

Hugh W. Welborn

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April 4, 2016

South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

RECEIVED

APR 08 2016

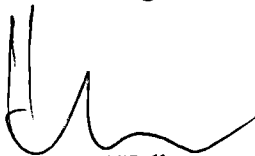
In RE: Stanley Shawn Davis, #277744 vs. State of South Carolina
Case #: 2014-CP-04-1013

S.C. SUPREME COURT

Dear Sir/Madam:

Please find enclosed herewith the original and one (1) copy of the Appellant's Notice of Appeal in connection with the foregoing matter which I ask that you file for record, returning the clocked copy to my office. I also enclose a copy of the Order of Dismissal and the original Proof of Service on Josh Thomas, Office of the Attorney General. Please use the enclosed self-addressed envelope to return the clocked copy to my office.

With kind regards,



Hugh W. Welborn

HWW/sba

cc: Office of the Appellate Defense
Office of the Attorney General
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
APPEAL FROM ANDERSON COUNTY
COURT OF COMMON PLEAS

HONORABLE FRANK R. ADDY, JR.

2014-CP-04-1013

STANLEY SHAWN DAVIS, #277744

APPELLANT,

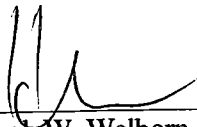
VS

STATE OF SOUTH CAROLINA,

RESPONDENT.

NOTICE OF APPEAL

Stanley Shawn Davis, #277744 appeals the denial of his Post Conviction Relief. The Post Conviction Relief Action was heard and denied by the Honorable Frank R. Addy, Jr., Circuit Court Judge on September 2, 2015, and Order of Dismissal issued on March 14, 2016, and filed on March 28, 2016. The Appellant received Order of Dismissal on April 4, 2016.



Hugh W. Welborn
Attorney for the Appellant
Post Office Box 173
Anderson, South Carolina 29622
(864) 226-5787
Attorney for Stanley Shawn Davis, #277744

Other Counsel of Record:
Josh Thomas
Office of Attorney General State of SC
Post Office Box 11549
Columbia, South Carolina 29211

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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM ANDERSON COUNTY
COURT OF COMMON PLEAS

HONORABLE FRANK R. ADDY, JR.

2014-CP-04-1013

STANLEY SHAWN DAVIS, #277744

APPELLANT,

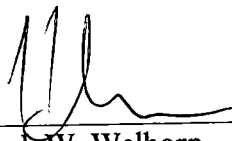
VS

STATE OF SOUTH CAROLINA,

RESPONDENT.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the State of South Carolina by depositing a copy of it in the United States Mail postage prepaid on April 4, 2016, addressed to its attorney of record Josh Thomas, Office of the Attorney General, Post Office Box 11549, Columbia, South Carolina 29211-1549



Hugh W. Welborn
Attorney for the Appellant
Post Office Box 173
Anderson, South Carolina 29622
(864) 226-5787
Attorney for Stanley Shawn Davis, #277744

Anderson, South Carolina

4 April, 2016

GS-04-0861). He was represented by Herverly Young, Esquire. On October 2, 2013, Applicant entered a guilty plea pursuant to plea agreement that included the State's recommendation for the offense's mandatory minimum thirty (30) year term of imprisonment before the Honorable R. Lawton McIntosh. Judge McIntosh accepted Applicant's plea and followed the State's recommendation in sentencing. Applicant did not appeal his sentence or conviction.

Allegations

In his application for post-conviction relief, Applicant alleged that he was being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel:
 - a. Failure to investigate Applicant's case;
 - b. Failure to investigate Applicant's competence and history of mental illness;
 - c. Failure to request a Blair¹ hearing.

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 reviewed the Clerk of Court records regarding the subject guilty plea, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the transcripts and documents from the prior proceedings, and legal arguments of counsel. Pursuant to S.C. Code Ann. §17-27-80 (2015), 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 that counsel presented credible testimony, to the effect that he prepared thoroughly for Applicant's criminal proceedings and had a firm grasp of all relevant issues. Applicant's conflicting testimony was not credible, especially in light of his sworn statements during the guilty plea hearing.

¹ State v. Blair, 275 S.C. 529, 273 S.E.2d 536 (1981).

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.

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. 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 a guilty plea, 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).

a. Failure to Investigate



Applicant has failed to meet his burden with respect to this allegation. Without a doubt, “[a] criminal defense attorney has a duty to investigate, but this duty is limited to a reasonable investigation.” Ard v. Catoe, 372 S.C. 318, 331-32, 642 S.E.2d 590, 597 (2007). Accordingly, the controlling standard for counsel’s duty to investigate is *reasonableness*. Edwards v. State, 392 S.C. 449, 457, 710 S.E.2d 60, 64 (2011). So long as a defendant’s attorney conducts a reasonable investigation, including interviewing potential witnesses when it is reasonable to do so, his performance will not be deficient. Id. at 457, 710 S.E.2d at 65. Moreover, failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result. Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998).

This Court finds that counsel met with Applicant a sufficient number of times to prepare for trial and observe his demeanor. Counsel testified credibly that he met with Applicant seven times and reviewed discovery with him. This Court finds Applicant’s contrary assertions concerning only meeting counsel twice lacking in credibility. Counsel said he also hired an investigator, who interviewed Applicant’s neighbor, wife, and daughter. Concerning Applicant’s history of mental illness, counsel said that he reviewed Applicant’s psychological records with an expert and determined a mental health evaluation was not necessary. This Court therefore finds that Applicant has failed to meet his burden to prove counsel’s investigation was not reasonable given the circumstances of this case. This allegation is therefore denied and dismissed.

b. Failure to Request a Blair Hearing

Applicant has also failed to meet his burden to prove counsel was ineffective in failing to request a Blair hearing. Due process prohibits the conviction of a person who is mentally



incompetent. Jeter at 232, 417 S.E.2d at 595 (citing Bishop v. United State, 350 U.S. 961, 76 S.Ct. 440, 100 L.Ed. 835 (1956)). This right cannot be waived by a guilty plea. Jeter at 232, 417 S.E.2d at 595 (citing Pate v. Robinson, 383 U.S. 375, 86 S.Ct. 836, 15 L.Ed.2d 815 (1966)). The test of competency to enter a plea is the same as required to stand trial. State v. Lambert, 266 S.C. 574, 225 S.E.2d 340 (1976). The accused must have sufficient capability to consult with his lawyer with a reasonable degree of rational understanding and have a rational as well as a factual understanding of the proceedings against him. Carnes v. State, 275 S.C. 353, 271 S.E.2d 121 (1980). In determining whether a competency hearing is warranted, an attorney is permitted to reasonably rely on his own perceptions of the client. See Jeter at 233, 417 S.E.2d at 596; Lee v. State, 396 S.C. 314, 322, 721 S.E.2d 442, 447 (Ct. App. 2011) (finding plea counsel could not be deficient if she had no indication of client's mental state).

Based upon the testimony and the evidence presented at the evidentiary hearing, this Court finds that counsel thoroughly investigated Applicant's mental health issues, and no grounds existed for additional evaluations to be conducted. Counsel had Applicant's existing mental health records reviewed by an outside expert who indicated that no further testing was needed. Clearly, Applicant was competent to stand trial and assist his counsel, and he understood right from wrong at the time of the incident.

Applicant has also failed to show prejudice. To show prejudice arising from failure to request a competency hearing, "the [applicant] bears the burden of proof to show by a preponderance of the evidence he was incompetent at the time of his plea." Jeter v. State, 308 S.C. 230, 232, 417 S.E.2d 594, 569 (1992). Applicant did not present any evidence or credible testimony during the evidentiary hearing that would suggest to this Court that he was not

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competent at the time of his guilty plea. As Applicant has failed to meet his burden with respect to this allegation, it is 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, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

[Signature follows]

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CONCLUSION

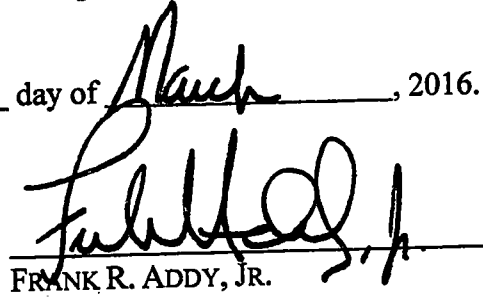
Based on the foregoing, this Court finds that the Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of intent to appeal within thirty (30) days from receipt of this Order to secure the appropriate appellate review. See Rule 203, SCACR. Rule 71.1(g), SCRCP; Bray v. State, 336 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant's counsel to file and serve notice of appeal. The Applicant's attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely filed.

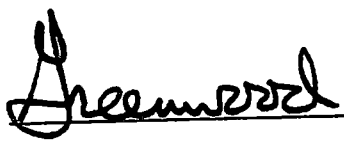
IT IS THEREFORE ORDERED

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of Respondent

AND IT IS SO ORDERED this 14th day of March, 2016.



FRANK R. ADDY, JR.
Presiding Judge
Tenth Judicial Circuit

, South Carolina

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COMMON PLEAS AND
GENERAL SESSIONS

STATE OF SOUTH CAROLINA
 COUNTY OF ANDERSON
 Stanley Shawn Davis,
 Plaintiff(s),
 -vs-
 South Carolina State Of,
 Defendant(s).

IN THE COURT OF COMMON PLEAS
 JUDICIAL CIRCUIT
 CASE NO.: 2014CP0401013
 APPOINTMENT OF COUNSEL OR GAL
 (Select one.)

ORDER
 AMENDED ORDER

TYPE OF CASE/PROCEEDING: (Check one.)

- Post-Conviction Relief (PCR)/habeas case
 SVP case
 Minor Name Change
 Adoption
 Custody and/or Visitation
 Other: Post Convict Rel 500
 Juvenile
 Abuse and Neglect

A TRUE COPY

MAY 30 2014

It appears Stanley Shawn Davis, who is a litigant in this case, is entitled to court-appointed counsel or a guardian ad litem.

It further appears that: (Select only one.)

- counsel/guardian ad litem has not yet been appointed by the court; therefore, an appointment for counsel/guardian ad litem is necessary.
 counsel or a guardian ad litem was previously appointed by the court but has indicated either a possible conflict of interest, an entitlement to exemption, or other good cause warranting the appointment of new counsel or guardian ad litem based on:
 counsel was previously appointed by the court but has not indicated that the litigant has retained private counsel and is no longer entitled to appointed counsel.
 court appointed counsel has obtained, Esquire as substitute counsel pursuant to Rule 608(h)(2) provided, however, only the member who originally received the appointment and who sought substitute counsel, shall receive credit.
 Other: .

Therefore, it is ordered that Hugh W. Welborn hereby is appointed as (Select one.)

- counsel lead counsel (if capital PCR case) guardian ad litem
 for the above-named person. Any counsel or GAL previously appointed is/are hereby relieved.

(If Death Penalty PCR Case) It is further ordered that, Esquire, is hereby appointed as second counsel in this capital PCR case.

The clerk of court is directed to forward a copy of this order to all persons entitled to notice.

IT IS SO ORDERED
 May 28, 2014

Circuit Judge Clerk of Court

Plaintiff Attorney:

Defendant Attorney:

John Walter Whitmire	
PO Box 11549	
Columbia, SC 29211-1549	

NOTICE: SC Supreme Court Order of September 29, 2006, requires appointed counsel entitled to payment from the Office of Indigent Defense (OID) to register the case online with OID within fifteen (15) days of this appointment at www.sccid.sc.gov, and further directs that reimbursement vouchers be submitted directly to SCCID and not to the trial judge or clerk of court. See SCCID website for further details.

Hugh W. Welborn

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April 4, 2016

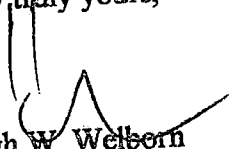
South Carolina Office of Appellate Defense
P. O. Box 11589
Columbia, South Carolina 29211-1589

In RE: Stanley Shawn Davis, #277744 vs. State of South Carolina
Case #: 2014-CP-04-1013

Dear Sir or Madam:

In connection with the foregoing matter, please be advised that I was the Court Appointed Attorney and enclose herewith a copy of my appointment. I also enclose copies of all documents you requested for filing a copy of the Appellant's Notice of Appeal in this matter together with a copy of the Order and Proof of Service. I ask that your office assume representation of this indigent Applicant.

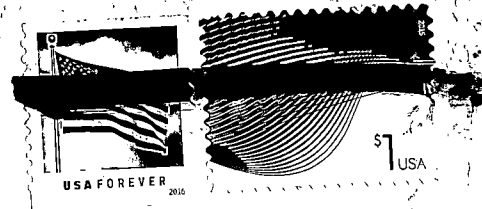
Very truly yours,


Hugh W. Welborn

HWW/sba
Enclosures

cc: South Carolina Supreme Court
Court of Appeals
Office of Attorney General

Hugh W. Welborn
Attorney At Law
P.O. Box 173
Anderson, SC 29622



South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211