

FALK LAW FIRM, LLC.

James K. Falk

(843) 606-6007

(843) 972-9005 Fax

Admitted to practice: KY(1984) S.C. (2010) jfalklaw@gmail.com

May 16, 2016, 2016

RECEIVED

MAY 20 2016

Clerk of Court
Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

S.C. SUPREME COURT

Re: Vashawn Ravenel, 2014-CP-10-04586

Dear Clerk Shearouse:

Please find the enclosed Notice of Appeal, Proof of Service, and Order of Dismissal in the above Charleston County PCR action. Please return a clocked copy of the Notice of Appeal and Proof of Service in the enclosed SASE.

Should you have any additional questions please do not hesitate to contact my office.

With best regards, I am,



James K Falk

Thank you for your assistance.

Cc: Rutledge Johnson, Esq.; Vashawn Ravenel 336066.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

MAY 20 2016

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas

S.C. SUPREME COURT

Honorable Deadra L. Jefferson, Circuit Judge

Case No.: 2014-CP-10-4586

Vashawn Ravenel 366066.....PETITIONER

V.

State of South Carolina.....RESPONDENT

NOTICE OF APPEAL

The Petitioner Vashawn Ravenel appeals the Honorable Deadra L. Jefferson's, May 5, 2016 Order of Dismissal. Undersigned counsel received notice of entry of the order on May 13, 2016. A copy of the order on appeal is attached hereto.



James K Falk
Falk Law Firm
PO Box 1058
Charleston, SC 29402

May 16, 2016

Rutledge Johnson, Esq.
Office of S.C. Attorney General
PO Box 11549
Columbia, SC 29211-1549

THE STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas

Honorable Deadra L. Jefferson, Circuit Judge

Case No.: 2014-CP-10-04586

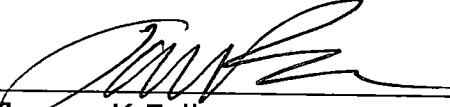
Vashawn Ravenel #336066.....PETITIONER

V.

State of South Carolina.....RESPONDENT

PROOF OF SERVICE

I, James Falk, certify that I have today served the within notice of appeal upon the Respondent by depositing a copy of it in the U.S. Mail, postage prepaid, addressed to its attorney of record, Rutledge Johnson, Office of the S.C. Attorney General, PO Box 11549, Columbia, SC 29211-1549. I further certify that all parties required by Rule to be served have been served this May 16, 2016.


James K Falk
Falk Law Firm
PO Box 1058
Charleston, SC 29402

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Vashawn Ravenel, #336066,)
Applicant,)

2014-CP-10-4586

v.)

ORDER OF DISMISSAL

State of South Carolina,)
Respondent.)

FILED
2015 MAY -9 AM 11:02
JULIE J. ARMSTRONG
CLERK OF COURT

| | |
|------------------------|------------------------------|
| Presiding Judge: | Hon. Deadra L. Jefferson |
| Applicant's Attorney: | James K. Falk, Esquire |
| Respondent's Attorney: | J. Rutledge Johnson, Esquire |
| Trial Counsel: | W. Stephen Harris, Esquire |
| Appellate Counsel: | Wanda C. Carter, Esquire |
| Date of Hearing: | December 15, 2015 |
| Court Reporter: | Ruth Weese |

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed July 25, 2014. The Respondent made its Return on April 14, 2015 and filed on April 15, 2015. An evidentiary hearing into the matter was convened on December 15, 2015 at the Charleston County Courthouse. The Applicant was present at the hearing and represented by James K. Falk, Esquire. J. Rutledge Johnson, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

At the hearing, Wanda H. Carter, Esquire, and Steve Harris, Esquire, testified. This Court had before it a copy of the records of the Charleston County Clerk of Court, records from the South

Carolina Department of Corrections, the Applicant's PCR Application, the State's return, the trial transcript and the appellate records.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted at the December 2008 term of the Charleston County Grand Jury for Attempted Armed Robbery¹ (2008-GS-10-9734), Assault with Intent to Kill (AWIK)² (2008-GS-10-2081), and Pointing and Presenting a Firearm³ (2008-GS-10-9736). The Applicant was represented by W. Steven Harris, Esquire, sitting first chair and David M. Holton, Esquire sitting second chair.

On July 28, 2009, the Applicant proceeded to trial and was found guilty. The Applicant was sentenced by the Honorable Roger M. Young, Sr., to confinement for a period of twenty (20) years for attempted armed robbery, ten (10) years for AWIK, and five (5) years for pointing and presenting a firearm. The Applicant's convictions are to be served consecutively.

The Applicant filed a timely Notice of Appeal. His appeal was perfected by Wanda H. Carter, Esquire, of the South Carolina Office of Appellate Defense. The Applicant's convictions and sentences were affirmed by the Court of Appeals. State v. Ravenel, No. 2011-UP-425 (S.C. Ct. App. September 20, 2011). The Applicant filed a Petition for Rehearing, which was denied on February

¹ Attempted Armed Robbery is a violent, most serious felony punishable by twenty (20) years' imprisonment. See S.C. CODE ANN. § 16-11-330(B) (2012); S.C. CODE ANN. § 16-1-60 (2012); S.C. CODE ANN. § 17-25-45 (2012).

² The crime of Assault and Battery with Intent to Kill shall be a most serious, violent felony in this State and any person convicted of such crime shall be punished by imprisonment not to exceed twenty (20) years. S.C. CODE ANN. § 16-3-620 (2007); S.C. CODE ANN. § 17-25-45 (2007); S.C. CODE ANN. § 16-1-60 (2007).

2/2/10
W.H.C.

14, 2012. The Supreme Court denied his Petition for Writ of Certiorari on February 26, 2014. The Remittitur was issued on March 14, 2014.

ALLEGATIONS

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

1. Ineffective assistance of counsel.
 - a. Counsel failed to object and move for a mistrial when the solicitor and State witness referred to the attempted carjacking which was previously *nolle prossed*.
 - b. Counsel failed to make a motion to quash the attempted armed robbery indictment when the attempted carjacking indictment was *nolle prossed*.
2. Ineffective assistance of appellate counsel.
 - a. Counsel failed to raise the issue that trial counsel erred in failing to suppress evidence that stemmed from an illegal arrest.

SUMMARY OF TESTIMONY

At the evidentiary hearing, Appellate Counsel testified the issue that she briefed was the sufficiency of the evidence as to withstand a directed verdict. She stated she had an oral argument in the Court of Appeals. Counsel stated she prepared this case by reading the transcript and taking notes. She then reviewed her notes and reread the transcript to pick the best issues to present to the appellate court. Counsel stated she did not raise the issue of the trial counsel's failure to suppress the evidence of an illegal arrest. She then testified that she would have raised the issue if she thought it

³ Pointing and Presenting a Firearm is a felony punishable by five (5) years imprisonment. S.C. CODE ANN. § 16-23-410 (2008).

was a viable one. She articulated that if the arrest was illegal, she would have raised it; but she was not convinced that this issue had merit.

Trial Counsel, W. Stephen Harris, testified that one of the main issues in this case was whether or not law enforcement conducted an illegal search or a Terry⁴ frisk. Counsel stated he argued that any further action other than Terry needed to be done while Applicant was under arrest. Counsel stated he moved to exclude the evidence and also made contemporaneous objections, including renewing all prior objections at the end of the State's case.

Counsel further testified that there was a stipulation between the State and Counsel that there would be no mentioning of "carjacking," as the State dismissed that charge which, in his opinion, would be easier to prove. Counsel stated he wanted to keep the word "carjacking" away from the ears of jury. Counsel stated he discussed with Judge Young that the attempted armed robbery should also be dismissed and once again did not want the jury hearing about "carjacking."

Counsel then testified to several instances throughout the transcript where he tried to make sure the word "carjacking" was not used by a witness. When the victim testified about the incident, he stated "tried to get in the car again." (Tr. 95-96). Counsel testified this was not a reference to carjacking and that Applicant was charged with attempted armed robbery. As such, the State had to prove that Applicant attempted to deprive victim of some piece of personal property. On page 109 of the trial transcript, the victim stated "take my car." Counsel testified that he did not object because as a matter of trial strategy, he did not want to upset the jury or "re-ring the bell."

⁴Terry v. Ohio, 392 U.S. 1 (1968).

Counsel, when presented with the State's closing argument and the Solicitor's references to the car, testified he does not like to object during closing argument unless it is something egregious as it draws more attention to an argument which is not evidence. Counsel also testified he would have objected had he heard the term "carjacking." The references by the Solicitor came from pages 203, 204, 205, 207, 208, and 210 of the trial transcript. Counsel then articulated that, as per trial strategy, if he had objected, he would be acknowledging something that is not evidence (Solicitor's closing argument), and the jury could think he expected to lose the case or the Court could say Defendant was trying to take personal property. Counsel also stated there was a sidebar conference, in which the Court reminded both attorneys not to use the term "carjacking." Counsel lastly stated that the Court denied his directed verdict specifically on the attempted armed robbery charge (Tr. 193: 18-21).

On cross-examination, Counsel agreed that the term "carjacking" was not used whatsoever throughout the trial. Counsel also agreed that the definition of armed robbery includes the taking of personal property, an element which the State has to prove in this case.

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. The Court also has read the trial transcript and the appellate records, all of which assists the Court in judging their credibility.

Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

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) (citing Rule 71.1(e), SCRCP). 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, 104 S.Ct. 2052, 2064 (1984); Butler v. State, 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, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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. "[W]here counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." Watson v. State, 370 S.C. 68, 72, 634 S.E.2d 642, 644 (2006). 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.

This Court had the opportunity to observe the witnesses on the witness stand and hear their testimony. This Court has also read the trial transcript, all of which assists the Court in judging the witnesses' credibility. This Court finds Trial Counsel's testimony persuasive and very credible.

This Court further finds Trial Counsel diligently represented his client. Counsel meticulously ensured that the term "carjacking" was not used throughout the trial. Counsel also explained that the State made reference to the Victim's car as part of the definition or elements of an attempted armed robbery. "A person is guilty of attempted armed robbery if the person has a specific intent to commit armed robbery. Robbery is defined as the felonious or unlawful taking of money, goods, or other personal property of any value from the person of another or in his presence by violence or by putting such person in fear." State v. Thompson, 374 S.C. 257, 262, 647 S.E.2d 702, 705 (Ct. App. 2007) (internal citations omitted). As the State charged Applicant with attempted armed robbery, it must prove every element of the crime. One of the main elements of robbery is the taking of personal property of any value of another person. In this case, the victim's car was the personal property in question. Based on the *res gestae* of this case, it was permissible for the State to mention that Applicant was trying to take the victim's car. As there was no reference to the term "carjacking," Counsel had no legal basis to object during the testimony or the State's closing argument. Furthermore, Counsel testified that he made the strategic decision not to object because he did not want to bring any more attention to the mention of "carjacking" in front of the jury. As such, this Court finds Applicant has failed to meet his burden of proving that Counsel was deficient in this manner or that there was any resulting prejudice.

This Court further finds overwhelming evidence of Applicant's guilt in this case. Where there is overwhelming evidence of guilt, a trial counsel's deficient representation will not be prejudicial.

Ford v. State, 314 S.C. 245, 442 S.E.2d 604 (1994); See also Humbert v. State, 345 S.C. 332, 548 S.E.2d 862 (2001), Geter v. State, 305 S.C. 365, 409 S.E.2d 344 (S.C. 1991). In Ford, trial counsel failed to request an alibi instruction and his representation was found deficient as a result. However, the evidence of the applicant's guilt in Ford was overwhelming and the South Carolina Supreme Court held that the Applicant failed to prove the second prong of Strickland, which requires that an Applicant show prejudice by the deficient representation.

Even assuming *arguendo* Counsel performed deficiently, Applicant can prove no resulting prejudice. In considering the totality of the record if there were any errors the record reflects overwhelming evidence of guilt of the Applicant. There were three credible eyewitnesses to the crime including the Victim who identified the Defendant, the camouflage face mask the Defendant was wearing, and the gun the Defendant used. The police also found the mask, gun, and bullets on the Defendant's person. Based on the entirety of the trial transcript, there is overwhelming evidence of Applicant's guilt in this case. Thus, this allegation is denied.

Ineffective Assistance of Appellate Counsel

A defendant is constitutionally entitled to effective assistance of appellate counsel. See Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830 (1985). "However, appellate counsel is not required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990). Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745, 749, 103 S. Ct. 3308, 3311 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226, 1235 (4th Cir. 1985).

8/2/10
[Signature]

The Applicant must show that appellate counsel's performance was deficient and that he was prejudiced by the deficiency. Thrift, at 537; Gilchrist v. State, 364 S.C. 173, 612 S.E.2d 702 (2005); Anderson v. State, 354 S.C. 431, 581 S.E.2d 834 (2003). When a claim of ineffective assistance of counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

This Court finds Appellate Counsel's representation of Applicant in this case well above the professional norms. Counsel fully investigated potential preserved issues on appeal and assisted Applicant in his defense. Counsel testified she reviewed the entire record and briefed the most meritorious issue, giving her client the best chance of prevailing. Further, Counsel testified that if she thought the illegal arrest issue was viable, then she would have raised it. This Court finds Appellate Counsel's testimony persuasive and very credible. Therefore, this Court finds the Applicant has failed to meet his burden of proving counsel's performance was deficient or that he was prejudiced thereby. Accordingly, this allegation is denied.

CONCLUSION

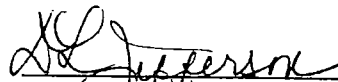
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) 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, 454, 409 S.E.2d 395, 396 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCR, provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant's attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

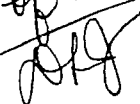
IT IS THEREFORE ORDERED:

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!


Deadra L. Jefferson
Presiding Judge
Ninth Judicial Circuit

May 5, 2016
Charleston, South Carolina

~~10 of 10~~


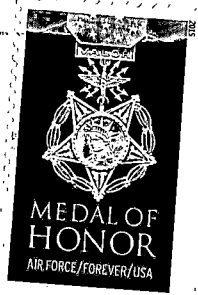
WALKER LAW FIRM

PO Box 1058

Charleston, SC 29402



ALWAYS
USE ZIP CODE



Clerk of Court.
Supreme Court of South Carolina
PO Box 11330
Columbia, SC 29211-1549

29211-1549 5099

