THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

The Honorable R. Scott Sprouse, Circuit Court Judge

Case No. 2014-CP-42-0129

State of South Carolina

Respondent,

v.

Jeffrey B. Falls, #311472

Appellant.

Notice of Appeal

Jeffrey B. Falls appeals the order of the Honorable R. Scott Sprouse dated July 24, 2015. Appellant received written notice of entry of this order on August 3, 2015.

September 2, 2015

Sincerely,

s/ _____

Brandt Rucker
522 North Church Street
Greenville, South Carolina 29601
(864) 271-9925
Attorney for Appellant

cc:
Other Counsel of Record:

Justin Hunter
Office of the South Carolina Attorney General
P.O. Box 11549
Columbia, S.C. 29211

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Proof of Service

I certify that I have served the Notice of Appeal, and the Proof of Service on the State of South Carolina by depositing a copy of those documents in the United States Mail, postage prepaid, on September 2, 2015, addressed to its attorney of record, Justin Hunter, Office of the South Carolina Attorney General, P.O. Box 11549, Columbia, S.C. 29211.

September 9, 2015

Sincerely,

s/ _____

Brandt Rucker
522 North Church Street
Greenville, South Carolina 29601
(864) 271-9925
Attorney for Appellant

cc:
Other Counsel of Record:

Justin Hunter
Office of the South Carolina Attorney General
P.O. Box 11549
Columbia, S.C. 29211

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	
	)	2014-CP-42-0129
Jeffrey B. Falls, #347321,	)	
	)	
Applicant,	)	
	)	
v.	)	**ORDER OF DISMISSAL**
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

This matter comes before the Court by way of an application for post-conviction relief filed January 9, 2014, and an amendment filed April 8, 2014. Respondent made its Return on or about October 9, 2014. The Court convened an evidentiary hearing into the matter on June 8, 2015, at the Spartanburg County Courthouse. Applicant was present and represented by J. Brandt Rucker, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented Respondent. At the hearing, Applicant testified on his own behalf. Chris Thompson, Esquire, also testified. This Court had before it the Spartanburg County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's appellate records, and the pleadings in this matter.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. He was indicted at the May 2007 term of the Spartanburg County Grand Jury for trafficking in cocaine (2007-GS-42-2111). Applicant was represented by Christopher P. Thompson, Esquire ("Counsel"). On August 12, 2011, Applicant proceeded to trial where he was found guilty of the charge by a jury. The

Honorable Roger L. Couch sentenced Applicant to imprisonment for twenty-five years and a fine of $100,000.

A timely Notice of Appeal was filed on Applicant's behalf. The South Carolina Court of Appeals affirmed the conviction and sentence. State v. Falls, Op. No. 2013-UP-420 (filed November 20, 2013). The Remittitur was returned on December 6, 2013.

II. ALLEGATIONS

In his current application and amendment, Applicant alleges that he is being held in custody unlawfully for the following reason:

1. Ineffective assistance of counsel, in that;
    a. Counsel failed to function as the State's adversary in any sense of the word,
    b. Counsel failed to properly consult with or communicate with Applicant as to the status of the case,
    c. Counsel never ascertained whether or not Applicant fully understood all of the issues involved with the case,
    d. Counsel failed to do the necessary factual investigations and preparation for trial on Applicant's behalf,
    e. Counsel failed to function as the counsel that the Constitution Sixth Amendment guarantees,
    f. Counsel failed to provide Applicant with his complete loyalty.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

In a post-conviction relief action, the applicant bears the burden of proving the allegations in the 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)). This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the evidentiary 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.

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A. Summary of the Testimony

Applicant testified that Counsel did not do any pretrial investigation or consult with Applicant concerning a pretrial suppression motion. Applicant testified that he believes the arresting officers illegally prolonged his detention during the traffic stop, constituting an illegal seizure. Applicant testified that he did not believe that Counsel filed the proper pretrial motions. Applicant gave his version of events, testifying that he is from Charlotte, left for Atlanta around 11:00AM to 12:00PM, stayed for two hours, left Atlanta around 6:00 PM, and was pulled over by South Carolina Highway Patrol in Spartanburg County. Applicant testified that he was being pulled over for improper lane movement. He testified that the stop lasted fourteen minutes before the police canine arrived. Applicant testified that he had issues regarding the clarity of the police videotape of the traffic stop but that Counsel did not make any objections to that regard. Applicant testified that he asked Counsel about obtaining an expert regarding video altering but Counsel never followed up.

Applicant testified that he met with Counsel three times in his office but never really reviewed discovery. Applicant testified that he got a copy of discovery after roll call but never got to see the full video. He testified that during the second meeting with Counsel, Counsel discussed an offer from the solicitor's office to plead guilty and receive eighteen years.

Applicant testified that during trial, Counsel did not renew his objection regarding the evidence found at the traffic stop and believes that had Counsel done so, it would have been granted by the trial court. Applicant also testified that Counsel should have brought jurisdictional claims regarding the his traffic stop and the strategy of Operation Rolling Thunder. Applicant also testified that Counsel should have objected to the chain of custody. Applicant testified that after his arrest, the chemist had possession of the drugs which were then displayed in a police

banquet. He testified that Counsel should have tested the drugs separately. Applicant also testified that the money found on his person at the traffic stop was not from a drug deal but from his towing business. Applicant testified that he believes the officers prolonged the stop by purposefully calling in the wrong driver's license number. Applicant further testified that Counsel should have objected to the arresting officer's testimony because Applicant believed he committed perjury.

Counsel testified that he had been practicing law for seven years in 2011 and had handled many similar cases before. He testified that he discussed the possibility of a plea offer involving an eighteen year sentence. He testified that he performed extensive investigation and research in this case and believes the Operation Rolling Thunder is unconstitutional. Counsel testified that he raised the issue of the stop being improper and unconstitutional. Counsel testified that he believed the motion to suppress the evidence from the traffic stop should have been granted and admitted that he did not renew his objection to the evidence when it came in during the trial.

Counsel further testified that he and Applicant tried to watch the traffic stop video five to six times. Counsel testified that he saw the video at least ten times himself and believed the video to be a decent quality. He testified that he does not recall Applicant saying that the video had been altered. He testified that the video's running clock remains consistent throughout and he did not believe it to be altered. He further testified that any initial issues he had with the video involved the program required to play it.

Counsel testified that he did not recall Applicant's concerns regarding the possibility of the evidence being on display at a police ceremony and that all people in the chain of custody testified at trial. He testified that he had no reason to believe that there were any issues with the chain.

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B. Ineffective Assistance of Trial Counsel

Because the application alleges ineffective assistance of trial counsel as a ground for relief, Applicant must prove trial 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. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether trial counsel 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)). The Court strongly presumes trial counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). 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).

The Court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove trial counsel's performance was deficient. Id. Under this prong, the Court measures an trial counsel's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, trial counsel's deficient performance must have prejudiced 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.

The trial court conducted a lengthy suppression hearing prior to the trial starting, and this Court finds that Counsel made the appropriate arguments in challenging the admission of the video and the drugs. The trial court ultimately ruled against Applicant at the suppression

hearing. Counsel failed to preserve his objection once the evidence was admitted later in the trial – a fact that led the Court of Appeals to reject Applicant's appeal.

South Carolina Courts have held specifically that failure to preserve a motion to suppress in a drug case is deficient performance by trial counsel. McHam v. State, 404 S.C. 465, 746 S.E.2d 41 (2013). In our present case, Counsel admits that he did not preserve the issue for appeal. This Court finds that Counsel's failure to preserve his objection constituted deficient performance measured by the standard of reasonableness under prevailing professional norms, meeting the first prong of the Strickland test.

The question now turns to the issue of prejudice. The applicant must prove that the errors of trial counsel prejudiced the applicant; to the extent of there being a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.

This Court has no jurisdiction to review this case from an appellate perspective. It is well established law in South Carolina that one Circuit Court Judge does not have the authority to overturn the rulings of another Circuit Court Judge. A very competent and capable trial judge ruled that the challenged evidence was admissible. It is clear that the admission of the challenged evidence came only after a very substantial evidentiary hearing and that the issue is a close question. Counsel testified that he still believes that the evidence should have been suppressed. This Court's review of the transcript and video raises factual questions as to whether detaining Applicant until the officer with the drug dog arrived was reasonable in light of the circumstances. This issue is magnified by the nature of the case itself. In a drug case, the issue of the search usually is the central issue to the case. In this particular case, had the Court suppressed the challenged evidence, or the ~~appellant~~ appellate RSS courts held that the evidence should have been suppressed and remanded the case, the State would have had no case against Applicant. The reverse is also

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true. The fact that the evidence was admitted placed Applicant in a very unfavorable position during the trial. However, this Court cannot conduct its own merits analysis because the trial judge ruled on that particular issue. This PCR analysis would be different if this were an issue that trial counsel failed to raise altogether. This issue was raised and the trial judge ruled.

The Court must look at the error in light of all the facts and circumstances of the case. To show prejudice, the applicant must prove that his whole case was prejudiced – that confidence in the eventual outcome is eroded. The lower courts cannot predict with absolute certainty how an appellate court will rule, especially in a factual situation such as this one. There are numerous cases in which delayed searches have been upheld. On the other hand, there are other cases where the searches have been deemed unreasonable. There is no way that this Court can conclude that there is a reasonable probability of a different outcome had trial counsel preserved his objection on the challenged evidence. Based on the facts, the Court finds that Applicant would have been able to make a good faith argument to the appellate courts, but nothing further. Merely being able to make a good faith argument does not arise to the standard of proving a reasonable probability of a different outcome. Accordingly, this Court finds that Applicant has failed to prove that he was prejudiced by trial counsel's deficient performance. Accordingly, the PCR application is denied.

C. 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, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

IV. CONCLUSION

Based on all the foregoing, this Court finds and concludes 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 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 an 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.

IT IS THEREFORE ORDERED:

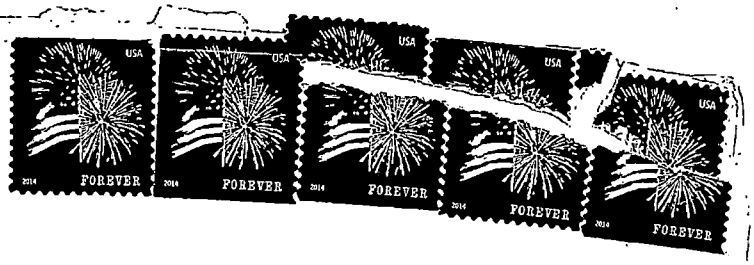
1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and

2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 21 **day of** July **, 2015.**

R. SCOTT SPROUSE
Presiding Judge
Seventh Judicial Circuit

Brandt Rucker
Attorney at Law, L.L.C.
522 North Church Street
Greenville, South Carolina 29601



The Honorable Daniel E. Shearouse
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