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. 2013-CP-42-2875

State of South Carolina

Respondent,

v.

Jason Will Williams, #298412 Appellant.

Notice of Appeal

Jason Will Williams appeals the order of the Honorable Roger L. Couch dated August 17, 2015. Appellant received written notice of entry of this order on August 24, 2015.

September 3, 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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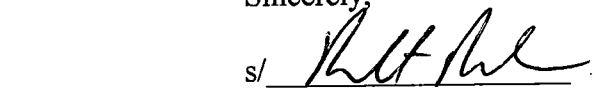
Proof of Service

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 3, 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
Attorney for Appellant
522 North Church Street
Greenville, South Carolina 29601
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cc:
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Office of the South Carolina Attorney General
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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	2013-CP-42-2875
Jason Will Williams, #298412,	)	
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 July 3, 2013 and received by Respondent on November 5, 2013. The Respondent made its Return on or about June 30, 2014. An evidentiary hearing into the matter was convened on March 23, 2015, at the Spartanburg County Courthouse. The Applicant was present and represented by J. Brandt Rucker, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. J. Roger Poole, Esquire, ("Counsel") also testified. This Court also had before it a copy of the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the Return, the appellate records, and the trial transcript.

PROCEDURAL HISTORY

The Applicant is 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 March 2010 term of the Spartanburg County Grand Jury for failure to stop for a blue light (2010-GS-42-2109), assault and battery of a high and aggravated nature (ABHAN) (2010-GS-42-2110), armed

robbery (2010-GS-42-2113(A), count 1), possession of a weapon during commission of a violent crime ((2010-GS-42-2113(A), count 2), and strong arm robbery (2010-GS-42-2114). The Applicant was represented by J. Roger Poole, Esquire.

The Applicant proceeded to trial and, on February 2, 2011, was convicted of all charges but possession of a weapon during commission of a violent crime. The Honorable J. Derham Cole sentenced the Applicant to concurrent terms of 3 years for failure to stop for a blue light, 10 years for ABHAN, life imprisonment for armed robbery, and 15 years for strong arm robbery.

A notice of appeal was filed at the South Carolina Court of Appeals. Robert M. Dudek, Esquire of the South Carolina Commission on Indigent Defense, Division of Appellate Defense perfected the appeal in the form of an Anders[1] brief. The Court of Appeals dismissed the appeal. State v. Williams, No. 2013-UP-105 (filed March 13, 2013). The Remittitur was issued on April 5, 2013.

ALLEGATIONS

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

1. Ineffective assistance of trial counsel

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. 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).

[1] Anders v. California, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967).

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) (citing Rule 71.1(e), SCRCP). 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, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. at 442, 334 S.E.2d at 814. The Applicant must overcome this presumption to receive relief. 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, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, citing Strickland, 466 U.S. at 688, 104 S. Ct. at 2065. 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." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland).

A.

The Applicant argued Counsel failed to properly investigate his case. The Applicant stated Counsel met with him 4 times in 11 months. The Applicant stated he had been in a car accident and did not recall speaking with police. The Applicant stated he discussed the effects of the crash with Counsel, but Counsel said he did not have time to get the medical records.[2]

Counsel testified he met with the Applicant and gave him discovery materials. Counsel testified he spoke with the Applicant's girlfriend and members of his family in order to make a timeline. Counsel testified the defense theory was that Phillip Young was the perpetrator. Counsel testified he did have the medical records.

This Court finds the Applicant failed to meet his burden of proving Counsel did not properly investigate his case. The gravamen of the Applicant's complaint is that Counsel failed to investigate his medical records and the impact that such could have had upon his trial. To establish counsel failed to adequately prepare for trial, applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel more fully prepared. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998) (finding the failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result). While Counsel testified that, in hindsight, he might have used the Applicant's medical records, this is not relevant to whether Counsel was effective. See, e.g., McAfee v. Thurmer, 589 F.3d 353, 356 (7th Cir. 2009) (noting attorney "reflection after the fact is irrelevant to the question of ineffective assistance of counsel"). The Applicant did not present an expert witness at the PCR hearing to interpret his medical records and offer an opinion about whether the Applicant's injury would have affected

[2] The medical records were admitted as Applicant's Exhibit 1.

him in any way. Without such, this Court cannot speculate as to the impact the Applicant's medical records would have had upon his trial. See Dempsey v. State, 363 S.C. 365, 370, 610 S.E.2d 812, 815 (2005) (finding that, as the applicant failed to have an expert testify at the evidentiary hearing, "any finding of prejudice is merely speculative").

B.

This Court finds the Applicant failed to meet his burden of proving Counsel should have requested a jury charge on criminal intent. The Applicant failed to articulate either why Counsel was deficient in failing to request this instruction or how this additional jury instruction would have affected the outcome of his trial. See Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (holding that, in a post-conviction relief proceeding, the applicant bears the burden of proving the allegations in their application).

C.

The Applicant argued Counsel failed to properly advise him during the trial. The Applicant stated he testified at the Jackson v. Denno hearing but not during the trial. the Applicant stated he believed he should have testified at trial.

Counsel testified he and the Applicant discussed his chances in going to trial. Counsel testified they discussed the Applicant's prior convictions and whether the Applicant should testify at trial.

This Court finds the Applicant failed to meet his burden of proving Counsel failed to properly advise him during the trial. The gravamen of the Applicant's complaint is that Counsel did not properly discuss with him whether he should testify in his own defense. This Court notes, however, that the Applicant and Counsel both indicated to the trial judge that they had thoroughly discussed the matter and that the Applicant did not want to testify. The trial judge

informed the Applicant of the right to testify in his own defense and the Applicant indicated he did not wish to do so. (Trial transcript, pp.194-98). This Court finds the Applicant's decision not to testify was both informed and voluntary. See Brown v. State, 340 S.C. 590, 594, 533 S.E.2d 308, 310 (2000) (holding a defendant's decision to testify or not must be made with knowledge of the consequences of either choice).

E.

This Court finds in regards to the allegations of ineffective assistance of counsel, Counsel's testimony was credible, while the Applicant's testimony was not credible. This Court further finds Counsel adequately conferred with the Applicant, conducted a proper investigation, was thoroughly competent in his representation, and that Counsel's conduct does not fall below the objective standard of reasonableness.

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. The Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in his representation of the Applicant. 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, 351 S.C. at 389, 570 S.E.2d at 174.

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 trial and sentencing proceedings. Counsel was not deficient 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 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 17th day of August, 2015.

Roger L. Couch
Presiding Judge

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The Honorable Daniel E. Shearouse
Supreme Court of South Carolina
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