

R. MILLS ARIAIL, JR.
ATTORNEY AT LAW

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January 28, 2016

RECEIVED

FEB 02 2016

S.C. SUPREME COURT

Via US Mail

Daniel Shearouse
Clerk of Court
South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re: *Notice of Intent to Appeal from Larold Morris v. State of SC*
C.A. No.: 2015-CP-39-0044

Dear Mr. Shearouse:

I was Court Appointed in the above referenced matter, and I expect that appellate defense will handle the appeal and petition for certiorari. On behalf of my client, enclosed for filing please find the Notice of Appeal and proof of service. I've enclosed a copy of the Honorable Perry H. Gravely's Order of Dismissal to be challenged on appeal. By copy of this letter, I am also serving my client, counsel for the State of South Carolina, the South Carolina Commission of Indigent Defense - Appellate Defense Division and the Pickens County Clerk's Office.

Thank you for your assistance in this matter and if you have any questions, please feel free to contact me.

Sincerely,
LAW OFFICE OF R. MILLS ARIAIL, JR.
Attorney at Law


R. Mills Ariail, Jr.

RMAjr/dl
Enclosures (as stated)

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge

Case No. 2015-CP-39-0044

RECEIVED

FEB 02 2016

S.C. SUPREME COURT


Larold Morris,..... Appellant,

v.

State of South Carolina Respondent.

NOTICE OF APPEAL

Appellant appeals the Honorable Perry H. Gravely's Order of Dismissal dismissing Appellant's application for post-conviction relief. On January 11, 2016, the Honorable Perry H. Gravely signed an order dismissing Appellant's application for post-conviction relief with prejudice. Appellant, through counsel, received written notice of entry of this order on January 25, 2016. A copy of the Honorable Perry H. Gravely's Order of Dismissal is attached.



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Greenville, SC 29601
Telephone (864) 232-9390
Facsimile (864) 232-9392
Attorney for Bobbie Albert McCann

Greenville, South Carolina
January 28, 2016

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge

Case No.2015-CP-39-0044

Larold Morris,..... Appellant,

v.

State of South Carolina Respondent.

CERTIFICATE OF SERVICE

I, Denise Tanner LaBeck, paralegal to R. Mills Ariail, Jr., do hereby certify that on this January 28, 2016, I served upon the below named Respondents copies of the **NOTICE OF APPEAL** by depositing copies of the same via U.S. Mail, postage prepaid, Registered Mail in an envelope addressed as set forth herein below:

Karen C. Ratigan, Esq.
Assistant Attorney General
PO Box 11549
Columbia, SC 29211

Pickens County Clerk's Office
Pickens County Courthouse
214 East Main Street
Pickens, SC 29671

Larold Morris SCDC#00336461
Perry Correctional Institution
430 Oaklawn Road
Pelzer, SC 29669

SC Commission of Indigent Defense
Division of Appellate Defense
PO Box 11433
Columbia, SC 29211-1433

Denise Tanner LaBeck
Denise Tanner LaBeck

January 28, 2016

STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE

COUNTY OF PICKENS

CASE NO: 2015CP3900044

IN THE COURT OF COMMON PLEAS

2016 JAN 19 AM 11 59

Larold Morris #336461 vs. State of South Carolina

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

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.
- ACTION DISMISSED (CHECK REASON):
 - Rule 12(b), SCRCP;
 - Rule 41(a), SCRCP (Vol. Nonsuit);
 - Rule 43(k), SCRCP (Settled);
 - Other: _____
- ACTION STRICKEN (CHECK REASON):
 - Rule 40(j) SCRCP;
 - 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; Statement of Judgment by the Court.

A copy mailed first class this 19th Day of January, 2016, to attorneys of record or to parties (when appearing pro se) as follows:

MB
Larold Morris #336461
R. Mills Ariail Jr. 11 North Irvine Street, Suite 11
Greenville, SC 29601

ATTORNEY(S) FOR THE PLAINTIFF(S)

Karen Christine Ratigan PO.Box 11549 Columbia, SC 29211

**Emailed to KarenJudy

ATTORNEY(S) FOR THE DEFENDANT(S)

HPW
Harold P Welborn, Jr. - Clerk of Court

MB

STATE OF SOUTH CAROLINA)
)
 COUNTY OF PICKENS)
)
 Larold Lee Morris,)
 S.C.D.C. No. 336461,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2015-CP-39-0044

CLERK OF COURT
 PICKENS COUNTY
 SOUTH CAROLINA

2016 JAN 19 AM 11 55

ORDER OF DISMISSAL

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed January 8, 2015. The Respondent made its return on May 29, 2015. An evidentiary hearing was held on December 14, 2015 at the Pickens County Courthouse. The Applicant was present and represented by R. Mills Ariail, Jr., Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's trial counsel, David D. Cantrell, Jr., Esquire. The Court had before it the trial transcript, the Pickens County Clerk of Court records, the South Carolina Department of Corrections records, the PCR application, the return, the appellate records, and Applicant's Exhibits 1 and 2.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Pickens County Clerk of Court. The Applicant was indicted at the February 2013 term of the Pickens County Grand Jury for first-degree burglary (2012-GS-39-0700), possession of a pistol with obliterated serial number (2012-GS-39-0752), armed

robbery (2013-GS-39-0457), and conspiracy (2013-GS-39-0458). He was represented by David D. Cantrell, Jr., Esquire.

After the State called the case to trial, the Applicant was found guilty. On March 20, 2013, the Honorable Edward W. Miller sentenced the Applicant to concurrent terms of 25 years for first-degree burglary, 5 years for possession of a pistol with obliterated serial number, 25 years for armed robbery, and 5 years for conspiracy.

A notice of appeal was filed at the South Carolina Court of Appeals. Robert M. Dudek, Esquire of the South Carolina Commission on Indigent Defense, Division of Appellate Defense and Chris Paton, Esquire perfected the appeal. The Court of Appeals affirmed the Applicant's convictions and sentences. State v. Morris, Op. No. 2014-UP-420 (S.C. Ct. App. filed Nov. 26, 2014). The remittitur was sent on December 12, 2014.

ALLEGATIONS

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

1. Ineffective assistance of trial counsel.
 - a. “[F]ailed to renew objection to introduction of evidence in violation of the 4th, 6th and 14th Amendments of the United States Constitution.”

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 PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their 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).

Ineffective Assistance of Counsel

The 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).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel’s ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052).

A.

The Applicant stated he asked trial counsel to subpoena his co-defendant (whom he identified as his brother, Cade) for trial because the co-defendant admitted guilt on the gun charge. The Applicant stated trial counsel told him he would be on trial with the co-defendant.

Trial counsel testified there were originally two co-defendants in this case but did not recall if the Applicant wanted to have one of them subpoenaed. Trial counsel testified the co-defendant may have done more harm than good at the Applicant’s trial. Trial counsel testified there was not going to be a joint trial.

This Court finds the Applicant failed to meet his burden of proving trial counsel should

have subpoenaed his co-defendant, Cade, for trial. Trial counsel testified they may not have known Cade's whereabouts and that, regardless, as he had not spoken to him there would be concerns about calling him as a witness. This Court finds the Applicant's main contention— that trial counsel should have subpoenaed Cade because he admitted his guilt on the gun charge — is without merit. When the Applicant made a similar argument to the trial judge before sentencing, the assistant solicitor noted “on the in-car tape there's a discussion between [the Applicant] and Cade 'cuz Mr. Cade had no record, somethin' along the lines of, 'You just take the guns, you'll get PTI, I'm on parole, I can't do this'” and the Applicant did not refute this. (Trial transcript, pp.338-39). This Court finds the Applicant cannot demonstrate either that trial counsel was deficient in not subpoenaing Cade for trial or that he was prejudiced as a result. See Porter v. State, 368 S.C. at 383, 629 S.E.2d at 356.

B.

The Applicant stated trial counsel failed to make specific constitutional challenges to the search warrant and failed to challenge probable cause.

Trial counsel testified he made all possible arguments at trial when arguing against the search warrant. Trial counsel testified he could not think of an additional argument he should have made.

This Court finds the Applicant failed to meet his burden of proving trial counsel did not properly challenge the search warrants in this case. This Court has examined the trial record and notes trial counsel made arguments in his motion to suppress in which he challenged various aspects of the search warrants. (Trial transcript, pp.66-83). This Court notes trial counsel is an experienced criminal defense attorney and finds he thoroughly attacked the search warrants. While the Applicant argues trial counsel should have made a constitutional challenge to the

search warrants, trial counsel made such an argument. (Trial transcript, pp.82-83). This Court finds the Applicant has failed to articulate what additional arguments trial counsel could have made that would have been more successful. See, e.g., Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (holding applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial).

C.

The Applicant stated trial counsel should have moved to suppress the gun charge based on the statement of his co-defendant.

Trial counsel testified the gun was found in reach of both the Applicant and his co-defendants.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have moved for dismissal of the gun charge based upon a statement by his co-defendant. As noted supra, however, there was a recording of the Applicant and Cade in which the Applicant asks Cade to take the blame for the guns. (Trial transcript, pp.338-39). Further, the weapons were found in the vehicle (after a consent search) and within reach of all three original co-defendants. This Court finds the Applicant has failed to articulate what – based upon these unassailable facts – trial counsel could have argued in order to successfully have the gun charge dismissed. See id.

D.

The Applicant stated trial counsel should have cross-examined the victim about the gun. The Applicant argued the victim mentioned a handgun but the State admitted a weapon (a TEC-9) into evidence that is not a handgun.

This Court finds the Applicant failed to meet his burden of proving trial counsel was

deficient. The victim stated the suspects had a black handgun. (Trial transcript, p.111). When the Applicant and his co-defendants were arrested, a .380 handgun and a TEC-9 were in a backpack in their vehicle. (Trial transcript, pp.179-82). This Court notes, however, that the Applicant and his co-defendants were arrested more than one month after the burglary and armed robbery. The Applicant's weapons charge in this case was not related to these crimes. Rather, the charge was possession of a pistol with an obliterated serial number. As such, this Court finds trial counsel was not deficient in not cross-examining the victim about the handgun.

E.

The Applicant stated trial counsel should have objected to the introduction of the photographs at trial because they were taken because of the execution of the search warrant and the search warrant was not valid.

Trial counsel testified he did not see a reason to object to the photographs during trial.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have objected to the introduction of the photographs. While the Applicant argues the search warrants were invalid, this Court notes the trial judge the search warrants were proper. As such, the photographs were taken as the result of the execution of valid search warrants. This Court finds the Applicant has failed to articulate a how the introduction of the photographs into evidence was improper or what legal arguments trial counsel could have made in order to prevent their introduction. See Sikes v. State, 323 S.C. 28, 30, 448 S.E.2d 560, 562 (1994) ("When the defendant claims that counsel's failure to articulate a Fourth Amendment claim was ineffective assistance, defendant must show that such claim is meritorious and that the verdict would have been different absent the evidence that should have been excluded.") (citation omitted).

F.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that trial counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that trial 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 trial counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

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

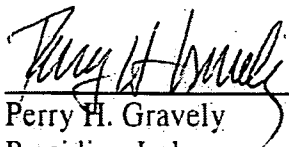
Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient and the Applicant was not prejudiced by counsel's representation. Therefore, this 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 this Order if he wants 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 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 11th day of January, 2016.



Perry H. Gravely
Presiding Judge
Thirteenth Judicial Circuit

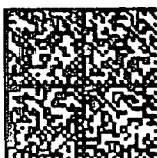
Greenville, South Carolina.

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