

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM WILLIAMSBURG COUNTY
Court of Common Pleas
Honorable Tanya A. Gee, Circuit Court Judge

Case No: 2014-CP-45-136

Antwine Matthews.....Appellant
S.C.D.C. 340876
v.
The State.....Respondent

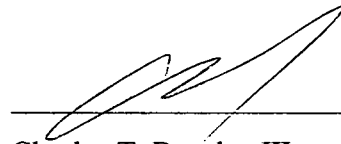
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MAR 07 2016

S.C. SUPREME COURT

NOTICE OF APPEAL

Antwine Matthews, appeals his Denial for Post Conviction Relief in this case. The order of Dismissal was imposed and signed by the Honorable Tanya A. Gee, January 20, 2016 (misdated 2015), which I, Charles T. Brooks, III, received on March 3, 2016.



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PROOF OF SERVICE

I, the undersigned, do hereby certify that on this 3rd day of March, 2016, I served the foregoing **Notice of Appeal, Order of Dismissal**, as well as **Proof of Service** in this matter by depositing a true copy of it in the United States Mail, postage prepaid, on March 3, 2016, addressed to the following as indicated below:

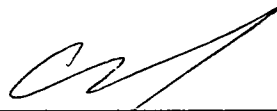
South Carolina Supreme Court
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Columbia, South Carolina 29211

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Antwine Matthews, 340876
Lee Correctional Institution
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Dated: March 3, 2016



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STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

Antwine Matthews, # 340876,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

2014-CP-45-136

ORDER OF DISMISSAL

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FILED
CLERK OF COURT
WILLIAMSBURG COUNTY
S.C.

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on March 11, 2014. An evidentiary hearing into the matter was convened on November 18, 2015, at the Sumter County Courthouse. Applicant was present at the hearing and was represented by Charles T. Brooks, III, 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 The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Williamsburg County Clerk of Court. The Applicant was true bill indicted at the March 2012 term of the Williamsburg County Grand Jury for two counts of assault and battery with intent to kill, criminal conspiracy, attempted armed robbery, and possession of a weapon during the commission of a violent crime (2012-GS-45-0057). Amanda Shuler, Esquire represented Applicant. On May 13, 2013, Applicant pled guilty as indicted before the Honorable George C. James, Jr. Judge James sentenced Applicant pursuant to a recommendation by the State to a twenty-year term of imprisonment for attempted armed robbery and five-year term of

imprisonment for criminal conspiracy, with both sentences running consecutively from his previous guilty plea on January 12, 2012. Applicant did not appeal his guilty plea or sentence.

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. Failure to prepare and investigate.
 - b. Failure to make contemporaneous objections.
 - c. Failure to file an appeal.

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf and presented testimony from Mary Amanda Shuler, Esquire. (hereinafter "Plea Counsel"). This Court also had before it a copy of the Williamsburg County Clerk of Court records, Applicant's South Carolina Department of Correction records, and the PCR application.

Applicant testified that he met with Plea Counsel four or five times prior to his guilty plea. Applicant recalled discussing various defenses with Plea Counsel and giving Plea Counsel various leads and witnesses to investigate on his behalf. Applicant stated that he had recently been convicted of separate charges prior to entering his guilty plea. Applicant explained that this case was pending since 2008, but the solicitor's office pursued the other charges first. Applicant stated that he received twenty years on the other charges and that the solicitor's office was going to "strike him out" due to the other charges.

Applicant stated Plea Counsel advised him that he could plead guilty to twenty years with no recommendation or get a recommendation of a thirty year cap. Applicant stated that when the plea judge ran his sentence consecutively to his prior conviction, Applicant requested Plea Counsel to file an appeal.

Following Applicant's testimony, Plea Counsel was called to testify. Plea Counsel stated that she was appointed to represent Applicant and that she reviewed discovery with Applicant. According to Plea Counsel, Applicant's co-defendants, Charles A. Bishop and Jeffrey Leron Dawkins, Jr., were going to plead guilty and she was concerned that they would testify against Applicant if he proceeded to trial. Plea Counsel stated that there was a strong possibility of Applicant getting convicted at trial and his co-defendants receiving a reduction for their cooperation.

Plea Counsel stated that the plea negotiations were fluid. Specifically, Plea Counsel stated there was initially a recommendation of a thirty-year cap because the solicitor erroneously believed that attempted armed robbery carried thirty years instead of twenty years. Plea Counsel stated that the solicitor realized her mistake and elected to make no recommendation. Plea Counsel stated that she spoke with Applicant about the changes in the plea deal and that Applicant wanted to continue with the plea. Plea Counsel stated that she advised Applicant that the judge had full discretion in sentencing. Plea Counsel testified that she never promised Applicant that he would receive a certain sentence, and after the plea, Applicant never requested that she file an appeal.

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), SCRCP; 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

1. Ineffective assistance of counsel regarding plea negotiations.

Applicant first alleges that he received ineffective assistance of counsel in the plea negotiation process. This Court disagrees.

This Court finds Plea Counsel credibly testified that she advised Applicant of the proper plea recommendations and never promised Applicant that the judge would sentence him to a specific sentence. This Court notes the plea transcript refutes Applicant's allegation that he was misadvised of the plea negotiations. Specifically, the plea judge advised Applicant that the only recommendation made was to run his attempted armed robbery charge and criminal conspiracy charge concurrently with each other. (T. 9-10). The plea judge stated that there was no recommendation as to whether these charges should run concurrently or consecutively to Applicant's previous convictions. (T. 9-10). The plea transcript reveals Applicant's complete understanding of the plea recommendations. This Court finds Applicant has failed to present any credible evidence or arguments that Plea Counsel was deficient or that Applicant was prejudiced by Plea Counsel's alleged deficient performance.

2. Ineffective assistance of counsel for failing to file an appeal

Applicant next alleges that Plea Counsel was ineffective for failing to file a notice of appeal. This argument has no merit.

"[C]ounsel has a constitutionally imposed duty to consult with the defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing." Roe v. Flores-Ortega,

528 U.S. 470, 480, 120 S. Ct. 1029, 1036, 145 L. Ed. 2d 985 (2000). This Court finds Plea Counsel credibly testified that Applicant did not request her to file an appeal following his guilty plea.

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 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.

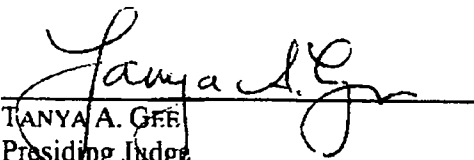
This Court notes that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRPC, provides that if the applicant wishes to seek appellate 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. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and

2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 20 day of January, 2015.


TANYA A. GEE
Presiding Judge
Third Judicial Circuit

Columbia, South Carolina

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

ANTWINE MATTHEWS, #340876

Applicant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Order of Dismissal** has been served upon the applicant by mailing one (1) copy in the United States mail, postage prepaid, addressed to:

**Charles Thomas Brooks, III, Esquire
Law Office of Charles T. Brooks, III
309 Broad Street
Sumter, South Carolina 29150**

This 1st day of March, 2016.



DANIEL GOURLEY
Attorney for Respondent

SWORN to before me this 1st day of March, 2016.



Notary Public for South Carolina.

My Commission Expires:

5/20/2020

THE BROOKS LAW OFFICES, LLC
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P.O. BOX 3512
SUMTER, S.C. 29151

South Carolina Supreme Court
PO Box 11330
Columbia, SC 29211

