

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM MARION COUNTY
Court of Common Pleas

The Honorable Edgar W. Dickson, Circuit Court Judge

Case No. 2012-CP-33-894

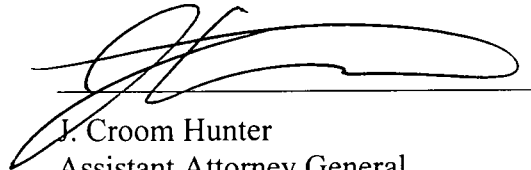
Shawn Bell, #296143,Respondent,

v.

State of South Carolina,Petitioner.

NOTICE OF APPEAL

The State of South Carolina appeals the orders of the Honorable Edgar W. Dickson, dated March 9, 2016 and filed March 28, 2016. Petitioner received written notice of entry of this order on April 13, 2016.



J. Croom Hunter
Assistant Attorney General
S.C. Bar No. 101253

Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

Other Counsel of Record:

Steven W. Fowler, Esquire
1019 Highway 17 South #222
North Myrtle Beach, SC 29582

RECEIVED

APR 27 2016

SC SUPREME COURT

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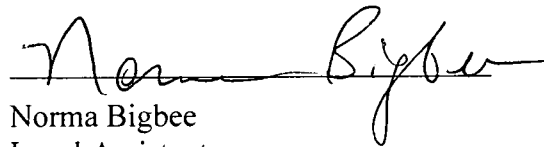
State of South Carolina, Petitioner.

PROOF OF SERVICE

I, Norma Bigbee, certify that I have served the within Notice of Appeal on Respondent by depositing a copy of the same in the United States mail, postage prepaid, addressed to:

Steven W. Fowler, Esquire
1019 Highway 17 South #222
North Myrtle Beach, SC 29582

I further certify that all parties required by Rule to be served have been served on this date, April 27, 2016.



Norma Bigbee
Legal Assistant
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

STATE OF SOUTH CAROLINA)
COUNTY OF MARION)

Shawn Bell, #296143)

-Applicant,)

v.)

State of South Carolina,)

Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE TWELFTH JUDICIAL
CIRCUIT

Case No. 2012-33-894

ORDER

MARION COUNTY SC
SHERRY R. RHODES
CLERK OF COURT

2016 MAR 28 PM 4:29

FILED

ORDER DENYING MOTION TO RECONVENE

After careful review of the record and previous filings by both parties, it is apparent that

- 1) The State had knowledge and sufficient notice of Applicant's desire to argue ineffective assistance of counsel due to failure to communicate a plea offer from the State.
- 2) The State had appropriate time to locate any witnesses to support the argument that Applicant rejected said plea offer, but failed to do so until some six months after the hearing and almost a year after receiving Applicant's Amended Complaint in late July of 2014 that contained Applicant's issue of the failed communication of the plea offer.
- 3) Applicant also briefly listed in his original PCR application the issue of the plea offer.

IT IS THEREFORE ORDERED THAT:

1. The State's Motion to reconvene is denied.

AND IT IS SO ORDERED this the 9th day of March, 2016



~~THE HONORABLE~~ EDGAR W. DICKSON
Presiding Judge

Orangeburg, South Carolina

STATE OF SOUTH CAROLINA)
 COUNTY OF MARION)
 Shawn Bell, #296143,)
 Applicant,)
 v.)
 State of South Carolina,)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE TWELFTH JUDICIAL CIRCUIT

Case No. 2012-33-894

ORDER

FILED
 2016 MAR 28 PM 4:29
 MARION COUNTY SC
 SHERY R. RICHES
 CLERK OF COURT

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed December 14, 2012. Respondent made a timely Return on or about May 15, 2013. The Court convened an evidentiary hearing into the matter on October 9, 2014, at the Florence County Courthouse. Applicant was present at the hearing and represented by Steven W. Fowler, Esquire. Joshua L. Thomas, Esquire, of the South Carolina Attorney General’s Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant’s trial counsel, Jack Lawson, Esquire, did not testify. The Court had before it a copy of the trial transcript, the records of the Marion County Clerk of Court regarding the subject convictions, Applicant’s records from the South Carolina Department of Corrections, and the pleadings in this matter. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Marion County County Clerk of Court. Applicant was indicted by the Marion County Grand Jury for distribution of cocaine base and distribution of cocaine base within proximity of a school or park (2009-GS-33-105). Jack Lawson, Esquire (“trial counsel”), represented Applicant. On March 4, 2010, Applicant was found guilty after a trial by jury and sentenced by the

plea offer, as failure to notify a defendant of a plea offer constitutes a gross deviation from professional standards. Judge at 150. To establish the second prong of the Strickland analysis, the applicant must show that he was prejudiced by such deficient performance. Davie v. State, 675 S.E.2d 416, 421 (2009). While an applicant's own statement that he would have accepted the plea can be enough to show prejudice, the fact that the plea bargain offered would have resulted in a lesser sentence is indicative of prejudice. Id. .

The Court established a two-part test for establishing a claim of ineffective assistance of counsel. Under this test, a criminal defendant may not obtain relief unless he can show that 1) counsel's performance fell below an objective standard of reasonableness, *and* 2) that counsel's performance gives rise to a reasonable probability that, if counsel had performed adequately, the result would have been different.

A. Summary of Testimony

Applicant testified at the hearing that he never received notice of any plea offer, and had he known of the offer that had been extended he would have accepted it and waived his right to a jury trial. In addition to Applicant's own statement, the ultimate offer on the table was a five-year sentence, far more favorable than Applicant's consecutive maximum sentences he received for his convictions.

This plea offer was confirmed by testimony of the solicitor.

B. Ineffective Assistance of Trial Counsel

In a post-conviction relief action, Applicant bears the burden of proving the allegations in the application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of trial counsel as a ground for relief, Applicant must prove trial 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." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether trial counsel provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)).

The Court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Strickland, at 117, 386 S.E.2d at 625. First, Applicant must prove trial counsel's performance was deficient. Id. Under this prong, the Court measures trial counsel's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, trial counsel's 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.

1. Failure to inform Applicant of a plea offer.

The Court finds Applicant met his burden to show trial counsel ineffective for failing to inform the Applicant of a plea offer. Regarding this allegation, based on testimony and case law, the Court finds Applicant's testimony credible. According to case law and testimony in this case, trial counsel did not provide effective reasoning why he did not inform the Applicant of the plea offer. Accordingly, the Court finds Applicant has demonstrated trial counsel's performance fell below a reasonable standard and that Applicant was prejudiced by trial counsel's performance.


IV. CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has established constitutional violations and deprivations that would require this Court to grant his application. Applicant has met the two-pronged test set out in Strickland. Therefore, this application for post-conviction relief must be granted.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is granted.

AND IT IS SO ORDERED this 9th day of March, 2016


~~Ed~~ THE HONORABLE EDGAR W. DICKSON
Presiding Judge

deangely, South Carolina



ALAN WILSON
ATTORNEY GENERAL

April 27, 2016

RECEIVED
APR 27 2016
SC SUPREME COURT

The Honorable Daniel E. Shearouse
Clerk of Court, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re: Shawn Bell, Respondent v. State of South Carolina, Petitioner
Civil Action No. 2012-CP-33-894

Dear Mr. Shearouse:

Enclosed for filing is a notice of appeal in the above case. Also enclosed are the following:

1. A copy of the order to be challenged on appeal.
2. Proof of service of notice of appeal on the Respondent.
3. Correspondence with the court reporter regarding the transcript.

Sincerely,

J. Croom Hunter
Assistant Attorney General
Bar No: 101253

JCH/nb

Enclosures

CC: Steven W. Fowler, Esquire
South Carolina Department of Corrections
The Honorable Sherry R. Rhodes, Marion County Clerk of Court
The Honorable E.L. Clements, Twelfth Circuit Solicitor
Office of Appellate Defense
Ms. Trisha Allen, Victim Services