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October 14, 2015

RECEIVED

OCT 20 2015

S.C. SUPREME COURT

The Honorable Daniel E. Shearhouse
Clerk, Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

RE: Timothy Young v. State of South Carolina, Case No.: 2014-CP-10-0437

Dear Mr. Shearhouse:

Enclosed for filing is the Notice of Appeal (original and clocked copy) in the above Post Conviction Relief (PCR) case. Also enclosed are the following:

- (1) Proof of Service of the Notice of Appeal on the Respondent;
- (2) The Order of Dismissal &
- (3) A Request for Representation on Appeal.

The Applicant-Appellant was represented by me as an indigent pursuant to my contract with the South Carolina Commission on Indigent Defense (SCCID) to handle PCR cases. By copy of this letter, I am forwarding a duplicate set of documents to the SCCID.

The Request for Representation on Appeal and the Affidavit in Support thereof are signed by me as attorney for Applicant-Appellant. If you need anything further, do not hesitate to contact me. Thank you for your time and attention to this matter.

Sincerely,

Rodney D. Davis
South Carolina Bar #: 12396
4000 Faber Place Drive, Suite 300
Charleston, SC 29405
(843) 323-4353
Davis@LowcountryLawOffice.com

Enclosure(s). As stated above.
RDD/mmt

cc: J. Rutledge Johnson, Assistant Attorney General
Kimberly McCall, Appellate Division, SCCID

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Roger E. Henderson, Circuit Court Judge

Case No.: 2014-CP-10-0437

Timothy Young,

Appellant,

v.

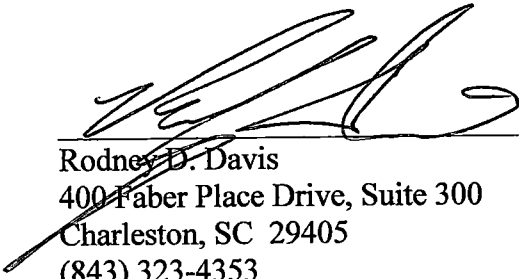
State of South Carolina,

Respondent.

NOTICE OF APPEAL

Timothy Young appeals the denial of his Post Conviction Relief application in this case. The Application for relief was denied, following an evidentiary hearing before the Honorable Roger E. Henderson on July 21, 2015.

October 16, 2015


Rodney D. Davis
400 Faber Place Drive, Suite 300
Charleston, SC 29405
(843) 323-4353
Davis@LowcountryLawOffice.com
Attorney for Appellant

Other Counsel of Record:
J. Rutledge Johnson
Assistant Attorney General
Office of the Attorney General, State of South Carolina
PO Box 11549
Columbia, SC 29211-1549

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OCT 20 2015

S.C. SUPREME COURT

BY

JULIE J. ARMSTRONG
CLERK OF COURT

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FILED

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

OCT 20 2015

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Roger E. Henderson, Circuit Court Judge

Case No.: 2014-CP-10-0437

Timothy Young,

Appellant,

v.

State of South Carolina,

Respondent.

BY

JULIE J. ARMSTRONG
CLERK OF COURT

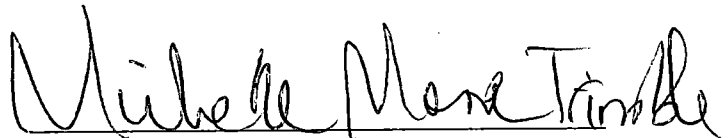
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FILED

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the State by mailing a copy of it to the address of record, J. Rutledge Johnson, P.O. Box 11549, Columbia, South Carolina 29211-1549, on October 16, 2015.

10/16, 2015



Michelle Moore Trimble
Paralegal to Rodney D. Davis
400 Faber Place Drive, Suite 300
Charleston, SC 29405
(843) 323-4353
Davis@LowcountryLawOffice.com
Attorney for Appellant

Other Counsel of Record:
J. Rutledge Johnson
Assistant Attorney General
Office of the Attorney General
State of South Carolina
P.O. Box 11549
Columbia, SC 29211-1549
Attorney for Respondent

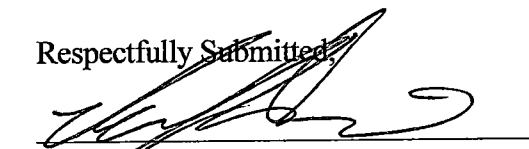
STATE OF SOUTH CAROLINA)	IN THE SUPREME COURT OF SOUTH CAROLINA
)	Case No.: 2014-CP-10-0437
COUNTY OF CHARLESTON)	
)	
)	
TIMOTHY YOUNG,)	REQUEST FOR REPRESENTATION ON APPEAL
)	
Applicant.)	
)	
-versus-)	
)	
STATE OF SOUTH CAROLINA,)	
)	
Respondent.)	

On behalf of the request of the above-named Applicant, to be represented by the South Carolina Commission of Indigent Defense, Appellate Division (SCCID), the undersigned attorney would show unto this Honorable Court that:

1. He is the attorney for the Applicant-Appellant in the above captioned case. The Applicant-Appellant was in custody during and taken into custody immediately following the Post Conviction Relief (PCR) hearing and was not available to personally sign this request;
2. The Applicant-Appellant was represented by the undersigned attorney as an indigent, pursuant to a contract with the SCCID;
3. The Applicant-Appellant has been informed that he may request assistance from the SCCID Appellate Division in perfecting his appeal;
4. A timely Notice of Intent to Appeal has been filed on the Applicant-Appellant's behalf;
5. The Applicant-Appellant has been informed that nothing requires SCCID Appellate Division to pursue this appeal unless that office's Chief Attorney is satisfied that there is arguable merit to this appeal and that he cannot afford to hire an attorney.

At this time, the Applicant-Appellant requests the aid of the SCCID Appellate Division in perfecting his appeal to the South Carolina Court of Appeals.

Respectfully Submitted,



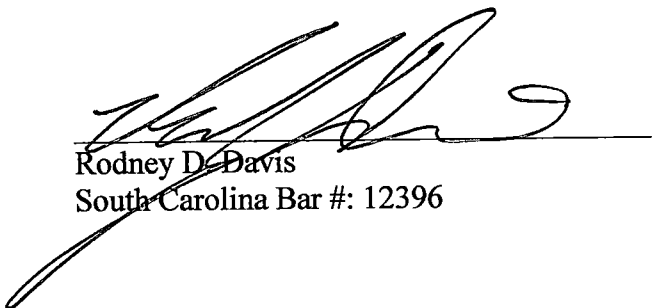
 Rodney D. Davis
 South Carolina Bar #: 12396

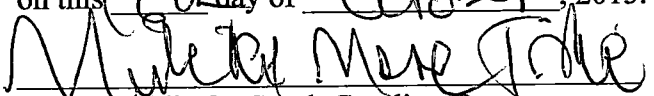
10/16, 2015
 Charleston, South Carolina.

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

VERIFICATION

PERSONALLY appeared before me, Rodney D. Davis, being first duly sworn, deposes and says that he has read the foregoing *Request for Representation on Appeal* and the same is true of his knowledge except those matters alleged on information and belief, and as to those matters, he believes them to be true.


Rodney D. Davis
South Carolina Bar #: 12396

SWORN to and subscribed to me
on this 11th day of October, 2015.

Notary Public for South Carolina
My Commission expires 3rd ~~12th~~ 2016

cc
AG
AT
GS
SOL

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
)
)
Timothy Young, #296628,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

2014-CP-10-0437

ORDER OF DISMISSAL

FILED
2015 SEP 23 PM 4:22
JULIE J. HIGHTSHAW
CLERK OF COURT

This matter comes before the Court by way of an Application for Post-Conviction Relief filed January 22, 2014. The Respondent made its Return on March 20, 2015. An evidentiary hearing into the matter was convened on July 21, 2015, at the Charleston County Courthouse. Rodney Davis, Esquire represented Applicant. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

At the hearing, Applicant testified on his own behalf. Melissa Gay, Esquire also testified. This Court had before it a copy of the records of the Charleston County Clerk of Court, records from the South Carolina Department of Corrections, the trial transcript and the appellate records.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted at the August 2010 term of the Charleston County Grand Jury for possession with intent to distribute (PWID) cocaine base- third offense (2010-GS-10-5622), possession with intent to

distribute cocaine base within proximity of a school/park (2010-GS-10-5623), and resisting arrest (2010-GS-10-5624). The Applicant was represented by Cantrell Frayer, Esquire.

On August 31-September 2, 2011, the Applicant proceeded to trial and was found guilty. The Applicant was sentenced by the Honorable Deadra L. Jefferson to confinement for a period of fifteen (15) years for PWID cocaine base, ten (10) years for PWID cocaine base within the proximity of a school/park, and one (1) year for resisting arrest. The Applicant's convictions are to be served concurrently.

The Applicant filed a timely Notice of Appeal. His appeal was perfected by Katherine Hudgins, Esquire, of the Office of Appellate Defense. The Applicant's appeal was dismissed by the Court of Appeals pursuant to Anders on November 27, 2013. The Remittitur was issued on December 13, 2013.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. Counsel prejudiced his case by informing jury during closing that he was guilty.
 - b. Counsel failed to suppress the alleged drugs found or challenge the chain of custody.
2. Unlawful search and seizure.
3. False arrest and lack of sufficient probable cause.

SUMMARY OF TESTIMONY

At the evidentiary hearing, Applicant testified that prior to trial, the weight of the crack cocaine from the initial search and seizure differed from that of the drugs listed in the discovery. Apparently, the drug weight on scene by law enforcement was 5.7 grams and then was 3.13 grams

after the chemist tested the crack cocaine. Applicant claimed Counsel never discussed this with him. Counsel admitted that law enforcement attempted to enforce an underlying trespass charge. As to the custody of the drugs, Applicant testified Counsel never got an independent evaluation of the crack cocaine. Applicant also stated Counsel was ineffective for saying that Applicant was guilty of possession of crack in her closing argument. Applicant testified Counsel never discussed her trial strategy with him and did not discuss the lesser included charges either.

Applicant then testified there was an initial offer of three (3) years for possession of crack cocaine which he rejected and then continued discussions about a possible guilty plea. Applicant then claimed he said he wanted to accept the plea offer. Applicant admitted he was charged with trespass in city court, thus acknowledging that he was on trespass notice at the time of the incident. Applicant stated he had until the court date to accept the offer and then court was adjourned that week. Then he received a five (5) year offer, which he rejected. Thereafter, Applicant proceeded to trial and was convicted. Applicant claimed in August of 2011 that he was ready, willing, and able to accept the three (3) year offer and would have accepted the plea offer, given the opportunity.

On cross-examination, Applicant admitted that he was in possession of crack during the incident, and that, in fact, the substance was crack cocaine. Applicant also admitted that the weights varied because the first test was a field test on scene and the second was from the chemist's testing of the crack cocaine. Applicant further admitted that Counsel argued this issue on his behalf in her closing argument.

Counsel testified she discussed the weight of the drugs and all of the discovery with Applicant and that the difference in the weight was the difference from the field test to the lab weight. Counsel stated she got Applicant a bond reduction, received a transcript from the bond



hearing and that Applicant admitted he was on a trespass notice. Counsel testified she requested and received a suppression hearing, but it was denied; yet, preserved for appeal. Counsel stated she discussed the lesser included offenses with Applicant.

As for the plea offers, Counsel testified the original offer was for a cap of three (3) years for possession of crack cocaine. Counsel stated she asked the solicitor for a sentence of time served, but the solicitor rejected this idea. Counsel also stated she relayed this offer to Applicant, but Applicant rejected it. Counsel testified Applicant wanted the city case dismissed and then a dismissal of these charges. Counsel testified the original offer for a cap of three (3) years was in March or April of 2011, and that Applicant had until August to accept it. Counsel requested that Applicant's case be put on the docket one more time, but then Judge Hughston, who was presiding over the August term of General Sessions, became ill and had to cancel the court term. Counsel sent an email asking that the solicitor not penalize Applicant and that if Applicant did not plead guilty in August, for a five (5) year offer. The solicitor offered Applicant five (5) years and the Applicant rejected the five (5) year offer on the record prior to trial.

On cross-examination, Counsel testified she researched and discussed with Applicant the issue of the probable cause of the stop. Counsel stated law enforcement had probable cause because they knew he was on a trespass notice. Applicant also resisted arrest when law enforcement officers attempted to stop him. Counsel testified that in emails between her and the solicitor, she asked for a sentence of time served, but the solicitor would only offer a cap of three (3) years. Counsel also stated this case was on the docket for August 1, 2011 and asked to put it on the docket again for the week of August 22, 2011. Counsel lastly testified that on the guilty verdict form, the jury marked



Applicant guilty of Possession with Intent to Distribute after possession of crack cocaine had been marked out.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court had the opportunity to observe the witnesses on the witness stand and heard their testimony. The Court also has read the trial transcript and the appellate records, all of which assists the Court in judging their credibility.

Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

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), SCRPC). 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, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (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, Id. 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,



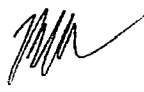
attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, *citing* Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Suppression of the crack cocaine

Applicant alleges Counsel never discussed the discrepancy in the weight of the drugs with him. Conversely, Counsel testified she fully discussed the difference in the weight of the crack cocaine with Applicant. Specifically, Counsel advised Applicant that the 5.7 gram measurement was the field test weight and the 3.13 gram measurement was the lab test weight. Counsel further testified she requested and received a suppression hearing on the crack cocaine, but this motion was denied. As to the claim that Counsel never had the crack cocaine independently tested, this Court finds that independent testing would be fruitless as Applicant admitted at trial and at the PCR hearing that the substance was, in fact, crack cocaine. This Court finds Counsel's testimony concerning her discussions about the crack cocaine with Applicant credible while finding Applicant's testimony not credible. Therefore, this allegation is denied.

Plea offer

Applicant also alleges Counsel was ineffective in relation to the plea offers from the State. This Court disagrees. Counsel testified she received the first offer of a cap of three (3) years from the State in March or April of 2011 and relayed that offer to Applicant. Counsel attempted to get the solicitor to agree to a sentence of time served, but the solicitor refused. Thereafter, Applicant

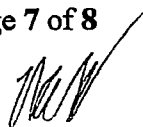
A handwritten signature in black ink, consisting of several loops and a long horizontal stroke, positioned above a vertical line.

rejected this offer. Counsel also testified she asked the solicitor to hold the offer open until the August 1, 2011 term of court before Judge Hughston. By no fault of Counsel, Judge Hughston fell ill and the term of General Sessions was cancelled. Counsel then contacted the solicitor and asked that this cancellation not be held against Applicant and to re-offer the three (3) year cap. The solicitor, who may rescind an offer at any time before a defendant accepts it, decided not to re-offer the three (3) year cap. Instead, the solicitor offered Applicant a plea for five (5) years, which Applicant rejected on the record before his trial. While Applicant claims he was willing, able and ready to accept the three (3) year offer, this Court finds his testimony not credible, while finding Counsel's testimony credible.

This Court also finds Counsel acted diligently in regards to the plea offers from the State. Applicant had over three (3) months to accept the plea offer, but failed to do so. As stated above, Counsel testified she relayed this offer to Applicant, but he rejected it. He then openly rejected the five (5) year offer on the record. This Court finds Applicant had ample opportunity to accept either offer, but rejected both of them. When he did not accept the offers, but rejected them, the solicitor was under no obligation to re-offer the plea bargains. Therefore, this Court finds Applicant failed to meet his burden of proving Counsel performed deficiently in this case and also finds no resulting prejudice due to Applicant's own actions. Thus, this allegation is denied.

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



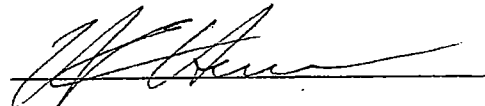
application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies the 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 the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant's 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.

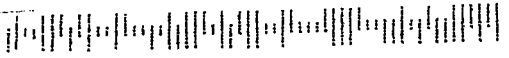
AND IT IS SO ORDERED!



Roger E. Henderson
Presiding Circuit Court Judge
Ninth Judicial Circuit

September 18, 2015
Chestnut, South Carolina

2014-CP-10-0437



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The Honorable Daniel E. Shearhouse
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