

The South Carolina Court of Appeals

Lionel Bradley, Petitioner,

v.

The State, Respondent.

Appellate Case No. 2015-002425

RECEIVED

DEC - 2 2015

S.C. Supreme Court

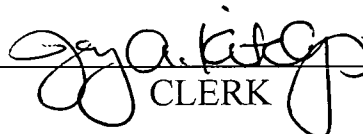
The Honorable George C. James, Jr.
Sumter County
Trial Court Case No. 2014CP4300537

ORDER

Pursuant to Rule 204(a) of the South Carolina Appellate Court Rules, this case is transferred to the South Carolina Supreme Court.

FOR THE COURT

BY


CLERK

Columbia, South Carolina

cc:

Melisa White Gay, Esquire
Robert Michael Dudek, Esquire
John Benjamin Aplin, Esquire
Alan McCrory Wilson, Esquire
Daniel Francis Gourley, II, Esquire

FILED

December 1, 2015

NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

George C. James, Circuit Court Judge

Case No. 2014-CP-43-00537

State of South Carolina,

Respondent,

v.

Lionel Bradley,

Appellant,

NOTICE OF APPEAL

Lionel Bradley appeals the order [judgment] of the Honorable George C. James dated October 23, 2015. Appellant received written notice of entry of this Order on October 29, 2015.



Melisa W. Gay
P.O. Box 2144
Mt. Pleasant, SC 29465
(843) 856-0580
Attorney for Appellant

Other Counsel of Record:
Daniel Gurley
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211-1549

RECEIVED

NOV 24 2015

SC Court of Appeals

RECORDED
2015 OCT 29 PM 4:02
JAMES F. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

RECEIVED

DEC - 2 2015

S.C. Supreme Court

FORM 7
PROOF OF SERVICE OF A NOTICE OF APPEAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

George C. James, Circuit Court Judge

Case No. 2014-CP-43-00537

State of South Carolina,

Respondent,

v.

Lionel Bradley,

Appellant

RECEIVED

NOV 24 2015

SC Court of Appeals

RECEIVED

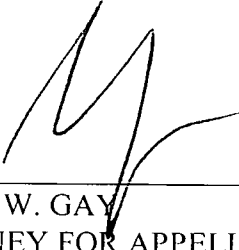
DEC - 2 2015

S.C. Supreme Court

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Attorney Daniel Gurley by placing a copy of this Notice in the United States Mail. The Notice of Intent to Appeal was sent on October 30, 2015 to:

Other Counsel of Record
Daniel Gurley
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211-1549



MELISA W. GAY
ATTORNEY FOR APPELLANT
P.O. BOX 2144
MT. PLEASANT, SC 29465
ATTORNEY FOR LIONEL BRADLEY

October 30, 2015

FORM 4

STATE OF SOUTH CAROLINA
 COUNTY OF SUMTER
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2014CP4300537

Lionel Bradley

RECORDED

2015 OCT 23 PM 3:51

JAMES C. CAMPBELL
 CLERK OF COURT
 SUMTER COUNTY, S.C.

RECEIVED

NOV 24 2015

PLAINTIFF(S)

South Carolina State of

DEPENDANT(S)
 SC Court of Appeals

Submitted by: Clerk of Court

Attorney for: Plaintiff Defendant
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: **See attached Order.**

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

2143

10/23/2015

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on , to attorneys of record or to parties (when appearing pro se) as follows:

Melisa White Gay PO Box 2144 Mt. Pleasant, SC 29465-2144

ATTORNEY(S) FOR THE PLAINTIFF(S)

Daniel Gourley
~~Alan McCrory Wilson~~ PO Box 11549 Columbia, SC 29211-1549

ATTORNEY(S) FOR THE DEFENDANT(S)

James C. Campbell

James C. Campbell - Clerk of Court

Court Reporter

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

RECORDED IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

2015 OCT 23 PM 3:08

Lionel Bradley, #266225,

2014-CP-43-537

Applicant,

JAMES O. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

CERTIFIED TRUE COPY
OF ORIGINAL FILED

v.

[Signature]
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on March 19, 2014. Respondent submitted its amended return on November 20, 2014. An evidentiary hearing into the matter was convened on April 15, 2015, at the Sumter County Courthouse. Applicant was present at the hearing and was represented by Melisa W. Gay, Esquire. Respondent was represented by Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. The Applicant was true bill indicted at the February 2012 term of the Sumter County Grand Jury for possession with intent to distribute cocaine base, 2nd or subsequent offense and possession with intent to distribute cocaine within proximity of school or park (2012-GS-43-0315). Tiffany Butler, Esquire represented Applicant. On February 20, 2013, after the Applicant's trial began, Applicant pled guilty before the Honorable W. Jeffrey Young. Judge Young sentenced Applicant to fifteen year term of imprisonment for possession with intent to distribute cocaine base, 2nd or subsequent offense and a ten year term of imprisonment for

possession with intent to distribute cocaine within proximity of school or park, the sentences to run concurrently.

A timely notice of appeal was filed on February 20, 2013. After receipt of appellate counsel's letter explaining there were no reviewable issues on appeal, the South Carolina Court of Appeals issued an order dismissing Applicant's appeal pursuant to Rule 203(d)(1)(B)(iv). The remittitur was issued on May 15, 2013.

ALLEGATIONS

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

1. Ineffective Assistance of Counsel
 - a. "Petitioner's counsel provided ineffective assistance of counsel because she failed to investigate all possible defenses for Petitioner. Counsel failed to inform Petitioner of the evidence that could have been presented against him with regard to the chain of custody of the drugs alleged in his case and the weight of the drugs alleged in his case. Counsel failed to procure the chain of custody documentation and the drug weight evidence for Petitioner to consider in defending his case."
 - b. "...She failed to request and or review with Petitioner all evidence that was available in Petitioner's case. Counsel failed to either request chain of custody and or drug weight evidence...or never filed a Motion to Compel the evidence to review with Petitioner."
 - c. "...she failed to file a Motion to Continue Petitioner's trial that started in his absence thus placing Petitioner in a vulnerable position and causing him to be pressured into entering a guilty plea."
 - d. "...she failed to object to the introduction of chain of custody and drug weight when counsel had not procured the evidence from the State before the date of the trial, thus placing Petitioner in a vulnerable position and causing him to be pressured into entering a guilty plea..."
 - e. "...she never provided Petitioner with any evidence or discovery material; that indicated the chain of custody evidence of the actual chemist tested drug weight. Petitioner believes that the drug weight that was alleged in this case of over 10



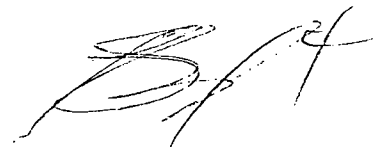
grams to substantiate a Trafficking charge could not be proven to the actual chemist weight...”

- f. “...her failures to obtain and review chain of custody evidence and drug weights with Petitioner cause him to be uniformed and disadvantaged such that he was prejudiced in his ability to make an informed and knowing decision about his options in his case.”
- g. “Petitioner is now aware through a request to his attorney of record that she did not have the chain of custody or drug weight evidence in her file because she mailed him what was in her file after he arrived at SCDC. Petitioner was prejudice in a way that he could not make an informed decision about his defense.”
- h. “Petitioner’s counsel was ineffective for failing to perfect an Appeal from his conviction. Counsel chose not to file a memorandum of issues under Rule 203(d) (1) (B) that was required to go forward with his appeal despite the fact that Petitioner did have valid appellate issues. He was never provided the chain of custody evidence or the drug analysis therefore objections should have been made that would have been the basis of an appeal.”

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf and presented testimony from Tiffany Butler, Esquire (hereinafter “Trial Counsel”). This Court also had before it a copy of the Sumter County Clerk of Court records, Applicant’s South Carolina Department of Correction records, appellate records, the PCR application, and amended return.

Trial Counsel testified that she was a public defender for less than four years. Trial Counsel stated that she was employed at the Sumter County Public Defender’s office at the time of Applicant’s plea. Trial Counsel stated that she was appointed to represent Applicant. Trial Counsel stated that Applicant had several drugs charges. Trial Counsel stated Applicant was out on bond during the majority of her representation. Trial Counsel stated that they met several times and discussed the case and the State’s evidence. Trial Counsel stated that the Solicitor offered an eight year plea deal and Applicant was not willing to accept the offer. Trial Counsel

A handwritten signature in black ink, appearing to be the initials 'BT' followed by a stylized flourish.

stated Applicant wanted to counter the solicitor's offer, but the solicitor refused to go any lower than eight years.

Trial Counsel could not recall specifically telling Applicant that she had not obtained the drug analysis prior to trial. Trial Counsel noted that she obtained the drug analysis prior to the start of trial. Trial Counsel stated that she did not make a motion for a continuance once she received the drug analysis. Trial Counsel stated they first selected a jury and then she renewed her Brady motion. Trial Counsel stated that she notified Applicant that his case was going to be called for trial. Trial Counsel stated Applicant was on the trial docket for two or three terms. Trial Counsel stated Applicant was present when the jury panel was being qualified, but failed to appear for the start of trial; the trial court then went through the typical procedures for proceeding with a trial *in absentia*. Trial Counsel stated Applicant claimed that he wanted to go hire Murrell Smith for trial. Trial Counsel stated that someone from her office contacted Murrell Smith and was informed that Mr. Smith did not represent Applicant.

Trial Counsel stated that she did not have the actual drug analysis form prior to the start of trial. Trial Counsel agreed that the actual weight and content of the drug was a crucial element of the State's case. Trial Counsel stated that she filed appropriate Rule 5 and Brady motions. Trial Counsel stated that she did not make a motion for a continuance under Rule 6. Trial Counsel stated that she did not think receiving the SLED analysis on the day of trial was prejudicial because it merely confirmed the weight of the drugs. Trial Counsel stated that the trial court gave her time to try to locate Applicant after he absconded. Trial Counsel stated that she saw no reason to object to the chain of custody of the drug analysis. Trial Counsel stated that there was no chemist testimony presented prior to Applicant's decision to plead guilty. Trial Counsel stated Applicant was picked up on the bench warrant the second day of trial. Trial

A handwritten signature in black ink, appearing to be the initials 'S.A.' followed by a stylized flourish.

Counsel stated she met with Applicant approximately twenty-five minutes. Trial Counsel stated Applicant told her that he wanted to plead guilty. Trial Counsel stated the Solicitor agreed to add three new charges to the plea in an effort to end any criminal litigation against Applicant.

Following Trial Counsel's testimony, Applicant was called to testify. Applicant opined that his guilty plea was unconstitutional. Applicant stated that he was out on bond the entire time he was represented by Trial Counsel and that he was never contacted by anyone from the Public Defender's office to say that he was up for trial the following week. Applicant stated that he had called and was told that his name was not on the trial list. Applicant stated that his bondsman telephoned him and told him that his trial would start the next day. Applicant stated that he left prior to trial because he felt Trial Counsel was not prepared for trial.

Applicant stated that he only had one meeting with Trial Counsel at her office prior to his plea. Applicant recalled reviewing discovery material with Trial Counsel. Applicant stated that he never reviewed the SLED analysis form. Applicant recalled telling the plea judge that he was satisfied with Trial Counsel's services.

Applicant stated that he got a plea offer of a cap of eight years the morning of trial. Applicant but that he wanted to go get his family prior to pleading. Applicant stated that he called the public defender's office and told them not to start the trial because he was trying to get college and work information. Applicant did not explain why he thought he or Trial Counsel had the authority to unilaterally delay the trial when he left of his own accord after the case was called for trial.

Applicant stated that he returned the following day, February 20, 2013, around 11:30 a.m. and saw his mother outside. The transcript reveals the morning session ended at 11:49 a.m., so this time estimate of the Applicant is fairly accurate. The Applicant testified his mother told him

A handwritten signature in black ink, appearing to be the initials 'JG' followed by a large, stylized flourish that extends to the right and slightly upwards.

the trial was in recess so he left and came back at 2:15 p.m. The Applicant was apprehended on a bench warrant and put in a holding cell. The Applicant stated that Trial Counsel told him the plea offer was off the table and that he could enter a plea without a recommendation from the solicitor. The Applicant stated that he did not feel as though he was being threatened. Applicant stated Trial Counsel told him that she thought he would receive a thirty year sentence if he decided to continue with the trial and was found guilty.

Applicant stated that he was never advised that he had the constitutional right to be present for critical stages of his trial. Applicant stated he entered his guilty plea and hoped that he would not receive a thirty year sentence. Applicant testified that he was not aware of his constitutional rights or the SLED drug analysis. Applicant stated that he never discussed the possibility of facing a life without parole sentence. Applicant concluded that he would not have pled guilty knowing what he knows today.

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 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



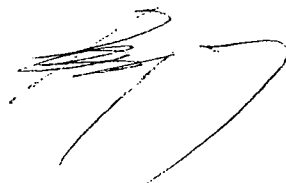
that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

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). 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 Trial 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).

ALLEGATIONS

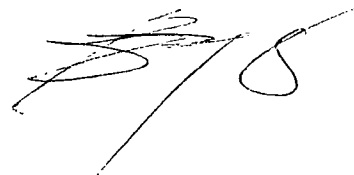
Initially, this Court notes the transcript reveals that after the jury was selected, Trial Counsel advised the court that the Applicant was on the phone and she asked for a recess to talk to him. The trial judge consented and Trial Counsel or someone in her office spoke with the applicant. Trial Counsel reported back that the Applicant stated he was on the way and that he



was hiring another attorney. Trial Counsel confirmed to the court that the Applicant had been present earlier in the morning but left. The trial began and adjourned for lunch at 11:49 a.m. The next witness for the state was to be the SLED chemist to testify about the crack cocaine which was the subject of the trafficking indictment.

Immediately after reconvening at 2:08 p.m., Trial Counsel advised the court that the Applicant was in the holding cell. She received permission to speak with him, and then reported to the court that Applicant wanted to plead guilty to the trafficking charge and several other charges. The subject plea then took place, along with pleas to failure to register as a sex offender, 2nd offense, possession of marijuana, PWID cocaine 2nd offense, and PWID cocaine within proximity of a school or park.

In his PCR counsel's email to the court of July 28, 2015, the Applicant argued that Trial Counsel should have asked for a continuance at trial because the State had not produced the SLED drug report within the ten day period required by Rule 6, SCRCrP. Applicant argued that Trial Counsel should have asked for a continuance and should have also objected to the SLED chemist's testimony and the introduction of the crack based on the supposed Rule 6 violation. Applicant argued that trial counsel did not inform the Applicant of the Rule 6 violation and that had the Applicant known of the Rule 6 violation, he would have asked Trial Counsel to raise the issue to the trial court. Applicant argued that this would have led to a continuance being granted, after which the Applicant and Trial Counsel would have had time to continue plea negotiations, which would have resulted in a better sentence. Applicant argued that if the continuance had not been granted, the Rule 6 violation would have provided a valid basis for the exclusion of the drug report and the chemist's testimony, thereby eliminating evidence of the trafficking weight of the drugs. Applicant argued that he would not have pled guilty had he

A handwritten signature in black ink, appearing to be the initials 'S/O' or similar, written in a cursive style.

known of the strategic importance of the Rule 6 violation. PCR Counsel states in the email, “[i]f Mr. Bradley knew during the trial that he could proceed with the trial and make motions to exclude the chemist testimony and the report itself, he would never have agreed to plead guilty.”

PCR Counsel for the Applicant requested and received additional time to submit a memorandum on the Rule 6 issue and submitted this memorandum to this court on September 14, 2015. In this memorandum, the Applicant advances the argument that trial counsel never showed him a drug report establishing that the crack cocaine weighed over 10 grams and never informed the solicitor she had not received the drug report. The Applicant argues that he did not know that the drug weight met the statutory trafficking threshold.

In the memorandum, the Applicant also now argues that when the Applicant appeared at the courthouse on the morning of jury selection, he told Trial Counsel he intended to hire another attorney and “left the courthouse to go to the other attorney’s office.” He now argues that Trial Counsel did not ask for a continuance to allow him to be present for jury selection and the commencement of the trial, “despite the fact that [the applicant] had informed her on the phone that he was on his way to court. Whatever the case, it is clear he was not on his way to court because he did not arrive until after 11:30 a.m. Also, this Court concludes that a continuance would not have been granted, as the transcript reveals the Applicant was present in the courthouse the morning the trial was to begin, and Trial Counsel told the trial judge she had advised the Applicant his trial was going to start that morning (Tr., p. 16, lines 15-21). Immediately after that exchange, Trial Counsel told the trial judge the Applicant was on the phone, and the trial judge gave Trial Counsel a moment to speak to him. After that conversation, Trial Counsel told the trial judge that the Applicant told her that he was hiring another attorney, that she told the Applicant that “he needed to be here”, and that the Applicant told her that he

A handwritten signature in black ink, appearing to be the initials 'BPJ' with a stylized flourish extending from the end.

was on his way (Tr., pp. 17-18). This court concludes a motion for a continuance would have been futile, as the Applicant simply left the courthouse when he knew full well his trial was about to begin. This timeline is also important because it evidences that the Applicant's own failure to be present to take advantage of the opportunity to evaluate the plea offer made by the State resulted in the expiration/withdrawal of the plea offer.

The Applicant notes in this memorandum that when he returned to the courthouse, he was put in lockup and met with trial counsel in the courtroom. He argues Trial Counsel did not ask for a continuance on the basis that he was constitutionally allowed to be present for jury selection. In so arguing, he ignores the fact that he voluntarily left the courthouse with full knowledge that a jury was about to be selected. He claims Trial Counsel should have asked for a continuance on the basis that he had just seen for the first time the crucial evidence of the drug weight and that he needed time to discuss the drug report. The Applicant claims in this memorandum that since he had never seen the drug report, his decision to plead after the trial had started was based on desperation and was not a conscious decision. The Applicant ignores the fact that if he had stayed at the courthouse and had not absconded, he would have had the opportunity to review the drug report before the State withdrew the plea offer.

Applicant returns to the Rule 6 argument in his memorandum, but now couches it in terms of a chain of custody argument. Applicant states he was never shown the chain of evidence, "yet he was in a trial that was proceeding without him." Applicant claims that when he was shown the chain of evidence for the first time (when he returned to the courthouse), Trial Counsel should have asked for a continuance to allow time for her to show it to him (again ignoring the fact that he left the courthouse knowing his trial was about to begin). He alternatively claims Trial Counsel should have objected to the introduction of evidence relevant

A handwritten signature in black ink, appearing to be 'B. J. O.', is located in the bottom right corner of the page.

to the drugs “in an attempt to keep the drug evidence out of the case, thereby allowing [the applicant] the ability to challenge the chain of evidence.” Applicant claims that trial counsel’s failure to understand the chain of custody issues “created a reasonable probability to undermine confidence in the outcome of the trial.” However, the Applicant does not explain what the chain of custody issues are.

The applicant claims in the memorandum that he may have decided to never have a trial if the drug report was available and then immediately claims he may have decided to continue with his trial if he had known of the chain of custody issues. These positions are inconsistent, and the Applicant continues to ignore the fact that if he had remained at the courthouse instead of leaving, he could have seen the drug report before the State withdrew the plea offer. Again, with regard to the chain of custody “issues”, the Applicant does not explain what those “issues” are. The chain forms and other chain evidence are not part of this record, and there is nothing in the record to explain any deficiency in the chain of custody.

The Applicant closes the memorandum with the statement that Rules 5 and 6 create the obligation on the part of the State to provide evidence of the chain of custody within 11 days of trial, and that while “Rule 6 may not create an ability to exclude the drug report from the trial, ... it serves to remind both the solicitor and defense counsel to get all the discovery to the defendant” in time for him to make an informed decision. The Court disagrees with this interpretation of Rule 6.

It is apparent to this Court that there was no Rule 6 “violation”. Rule 6 provides a method for the drug report and drugs to be admitted into evidence without the necessity of having certain witnesses and does not contemplate exclusion of drug evidence when the chain witnesses and the chemist testify. The transcript establishes that the chain witnesses testified and that the SLED

A handwritten signature in black ink, appearing to be 'B. J. 11', is located in the bottom right corner of the page.

chemist was the next witness to be called before the Applicant pled. The Court respectfully rejects any ground for relief based on a Rule 6 violation. In addition, there is no basis for the applicant's argument that a chain of custody argument was available due to a perceived Rule 5 or Rule 6 violation. Even if there were a chain of custody issue, it would be necessary for the Applicant to establish such an issue at the PCR hearing by calling witnesses and presenting proof of such an issue. Again, there is no such evidence in the record.

The Applicant's claim that trial counsel should have requested a continuance to allow him the right to attend jury selection and his trial are fundamentally without merit. He was present just before jury selection, knew his trial was to begin, and simply left. He cannot now claim he was denied his right to be present when he left of his own accord. Trial counsel told him of the offer of the eight year cap, and he still left. According to his testimony at the PCR hearing and his memorandum, he left because he wanted to talk to his relatives or to hire another lawyer, or both. No criminal defendant can resort to the tactic of leaving the courthouse when jury selection is about to begin and then complain that he has been deprived of the right to be present for jury selection.

The primary issue in this case is whether trial counsel was ineffective for failing to obtain a drug report that showed the true weight of the crack cocaine, i.e., 13.2 grams. As previously noted, it is inconsistent for the Applicant to argue on the one hand that he would have continued with the trial and not pled guilty if he had known of the Rule 6 "violation" that would have led to the drug evidence being excluded, and to argue on the other hand that if he had known of the contents of the drug report early enough, he would have pled guilty under the eight year offer. The Applicant seems to concentrate now on the argument that he would have pled guilty in exchange for the eight year offer if he had been aware of the contents of the drug report. He

ignores the fact that the report was in his lawyer's hands when the eight year offer was still on the table but that he had left the courthouse and was not present to look at it. By the time he chose to return, the offer was off the table. Any prejudice was not the result of trial counsel's ineffectiveness, but rather the result of the Applicant's own choice to leave the proceedings. Based on the foregoing, this Court finds that Applicant has fallen well short of his burden of proof and this allegation must be denied and dismissed with prejudice. His testimony as to whether he would have pled guilty if his lawyer had performed up to standards is simply not credible in the least.

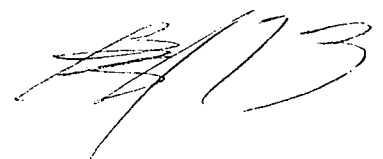
ALL OTHER ALLEGATIONS

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, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

CONCLUSION

Based upon 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 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), SCRCP, provides that if the applicant wishes to seek appellate

A handwritten signature in black ink, appearing to be 'AJB', is located in the bottom right corner of the page.

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. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. The Applicant is remanded to the custody of the Respondent.



GEORGE C. JAMES, JR.
Presiding Judge
Third Judicial Circuit

October 12, 2015
Sumter, South Carolina



Melisa W. Gay, LLC
Attorney and Counselor at Law

Melisa W. Gay

Post Office Box 2144
Mt. Pleasant, South Carolina 29465-2144

Office (843) 856-0580
Facsimile (843) 856-0590

November 20, 2015

RECEIVED

NOV 24 2015

SC Court of Appeals

Via United States Mail

Supreme Court
South Carolina Court of Appeals
P.O. Box 11330
Columbia, SC 29211

RECEIVED

DEC - 2 2015

RE: State of South Carolina v. Lionel Bradley
Case No: 2014-CP-10-43-00537

S.C. Supreme Court

Dear Madam Clerk:

Please find enclosed seven (7) copies of the Notice of Intent To Appeal and Certificate of Service. I sent the original on October 30, 2015 but they were never received by your office. Additionally I have enclosed a copy of the original court Order.

Upon filing, kindly return the certified copies to me in the self-addressed, stamped envelope that I have provided for your convenience. Should you have any questions or concerns, please do not hesitate to contact our office at your earliest convenience. Thank you for your attention to this matter.

Sincerely,



Melisa W. Gay

Enclosure

cc: Other Counsel of Record
Daniel Gurley
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211-1549

Melisa W. Gay, LLC
Attorney and Counselor at Law

Melisa W. Gay

Post Office Box 2144
Mt. Pleasant, South Carolina 29465-2144

Office (843) 856-0580
Facsimile (843) 856-0590

October 30, 2015

Via United States Mail

Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RE: State of South Carolina v. Lionel Bradley
Case No: 2014-CP-10-43-00537

RECEIVED
NOV 24 2015
SC Court of Appeals
RECEIVED

DEC - 2 2015

S.C. Supreme Court

Dear Madam Clerk:

Please find enclosed an original and six (6) copies of the Notice of Intent To Appeal and Certificate of Service. Additionally I have enclosed a copy of the original court Order.

Upon filing, kindly return the certified copies to me in the self-addressed, stamped envelope that I have provided for your convenience. Should you have any questions or concerns, please do not hesitate to contact our office at your earliest convenience. Thank you for your attention to this matter.

Sincerely,



Melisa W. Gay

Enclosure

cc: Other Counsel of Record
Daniel Gurley
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211-1549



RECORDED
2015 OCT 23 PM 3:08
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

ALAN WILSON
ATTORNEY GENERAL

October 21, 2015

The Honorable James C. Campbell
Clerk of Court, Sumter County
Sumter County Judicial Center
215 N. Harvin Street
Sumter, SC 29150

RECEIVED

DEC - 2 2015

S.C. Supreme Court

Re: Lionel Bradley, #266225 v. State of South Carolina
2014-CP-43-537

Dear Mr. Campbell:

Enclosed please find the original **Order of Dismissal**, signed by the Honorable George C. James, Jr., in the above-captioned case for filing in your office. Please forward a **time stamped copy** back to our office for our files.

Sincerely,

Daniel Gourley
Assistant Attorney General

DG/cc
Enclosure(s)

Melisa W. Gay, LLC
Attorney and Counselor at Law

Melisa W. Gay

Post Office Box 2144
Mt. Pleasant, South Carolina 29465-2144

Office (843) 856-0580
Facsimile (843) 856-0590

October 30, 2015

RECEIVED

NOV 24 2015

SC Court of Appeals

Via United States Mail

Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RECEIVED

DEC - 2 2015

RE: State of South Carolina v. Lionel Bradley
Case No: 2014-CP-10-43-00537

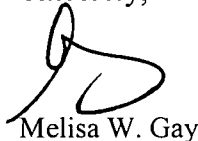
Dear Madam Clerk:

S.C. Supreme Court

Please find enclosed an original and six (6) copies of the Notice of Intent To Appeal and Certificate of Service. Additionally I have enclosed a copy of the original court Order.

Upon filing, kindly return the certified copies to me in the self-addressed, stamped envelope that I have provided for your convenience. Should you have any questions or concerns, please do not hesitate to contact our office at your earliest convenience. Thank you for your attention to this matter.

Sincerely,



Melisa W. Gay

Enclosure

cc: Other Counsel of Record
Daniel Gurley
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211-1549