

AXELROD & ASSOCIATES, P.A.

Attorneys and Counselors at Law

"Success is all that matters"

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FROM THE DESK OF:
Kris Gunnell, Senior Paralegal
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Kris@gotaxelrod.com

November 25, 2015

RECEIVED

NOV 30 2015

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

S.C. Supreme Court

RE: Christopher Doville, #352112 v. State of South Carolina
Case No.: 2013-CP-27-0333

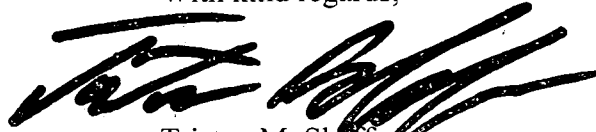
Dear Clerk of Court:

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. Doville 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
Attorney at Law

TMS/kmg
Enclosures

cc: J. Rutledge Johnson, Esquire
Jasper County Clerk of Court
Appellate Defense
Christopher Doville

SUPREME COURT OF SOUTH CAROLINA

APPEAL FROM JASPER COUNTY
In The Court of Common Pleas

Honorable Roger L. Couch,
Common Pleas Judge of the Fourteenth Judicial Circuit

Case No.: 2013-CP-27-0333

Christopher Doville #352112,

Petitioner,

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v.

State of South Carolina,

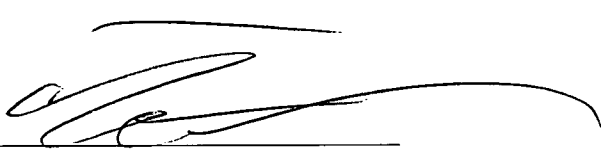
Respondent.

S.C. Supreme Court

NOTICE OF APPEAL

Petitioner appeals the Order of Dismissal of the Honorable Roger L. Couch dated November 9, 2015, filed November 20, 2015 and received by Petitioner on November 23, 2015.

November 24, 2015



Tristan M. Shaffer, Esq.
AXELROD & ASSOCIATES P.A.
4701 Oleander Drive
Myrtle Beach, SC 29577
(843) 848-6708 Phone
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Tristan@Gotaxelrod.com
Attorney for Petitioner

Respondent's Attorney:
J. Rutledge Johnson, Esquire
S.C. Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

SUPREME COURT OF SOUTH CAROLINA

APPEAL FROM JASPER COUNTY
In The Court of Common Pleas

Honorable Roger L. Couch,
Common Pleas Judge of the Fourteenth Judicial Circuit

Case No.: 2013-CP-27-0333

Christopher Doville #352112,

Petitioner,

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NOV 30 2015

v.

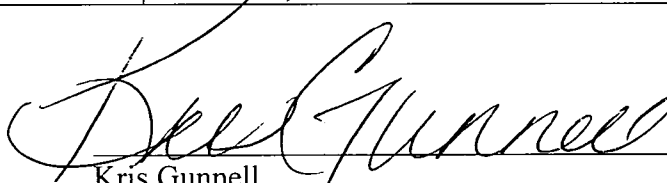
State of South Carolina,

Respondent. **S.C. Supreme Court**

CERTIFICATE OF SERVICE

I, Kris 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	Christopher Doville Evans Correctional Institution 610 Highway 9 West Bennettsville, SC 29512
Jasper County Clerk of Court P.O. Box 248 Ridgeland, SC 29936-0248	Appellate Defense 1330 Lady Street Columbia, SC 29201


Kris Gunnell
Paralegal to Tristan M. Shaffer

November 24, 2015
MYRTLE BEACH, SOUTH CAROLINA

STATE OF SOUTH CAROLINA
COUNTY OF JASPER

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Christopher Doville, #352112,

2013-CP-27-0333

Applicant,

ORDER OF DISMISSAL

v.

State of South Carolina,

Respondent.

This matter comes before the Court by way of an Application for Post-Conviction Relief filed June 8, 2013. Respondent made its Return on May 8, 2015. An evidentiary hearing into the matter was convened on October 19, 2015, at the Beaufort County Courthouse in Beaufort, SC. Tristan Shaffer, 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. Robert Hughes, Esquire also testified. This Court had before it a copy of the records of the Jasper County Clerk of Court, records from the South Carolina Department of Corrections, the application, the State's Return and the guilty plea transcript.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Jasper County Clerk of Court. The Applicant was indicted at February 2012 term of the Jasper County Grand Jury for Grand Larceny (2012-CP-27-0053). Robert Hughes, Esquire, represented him. On August 14, 2012, the Applicant pled guilty as indicted

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before the Honorable J. Michael Baxley and was sentenced to imprisonment for six (6) years. Applicant did not appeal his conviction or sentence.

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

- a. "Violation of 6th Amendment right to effective assistance of counsel"
 - i. "Counsel failed to properly advise me"

At the hearing, the Applicant proceeded on his claims of ineffective assistance of plea counsel.

SUMMARY OF TESTIMONY

At the evidentiary hearing, Applicant testified he pled guilty to stealing a police car and wrecking it. Applicant also stated it was 1:16 AM and he drove pretty far away from the hotel. Applicant then stated Robert Hughes was his attorney. He met with Counsel twice and discussed discovery, including lesser included offenses due to the vehicle's value. Applicant then testified he spoke with Counsel concerning his defense, and the defense he and Counsel agreed upon was to challenge the value of the car to keep it under the \$10,000 threshold. Applicant claimed Counsel would not listen to him and that he wanted to plead to a lesser included offense. Applicant stated he wants a new trial and would have taken this case to trial if counsel had listened to him.

On cross-examination, Applicant admitted he pled guilty and was aware that this charge carried up to 10 years. Applicant also stated this was his decision to plead guilty, admitted his guilt, and agreed with the facts as stated by the solicitor.



Counsel testified he was appointed to Applicant's case and met with Applicant monthly, including 3 or 4 times before trial. Counsel stated they discussed the facts and that their strategy was to challenge the value of the police car. Counsel stated he attempted to gain the best possible plea offer for Applicant. Counsel then stated the solicitor offered 6 years on a non-serious, nonviolent charge. Counsel stated he discussed this offer with Applicant. Counsel further stated Applicant was charged with other crimes.

On cross-examination, counsel stated he relayed the offer to Applicant and that Applicant understood this offer. Counsel then stated he did not tell Applicant what to say at the plea hearing nor did he force or threaten applicant to plead guilty. Lastly, Counsel testified it was applicant's decision to plead guilty.

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 presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

Ineffective Assistance of Counsel

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

*all
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cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (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. With respect to guilty plea counsel, the Applicant must show that 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, 106 S.Ct. 366 (1985).

This Court finds Counsel provided effective assistance of counsel in this case. Counsel advised Applicant of all of the charges and the sentences the charges carried. Counsel also negotiated with the State in Applicant's best interest. This Court finds Applicant made the decision on his own accord with the help of learned counsel. Additionally, this Court finds Applicant made this decision freely and voluntarily without any threats or promises from anyone else. Furthermore, this Court finds that it was ultimately the Applicant's decision to plead guilty.

Handwritten signature and initials, possibly "A. J. P. 4", written in black ink.

This Court further finds the Applicant's testimony regarding Counsel's ineffectiveness is not credible while also finding Counsel's testimony is credible. This Court finds the Applicant has failed to meet his burden of proving counsel's performance was deficient or that he was prejudiced thereby. Therefore, this allegation is denied.

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. Therefore, these allegations are 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


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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.

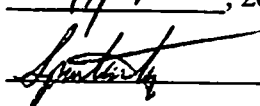
IT IS THEREFORE ORDERED:

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 L. Couch
Presiding Circuit Court Judge
Fourteenth Judicial Circuit

11/9, 2015

_____, South Carolina

STATE OF SOUTH CAROLINA

IN THE FAMILY COURT
14 JUDICIAL CIRCUIT

COUNTY OF Jasper

2015 NOV 20 AM 10:00

CHRISTOPHER DOVILLE

MARGARET BOSTICK
Plaintiff
COURT
JASPER COUNTY SC

AFFIDAVIT OF MAILING

vs.

STATE OF SOUTH CAROLINA

Defendant.

) Docket No.2013-CP-27-333

Personally appeared Cierra Gregory who states that (s)he served the ORDER OF DISMISSAL with a copy of the Affidavit by mailing:

(Check one)

First class mail

Certified mail

restricted delivery

return receipt requested

in the United States Mail, with proper postage attached and receipt attached (if applicable), on NOVEMBER 20, 2015 (date) addressed as follows:

TRISTAN MICHAEL SHAFFER

4701 OLEANDER DRIVE

MYRTLE BEACH, SC 29577

Sworn to before me this

~~20th~~ day of November, 2015

David M. Hill
Notary Public of South Carolina

Cierra Gregory
Affiant

My Commission expires: 1-3-21

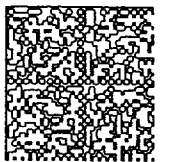
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& ASSOCIATES
ATTORNEYS AT LAW

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KMG

Supreme Court of South Carolina
Post Office Box 11330
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UNITED
PITNEY BOWES
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