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December 28, 2015

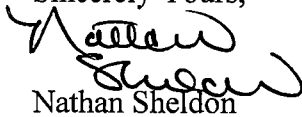
Hon. Daniel E. Shearouse, Clerk
Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

Re.: Arteasa M. Whitlock v. State
2014-CP-46-2336

Dear Clerk of Court:

Please find enclosed Mr. Whitlock's Notice of Appeal and Proof of Service on the Attorney General's Office. I have also included a copy of the filed order denying Mr. Whitlock's PCR. A copy of this paperwork has been sent to the Office of Appellate Defense. Please let me know if you have any questions or concerns about the papers being filed. Thank you.

Sincerely Yours,



Nathan Sheldon
The Law Office of Nathan J. Sheldon

RECEIVED

JAN 04 2016

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM YORK COUNTY
Court of Common Pleas

Roger M. Young Sr., Circuit Court Judge

Case No. 2014-CP-46-2336

State of South Carolina,

Respondent,

v.

Arteasa Maurice Whitlock,

Appellant.

NOTICE OF APPEAL

Arteasa Maurice Whitlock appeals the order of the Honorable Roger M. Young, Sr. dated September 11, 2015. Appellant received written notice of entry of this order on December 14, 2015.

December 28, 2015



Nathan J. Sheldon
331 E. Main St., Suite 200
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Attorney for Appellant

Other Counsel of Record:
Justin James Hunter, Esquire
Assistant Attorney General
Post Office Box 11549
Columbia, South Carolina 29211-1549
Attorney for Respondent
(803) 734-3970

RECEIVED

JAN 04 2016

S.C. SUPREME COURT

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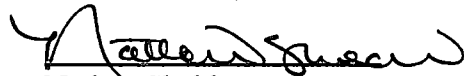
Arteasa Maurice Whitlock,

Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Justin James Hunter with the Attorney General's Office by depositing a copy of it in the United States Mail, postage prepaid, on December 28, 2015 mailed to Post Office Box 11549, Columbia, South Carolina 29211-1549.

December 28, 2015



Nathan Sheldon
331 E. Main St., Suite 200
Rock Hill, South Carolina 29730
(803) 909-9343
Attorney for Appellant

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2014CP4602336

Arteasa Maurice Whitlock

South Carolina State Of

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Justin James Hunter

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

ORDER OF DISMISSAL

This order ends does not end the case.

Additional Information for the Clerk: _____

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.**

S/Roger M. Young, Sr
Circuit Court Judge

2134
Judge Code

9/11/2015
Date

For Clerk of Court Office Use Only

This judgment was entered on **December 10, 2015**, and a copy mailed first class or placed in the appropriate attorney's box on **December 10, 2015**, to attorneys of record or to parties (when appearing pro se) as follows:

Nathan James Sheldon PO Box 36682 Rock Hill, SC 29732
Arteasa Maurice Whitlock BRCI-MLT 2095, 4460 Broad
River Road, Columbia, SC 29210

Justin James Hunter PO Box 11549 Columbia, SC 29211-
1549

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

Court Reporter

David Hamilton - Clerk of Court

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 YORK)
)
 Arteasa Maurice Whitlock,)
 S.C.D.C. No. 277009,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 OF THE SIXTEENTH JUDICIAL CIRCUIT

2014-CP-46-2336

ORDER OF DISMISSAL

FILED-RECEIVED
 2015 DEC 10 PM 3:14
 DAVID HAMILTON
 C.O.C.P. & G.S.
 YORK COUNTY, SC

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed July 18, 2014. Respondent made its Return on or about March 19, 2015. An evidentiary hearing into the matter was convened on August 5, 2015, at the Moss Justice Center in York, South Carolina. Applicant was present at the hearing and represented by Nathan Sheldon, Esquire. Justin Hunter, Esquire, of the South Carolina Attorney General's Office represented Respondent. At the hearing, Applicant testified on his own behalf. Also testifying on behalf of Applicant were Kelly McClure and Michael Whitlock. Applicant's trial counsel, Jim Morton, Esquire, testified. Applicant's sentencing counsel, Twana Burris, Esquire, testified. Misti Shelton, Esquire, of the Sixteenth Circuit Solicitor's Office also testified. This Court had before it a copy of Applicant's records from the York County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the transcript from Applicant's sentencing hearing, Applicant's PCR Application, Respondent's Return, Applicant's Petition for Order to Reconstruct the Record of Appellant's Criminal Trial, and the Order dismissing Applicant's direct appeal.

I. PROCEDURAL HISTORY

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to orders of commitment from the York County Clerk of Court. Applicant was indicted at the June 2004 term of the York County Grand Jury for Trafficking Crack Cocaine (2004-GS-46-1846) and Possession of Crack Cocaine with intent to distribute (PWID) within proximity of a park (2004-GS-46-1846). He was represented by Jim Morton, Esquire. On March 2, 2005, Applicant proceeded *in absentia* to a jury trial before the Honorable Lee S. Alford, after which he was found guilty of both charges as indicted. The sentence was sealed and was opened on June 6, 2013. Applicant appeared with his counsel, Twana Burris, Esquire, before Judge Alford and was sentenced to confinement for eighteen (18) years for Trafficking Crack Cocaine 10-28 grams, 2nd offense and ten (10) years, concurrent, for PWID Crack Cocaine within proximity of a park.

A notice of appeal was filed and an appeal perfected on Applicant's behalf by Benjamin Tripp, Esquire. A "Petition for Order to Reconstruct the Record of Appellant's Criminal Trial" was filed on Applicant's behalf on March 26, 2014. The South Carolina Court of Appeals denied the petition to reconstruct the record and affirmed the Applicant's conviction and sentence. State v. Whitlock, Order Appellate Case No. 2013-001340 (filed May 14, 2014). The Remittitur was issued on June 3, 2014.

Allegations

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

1. "Ineffective Assistance of Counsel"
 - a. "Trial Counsel Failure to Review the Law of the Case
Render's Counsel's Assistance Ineffective"



2. "Ineffective Assistance of Appellate Counsel"
 - a. "Appellate Counsel Render(sic) Ineffective Assistance by Counsel's Failure to Provide the Court with a Full Record on Appeal"

II. SUMMARY AND EVIDENCE PRESENTED AT PCR HEARING

Applicant's Testimony

Applicant testified that he met with Mr. Morton in early 2005 after being previously represented by another attorney. He testified that he met with Mr. Morton three times and discussed plea offers. He testified that he did not have any notice of his trial, did not know the case was set for trial, and did not discuss with Mr. Morton the consequences of not showing up for trial. Applicant testified that when his trial was called, he was in Georgia because Mr. Morton gave him time to get his house and affairs together. Applicant testified that he told Mr. Morton that he would plead guilty to trafficking if it would be considered a second offense. Applicant testified that he discussed possible defenses with his attorney including search and seizure issues. He testified that he also told Mr. Morton which witnesses would be helpful to his case. Applicant testified that he was never told pre-trial by any judge that he would be tried in his absence if he failed to show when his case was called. He testified that in February 2009 he was incarcerated in federal prison on a federal drug charge. He that when he was in federal prison he attempted to reach out to Mr. Morton with no response and hired Mrs. Burris in 2009. Applicant testified that neither attorney obtained his trial transcript and he did not make any effort to obtain the transcript himself.

On cross-examination, Applicant testified that the court never gave him notice of when he had to be in court. He was shown his bond form from February 28, 2004, and acknowledged his signature on the form. He acknowledged that Section 2(b) on the first page of the form states that the judge informed him of "[h]is right and obligation to be present at trial and that trial will



proceed in his absence if he fails to attend." Applicant further acknowledged the he initialed a box on the second page of the bond form ordering him to appear at the term of general sessions in York County at 9:00AM on April 19, 2004, and appear and remain throughout each succeeding term of court until a final disposition is made of his case.

Kelly McClure's Testimony

Ms. McClure testified that she is Applicant's fiancé and was aware of his trial in absentia. She testified that she hired Mrs. Burris in 2009 and later learned from Mrs. Burris that the trial transcript was unavailable.

Michael Whitlock's Testimony

Michael Whitlock testified that he is Applicant's brother and helped retain Mrs. Burris around 2009. He testified that he met with her in 2009 and that she did not help with Applicant's case.

Counsel Jim Morton's Testimony

Mr. Morton testified that he does not recall his meetings with Applicant prior to trial and does not recall much about the trial. He testified that on March 1, 2005, he went to the address given to him by Applicant to inform him of the trial date. He testified that he did not see Applicant that day but told Applicant's mother to inform Applicant that he needed to be in court the following day. Mr. Morton testified that he has represented defendants in many trials *in absentia* before. He further testified that he did not have any reason to request the transcript after the trial and that appellate attorneys would typically request it for their appeals.

Mr. Morton testified on cross-examination that he met with Applicant for the first time on February 6, 2005. He again testified that he does not remember much from the 2005 trial but

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assumes that he made the proper suppression motion. He testified that he did pursue witnesses to call but testified that either he could not find them or they turned out not to be helpful.

Counsel Twana Burris's Testimony

Mrs. Burris testified that she was contacted by Applicant's fiancé and cousin in late 2009 but was not retained for several weeks. She testified that there was a lot of confusion regarding exactly who she was representing because of an inmate with the same last name as Applicant. Mrs. Burris testified that she was retained specifically to open the sealed sentence and represent Applicant in his sentencing hearing. She further testified that she received the relevant information from the State regarding Applicant's case. She testified that she diligently made efforts to obtain the transcript but that it had already been purged since it had been longer than five years after Applicant's trial. Mrs. Burris testified that she contacted Mr. Morton and the Solicitor's Office in preparation for Applicant's sentencing hearing. She testified that she made efforts to get Applicant back in York County so that the sentence could be unsealed.

Assistant Solicitor Misti Shelton's Testimony

Ms. Shelton testified that she was the assistant solicitor who prosecuted Applicant's case in 2004. She testified that she discussed a plea offer with Mr. Morton on February 7, 2005, and informed him that if he did not take the plea then the case would go forward on the February 28, 2005 docket. She further testified that she spoke to Applicant's bondsman who said that Applicant was absconding and informed Mr. Morton of this fact. Ms. Shelton testified that a bench warrant was issued and the case was tried on March 2, 2005.

Ms. Shelton testified that she remembers the case well and that Applicant was not excused from trial. She testified that Applicant's suppression motion was denied, a motion



pursuant to Jackson v. Denno¹ was denied, and no witnesses were called on defense. Ms. Shelton further testified that the issue of trying Applicant *in absentia* was brought before Judge Alford. She testified that the State informed Judge Alford that they believed Applicant to be absconding and that Mr. Morton informed the Judge Alford that Applicant had notice of the trial. Ms. Shelton testified that she received permission from Judge Alford to proceed with a trial *in absentia* after the court found it to be appropriate. Further, Ms. Shelton testified that the Sixteenth Circuit Solicitor's Office contacted the appropriate federal authorities in 2009 in an attempt to have Applicant returned to York County, however their attempts were unsuccessful.

III. APPLICABLE LAW

In a post-conviction relief action, the 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

¹ See Jackson v. Denno, 378 U.S. 368 (1964).

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.

IV. 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 sentencing 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 the testimony of Applicant's trial counsel and sentencing counsel to be credible and persuasive on all matters. These credibility findings have been applied to the Court's findings and conclusions set forth below.

Ineffective Assistance of Counsel

This Court finds that Applicant failed to meet his burden of proving that his trial counsel was ineffective. This Court finds that Mr. Morton made diligent efforts to notify Applicant of the impending trial by going to the address Applicant provided, however Applicant was not home. This Court further finds that Judge Alford made the finding prior to proceeding with a trial *in absentia* that Applicant had been properly notified of his trial by Mr. Morton and the language on the signed bond form. Regarding Applicant's allegation that his trial counsel failed to obtain



the trial transcript, this Court finds that Mr. Morton was under no duty to order the transcript, especially in light of the fact that he had no communication with Applicant while Applicant absconded.

This Court finds that Applicant has also failed to meet his burden of proving that his sentencing counsel was ineffective. This Court finds that Mrs. Burris had not been officially retained by Applicant for weeks or months after her initial discussions with Applicant's family. This Court also finds that Mrs. Burris made reasonable efforts to find her client in the federal system so that she would be able to diligently represent him at the sentencing hearing. This Court further finds that Mrs. Burris made reasonable efforts to obtain the trial transcript but was unsuccessful because over five years had elapsed since the trial and the transcript was purged. Regardless, this Court finds that Mrs. Burris was under no duty to order the trial transcript.

Accordingly, this Court finds that neither Applicant's trial counsel nor his sentencing counsel were ineffective. This Court further finds that Applicant has failed to prove prejudice. The record shows that Judge Alford made the correct inquiry of both parties before proceeding with Applicant's trial *in absentia*. The fact that Applicant was tried in his absence is of his own making, as Applicant had a duty to appear before the Court as instructed and a duty to communicate with his counsel. Instead, Applicant absconded from York County and was arrested on federal charges four years later. Additionally, Applicant cannot show prejudice by his counsels' failure to obtain the trial transcript because Applicant's absconding and federal arrest contributed to the unavailability of the trial transcript. See State v. Serrette, 375 S.C. 650, 654 S.E.2d 554 (Ct. App. 2007) (the right to appeal may be lost when a defendant's willful decision to abscond led to the destruction of the trial transcript pursuant to Rule 607).



Thus, Applicant's allegation of ineffective assistance of counsel is readily denied and dismissed as Applicant has failed to meet his burden in proving deficiency and resulting prejudice.

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, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

V. 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' performances were 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.

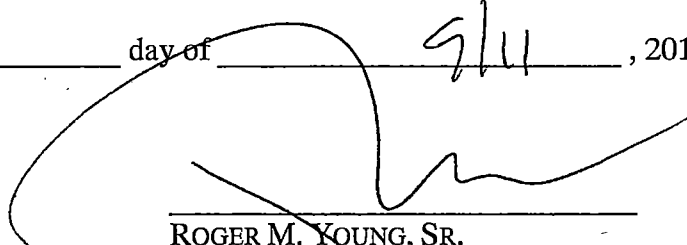
The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, 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 shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this _____ day of 9/11, 2015.



ROGER M. YOUNG, SR.
Presiding Judge
Sixteenth Judicial Circuit

**JUDGE ROGER YOUNG
CIRCUIT COURT
OF SC #2134**

For Children, South Carolina