

MOSES A. FRAZIER, #317940
LEE CORR. INST./F-6A-2145
990 WISACKY HWY.
BISHOPVILLE, S.C. 29010

RECEIVED

DEC 17 2015

DECEMBER 14, 2015

S.C. SUPREME COURT

HON: DANIEL E. SHEAROUSE
CLERK OF S.C. SUPREME Ct.
PO BOX 11330
COLUMBIA, S.C. 29211

RE: MOSES FRAZIER v. STATE OF S.C., #2009-CP-10-1183, etc.,
NOTICE OF APPEAL, CERTIFICATE OF SERVICE, ENCLOSURES.

DEAR MR. SHEAROUSE:

PLEASE FIND ENCLOSED MY NOTICE OF APPEAL AND THE CERTIFICATE OF SERVICE TO INCLUDE THE ORDER OF DISMISSAL TO THE POST CONVICTION RELIEF THAT I AM APPEALING TO THE SUPREME COURT.

I ALSO PROVIDED TO YOU AN EXTRA COPY TO BE RETURNED TO ME FOR MY FILES ONCE YOU HAVE PLACED YOUR OFFICE SEALS ON THEM AND CLOCK STAMPED IT FOR THE PURPOSES OF THE TIMELY FILING THE APPEAL.

THANKING YOU IN THE ADVANCE FOR YOUR TIME AND HELP GIVEN TO ME IN THIS CRUX MATTERS AND I LOOK FORWARD IN HEARING FROM YOU IN THIS VERY NEAR FUTURE.

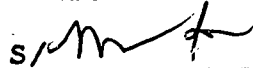
AGAIN AGAIN THANK YOU!

DECEMBER 14, 2015

ENCLOSURES

MAF/cm

RESPECTFULLY SUBMITTED,

 #317940

MOSES FRAZIER
990 WISACKY HWY.
BISHOPVILLE, S.C. 29010
PETITIONER

cc: MATTHEW J. FRIEDMAN, Esq.
CIR. CLERK OF Ct.
FILES/maf

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

APPEAL FROM CHARLESTON COUNTY
COURT OF COMMON PLEAS

DEC 17 2015

R. MARKLEY DENNIS, Jr., Cir. Ct. JUDGE

S.C. SUPREME COURT

CASE NO. 2009-CP-10-1183

MOSES FRAZIER,.....PETITIONER,

v.

STATE OF S.C.,.....RESPONDENT.

NOTICE OF APPEAL

MOSES FRAZIER APPEALS THE ORDER OF DISMISSAL OF THE HONORABLE R. MARKLEY DENNIS, Jr. DATED FEBRUARY 16, 2012. PETITIONER RECEIVED WRITTEN NOTICE OF ENTRY OF THIS ORDER ON DECEMBER 07, 2015.

DECEMBER 14, 2015

s/ *MM* #317940
MOSES FRAZIER
990 WISACKY HWY.
BISHOPVILLE, S.C 29010
ATTORNEY FOR APPELLANT

OTHER COUNSEL OF RECORD:

MATTHEW J. FRIEDMAN, Esq.
PO BOX 11549
COLUMBIA, S.C. 29211
ATTORNEY FOR RESPONDENT

CASE COUNSEL J. YUNGMAN, Esq.
DID NOT FILE THE NOTICE OF
APPEAL, AND THE PETITIONER
IS pro se, PLEASE NOTIFY THE
SC INDIGENT DEFENSE FOR THE
APPELLATE DEFENSE ASSIGNMENT
OF CASE FOR PROPERLY ORDER
TO TRANSCRIPTS, etc. FOR

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

APPEAL FROM CHARLESTON COUNTY
COURT OF COMMON PLEAS

DEC 17 2015

R. MARKLEY DENNIS, Jr., Cir. Ct. JUDGE

S.C. SUPREME COURT

CASE NO. 2009-CP-10-1183

MOSES FRAZIER,.....PETITIONER,


v.

STATE OF S.C.,.....RESPONDENT.

PROOF OF SERVICE

I CERTIFY THAT I HAVE SERVED THE NOTICE OF APPEAL ON MATTHEW J. FRIEDMAN BY DEPOSITING A COPY OF IT IN THE UNITED STATES MAIL, POSTAGE PREPAID, ON DECEMBER 14, 2015, ADDRESSED TO HIS OFFICE AS ATTORNEY FOR THE RESPONDENT, P.O. BOX 11549, COLUMBIA, S.C. 29211 BY PERSONALLY DELIVERING IT TO THE PRISON MAIL ROOM POSTAL DIRECTOR, ON DECEMBER 14, 2015, AS VERIFIED BY DATE STAMPED RECEIVED BY MAIL ROOM.

DECEMBER 14, 2015

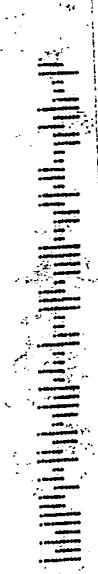
s/  #317940
MOSES FRAZIER
LEE CORR. INST.
990 WISACKY HWY.
BISHOPVILLE, S.C. 29010
ATTY. FOR APPELLANT

Crisis Ministries

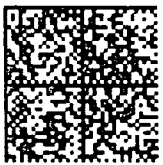
God • Shelter • Hope

P.O. Box 20038

Charleston, SC 29413-0038



MOSES A. FRAZIER - 317940
F62145
LEE CORRECTIONAL INSTITUTION
990 WISACKY HWY.
BISHOPVILLE, SC 29010



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cc/ AT AG SOL DS

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
Moses Frasier, #317940,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)

IN THE COURT OF COMMON PLEAS
2009-CP-10-1183

FILED
2012 FEB 22 AM 9:03
JULIE A. ARMSTRONG
CLERK OF COURT
BY _____

ORDER OF DISMISSAL

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed February 27, 2009 and amended on November 5, 2009. The Respondent made its Return on July 7, 2009. An evidentiary hearing into the matter was convened on January 9, 2012 at the Charleston County Courthouse. The Applicant was present at the hearing and represented by Jeffrey Yungman, Esquire. Matthew J. Friedman, Esquire, of the South Carolina Attorney General's Office represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Applicant's trial counsel, Beattie Butler, Esquire, also testified at the hearing. This Court had before it the records of the Charleston County Clerk of Court regarding the subject convictions, the Applicant's records from the Department of Corrections, the trial transcript, the Final Brief of Appellant, the Final Brief of Respondent, the Court of Appeals' opinion affirming the conviction and sentence, the Remittitur dated February 2, 2009, the PCR application and amended application, and the State's Return thereto.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. Applicant was

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JULIE A. ARMSTRONG (SEAL)
CLERK OF COURT
BY *[Signature]*
DEPUTY CLERK

indicted at the June 2006 term of the Charleston County Grand Jury for murder (2006-GS-10-4259). Beattie I. Butler, Esquire, and Jason Mikell, Esquire, represented him. On October 2, 2006, Applicant proceeded to trial, after which a jury found him guilty of the lesser-included offense of voluntary manslaughter. The Honorable James C. Williams sentenced him to confinement for thirty (30) years.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. Chief Appellate Defender Joseph L. Savitz, III, represented Applicant on appeal. Following full briefing, the South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Frasier, Op. No. 2009-UP-052 (S.C. Ct. App. filed January 15, 2009). The Remittitur was issued on February 2, 2009.

ALLEGATIONS

The Applicant alleges he is being held in custody unlawfully for the following reasons:


1. Ineffective assistance of trial counsel in that counsel
 - a. Failed to investigate and present a defense.
 - b. Failed to object to the highly prejudicial opinion testimony of a State's witness who had not been qualified as an expert by the trial court.
 - c. Failed to object to the prosecution soliciting highly prejudicial opinion testimony from a State's witness who had not been qualified as an expert by the trial court.
 - d. Engaged in improper closing argument to the jury that denied Applicant a fair trial.
 - e. Failed to object to the prosecution's improper closing argument that violated the Golden Rule and denied Applicant his right to a fair trial.

2. Ineffective assistance of appellate counsel in that appellate counsel failed to raise the issue on appeal as to whether the trial court erred in refusing to charge the jury on the issue of involuntary manslaughter.

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 and arguments presented at the hearing. This Court has further had the opportunity to

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CLERK, P. J. G.S. & C.
By 
DEPUTY CLERK

observe each witness who testified at the hearing, and to closely pass upon his or her credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

The Applicant testified that counsel failed to object to opinion testimony from a State's witness, Sergeant Kevin McGowan, who was not qualified. He asserted that Sergeant McGowan testimony about blood splatter on a pole was highly prejudicial and counsel should have objected.

Trial counsel testified that Sergeant McGowan was a crime scene technician. He did not recall Sergeant McGowan being qualified as an expert. Counsel asserted that the blood on the laundry line pole was the victim's blood, and the question was about why it happened rather than if it happened. He testified that it was not disputed that it was the victim's blood. Counsel testified that the victim's blood was on Applicant's pants. He testified that the trial court charged self-defense and voluntary manslaughter to the jury.

Ineffective Assistance of Counsel

The Applicant alleges that he received 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, 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. The applicant must overcome this presumption in order to receive relief. Cherry, 386 S.E.2d 624.

Courts use a two-pronged test to evaluate 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." Id. at 625 (citing Strickland, 466 U.S. 668). 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." Id. at 625. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

This Court finds that trial counsel's testimony is credible. This Court finds that counsel is a trial practitioner who has extensive experience in the trial of serious offenses. Counsel conferred with the Applicant on several occasions. During conferences with the Applicant, counsel discussed the pending charges, the elements of the charges and what the State was required to prove, Applicant's constitutional rights, and possible defenses or lack thereof.

Regarding Applicant's claims of ineffective assistance of counsel, this Court finds Applicant has failed to meet his burden of proof. This Court finds that counsel demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, 466 U.S. at 668; Butler, 286 S.C. 441, 334 S.E.2d 813. This Court further finds counsel adequately conferred with Applicant, conducted a proper investigation, and was thoroughly competent in his representation. This Court finds that

counsel's representation did not fall below an objective standard of reasonableness.

This Court finds that Applicant was not prejudiced by counsel's failure to object to Sergeant McGowan's testimony regarding blood splatter. Applicant's defense was self-defense, and there was no dispute that the victim's blood was on the pole. There was also no dispute that Applicant and the victim were in an altercation and the victim died as a result of the altercation. Thus, counsel was not ineffective for failing to object and Applicant was not prejudiced in any manner. This Court finds that counsel's failure to object did not affect the outcome of the trial.

Accordingly, this Court finds the Applicant has failed to prove both prongs of Strickland. Applicant's complaints concerning counsel's performance are without merit and are denied and dismissed.

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 evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial or sentencing proceedings. Counsel was not deficient in any manner, nor was the Applicant prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

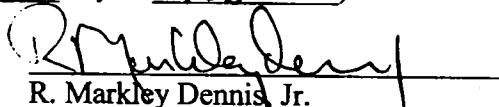
This Court advises the Applicant that he must file a notice of intent to appeal within thirty

(30) days from the receipt of written notice of entry of this Order to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely served and filed.

IT IS THEREFORE ORDERED:

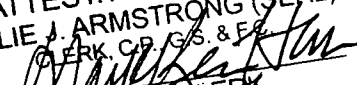
1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 16 day of Feb., 2012.


R. Markley Dennis Jr.
Presiding Judge
9th Judicial Circuit

Charleston, South Carolina.

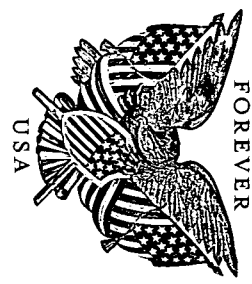
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JULIE J. ARMSTRONG (SEAL)
CLERK, CP, GS, & FE
By 
DEPUTY CLERK

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Bishopville, S.C.
29010

Hon. Daniel E. Shearouse
Clerk of S.C. Supreme Ct.
P.O. Box 11330
Columbia, S.C. 29211

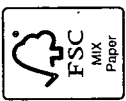
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