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October 1, 2015

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

In RE: Steven G. Frost, #133769 vs. State of South Carolina
Case #: 2015-CP-37-0045

RECEIVED
OCT 06 2015
S.C. SUPREME COURT

Dear Sir/Madam:

Please find enclosed herewith the original and one (1) copy of the Appellant's Notice of Appeal in connection with the foregoing matter which I ask that you file for record, returning the clocked copy to my office. I also enclose a copy of the Order of Dismissal and the original Proof of Service on Walt Whitmire, Office of the Attorney General. Please use the enclosed self-addressed envelope to return the clocked copy to my office. ✓ 50-76 Oct 20 15

With kind regards,



Hugh W. Welborn

HWW/sba

cc: Office of the Appellate Defense
Office of the Attorney General
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
APPEAL FROM ANDERSON COUNTY
COURT OF COMMON PLEAS
HONORABLE FRANK R. ADDY, JR.

2015-CP-37-0045

STEVEN G. FROST, #133769

APPELLANT,

vs

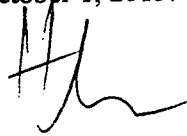
STATE OF SOUTH CAROLINA,

RESPONDENT.

RECEIVED
OCT 08 2015
S.C. SUPREME COURT

NOTICE OF APPEAL

Steven G. Frost, #133769 appeals the denial of her Post Conviction Relief. The Post Conviction Relief Action was heard and denied by the Honorable Frank R. Addy, Jr., Circuit Court Judge on September 2, 2015, and Order of Dismissal issued on September 25, 2015, and filed on September 28, 2015. The Appellant received Order of Dismissal on October 1, 2015.



Hugh W. Welborn
Attorney for the Appellant
Post Office Box 173
Anderson, South Carolina 29622
(864) 226-5787
Attorney for Steven G. Frost, #133769

Other Counsel of Record:
Walt Whitmire
Office of Attorney General State of SC
Post Office Box 11549
Columbia, South Carolina 29211

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
APPEAL FROM ANDERSON COUNTY
COURT OF COMMON PLEAS
HONORABLE FRANK R. ADDY, JR.

2015-CP-37-0045

STEVEN G. FROST, #133769

APPELLANT,

vs

STATE OF SOUTH CAROLINA,

RESPONDENT.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the State of South Carolina by depositing a copy of it in the United States Mail postage prepaid on October 1, 2015, addressed to its attorney of record Walt Whitmire, Office of the Attorney General, Post Office Box 11549, Columbia, South Carolina 29211-1549



Hugh W. Welborn
Attorney for the Appellant
Post Office Box 173
Anderson, South Carolina 29622
(864) 226-5787
Attorney for Steven G. Frost, #133769

Anderson, South Carolina

01 October, 2015

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

Steven Frost, #133769,
Plaintiff(s),

-vs-

State of South Carolina,
Defendant(s).

IN THE COURT OF (Select one.)

COMMON PLEAS FAMILY COURT

TENTH JUDICIAL CIRCUIT

CASE NO.: 2015-CP-37-0045

APPOINTMENT OF COUNSEL OR GAL

(Select one.)

ORDER

AMENDED ORDER

TYPE OF CASE/PROCEEDING: (Check one.)

- Post-Conviction Relief (PCR)/habeas case
- SVP case
- Minor Name Change
- Adoption
- Custody and/or Visitation
- Other:
- Juvenile
- Abuse and Neglect

It appears that James A. Sullivan, S.C.D.C. No. 233976, who is a litigant in this case, is entitled to court-appointed counsel or a guardian ad litem.

It further appears that: (Select only one.)

- counsel/guardian ad litem has not yet been appointed by the court; therefore, an appointment for counsel/guardian ad litem is necessary.
- counsel or a guardian ad litem was previously appointed by the court but has indicated either a possible conflict of interest, an entitlement to exemption, or other good cause warranting the appointment of new counsel or guardian ad litem based on: _____
- counsel was previously appointed by the court but has not indicated that the litigant has retained private counsel and is no longer entitled to appointed counsel.
- court appointed counsel has obtained _____, Esquire as substitute counsel pursuant to Rule 608(h)(2); provided, however, only the member who originally received the appointment and who sought substitute counsel shall receive credit.
- Other:

- counsel
- lead counsel (if capital PCR case)
- guardian ad litem

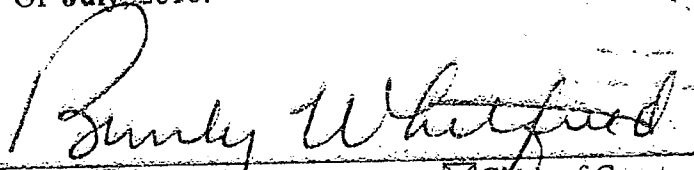
Therefore, it is ordered that HUGH WELBORN, P.O. Box 173, Anderson, SC, 29622, telephone (864) 226-5787, hereby is appointed as (Select one.)

for the above-named person. Any counsel or GAL previously appointed is/are hereby relieved.

(If Death Penalty PCR Case) It is further ordered that _____, Esquire, is hereby appointed as second counsel in this capital PCR case.

The clerk of court is directed to forward a copy of this order to all persons entitled to notice.

IT IS SO ORDERED THIS 16th DAY OF July, 2015.


 Circuit Judge Clerk of Court

FILED OCONEE, SC
 BEVERLY H. WHITEFIELD
 CLERK OF COURT
 JUL 16 2015 3:42

NOTICE: SC Supreme Court Order of September 29, 2006, requires appointed counsel entitled to payment from the Office of Indigent Defense (OID) to register the case online with OID within fifteen (15) days of this appointment at www.sccid.sc.gov, and further directs that reimbursement vouchers be submitted directly to SCCID and not to the trial judge or clerk of court. See SCCID website for further details.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
 COUNTY OF OCONEE) TENTH JUDICIAL CIRCUIT
)
 Steven G. Frost,) C.A. No. 2015-CP-37-0045
 S.C.D.C. No. 133769)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

FILED OCONEE, SC
 BEVERLY H. WHITMIRE
 CLERK OF COURT
 2015 SEP 28 A 11:27

**ORDER OF DISMISSAL
 (with prejudice)**

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on January 14, 2015. Respondent's responsive pleadings followed. An evidentiary hearing into the matter was convened on September 2, 2015 at the Anderson County Courthouse. Applicant was present at the hearing and was represented by Hugh Welborn, Esq. Respondent was represented by Walt Whitmire, Esq., of the Office of the Attorney General.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Oconee County Clerk of Court. In June 2012 the Oconee County Grand Jury indicted Applicant for Criminal Sexual Conduct First Degree (CSC First) (2012-GS-37-0549). Daniel Day, Esq., represented Applicant. On September 17-19, 2012, Applicant proceeded to a trial before the Honorable J. Cordell Maddox and a jury, which found Applicant guilty as indicted. Judge Maddox sentenced Applicant to a term of forty (40) years imprisonment.

A timely notice of appeal was filed on September 21, 2012, and an amended notice of appeal was filed on October 8, 2012. On appeal, David Alexander, Esq., represented Applicant.

DM

Copies to:
 Atty (P) Welborn (D) Whitmire
 DSS other ENTERED

The South Carolina Court of Appeals affirmed Applicant's convictions and sentences. State v. Frost, Op. No. 2014-UP-258 (S.C. Ct. App. filed June 25, 2014). The Remittitur was issued on July 11, 2014.

At the PCR hearing, Applicant alleged that he is being held in custody unlawfully for the following reasons:

- (a) Ineffective assistance of counsel for failing to meet with Applicant on a sufficient number of occasions prior to trial.

SUMMARY OF STATE'S EVIDENCE PRESENTED AT TRIAL

The minor victim testified that Applicant assaulted her by digital penetration. She also testified that prior to the assault, Applicant exposed himself to her. **Trial Tr. p.75**. The minor victim's adoptive mother testified that she walked into the child's bedroom and observed Applicant with his hands in the minor victim's pants. **Trial Tr. p.106**. The assault caused physical trauma. Dr. Carter, qualified as an expert in child sexual abuse trauma, testified to the scarring caused by the assault. **App.pp.89-95**. Applicant offered his remorse during the sentencing phase of the trial. **App.p.196**.

SUMMARY OF TESTIMONY

At the PCR hearing, Applicant testified to his impressions of counsel and to his concerns on the competency of representation that he received. Applicant testified to his version of facts that benefited a defense. Applicant testified to his interactions with counsel during the case. According to Applicant, counsel did not meet with him until the week prior trial. Applicant testified that his case was called to trial five months after his arrest. He opined that he could have helped counsel prepare the case if they had met more often.

Counsel testified to his course of conduct during the representation. He briefly detailed his thirty-seven (37) years of experience practicing criminal defense law. He further detailed the

circumstances of his appointment and consultations with Applicant during the representation. Counsel obtained Applicant's case filed on March 12, 2012, eight days after Applicant's arrest. Counsel held a lengthy consultation with Applicant on April 16, 2012. A preliminary hearing followed on May 4, 2012 after counsel had the opportunity to meet with the prosecuting solicitor and law enforcement. Several short meetings at the Oconee County Detention Center followed. On July 10, 2012, counsel held a consultation with Applicant where they reviewed the State's evidence and discovery disclosures. They discussed Applicant's theory of the case: a purported motive for Applicant's family against him. Prior to the September 2012 trial, counsel had fully reviewed and discussed the State's evidence, including the child victim's forensic interview, with Applicant. Counsel was adamant that he fully prepared to try Applicant's case.

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 at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses and exhibits presented at the hearing, closely pass upon their credibility, and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

INEFFECTIVE ASSISTANCE OF COUNSEL

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). 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, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

DM

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. 441, 334 S.E.2d 813 (1985). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. 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). After careful review based on the standard discussed above, the Applicant has failed to carry his burden in this action.

A.

Applicant's allegation (a) Ineffective assistance of counsel for failing to meet with Applicant on a sufficient number of occasions prior to trial is entirely without merit.

"From counsel's function as assistant to the defendant derive the overarching duty to advocate the defendant's cause and the more particular duties to consult with the defendant on important decisions and to keep the defendant informed of important developments in the course of the prosecution." Strickland, 466 U.S. at 688, 104 S. Ct. 2052.

This Court readily rejects Applicant's claim in light of counsel's convincing account of the pre-trial consultations with Applicant. Counsel testified in a methodical and prepared manner that evidenced his thorough representation on behalf of Applicant. Furthermore, it is simply objectively unreasonable for an experienced attorney to have neglected his client until the eve of trial on a most serious charge that resulted in a presumptive life sentence. Regardless, Applicant

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has failed to meet his most basic burden of production in presenting credible evidence to show how additional attorney/client consultations would have changed the result of trial. Therefore, this allegation is denied and dismissed with prejudice.

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.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the 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 notes that that Applicant must file and serve a notice of appeal within thirty 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 post-conviction relief. Rule 71.1(g), SCRCR, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

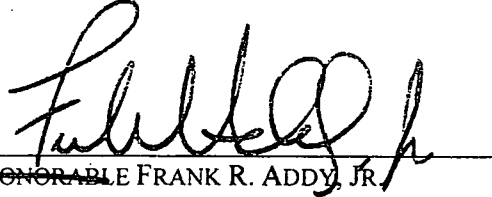
IT IS THEREFORE ORDERED:

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 25th day of Sept., 2015.



HONORABLE FRANK R. ADDY, JR.
Presiding Judge
Eleventh Judicial Circuit

Greenwood, South Carolina

2015 SEP 28 A 11:27

FILED OCOONEE, SC
DEVELOPMENTAL CENTER
CLERK OF COURT

A TRUE COPY
SEP 28 2015
CLERK OF COURT, OCOONEE COUNTY

