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February 15, 2016

RECEIVED

FEB 19 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

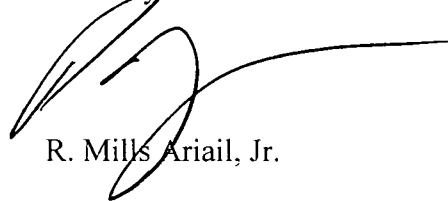
*Re: Notice of Intent to Appeal from Johnny Edwards v. State of South Carolina
C.A. No.: 2014-CP-39-670*

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

RECEIVED

FEB 19 2016

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Perry H. Gravely, Circuit Court Judge

Case No. 2014-CP-23-670

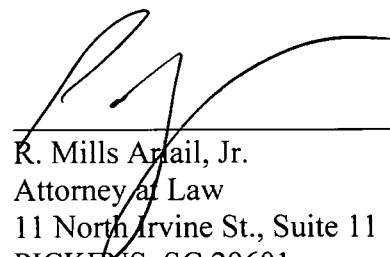
Johnny James Edwards,..... Appellant,

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 26, 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 February 6, 2016. A copy of the Honorable Perry H. Gravely's Order of Dismissal is attached.



R. Mills Anail, Jr.
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Attorney for Johnny Edwards

Pickens, South Carolina
February 15, 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.2014-CP-39-670

Johnny Edwards,..... Appellant,

v.

State of South Carolina Respondent.

CERTIFICATE OF SERVICE

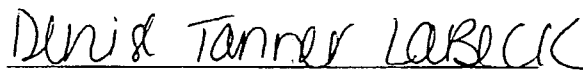
I, Denise Tanner LaBeck, paralegal to R. Mills Ariail, Jr., do hereby certify that on this February 16, 2016, I served upon the below named Respondents copies of the **NOTICE OF APPEAL** by depositing copies of the same via U.S. Mail, postage prepaid, Registered Mail in an envelope addressed as set forth herein below:

Karen C. Ratigan, Esq.
Assistant Attorney General
PO Box 11549
Columbia, SC 29211
Attorney for the State of South Carolina

Greenville County Clerk's Office
Greenville County Courthouse
305 East North Street
Greenville, SC 29601

Johnny Edwards SCDC# 00233803
Tyger River Correctional
200 Prison Road
Enoree, SC 29335

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


Denise Tanner LaBeck

February 16, 2016

STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE

COUNTY OF PICKENS

CASE NO: 2014CP3900670

IN THE COURT OF COMMON PLEAS

Johnny James Edwards Jr vs. State of South Carolina

CHECK ONE:

CLERK OF COURT

[] JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

SOUTH CAROLINA

[] 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); 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: [X] See attached order; [] Statement of Judgment by the Court:

Order of Dismissal

Dated at Pickens, South Carolina, this .

Court Reporter:

PRESIDING JUDGE -

A copy mailed first class this 3 day of February, 2016 to attorneys of record or to parties (when appearing pro se) as follows:

Handwritten signature/initials

Johnny James Edwards Jr, R. Mills Ariail Jr, 11 North Irvine Street, Suite 11 Greenville, SC 29601

Emailed

Karen Christine Ratigan PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Handwritten signature of Harold P. Welborn, Jr.

Harold P. Welborn, Jr. - Clerk of Court

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)
)
Johnny James Edwards, Jr.,)
S.C.D.C. No. 233803,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
2014-CP-39-0670

ORDER OF DISMISSAL

2016 FEB 3 AM 8 49
CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed May 30, 2014. The Respondent made its return and motion to dismiss on October 8, 2014. 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.

At the start of the hearing, the Respondent made its motion to dismiss. This motion was denied, as this Court found the Applicant filed a motion to amend in January 2015 and the parties agreed to go forward with the PCR hearing.

The Applicant testified on his own behalf. Also testifying were Stacy Riden and the Applicant's plea counsel, Cameron G. Boggs, Esquire. The Court had before it the guilty plea transcript, the Pickens County Clerk of Court records, the South Carolina Department of Corrections records, the PCR application (and subsequent amendment), and the return and motion to dismiss.

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 July 2012 term of the Pickens County Grand Jury for first-degree burglary (2012-GS-39-0742), criminal domestic violence of a high and aggravated nature (CDVHAN) (2012-GS-39-0743), child endangerment (2012-GS-39-0744), unlawful conduct towards a child (2012-GS-39-0745), resisting arrest (2012-GS-39-0747), and failure to stop for a blue light (2012-GS-39-1266). He was represented by Cameron G. Boggs, Esquire.

On June 25, 2013, the Applicant entered an Alford¹ plea to second-degree burglary and pled guilty as indicted to all other charges.² The Honorable Letitia H. Verdin sentenced the Applicant to concurrent terms of 14 years for second-degree burglary, 10 years for CDVHAN, 18 months for child endangerment, 10 years for unlawful conduct towards a child, 1 year for resisting arrest, and 3 years for failure to stop for a blue light. The Applicant did not appeal.

ALLEGATIONS

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

1. "Bias judgement/From judge."
2. "Had statements from witnesses to refute charges against me."
3. "The homeowner being one of the witnesses."

In a "Motion to Amend Current Post Conviction Relief Application" filed by the Applicant on January 9, 2015, he made the following allegations:

1. Ineffective assistance of counsel:
 - a. Failed to conduct a proper pre-trial investigation.

¹ North Carolina v. Alford, 400 U.S. 25, 91 S. Ct. 160 (1970).

² The Applicant also pled guilty to two Greenville County charges that day.

Although there were numerous charges in this case, the Applicant only challenged the second-degree burglary charge and conviction. This Court finds all issues related to the other charges have been abandoned.

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). When there has been a guilty plea, the applicant must prove that counsel’s representation was below the standard of reasonableness and that, but for counsel’s unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citations omitted).

The Applicant stated the burglary victim (Stacy Riden) said he had permission to enter her home and that he asked plea counsel to speak to her. The Applicant stated he decided to enter an Alford plea to the burglary charge on the day of the plea hearing because plea counsel said the State could make him look guilty so an Alford plea was the best option. The Applicant stated plea counsel explained an Alford plea to him.

Stacy Riden stated she is good friends with the Applicant's wife, who was staying at her residence. Riden stated the Applicant called her to ask if he could go to her residence and check on the baby and (after speaking to the Applicant's wife), she agreed. Riden acknowledged she was not at the residence when the Applicant arrived. Riden also acknowledged the Applicant's wife had a trespass notice against the Applicant at the time. Riden stated she spoke to plea counsel on the day of the plea hearing.

Plea counsel testified he filed discovery motions and believed he received full discovery from the State. Plea counsel testified he reviewed the discovery materials with the Applicant numerous times. Plea counsel testified they also reviewed the elements of the charges, sentence ranges, and the Applicant's version of events. Plea counsel testified the State made a plea offer of 30 years suspended on the service of 20 years. Plea counsel testified it was "pulling teeth" to get the State to make a second offer of 12 years but that the Applicant wanted a 6-8 years sentence so he pled guilty without a recommendation. Plea counsel testified the Applicant said he had permission to be in the residence. Plea counsel testified, however, that he discussed with the Applicant that – whether or not he had permission to be there – it did not excuse any crimes he committed therein. Plea counsel testified the Applicant also told him that he was on trespass notice at the time. Plea counsel testified the plea judge denied his post-trial motion to for sentence reconsideration.

Initially, this Court notes the Applicant confirmed to the plea judge that he wanted to plead guilty to his charges. (Plea transcript, p.15). The Applicant also told the plea judge that he understood the trial rights he was waiving in pleading guilty, was satisfied with counsel, and had not been coerced in any way. (Plea transcript, pp.9-13). The Applicant did not dispute the State's recitation of the facts in his case.

This Court finds the Applicant failed to meet his burden of proving plea counsel was ineffective. Plea counsel testified he was aware of the Applicant's contention that he had permission to be in the residence that was the location of the burglary. Plea counsel testified they discussed the Applicant's version of events, the elements of the charges, and the sentence ranges. This Court finds plea counsel's testimony is credible. This Court finds plea counsel was clearly aware of Stacy Riden's role in this case, as he mentioned during his mitigation argument that she had given the Applicant permission to enter her residence. (Plea transcript, p.29). This Court finds the State's case against the Applicant was very strong and plea counsel's strategy was to have the Applicant enter an Alford plea to the burglary charge and then argue in mitigation. This Court finds this was a valid strategic decision and notes plea counsel gave a thorough and detailed mitigation argument to the plea judge. (Plea transcript, pp.27-34). While the Applicant may have been unhappy with the sentence he ultimately received, he was advised by both plea counsel and the plea judge of the sentence ranges for his charges. (Plea transcript, pp.6-7). See Holden v. State, 393 S.C. 565, 575-76, 713 S.E.2d 611, 617 (2011) (citing Roddy v. State, 339 S.C. 29, 36, 528 S.E.2d 418, 422 (2000)) ("Wishful thinking regarding sentencing does not equal a misapprehension concerning the possible range of sentences, especially where one acknowledges on the record that one knows the range of sentences and that no promises have been made."). The Applicant pled guilty without a recommendation, as he rejected the State's

two plea offers, so he was aware he could receive a lengthy sentence on these charges. This Court also finds the Applicant failed to meet his burden of proving he suffered any prejudice, as the State had overwhelming evidence of the Applicant's guilt. See, e.g., Rosemond v. Catoe, 383 S.C. 320, 325, 680 S.E.2d 5, 8 (2009) (holding no prejudice occurs, even if trial counsel was deficient, where there is otherwise overwhelming evidence of the defendant's guilt).

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that plea counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that plea 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 plea 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 guilty plea and sentencing proceedings. Counsel was not deficient in any manner and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and

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dismissed with prejudice.


CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

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 26th day of January, 2016.



Perry H. Gravely
Presiding Judge
Thirteenth Judicial Circuit

Pickens, South Carolina.