



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
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Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

RECEIVED

MAR 12 2012

March 12, 2012

S.C. Supreme Court

The Honorable Daniel E. Shearouse
Clerk, S.C. Supreme Court
Post Office Box 11330
Columbia, SC 29211

Dear Mr. Shearouse:

The following case falls under the 60 day rule for appeals, and the date we received the transcript is listed to the side.

Thomas Curtis Hamilton v. State of South Carolina

3/9/2012

I would appreciate you beginning our time limits from the above date, and if you need additional information, or have any questions please contact me.

Thank you for your assistance in this matter.

Sincerely,

Lorlene French
Legal Services Coordinator



SCCID

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Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

January 5, 2012

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JAN - 5 2012

S.C. Supreme Court

Ms. Anne Bouley Meyer
Circuit Court Reporter
P O Box 12093
Charleston, SC 29422

Dear Ms. Meyer:

Please provide us with the following transcript:

Thomas Curtis Hamilton v. State of South Carolina Case #: 10-CP-10-07619

County: Charleston Date of Trial: September 14, 2011

Presiding Judge: Deadra L. Jefferson

To ensure prompt payment, please sign and complete the enclosed CID FORM 3500 and include the original criminal case number (Indictment number) where the space is provided.

Please number the lines on the paper from 1-25, and include any and all recorded motions, pre and post-trial. Additionally, please transcribe the jury selection, and the State and defense counsel's opening and closing arguments.

If you are aware of any co-defendants or if the Attorney General's Office has already requested a transcript, please let us know.

Sincerely,


Lorraine French
Legal Services Coordinator

cc: S.C. Supreme Court
Attorney General's Office

The South Carolina Court of Appeals

Thomas Curtis Hamilton, #161339, Appellant,

v.

State of South Carolina, Respondent.

The Honorable Deadra L. Jefferson
Charleston County
Trial Court Case No. 2010-CP-10-07619

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DEC - 6 2011

S.C. Supreme Court

ORDER

The appeal in the above captioned matter is transferred to the South Carolina Supreme Court under the filing provisions of Rule 243 of the South Carolina Appellate Court Rules.

IT IS SO ORDERED.

JOHN CANNON FEW, CHIEF JUDGE
For The Court

BY *V. Claire Allen, Deputy*
CLERK

Columbia, South Carolina

cc: Edward K. Pritchard, III, Esq.
Chief Appellate Defender Robert M. Dudek
Assistant Attorney General Matthew J. Friedman
The Honorable Daniel Shearouse

FILED

12/1/11



PRITCHARD & ELLIOTT, LLC
ATTORNEYS AND COUNSELORS AT LAW

Writer's direct email: epritchard@pritchard-elliott.com

Post Office Box 630 | Charleston, SC 29402

129 Broad Street | Charleston, SC 29401

Tel: (843) 722-3300 | Fax: (843) 722-3379

November 21, 2011

The Honorable Tanya A. Gee
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

RE: *Thomas Curtis Hamilton, # 161339, Appellant v. State of South Carolina,*
Respondent
Case No. 2010-CP-10-7619

Dear Ms. Gee:

In connection with the above, enclosed for filing please find an original and one copy of the Notice of Appeal to which are attached the judgment being appealed from and the Order underlying the judgment. Also enclosed is the proof of service of the Notice of Appeal on respondent and the Clerk of the lower court, and a self-addressed, stamped envelope for returning to me a clocked copy of the Notice for my records.

It is my understanding that no filing fee is required in the appeal of a post-conviction relief judgment.

Thank you for your assistance in this matter.

With warmest personal regards, I am

Yours very truly,

Edward K. Pritchard, III

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DEC - 6 2011

S.C. Supreme Court

Enclosure

CC:

Matthew J. Friedman, Asst. Atty. General
Mr. Thomas Hamilton

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NOV 23 2011

SC Court of Appeals

 ORIGINAL

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Deadra L. Jefferson, Presiding Judge, Ninth Judicial Circuit

Case No. 2010-CP-10-7619

Thomas Curtis Hamilton, # 161339 Appellant,
v.
State of South Carolina Respondent.

NOTICE OF APPEAL

Thomas Curtis Hamilton appeals the judgment of the Honorable Deadra L. Jefferson dated October 25, 2011, and received on November 4, 2011, denying his motion to alter or amend the *Order of Dismissal* of The Honorable Deadra L. Jefferson dated October 7, 2011. Appellant has attached hereto the *Order Denying Motion to Alter or Amend Judgment Pursuant to Rule 59(e), SCRCF*, being appealed from, and the underlying *Order of Dismissal*.

Charleston, South Carolina
November 21, 2011



Edward K. Pritchard, III
Pritchard & Elliott, LLC
Post Office Box 630
Charleston, SC 29401
Attorneys for Appellant
(843) 722-3300

RECEIVED

DEC - 6 2011

S.C. Supreme Court

Other Counsel of Record:
Matthew J. Friedman, Esq.
Assistant Attorney General
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211-1549
Attorneys for Respondent
(803) 734-3970

RECEIVED

NOV 23 2011

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Deadra L. Jefferson, Presiding Judge, Ninth Judicial Circuit

Case No. 2010-CP-10-7619

Thomas Curtis Hamilton, # 161339 Appellant,
v.
State of South Carolina Respondent.

CERTIFICATE OF SERVICED

The undersigned hereby certifies that a true and correct copy of the *Notice of Appeal* was served via postage paid, First Class U.S. Mail on November 21, 2011, to all known counsel of record as follows, and to the Clerk of Court for Charleston County for filing:

Matthew J. Friedman, Esq.
Assistant Attorney General
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211-1549
Attorneys for Defendant/Respondent

The Honorable Julie J. Armstrong
Clerk, Charleston County Court of Common Pleas
100 Broad Street, Suite 106
Charleston, SC 29401

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DEC - 6 2011

S.C. Supreme Court

Pritchard & Elliott, LLC

Marras, Leg. Asst.

RECEIVED

NOV 23 2011

SC Court of Appeals

JULIE J. ARMSTRONG
CLERK OF COURT, C.P. & G.S.
100 BROAD STREET, SUITE 106
CHARLESTON, SC 29401-2258
RETURN SERVICE REQUESTED



www3.charlestoncounty.org

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EDWARD K. PRITCHARD III
PRITCHARD & ELLIOTT, LLC
129 BROAD ST
CHARLESTON SC 29401-2433

NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRPC

Order/denying mot to alter or amend judgment

CASE NO: 2010CP1007619

Thomas Curtis #161339 Hamilton VS South Carolina State Of

This judgment was entered on the 28th day of October, 2011, and a copy mailed first class on Tuesday, November 01, 2011, to all counsel of record and/or all parties entitled to receive notice.

You may view and download this document at www3.charlestoncounty.org.

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
Thomas Curtis Hamilton, #161339,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)

IN THE COURT OF COMMON PLEAS
OF THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2010-CP-10-7619

ORDER DENYING MOTION TO
ALTER OR AMEND JUDGMENT
PURSUANT TO RULE 59(e), SCRCF

FILED
2011 OCT 28 AM 9:40
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

Presiding Judge: Deadra L. Jefferson
Applicant's Attorney: Edward K. Pritchard, III., Esq.
Respondent's Attorney: Matthew J. Friedman, Esq.
Trial Counsel: Martha Kent Runey, Esq.
Date of Hearing: September 14, 2011
Court Reporter: Anne Meyer

THIS MATTER comes before the Court by way of the Applicant's Motion pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, filed October 13, 2011 and received by the Court October 14, 2011, in which he asks the Court to alter or amend its Final Order dismissing his application for post-conviction relief (PCR). The Court's Final Order was filed October 10, 2010. The State submitted a Return and Motion to Dismiss Motion to Alter or Amend dated October 21, 2011 which was received by the Court on October 24, 2011.

STANDARD OF REVIEW

"The purpose of Rule 59, SCRCF, to alter or amend the judgment, is to request the trial judge to 'reconsider matters properly encompassed in a decision on the merits.'" Pye v. Estate of Fox, 369 S.C. 555, 565, 633 S.E.2d 505, 510 (2006) (quoting Arnold v. State, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992)). The Supreme Court recently clarified the two situations in which a Rule 59(e) motion is appropriate. "A party may wish to file such a motion when she believes the

court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party must file such motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review." Elam v. South Carolina Dep't of Transp., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). Additionally, "[a] party cannot use a motion to reconsider to present an issue he could have raised prior to judgment but did not." Anderson Mem'l Hosp., Inc. v. Hagen, 313 S.C. 497, 498, 443 S.E.2d 399, 400 (Ct. App. 1994) (citing C.A.H. v. L.H., 315 S.C. 389, 434 S.E.2d 268 (1993)).

ANALYSIS

The Final Order of Dismissal, filed October 10, 2011, contains the required findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003) and Rule 52(a), SCRPC. See McCray v. State, 305 S.C. 329, 408 S.E.2d 241 (1991). All matters raised in Applicant's Motion to Alter or Amend were raised and ruled upon at trial. The Court further notes the Applicant is not requesting an alteration or amendment to the Order, but rather is asking the Court to reverse its decision and grant post-conviction relief. Such a request is more properly addressed through the appellate process. See Wilder Corp. v. Wilke, 330 S.C. 71, 77, 497 S.E.2d 731, 734 (1998). Applicant has failed to raise an allegation that was properly raised but not ruled upon by this Court.


CONCLUSION

Having fully considered the Applicant's Motion to Alter or Amend, the State's Return and Motion to Dismiss, the full record and applicable law, as well as the various interests

balanced by the Court at the time of the ruling, the Applicant Thomas Curtis Hamilton's Motion to Alter or Amend is hereby **DENIED**.¹

IT IS SO ORDERED.

Oct. 25, 2011
Charleston, South Carolina



The Honorable Deadra L. Jefferson
Presiding Judge, Ninth Judicial Circuit

¹ This motion is disposed of without the necessity of a hearing and decided on the record and briefs. Rule 59(f), SCRPC; Pollard v. County of Florence, 314 S.C. 397, 444 S.E.2d 534 (Ct. App. 1994).

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STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Thomas Hamilton #161339,

Applicant / Petitioner

vs.

State of South Carolina,

Respondent.

COURT OF COMMON PLEAS

Case # 2010-CP-10-7619

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ORDER

FILED
2011 SEP 14 PM 11:16
JULIE J. ARMSTRONG
CLERK OF COURT

This post-conviction relief case came before the court for a hearing. Having now heard this matter, the court orders as indicated herein.

1. The application for post-conviction relief is hereby: denied granted under advisement; a formal order will be filed (see below - No.6)

2. Motion(s) was/were heard in this case and the court orders:
 The motion to dismiss and/or for summary judgment is hereby granted denied under advisement based upon the statute of limitations and/or the successive nature of the application or other reason as follows:

3. A conditional order of dismissal was previously filed in this case. Upon review of the matter, the court finds:

Good cause as to why the case should not be dismissed has been shown in response to the order of dismissal; therefore, a hearing on the merits of the application shall be scheduled.

The court has considered the response to the conditional order of dismissal and finds that good cause has not been shown or no response has been filed to the conditional order of dismissal; therefore, the application is hereby dismissed.

4. The application was freely, voluntarily, and intelligently withdrawn as indicated on the record; therefore, this case is dismissed with prejudice without prejudice.

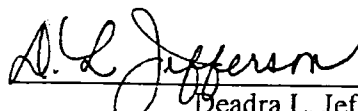
5. Other: _____

6. The court further orders:
 The Attorney General Applicant's counsel is directed to submit to the court a proposed order and to serve the order on opposing counsel within 20 days.

Both sides are directed to submit proposed orders to the court and to serve the orders on each other within _____ days.

The court does not request proposed orders.

IT IS SO ORDERED.


Deadra L. Jefferson
Chief Administrative Judge

Date: September 14, 2011

Charleston, S.C.

Court Reporter : Sharon Vizer-Hanks

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AG
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ES

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 Thomas Curtis Hamilton, #161339,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 NINTH JUDICIAL CIRCUIT
 CASE NO.: 2010-CP-10-7619

ORDER OF DISMISSAL

FILED
 2011 OCT 10 AM 10:01
 JULIE J. ARMSTRONG
 CLERK OF COURT
 BY _____

Presiding Judge:	Deadra L. Jefferson
Applicant's Attorney:	Edward K. Pritchard, III., Esq.
Respondent's Attorney:	Matthew J. Friedman, Esq.
Trial Counsel:	Martha Kent Runey, Esq.
Date of Hearing:	September 14, 2011
Court Reporter:	Anne Meyer

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed September 17, 2010. The Respondent made its Return on February 15, 2011 which was filed on March 16, 2011. An evidentiary hearing into the matter was convened on September 14, 2011 at the Charleston County Courthouse. The Applicant was present at the hearing and represented by Edward K. Pritchard III, Esquire. Matthew J. Friedman, Esquire, of the South Carolina Attorney General's Office represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Applicant's trial counsel, Martha Kent Runey, Esquire, also testified at the hearing. This Court had before it the records of the Charleston County Clerk of Court regarding the subject convictions, the Applicant's records from the Department of Corrections, the Record on Appeal, the Final Anders Brief of Appellant, the Court of Appeals' opinion dismissing the appeal, the Remittitur dated October 23, 2009, the PCR application, and the State's Return thereto.

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 [Signature]

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Charleston County. The Applicant was indicted at the November 2004 term of the Charleston County Grand Jury for burglary, first degree (2004-GS-10-8212) and petty larceny (property crime enhancement) (2004-GS-10-8213). Martha Kent Runey, Esquire, sitting first chair, and W. Ted Smith, Esquire, sitting second chair, represented the Applicant. The Applicant proceeded to trial on June 5-6, 2006, after which a jury found him guilty as indicted for both offenses. The Honorable R. Knox McMahon sentenced the Applicant to confinement for life without parole (LWOP) for burglary, first degree and five (5) years concurrent for petty larceny.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. Joseph L. Savitz, III, Esquire, of the South Carolina Commission on Defense, filed a brief pursuant to Anders v. California, 386 U.S. 738, 87 S. Ct. 1396 (1967). The Court of Appeals subsequently dismissed the appeal. State v. Hamilton, Op. No. 2009-UP-448 (S.C. Ct. App. filed October 7, 2009). The Remittitur was issued on October 23, 2009.

ALLEGATIONS

The Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel in that counsel
 - a. Failed to move for a continuance.
 - b. Failed to request a curative instruction when prosecutor commented before the jury that Applicant had two prior convictions for burglary and did not take the stand.
 - c. Failed to adequately communicate plea offers.
 - d. Failed to adequately challenge the identification.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the

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testimony and arguments presented at the hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon his or her credibility. —This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

The Applicant testified he only met with counsel once before the trial. He testified he rejected the first plea offer for fifteen (15) years. He asserted the second offer was to dismiss the first degree burglary charge, but he did not understand what counsel was talking about in regards to the property crime enhancement. Applicant also rejected this plea offer. Applicant testified counsel did not investigate his alibi defense. He admitted it was his decision to reject both plea offers.

Trial counsel testified she met with Applicant at least three (3) times prior to trial. She testified she was appointed in September 2005, which was about nine (9) months prior to trial. Counsel testified she discussed with Applicant the elements of the offenses and potential defenses. She testified she challenged the victim's identification of Applicant at trial in a Neil v. Biggers hearing. Counsel testified Applicant's defense was that he did not do it. She asserted the charges were upgraded from burglary, second degree to burglary, first degree based on Applicant's two (2) prior burglary convictions.

Counsel testified Applicant rejected the first plea offer of fifteen (15) years. She asserted the solicitor subsequently offered to dismiss the burglary, first degree in exchange for Applicant's plea to both property crime enhancements, which each carried a maximum of ten (10) years. Counsel contended it was Applicant's decision to reject both offers. She testified Applicant thought he already pled guilty to property crime enhancement in municipal court, but she called the city court and learned he had only gone to court for simple assault. She also

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learned Applicant had a charge for shoplifting pending in the municipal court. Counsel asserted she had the solicitor bring Applicant back the next day. She testified she did not recall all of the details, but her notes reflect Applicant still did not want to plead guilty.

Counsel asserted Applicant's best defense was identification because there were some discrepancies. She testified she subpoenaed Officer Hargrave, as was her general practice to subpoena all officers in a case, but he did not show up because he was out of state. She asserted she did not move for a continuance because she did not think she needed the officer, as his testimony was not dispositive on the issue. Counsel testified she disputed the two (2) prior burglary convictions, and the State called an employee of the clerk of court's office and a fingerprint expert from SLED to verify the prior convictions. Counsel was able to cross-examine these witnesses. She testified that while the two (2) prior convictions were mentioned, it was not improper for the State to do so under state law, as it was an element of the offense. She also testified the trial court gave a jury charge on burglary, second degree.

Ineffective Assistance of Counsel

The Applicant alleges he received 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), SCRPC; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (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, 686, 104 S. Ct. 2052, 2064 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel

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rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

Courts use a two-pronged test to evaluate 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 prevailing professional norms." Id. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). 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." Id. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997).

This Court finds Applicant's testimony is not credible while also finding trial counsel's testimony is credible. This Court finds counsel is a trial practitioner who has extensive experience in the trial of serious offenses. Counsel has been licensed since 2001 and began working with the Charleston County Public Defender's Office as a Staff Attorney in 2002. Counsel conferred with the Applicant on several occasions. During conferences with the Applicant, counsel discussed the pending charges, the elements of the charges and what the State was required to prove, discovery, Applicant's constitutional rights, and possible defenses or lack thereof.

Regarding Applicant's claims of ineffective assistance of counsel, this Court finds Applicant has failed to meet his burden of proof. This Court finds counsel demonstrated the

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normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 5, 239 S.E.2d 750, 752 (1977); Strickland, 466 U.S. at 687-88, 104 S. Ct. at 2064-65; Butler, 286 S.C. at 442. 334 S.E.2d at 814. This Court further finds counsel adequately conferred with Applicant, conducted a proper investigation, and was thoroughly competent in her representation. This Court finds that counsel's representation did not fall below an objective standard of reasonableness.

This Court finds counsel properly communicated the plea offers to Applicant, and it was Applicant's decision to reject the plea offers. This Court finds Applicant understood the terms of the offers and knowingly chose to decline the offers. Counsel and Applicant testified Applicant rejected both plea offers. Counsel testified she investigated the Applicant's municipal court convictions and found he had not yet been convicted of shoplifting. She also learned he had gone before the municipal court on a simple assault charge but not for property crime enhancement. She then met with Applicant to discuss the second plea offer, and Applicant still did not want to plead guilty. This Court finds Applicant has considerable experience with the system, and finds no credibility to Applicant's claim he did not understand the plea offers or that counsel did not explain the offers to him.

This Court finds counsel made a valid strategic decision not to request a continuance when the officer under subpoena was out of state and did not appear at trial. "There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in a case." Caprood v. State, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000). Where trial counsel articulates a valid reason for employing a certain trial strategy, such conduct will not be deemed ineffective assistance of counsel. Roseboro v.

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State, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995). Counsel's strategy will be reviewed under "an objective standard of reasonableness." Ingle v. State, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002). Here, counsel testified she did not request a continuance because she did not think she needed the officer. This Court finds the officer was not critical to the identification issue and would not have corroborated an alibi. There were other witnesses who were more critical and instrumental to the identification issue. This court finds counsel's strategy was valid and reasonable.

This Court finds counsel properly challenged the identification. The identification issue was raised at trial and on appeal. Trial counsel requested a Neil v. Biggers hearing to challenge the show-up lineup, after which the trial court found the identification procedure was not unduly suggestive. (Tr. 55:16-19, 60:22-80:7.) The Court finds counsel fully explored the discrepancies in the descriptions of the Defendant, particularly the lack of a hat, which too was a valid strategy. However, the Court finds it came down to witness credibility and believability rather than inadequate representation by counsel.

This Court finds counsel properly challenged Applicant's two (2) prior burglary convictions. The State called Laurie Cicarelli, a SLED fingerprint expert, and Reina Gascon, an employee of the clerk of court's office, and counsel was able to cross-examine these witnesses. (Tr. 146:22-147:15, 154:7-156:1.) The State offered the two (2) prior burglary convictions as an element of burglary, first degree, rather than to prove Applicant committed this burglary. The State also mentioned the two (2) prior burglaries in its closing. (Tr. 180:16-182:8) The Court finds the State's comments were proper, and counsel had no basis to object or request a curative instruction, because S.C. Code Ann. § 16-11-311 requires as an element of burglary, first degree that the "the burglary is committed by a person with a prior record of two or more convictions

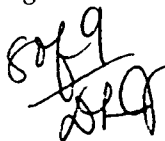
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for burglary or housebreaking or a combination of both.” S.C. Code Ann. § 16-11-311(A)(2). This Court further finds the trial court gave the standard charge that the State must prove beyond a reasonable doubt the Applicant has a prior record of two (2) or more convictions for burglary. (Tr. 206:22–207:3.) The court further instructed the evidence of prior offenses was not offered to prove the Applicant’s bad character or that he committed the burglary on this occasion, and such evidence may only be considered for the purpose of determining whether or not it satisfies the elements of first degree burglary. (Tr. 206:25–207:9.) The trial court also instructed the jury that before they could consider the evidence of Applicant’s prior burglaries, they must first find the State has proven beyond a reasonable doubt that a burglary was committed, and only after they find a burglary was committed may they consider the evidence of the prior convictions. (Tr. 207:10–18.)

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test, specifically that counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that counsel committed either errors or omissions in her representation of the Applicant. The Applicant failed to show that counsel’s performance was deficient. This Court also finds the Applicant has failed to prove the second prong of Strickland, specifically that he was prejudiced by counsel’s performance. Applicant’s complaints concerning counsel’s performance are without merit and are 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, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant

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waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

CONCLUSION

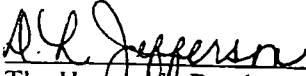
Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial or sentencing proceedings. Counsel was not deficient in any manner, nor was the Applicant prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of written notice of entry of this Order to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely served and filed.

IT IS THEREFORE ORDERED:

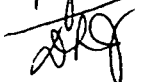
1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 7th day of October, 2011.



The Honorable Deadra L. Jefferson
Presiding Judge, Ninth Judicial Circuit

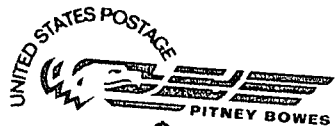
Charleston, South Carolina.

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UNITED WE STAND

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PRITCHARD & ELLIOTT
ATTORNEYS AND COUNSELORS AT LAW, LLC

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