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"Success is all that matters"

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September 11, 2015

RECEIVED

SEP 16 2015

S.C. SUPREME COURT

Supreme Court of South Carolina
Post Office Box 11330
Columbia, SC 29211

RE: Jason L. Mixon #00300006 v. State of South Carolina
Case No.: 2013-CP-27-572

Dear Clerk of Court:

Enclosed please find an original and one copy of a Notice of Appeal, along with the Order we are appealing in the above referenced matter. If you would, please file the Notice of Appeal and return a clocked copy to me in the envelope provided.

Please be advised that I have been court appointed to represent Mr. Mixon in this matter.

Thank you for your assistance in this matter. If you have any questions or concerns, please feel free to contact my office.

With kind regards,



Tristan M. Shaffer

TMS/kmg
cc: J. Rutledge Johnson, Esquire
Jasper County Clerk of Court
Appellate Defense
Jason Mixon

SUPREME COURT OF SOUTH CAROLINA

APPEAL FROM JASPER COUNTY
In The Court of Common Pleas

Honorable Edgar W. Dickson,
Common Pleas Judge of the Fourteenth Judicial Circuit

Case No.: 2013-CP-27-572

Jason L. Mixon,

Petitioner,

v.

State of South Carolina,

Respondent.

RECEIVED


SEP 16 2015

S.C. SUPREME COURT

NOTICE OF APPEAL

Petitioner appeals the Order of Dismissal of the Honorable Edgar W. Dickson dated August 14, 2015, filed August 19, 2015 and received by Petitioner on August 21, 2015.

September 11, 2015


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Columbia, SC 29211

SUPREME COURT OF SOUTH CAROLINA

APPEAL FROM JASPER COUNTY
In The Court of Common Pleas

Honorable Edgar W. Dickson,
Common Pleas Judge of the Fourteenth Judicial Circuit

Case No.: 2013-CP-27-572

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Jason L. Mixon,

Petitioner,

SEP 16 2015

v.

State of South Carolina,

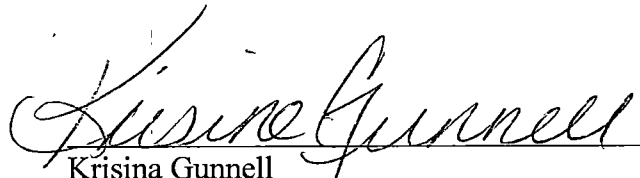
Respondent.

S.C. SUPREME COURT

CERTIFICATE OF SERVICE

I, Krisina Gunnell, do hereby certify that I am an employee of Axelrod & Associates, P.A., in Myrtle Beach, South Carolina, and that I have this date served the Petitioner's Notice of Appeal upon the Respondent, by depositing a copy of same in the United States Mail, postage prepaid, addressed as follows:

J. Rutledge Johnson, Esquire S.C. Office of the Attorney General Post Office Box 11549 Columbia, SC 29211	Jason L. Mixon, #00300006 Kershaw Correctional Institution 4848 Gold Mine Highway Kershaw, SC 29067
Jasper County Clerk of Court P.O. Box 248 Ridgeland, SC 29936-0248	Appellate Defense 1330 Lady Street Columbia, SC 29201



Krisina Gunnell
Paralegal to Tristan M. Shaffer.

September 11, 2015
MYRTLE BEACH, SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
COUNTY OF JASPER)

Jason L. Mixon,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT

Case No. 2013-CP-27-572

ORDER OF DISMISSAL

This matter comes before the Court by way of an Application for Post-Conviction Relief filed November 7, 2013. Respondent made a timely Return on or about May 30, 2014. The Court convened an evidentiary hearing into the matter on October 30, 2014. Applicant was present at the hearing and represented by Tristan M. Shaffer, Esquire. Ashleigh R. Wilson, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's plea counsel, Stephen T. Plexico, Esquire, also testified. The Court had before it a copy of the plea transcript, the records of the Jasper County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the pleadings, and the exhibits introduced at the hearing. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant was indicted at the March 2013 term of the Jasper County Grand Jury for possession of contraband by a prisoner (2013-GS-27-0158) and possession with intent to distribute marijuana (2012-GS-27-0114). Applicant was represented by Stephen T. Plexico, Esquire ("plea counsel"). On April 16, 2013, Applicant pled guilty as indicted. Applicant was sentenced by the Honorable Perry M. Buckner, III, to confinement for a period of two years on

both charges. The sentences were to be served concurrently to each other and to Applicant's sentences for Colleton County charges. Applicant did not appeal his sentences or convictions.

II. ALLEGATIONS

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

1. Ineffective assistance of counsel.
 - a. Counsel failed to conduct a pretrial investigation.

At the evidentiary hearing, Applicant amended his application to include an allegation of a violation of Brady v. Maryland, 373 U.S. 83 (1963).

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the evidentiary hearing. The Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. The 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).

A. Ineffective Assistance of Plea 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. With respect to guilty plea counsel, the Applicant must show there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

The Court finds Applicant failed to meet his burden to show plea counsel ineffective for failing to investigate. Applicant testified he only pled guilty because he did not want to take the charges to trial. He now alleges he wants a new trial because one of the officers involved in his case was later investigated for wrongdoing. He testified he would have gone to trial had he known the officer had a history of lying. On the other hand, plea counsel testified he was aware of the investigation against the officer. However, he recalled the officer was not a fact witness,

but a chain witness. Plea counsel adamantly maintained the officer was not important to the case against Applicant, and any further information about him would not have affected the case.

The Court finds plea counsel's testimony credible and gives it great weight. Correspondingly, the Court finds Applicant's testimony neither credible nor supported by the record. The Court finds trial counsel conducted a proper investigation, adequately conferred with Applicant, and was thoroughly competent in his representation. Applicant failed to demonstrate how further investigation of the officer would have uncovered any information helpful to his defense. See Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998). Accordingly, Applicant failed to satisfy the first prong of the Strickland analysis.

Applicant also failed to satisfy the second prong of the Strickland analysis. Specifically, Applicant failed to show that but for the lack of further information he would have insisted upon a trial. Hill, 474 U.S. at 59; see also Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009) (applicant must show "something that would have affected counsel's advice to [the applicant] to accept the plea bargain offered or that would have caused [the applicant] to decline to accept it"). Accordingly, relief is denied on this ground.

B. Brady Violation

The Court further finds Applicant failed meet his burden to show the State committed a Brady violation. "Brady only requires disclosure of evidence which is both favorable to the accused and material to guilt or punishment." State v. Taylor, 333 S.C. 159, 177, 508 S.E.2d 870, 879 (1998) (citing United States v. Bagley, 473 U.S. 667 (1985)). Evidence is material only if it would have changed the result of the proceeding had it not been intentionally withheld. Id. In reviewing an alleged Brady violation, the court must consider the evidence in the context of the entire record. Id. (citing United States v. Agurs, 427 U.S. 97 (1976)).

Here, Applicant alleged the State violated Brady by failing to disclose Department of Corrections' visitation records. However, the Court fails to discern how these records were favorable to Applicant. The Court finds very credible trial counsel's testimony that these records were not relevant to the prosecution of Applicant. The Court further fails to discern how these records were material to Applicant's guilt or innocence. The records do not establish any officer in Applicant's case was untruthful about the investigation of Applicant's crimes. Accordingly, the Court finds Applicant has not demonstrated the likelihood of a different outcome to his case had the State provided these records to plea counsel. See, e.g., Giglio v. United States, 405 U.S. 150, 154 (1972) ("We do not, however, automatically require a new trial whenever 'a combing of the prosecutors' files after the trial has disclosed evidence possibly useful to the defense but not likely to have changed the verdict'" (citations omitted)). Therefore, relief is likewise denied on this ground.

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 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 PCR counsel's 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), SCRPC, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

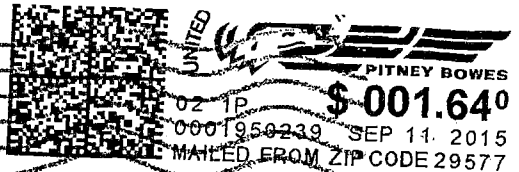
1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 14th day of August, 2015.



EDGAR W. DICKSON
Presiding Judge

Orangeburg, South Carolina



COLUMBIA SC 292

TUE 15 SEP 2015 AM

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