PAUL ARCHER

Attorney at law

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Certified as Lead Counsel for Death Penalty Defense

Member N.Y. Bar since 1966
Member S.C. Bar 1994
Federal Bar since 1967
United States Supreme Court 1976

233 Muirfield Drive
Pawleys Island, South Carolina 29585

Honorable Daniel E. Shearouse
Clerk Of Court
SC Supreme Court
P.O. Box 11330
Columbia, SC 29211

September 20, 2012

Re: Notice Of Appeal Travis D. Bellamy PCR

Dear Mr. Shearouse:

Enclosed is a Notice Of Appeal and Proof of Service in the above PCR.

I have served the necessary parties.

I was appointed on the above case in Horry County and since the Applicant is indigent I have sent a copy of the Appeal to Appellate Defense to handle the appeal.

Thank you.

Very truly yours,

Paul Archer

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM HORRY COUNTY
HONORABLE THOMAS A. RUSSO

Case # 2011-CP-26-5644

TRAVIS D. BELLAMY 323612.....APPLICANT

STATE OF SOUTH CAROLINA.....RESPONDENT

NOTICE OF APPEAL

Travis D. Bellamy appeals the Order of the Honorable Thomas A. Russo, dated September 6, 2012.

Other Counsel of record:

Paul Archer, Esq.
Attorney for Applicant
233 Muirfield Drive
Pawleys Island, SC 29585
(843) 979-4000

Tyson Andrew Johnson, Sr. Esq.
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
(803) 734-3737

Dated: September 20, 2012

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM THE HONORABLE
HONORABLE THOMAS A. RUSSO

Case # 2011-CP-26-5644

TRAVIS D. BELLAMY.....APPLICANT

STATE OF SOUTH CAROLINA.....RESPONDENT

PROOF OF SERVICE

The undersigned, Attorney for the Applicant, hereby certifies that a true copy of the Notice Of Appeal in the above case has been served upon the following by mailing a copy to each in a properly addressed envelope on September 20, 2012.

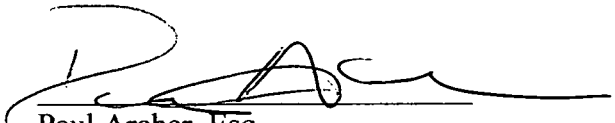
South Carolina Supreme Court
P.O. Box 11330
Columbia, SC 29211

Travis D. Bellamy 323612
Lieber Correctional
P.O. Box 205
Ridgeville, SC 29472

Tyson Andrew Johnson, Sr. Esq.
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211-1549

Office Of Appellate Defense
1330 Lady Street, Suite 401
Columbia, SC 29201

Horry County Clerk's Office
P.O. Box 677
Conway, SC 29528



Paul Archer, Esq.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	2011-CP-26-5644
COUNTY OF HORRY	)	
	)	
Travis D. Bellamy, 323612	)	
	)	
	)	
Applicant,	)	
	)	**ORDER OF DISMISSAL**
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

HORRY COUNTY
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MELANIE HUGGINS-WARD
CLERK OF COURT

This matter comes before the Court by way of an Application for Post-Conviction Relief filed July 5, 2011. Respondent made its Return on August 4, 2011. The Court convened an evidentiary hearing into the matter on August 27th, 2012, at the Horry County Courthouse. The Applicant was present at the hearing and was represented by Paul Archer, Esquire. Tyson Andrew Johnson, Sr., Esquire of the South Carolina Attorney General's Office represented Respondent.

At the hearing, the Applicant testified on his own behalf. Also testifying was Ronald W. Hazzard, Esquire. This Court had before it the PCR Application, the State's Return, the records of the Clerk of Court, the transcript, and the Applicant's records from the South Carolina Department of Corrections.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to convictions from Horry County. The Applicant was indicted in September 2007 for first-degree burglary (2007-GS-26-3930), kidnapping (2007-GS-26-3931), and armed robbery (2007-GS-26-

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3932). He was represented by Ronald W. Hazzard, Esquire.

On August 3-6, 2009, Applicant was tried before the Honorable Benjamin H. Culbertson. The jury found the Applicant guilty of first-degree burglary and armed robbery, but not guilty of kidnapping. Judge Culbertson sentenced the Applicant to 30 years for armed robbery and life imprisonment for first-degree burglary. The sentences were to run concurrently. A notice of appeal was timely filed, and Wanda H. Carter, Esquire, represented the Applicant on appeal. The South Carolina Court of Appeals affirmed the conviction on May 18, 2011 (2011-UP-221). The case was remitted to the circuit court on June 3, 2011.

Allegations

In his application for post-conviction relief the Applicant alleges he is being held in custody unlawfully for the following reason:

1. Ineffective assistance of counsel – counsel failed to adequately investigate the case; and
2. Due process of law violation – Judge erred in giving an unconstitutionally coercive Allen instruction with threatening remarks to the jury, and the judge constructively amended the indictment during trial.

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.

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, 80 L.Ed.2d 674, 692 (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, 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, supra). 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. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland).

Failure to object to sentence

Applicant testified his counsel was ineffective because he failed to object to what Applicant felt was an excessive sentence, and that as a person with no substantial prior record, he felt he was punished for going to trial. Applicant testified that his co-defendant received a ten year plea offer and took it. Attorney Hazard testified that Applicant had been offered fifteen years and had rejected the offer. The negotiations were between counsel and the State, and the sentencing Judge was not a party to any plea negotiations that may have occurred. Applicant seemed to think that Attorney Hazzard should have immediately objected to the sentence as excessive, but the testimony in this matter establishes that while Hazzard may not have acted immediately after the sentence was announced, Hazzard made a timely motion to reconsider the sentence, which was to no avail. It appears from the testimony that Hazzard acted reasonably and within professional norms.

Applicant produced no evidence that his sentence was excessive. Applicant's sentence is well within the legal sentence that was available to the trial court. Applicant failed to show his counsel was ineffective. In reaching this conclusion, this Court finds counsel's testimony credible and gives it great weight. This Court does not find Applicant's testimony persuasive. I find that counsel acted reasonably, and that counsel was not deficient in this respect, nor was applicant prejudiced ay any alleged deficiency. Further, I find counsel's actions were reasonable under prevailing professional norms, and therefore this claim is denied.

Other Allegations

No other allegations were raised or testified to at the PCR hearing. Therefore, any additional allegations raised in the PCR Application or amendment are deemed waived because no evidence was presented.

CONCLUSION

Based on 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 is denied and dismissed with prejudice.

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 6th day of Sept, 2012.

THOMAS A. RUSSO
Presiding Judge
Fifteenth Judicial Circuit

Florence, South Carolina.

PAUL ARCHER
Attorney at Law
233 Muirfield Drive
Pawleys Island, South Carolina 29585

N/O postage attached when rec'd. 9/24

Travis D. Bellamy

Honorable Daniel E. Shearouse
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