADDRESS: LIEBRE INST.
P.O. BOX 205
RIDGEVILLE S.C. 29472

DEFENDANT'S ATTORNEY
JOSHEA H. THOMAS
P.O. BOX 11549
COLUMBIA, S.C. 29211

MOTION HEARING REQUESTED (ATTACH WRITTEN MOTION AND COMPLETE
SECTION I AND II

NATURE OF MOTION: MOTION FOR REHEARING

SECTION II: MOTION/ORDER TYPE

WRITTEN MOTION ATTACHED

I HEREBY MOVE FOR RELIEF OR ACTION BY COURT AS SET FORTH IN
THE ATTACHED PROPOSED ORDER.

Dameon Myers July 8 - 2015
Signature of Attorney PLAINTIFF

SECTION III

POST-CONVICTION RELIEF

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SC Court of Appeals
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AUG 20 2015

S.C. Supreme Court

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN
DAMEON h. MYERS
Applicant

V.

STATE OF SOUTH CAROLINA
RESPONDENT

IN THE COURT OF COMMON PLEAS
2012-CP-22-1132

NOTICE OF MOTION AND MOTION
FOR REHEARING PURSUANT TO RULE
59(A) SCRP, AND/OR MOTION TO
ALTER OR AMEND PURSUANT TO
RULE 59(e), SCLP

SC Supreme Court

AUG 20 2015

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RECEIVED

JUL 15 2015

SC Court of Appeals

PLEASE TAKE NOTICE THAT I THE APPLICANT, WILL
MOVE BEFORE THE JUDGE THE HONORABLE MICHAEL G. NETTLES
TO DIRECT AN ENTRY OF A NEW JUDGEMENT AND/OR ALTER
OR AMEND THE JUDGEMENT SIGNED ON JUNE 16 2015, WHICH
WAS FILED ON JUNE 26 2015, I RECEIVED ON JULY 2 2015.

I THE APPLICANT REQUEST THAT THIS COURT DIRECT A
ENTRY OF A NEW JUDGEMENT, PURSUANT TO RULE 59(A)(2)
AND OR AMEND THE FINDING OF FACTS AND CONCLUSION OF
LAW IN THE STANDING ORDER OF DISMISSAL PURSUANT TO
RULE 59(e), SCLP. I RESPECTFULLY SUBMIT THE FOLLOWING
GROUNDS IN SUPPORT OF MY MOTION ON MAY 13 2015.

(1.) THE ORDER OF DISMISSAL FAILS TO ADDRESS THE DETAIL
ARGUMENTS SET FORTH IN I THE APPLICANT'S AMENDMENT
TO POST CONVICTION RELIEF APPLICATION AND RESPONSE TO
STATE'S RETURN AND MOTION TO DISMISS AND RESPONSE TO
CONDITIONAL ORDER OF DISMISSAL.

(2) INEFFECTIVE ASSISTANCE OF COUNSEL ON
MICHAEL T. HURSHEY TRIAL ATTORNEY.

- (1.) Micheal T. Hursey Fail to Submit AN Appeal.
- (2.) Micheal T. Hursey committed fraud by informing me that I was not going to trial and the objective at the time was to work out a plea.
- (3.) Micheal Hursey failed to turn over a copy of discovery material to me.

Violation of the Supreme law of the land
(1.) pursuant to Article VI, Section 2
of the Constitution for the land of the
United States.

Therefore, base upon the foregoing I the Applicant
prays the court reconsider the order of Dismissal and
review the Amendment to Post Conviction Relief Application
and Response to State's Return and Motion to Dismiss
and the Response to Conditional order of dismissal.

I SO MOVE

JULY 8 2015

PAGE 3

Dameon Myers
DAMEON L. MYERS
LIEBRE INST.
BIDGEVILLE S.C. 29472
P.O. BOX 205

RECEIVED

AUG 20 2015

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

Dameon Myers,
S.C.D.C. No. 279666,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

Case No. 2012-CP-22-1132

ORDER OF DISMISSAL

ALMA Y. WHITE
CLERK OF COURT

RECEIVED
JUL 15 2015
SC Court of Appeals

FILED
2015 JUN 26 PM 3:58
GEORGETOWN COUNTY, S.C.

Procedural History

In October 2002, the Georgetown County Grand Jury indicted Applicant for failure to stop for a blue light (2002-GS-22-861), trafficking crack cocaine (2002-GS-22-862), possession with intent to distribute crack cocaine within proximity of a school or park (2002-GS-22-863), and possession with intent to distribute of marijuana (2002-GS-22-864). Applicant was represented by Michael T. Hursey, Jr., Esquire. On December 5, 2002, the matters were called for trial before the Honorable Paula H. Thomas and a jury. Applicant did not appear for trial, and the jury found him guilty of failure to stop for a blue light, possession with intent to distribute crack cocaine, and simple possession of marijuana. The jury found him not guilty of possession with intent to distribute crack cocaine within proximity of a school or park. Judge Thomas issued sealed sentence at that time.

On October 17, 2011, Applicant appeared before the Honorable Steven H. John, who sealed and pronounced Judge Thomas' sentences of three (3) years for failure to stop for a blue light, twenty (20) years for possession with intent to distribute crack cocaine, and one (1) year for simple possession of marijuana. Applicant was represented at this proceeding by T. Kirk

Truslow, Esquire. Judge John denied Applicant's motion to vacate sentence, motion for a new trial, and motion to reduce sentence.

Applicant filed and served notice of appeal on October 19, 2011. The South Carolina Court of Appeals dismissed Applicant's appeal on October 4, 2012. The Court of Appeals denied a motion for reconsideration on March 11, 2013. The remittitur was returned to the circuit court on April 17, 2013.

Applicant filed an Application for Post-Conviction Relief filed October 18, 2012. Respondent made a timely Return on or about June 28, 2013. On August 4, 2014, Respondent filed a Motion to Dismiss. A hearing was held on August 28, 2014, at which time Respondent moved to dismiss the Application based on the Fugitive Disentitlement Doctrine. Applicant appeared *pro se*.¹ Respondent was represented by Assistant Attorney General Joshua L. Thomas, Esquire. The Honorable Kristi Lea Harrington denied Respondent's motion and ordered that an evidentiary hearing into the matter be held.

Accordingly, this Court convened an evidentiary hearing into the *matter* on May 13, 2015. Applicant appeared *pro se*.² J. Croom Hunter, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Allegations

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

1. Unconstitutional conviction;
2. Ineffective assistance of counsel; and
3. "Prosecutor was unethical and so was my counsel."

¹ By order filed April 29, 2014, the Honorable George C. James, Jr., granted Applicant's motion to relieve counsel and proceed *pro se*.

² This Court further advised Applicant of his right to counsel at the PCR hearing, but Applicant chose to proceed *pro se*.

Summary of Testimony Presented

At the evidentiary hearing, Applicant testified on his own behalf. Applicant also presented testimony from T. Kirk Truslow, Esquire, Loushonda Myers, Wendy Reed, and Bo Bryan, Esquire. At the close of Applicant's case, Respondent again moved to dismiss Applicant's case under the Fugitive Disentitlement Doctrine. This Court does not need to address Respondent's motion under the Fugitive Disentitlement Doctrine because Applicant's case fails on the merits. As an initial matter, this Court finds Applicant's testimony not credible. The Court also had before it a copy of the Georgetown County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, and the return.³

During the evidentiary hearing, Applicant testified Michael Hursey (Counsel) was ineffective for failing to challenge the jurisdiction of the trial court. Applicant testified he did not believe the State had standing to bring charges against him. Applicant testified Counsel was ineffective for failing to thoroughly prepare his case and review discovery with him. Applicant claimed the police reports contained false statements, and the police were out to get him. Applicant claimed Counsel was ineffective for failing to obtain witnesses to testify at trial. Applicant testified Counsel's performance at trial was deficient.

Applicant further testified that Kirk Truslow was ineffective for not asking Judge John to recuse himself from the unsealing of Applicant's sentence because Judge John allegedly presided over a murder case two weeks prior where Applicant's name was mentioned as a co-conspirator. Applicant testified the victim in that case was Joey Pope. Applicant further testified that Truslow did not help him prepare for the sentencing hearing after Applicant was apprehended. Applicant

³ This Court did not have a copy of the trial transcript because Applicant was apprehended approximately eight years after his trial. As such, the transcript had been destroyed pursuant to Rule 607 SCACR.

testified Truslow failed to challenge the jurisdiction of the sentencing court. Finally, Applicant testified Truslow did not inform him he did not have to testify at the sentencing hearing.

Applicant further testified his conviction and sentence violated the United States Constitution. Applicant claimed he was denied Due Process. Applicant claimed the search which resulted in evidence against him violated his rights. Applicant claimed he was denied an impartial trial, and that he was found guilty before the trial even began. Applicant claimed the trial judge was not impartial, and that he was sentenced unfairly based on his race. Applicant claimed the General Sessions court had no jurisdiction, and the court could not force its jurisdiction on any human being. Applicant claimed he is not a "person" as defined under South Carolina statutes. Applicant further claimed the authorities who took him into custody were members of a criminal gang involved in murder, kidnapping, extortion, burglary, and treason, and the Georgetown County Sheriff's Office was carrying out a vendetta against his family.

T. Kirk Truslow, Esquire, testified he did not see any reason to challenge the trial court's jurisdiction. Truslow initially testified he was unaware Judge John presided over the Pope murder trial, but he later testified he did remember meeting with Loushonda Myers and Wendy Reed at his office, where they brought their concerns to his attention. However, Truslow further testified he did not believe it mattered that Judge John presided over the Pope murder trial because Applicant was never charged in that crime; any connection was merely speculation. Truslow testified Applicant's family retained him to represent Applicant at his sentencing hearing. Truslow testified Judge John presided because Judge Thomas was no longer on the trial bench. Truslow testified he filed a motion for a new trial as well as a motion to reconsider the sentence, but Judge John denied both motions. Truslow testified he was successful in getting Judge John to run the sentences concurrently. Truslow testified it was necessary for Applicant to

testify in order to have chance at having his sentence reduced or his motion for a new trial granted. Truslow testified Applicant was tried in his absence a month after he failed to appear for his guilty plea. He testified he had no reason to challenge the Court's jurisdiction over Applicant's case. Truslow testified he attempted to contact Applicant's trial attorney, who had since been disbarred, but he was unsuccessful. Truslow testified that based on his knowledge at the time of the sentencing, he had no reason to object to Judge John presiding over the hearing. Finally, Truslow testified that to his knowledge, trial counsel's disbarment had nothing to do with his handling of Applicant's case.

Applicant next called Loushonda Myers, who testified she told Truslow that Judge John presided over the Joey Pope trial in which Applicant was named as being involved. Myers testified Truslow told her he did not think it would be a problem, and that Judge John would be fair. Applicant then called Wendy Reed, whose testimony was substantially the same as that of Myers.

Finally, Applicant called Bo Bryan, Esquire. Upon inquiry by Applicant as to whether the State of South Carolina appeared at his trial, Bryan responded that he did not understand the question. Bryan testified he appeared as the prosecutor for the State of South Carolina. Applicant asked Bryan who the plaintiff was at his trial, and Bryan responded there was not a plaintiff in criminal matters. Bryan testified multiple witnesses also appeared at Applicant's trial on behalf of the State of South Carolina, including the police officers who responded after Applicant fled from a traffic stop and chased him into an apartment where he was found with drugs. Bryan testified that the chemist and the witnesses who testified regarding chain of custody also appeared on behalf of the State of South Carolina. Bryan testified there was no issue with the Court having jurisdiction over Applicant's case because Applicant was arrested in Georgetown

County. Bryan testified that Applicant's attorney was notified of the date of Applicant's trial, and Bryan also identified Applicant's bond paperwork and subpoenas indicating he was aware of the trial date and the consequences of failing to appear. Bryan testified to a letter he had in his file that was sent to trial counsel, Applicant, and the bail bondsman indicating the date of Applicant's trial. Finally, Bryan testified he turned over all discovery to trial counsel.

Findings of Fact and Conclusions of Law

1. 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, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove "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." Id. at 442, 334 S.E.2d at 814 (citing Strickland v. Washington, 466 U.S. 668 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance

was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any 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 alleges trial Counsel was ineffective in his representation of Applicant. This Court finds this argument is without merit. Initially, this Court notes that Applicant is wholly at fault for the inability of this Court to review the trial transcript. Applicant absconded prior to his trial and remained on the run for almost a decade. Because Applicant evaded capture for so long, the transcript of his trial was destroyed according to Rule 607, SCACR. This Court can think of no reason why Applicant should be rewarded for his effectiveness at eluding authorities. As such, this Court must presume that Counsel rendered adequate professional assistance. Furthermore, "in the absence of evidence to the contrary, the regularity of the proceedings of a court of general jurisdiction will be assumed." Pringle v. State, 287 S.C. 409, 410-11, 339 S.E.2d 127, 128 (1986). Additionally, the burden of proof at the hearing is on the applicant to prove his allegations by a greater preponderance of the evidence. Bannister v. State, 333 S.C. 298, 509 S.E.2d 801 (1998). Applicant has presented no evidence other than his self-serving statements that his trial was not properly conducted or that Counsel's representation was deficient. Accordingly, this Court finds Applicant has failed to meet his burden of showing that Counsel did not render adequate assistance. This Court notes Applicant's allegations cannot logically have any factual basis because Applicant was not at his trial to witness Counsel's conduct, and the transcript has been destroyed. As such, Applicant really has no idea how his trial proceeded, despite his allegations to the contrary, so his testimony is clearly not credible.

Applicant next alleges Mr. Truslow's representation at Applicant's sentencing was ineffective. This Court finds the allegation to be without merit. Mr. Truslow's testimony clearly and logically explained his reasoning for having Applicant testify at the sentencing. Where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1996); Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). Courts must be wary of second guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992). Mr. Truslow stated his goal was to either get Applicant a new trial, or have his sentence reduced, and the only way he could do that was to have Applicant testify why he did not appear for trial. Without Applicant's testimony, Truslow would have had no grounds on which to base his plea for a new trial or lower sentence. Furthermore, Applicant has failed to show how his testimony at the sentencing prejudiced him in any way. Additionally, this Court notes Mr. Truslow was successful in having Applicant's sentences run concurrent to one another. Accordingly, this Court finds Mr. Truslow's performance was well within reasonable professional norms, and Applicant's allegation is without merit.

2. Unconstitutional Conviction

Applicant has voiced numerous concerns over the constitutionality of his conviction, particularly that the court of general sessions did not have jurisdiction over him. This Court finds such allegations to be without merit. Regarding PCR actions, an applicant may challenge the subject matter jurisdiction of the trial court, and such a claim is one that may be raised at any time. See Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001), overruled in part by Gentry, 610

S.E.2d 494. However, “[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters.” Gentry, 610 S.E.2d 494; See also S.C. Const. Art. V, § 7. Therefore, the applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. Applicant has failed to present any such evidence to this Court. This Court finds that Applicant’s conviction involved a criminal charge in General Sessions Court, and thus finds that the circuit court had proper subject matter jurisdiction. This Court notes that Applicant was arrested in Georgetown County, where he was subsequently indicted by a lawfully convened grand jury for crimes that were committed within Georgetown County. As such, his allegations are patently without merit.

3. Ethical Allegations

Applicant has alleged that the solicitor acted unethically. This Court finds the allegation to be without merit. Prosecutorial misconduct is not an issue for post-conviction relief. Rather, this allegation is a direct appeal issue that is procedurally barred by S.C. Code Ann. § 17-27-20(b). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). Applicant could have raised the issue of prosecutorial misconduct on appeal. The failure to do so has waived this allegation as grounds for relief. Regardless, it is applicant’s burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794 (1989). Applicant has failed to present any evidence to support his accusations; accordingly the allegation is without merit.

Conclusion

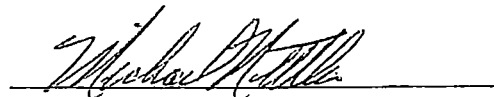
Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from receipt 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, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, his post-conviction relief attorney must serve and file a notice of appeal on Applicant's behalf. Applicant and his attorney are directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice;
and
2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 6th day of June, 2015.



Michael G. Nettles
Presiding Judge
Fifteenth Judicial Circuit

Aidance, South Carolina

DAMEON MYERS #279666 OB-S1
P.O. Box 285
Ridgerville S.C. 29472

RECEIVED

JUL 09 2015

**MAIL ROOM
LIBERAL**

RECEIVED

AUG 20 2015

RECEIVED

JUL 15 2015

**SC Court of Appeals
S.C. Supreme Court**

Kitchen Aboutt

Court of Appeals

P.O. Box 11629

Columbia S.C. 29217

100-100000-1000

THE DEPARTMENT OF CORRECTIONS HAS NOT
INSPECTED OR CENSORED THIS ITEM, THEREFORE,
THE DEPARTMENT DOES NOT ASSUME RESPONSIBILITY
FOR ITS CONTENTS.
LEEER CORRECTIONAL INSTITUTION
S. C. DEPARTMENT OF CORRECTIONS