

The Brooks Law Office, LLC

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October 29, 2015

RECEIVED

NOV 04 2015

South Carolina Supreme Court
PO Box 11330
Columbia, SC 29211

S.C. SUPREME COURT

RE: Kentwan L. Lake, 347507 v State of South Carolina
Case No. 2012-CP-40-5879

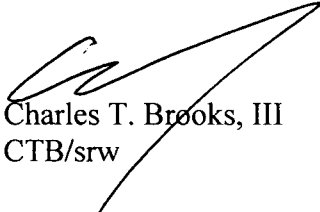
Dear Sir or Madam:

Enclosed herewith you will find the Notice of Appeal, Order of Dismissal, along with a Proof of Service in reference to the above named Applicant.

If you have any questions or concerns, please contact my office at the number stated above.

With kind regards, I am

Sincerely,



Charles T. Brooks, III
CTB/srw

Enclosed as stated

cc: J. Clayton Mitchell, Office of Attorney's General
South Carolina Office of Appellate Defense
Kentwan L. Lake, 347507

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas
Honorable Tanya A. Gee Circuit Court Judge

Case No: 2012-CP-40-05879

Kentwan L. Lake.....Appellant

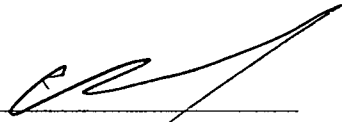
S.C.D.C. 347507

v.

The State.....Respondent

NOTICE OF APPEAL

Kentwan L. Lake, appeals his Denial for Post Conviction Relief in this case. The order of Dismissal was imposed and signed by the Honorable Tanya A. Gee, October 26, 2015, which I, Charles T. Brooks, III, received on October 29, 2015.



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Attorney for Appellant

Other Counsel on Record:
J. Clayton Mitchell, Esquire
Assistant Attorney General
Post Office Box 11549
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Dated: 10/29/2015

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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas
Honorable Tanya A. Gee Circuit Court Judge

Case No: 2012-CP-40-05879

Kentwan L. Lake.....Appellant

S.C.D.C. 347507

v.

The State.....Respondent

PROOF OF SERVICE

I, the undersigned, do hereby certify that on this 29th of October, 2015, I served the foregoing **Notice of Appeal, Order of Dismissal**, as well as **Proof of Service** in this matter by depositing a true copy of it in the United States Mail, postage prepaid, on October 29th, 2015, addressed to the following as indicated below:

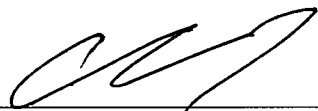
South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

South Carolina Office of Appellate Defense
1330 Lady Street, Suite 401
PO Box 11589
Columbia, SC 29211-1589

Office of Attorney's General
Attn: J. Clayton Mitchell, Esquire
Post Office Box 11549
Columbia, South Carolina 29211-1549

Kentwan L. Lake, 347507
Kershaw Correctional Institution
4848 Goldmine Hwy
Kershaw, S. C. 29067

Dated: October 29, 2015



Charles T. Brooks, III
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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Kentwan L. Lake, #347507,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

2012-CP-40-05879

ORDER OF DISMISSAL

2015 OCT 26 AM 10:13
CLERK OF COURT
FILED

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed August 28, 2012. Respondent made its Return on October 18, 2012, requesting an evidentiary hearing be convened. George V. Hanna, IV, Esquire was appointed by the Richland County Clerk of Court. By Order filed August 25, 2014, Charles T. Brooks, III, Esquire, was substituted as counsel. An evidentiary hearing was held on August 27, 2015, at the Richland County Courthouse. Applicant was present and represented by Counsel Brooks. J. Clayton Mitchell, Esquire, of the South Carolina Attorney General's Office represented Respondent.

At the PCR hearing, Applicant testified on his own behalf. Also testifying were Applicant's plea counsel, Tivis C. Sutherland, IV, Esquire, F. Casey Dale Cornwell, Esquire, and Dr. Donna M. Schwartz-Watts. This Court had before it the Richland County Clerk of Court records, Applicant's South Carolina Department of Corrections records, the PCR application, the Return, and the transcript.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. Applicant was indicted during the December 2008 term of the Richland County Grand Jury for two counts of first degree

burglary (2008-GS-40-6489; -7169); and at the March 2009 term for armed robbery (2009-GS-40-10192). Applicant was represented by Counsel Sutherland. On August 25, 2011, Applicant appeared before the Honorable L. Casey Manning where he pleaded guilty as indicted and was sentenced to fifteen (15) years' imprisonment on each charge, to run concurrently. Applicant also pleaded guilty to the Lexington charges of armed robbery (2013-GS-32-2569; -2595) where he was also sentenced to fifteen (15) years' imprisonment. Applicant was represented on those charges by Counsel Cornwell.

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

1. Ineffective assistance of counsel in:
 - a. Failing to present adequate evidence of Applicant's competence during the mitigation phase of the guilty plea; and
 - b. Failing to file a notice of appeal.

II. APPLICABLE LAW

In a post-conviction relief action, Applicant bears the burden of proving the allegations in the application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, 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, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order 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. Id. at 117, 386 S.E.2d at 625. First, 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 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).

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the guilty plea transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

As a matter of general impression, this Court finds Applicant's testimony and assertions to be not credible. In contrast, this Court finds counsel's testimony to be credible and persuasive on all matters. These credibility findings have been applied to the Court's findings and conclusions set forth below.

As an initial matter, this Court finds Applicant can proceed on challenges to both his Richland and Lexington County convictions. Respondent objected to the Lexington County challenge being heard in Richland County and argued that the cases should be bifurcated. This Court overrules the objection. Applicant agreed to waive any objection to venue to proceed on all convictions. This Court heard testimony from Applicant's attorneys on the Richland and Lexington charges.

Failure to present adequate evidence of Applicant's competence during the mitigation phase

Applicant alleges Counsel was ineffective in failing to present sufficient evidence of Applicant's lack of competency during the mitigation phase of his plea. Dr. Schwartz-Watts was qualified by this Court as an expert in forensic psychology, specializing in schizoid personality disorder. Dr. Schwartz-Watts testified Applicant had a history of intellectual defects and attention deficit disorder. She explained Applicant experienced bizarre delusions revolving around a pit bull dog. She testified that she ran a magnetic resonance imaging (MRI) exam on Applicant which showed the signs of early on-set schizophrenia. Dr. Schwartz-Watts took issue with the finding by Dr. Richard L. Frierson that Applicant was malingering. She did not take issue with Dr. Frierson's conclusion that Applicant was competent to stand trial and criminally responsible. Counsel Sutherland testified he had represented Applicant previously and knew him fairly well. He noted he was close with Applicant's family. Counsel Sutherland testified he coordinated with Counsel Cornwell in working with the Richland and Lexington County solicitor's offices to dispose of all charges against Applicant. Counsel Sutherland testified that after he received Applicant's school records and saw that he was diagnosed with attention deficit hyperactivity disorder (ADHD), he thought it would be best to get him evaluated. Dr. Frierson concluded that Applicant was competent and that he showed signs of malingering. Counsel

Cornwell testified similarly in that he and Counsel Sutherland hoped to have Applicant plead guilty to both Richland and Lexington charges in Richland County. He also emphasized that it was important to dispose of all charges pending against Applicant at one time. Counsel Cornwell testified that Applicant told him similar stories about a dog and believed it was proper to have Applicant evaluated.

“Strickland does not require counsel investigate every conceivable line of mitigating evidence or require the submission of such evidence in every case.” Wiggins v. Smith, 539 U.S. 510, 533 (2003). First, this Court find Applicant was competent to stand trial as there was no testimony presented that he was incompetent. Dr. Schwartz-Watts could not testify as to Applicant’s competency at the time of the offense or plea. She testified only to evidence that could have been further presented in mitigation. The record shows Applicant’s issues were brought to Judge Manning’s attention. Notably, Applicant received the minimum of fifteen (15) years’ imprisonment on the charge. No more mitigation needed to be done. Both Counsel Sutherland and Cornwell acted reasonably in having Applicant evaluated and presented that information in a persuasive fashion. Applicant has failed to meet his burden in proving deficiency and prejudice.

Failure to File a Notice of Appeal

This Court further finds Applicant has failed to carry his burden to prove Counsel was ineffective in failing to file a notice of appeal. “[C]ounsel has a constitutionally imposed duty to consult with the defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing.” Roe v. Flores-Ortega, 528 U.S. 470, 480, 120 S. Ct. 1029, 1036, 145 L.

Ed. 2d 985 (2000). Here, Applicant did not convey any wishes to have the negotiated guilty plea appealed. This Court finds there was no basis in an appeal. The record before the Court, chiefly the guilty plea transcript, shows that the meticulous colloquy ensured Applicant was apprised of his rights and fully admitted his guilt. This Court finds persuasive the testimony of Counsel Sutherland and Cornwell that Applicant did not request a notice of appeal be filed. Specifically, Counsel Sutherland noted that he saw no grounds in an appeal and that he believed the outcome was favorable to Applicant. This Court also finds Applicant failed to present any evidence showing how he may be prejudiced by this alleged deficiency. See Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

All Other Allegations

As to any and all allegations that were raised 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. Applicant failed to demonstrate counsels' performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). 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 will remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 26th day of October, 2015.



TANYA A. GEE
Presiding Judge

Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNT OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

KENTWAN L. LAKE, #347507

2012-CP-40-05879

Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,

RECEIVED

Respondent.

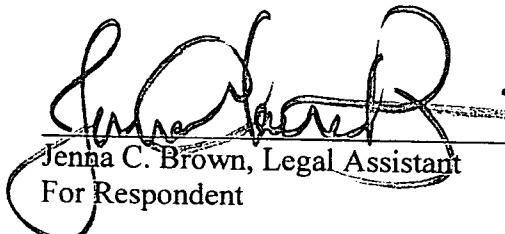
OCT 04 2015

S.C. SUPREME COURT

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Order of Dismissal** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Charles T. Brooks, III, Esquire
Law Office of Charles T. Brooks, III
309 Broad Street
Sumter, SC 29150

DATED this 27th day of October, 2015



Jenna C. Brown, Legal Assistant
For Respondent

THE BROOKS LAW OFFICES, LLC
309 BROAD STREET
P.O. BOX 3512
SUMTER, S.C. 29151

South Carolina Supreme Court
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29211133030

