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May 27, 2016

The Honorable Daniel E. Shearouse
Clerk of South Carolina Supreme Court
Supreme Court Building
1231 Gervais Street
Columbia, South Carolina 29201

RECEIVED

MAY 31 2016

S.C. SUPREME COURT

Re: *Goodwin v. State of South Carolina*
Case No.: 2014-CP-10-4276

Dear Mr. Shearouse:

Enclosed for filing, please find an original and two copies of Appellant's Notice of Appeal of the denial of his application for Post-Conviction Relief. If you find everything in order, please file the original and return the clocked in copies in the enclosed self-addressed envelope.

Please note I was appointed and copy the Office of Appellate Defense who will handle the appeal. Please call if you have any questions.

With kindest regards, I am

Sincerely,



Christopher L. Murphy

CLM:ah
Enclosures

cc (w/ encls.): Mr. Leonard Goodwin
J. Rutledge Johnson, Esq.
Robert M. Dudek, Esq.
The Honorable Deadre L. Jefferson
The Honorable Julie J. Armstrong

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

RECEIVED

Deadra L. Jefferson, Circuit Court Judge

MAY 31 2016

Case Nos.: 2014-CP-10-4276

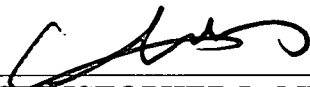
S.C. SUPREME COURT

Leonard Brown Goodwin Appellant
v.
State of South Carolina Respondent

NOTICE OF APPEAL

Appellant appeals the Court's denial of his application for post-conviction relief. Attached is the order from the Court dated May 16, 2016 and received May 19, 2016.

May 27, 2016


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THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Deadre L. Jefferson, Circuit Court Judge

Case Nos.: 2014-CP-10-4276

Leonard B. Goodwin Appellant
v.
State of South Carolina Respondent

PROOF OF SERVICE

I CERTIFY that I have served APPELLANT'S NOTICE OF APPEAL by delivering a copy via U.S. Mail First-Class postage prepaid on the 27th day of May, 2016, on the following:

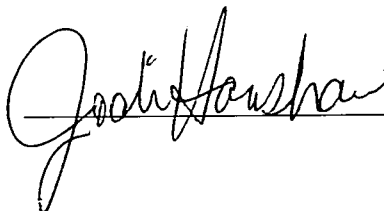
Rutledge Johnson, Esquire
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The Honorable Deadre L. Jefferson
Circuit Court Judge, Ninth Judicial Circuit
Charleston County Judicial Center
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The Honorable Julie J. Armstrong
Clerk of Court, Ninth Judicial Circuit
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Office of Appellate Defense
Post Office Box 11433
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Leonard B. Goodwin, SCDC #143201
Lee Correctional Institution
990 Wisacky Highway
Bishopville, SC 29010



STATE OF SOUTH CAROLINA)
 COUNTY OF CHARLESTON)
)
)
 Leonard B. Goodwin, #143201,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 NINTH JUDICIAL CIRCUIT

2014-CP-10-04276

ORDER OF DISMISSAL

FILED
 2016 MAY 16 PM 12:25
 JULIE J. ADRIAN
 CLERK OF COURT

Presiding Judge:	Hon. Deadra L. Jefferson
Applicant's Attorney:	Christopher L. Murphy Esquire
Respondent's Attorney:	J. Rutledge Johnson, Esquire
Trial Counsel:	Cassandra L. Woosley, Esquire
Date of Hearing:	December 16, 2015
Court Reporter:	Sharon Vizer

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed July 8, 2014. The Respondent made its Return on May 22, 2015 and filed on May 26, 2015. An evidentiary hearing into the matter was convened on December 16, 2015, at the Charleston County Courthouse. The Applicant was present at the hearing and represented by Christopher L. Murphy, Esquire. J. Rutledge Johnson, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

At the hearing, Applicant testified on his own behalf. Cassandra Woosley, Esquire, also 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.

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PROCEDURAL HISTORY

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Charleston County Clerk of Court's orders of commitment. The Applicant was indicted by the January 2010 term of the Charleston County Grand Jury for Murder¹ (2010-GS-10-0738). Cassandra Woosley, Esquire, sitting first chair and Beattie Butler, Esquire, sitting second chair represented him. On May 31-June 3, 2011, the Applicant proceeded to a jury trial and was found guilty as indicted. The Honorable Kristi Lea Harrington sentenced the Applicant to confinement for Life.

A Notice of Appeal was filed on Applicant's behalf and an Appeal perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Goodwin, Op. No. 2013-UP-448 (filed on December 11, 2013). The Remittitur was issued on December 30, 2013.

ALLEGATIONS

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

1. "Trial counsel failed to "object" to indictment"
2. "Trial counsel failed to "object" to and the trial court allowed "hearsay" and "character" evidence concerning Applicant's conduct of bad acts and his relationship with the victim and Applicant's family"
3. "Defense counsel failed to OBJECT TO and then; if necessary, preserve the matter for appellate review ("the testimony of a state witness testifying in the form of an "opinion" relevant to the scientific evidence, without being qualified as an expert")
4. "Trial counsel "OBJECTED TO" the Court's charge on Malice a burden-shifting instruction, which Appellate counsel "FAILED" to raise the issue on appeal"

¹ Murder is a violent, most serious felony punishable by death, imprisonment for life, or by a mandatory minimum term of imprisonment for thirty (30) years. See S.C. CODE ANN. §§ 16-3-10, -20 (2003), 16-1-60 (2003), 17-25-45 (2003). Life imprisonment means until death of the offender without the possibility of parole. See S.C. CODE ANN. § 16-3-20 (2003).

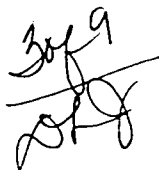


At the commencement of the hearing Applicant through counsel advised the Court that he was abandoning all issues raised in his application with the exception to his failure to testify and failure to call an Alibi witness.

SUMMARY OF TESTIMONY

At the evidentiary hearing, Applicant testified he discussed his innocence with Counsel. He also stated he met face-to-face with Counsel seven (7) times, for about twenty (20) minutes each time. Counsel wanted to know what happened. Applicant said he came home from work and a car was parked in front of his house; the car belonged to a friend of the Victim's girlfriend. Applicant claimed he did not commit the crime and was not at the scene when the crime occurred. Applicant gave Counsel the names of alibi witnesses who he claimed could testify as to his whereabouts. He further testified these alibi witnesses included: Natasha Washington, Jessie Owens, Michael Phillips, and a bus driver whose name he did not know. Applicant claims Counsel made no attempts to contact these witnesses. Applicant also testified he remained in the Charleston area until 2008 when he left town for a week. Applicant further testified he did not meet with Counsel to discuss trial strategy, did not know the evidence against him, and did not discuss direct versus circumstantial evidence.

Applicant testified that the judge questioned him on his right to testify at trial. He testified he did discuss the pros and cons about testifying but for five (5) minutes, when the trial judge asked Counsel to discuss it with him. Applicant claimed Counsel told him not to testify but did not explain why. Applicant further claimed Counsel did not discuss the evidence and did not discuss the pros and cons of testifying, but he wanted to testify. He further maintains that from the first time he met counsel eighteen (18) months before trial that it was always his position that he wished to testify.

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Once again, Applicant claimed he did not testify because of Counsel's advice, but informed the trial judge he was not testifying. Applicant also stated Counsel did not explain the strategy and evidence against him, did not discuss alibi witnesses, and did not use the questions he gave Counsel.

On cross-examination, Applicant admitted that the trial judge thoroughly advised him concerning his right to testify and that he chose not to. He also admitted that none of his alibi witnesses were present at the PCR hearing to testify on his behalf.

Counsel testified she met with Applicant over twenty (20) times and that Applicant was very active in his own defense. She testified that Applicant always maintained his innocence. Counsel stated Applicant gave her no alibi witnesses and that the only witnesses testifying at trial were the State's witnesses. She further testified that all of the names Applicant provided her with as potential alibi witnesses were already listed on the State's witness list. She further testified that she made every attempt to speak with them prior to trial but could not gain their cooperation in her efforts. Counsel also testified she cross-examined all the witnesses at trial and that her theory of the case was that it was impossible to commit the crime within the thirty (30) minute time frame alluded to by the State. She argued this throughout the entire case and again in her closing argument. Counsel then stated she advised Applicant concerning his right to testify and believed that Applicant would testify. She also prepared Applicant for trial if he decided to testify. She further testified that she went over his testimony with him again during the trial. She testified that after this preparation and at the trial Applicant decided he did not wish to testify and changed his mind. Counsel articulated that it was Applicant's decision not to testify and that she did not force or threaten him concerning this decision. She testified that it was "his decision" at all times. She also stated that if he did not testify, she would

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have last closing. She lastly stated that the trial judge also advised Applicant concerning his right to testify.

On cross-examination, Counsel testified this was her second murder case in which she was lead counsel. Counsel stated this was a circumstantial case and that there was no direct evidence linking Applicant to the crime and that this was a tough case. Counsel then testified the case was made more difficult due to the three-year delay because Applicant fled the jurisdiction, when he went to New Jersey. Counsel articulated that she had no witnesses to support Applicant's claim of innocence because Applicant did not provide her with any. She further testified that she went over all evidence with the Applicant before the trial. She admits that he gave her a list of questions and she reviewed those as well. Counsel testified it was Applicant's decision not to testify at trial and thought, prior to trial, that Applicant was going to testify.

Counsel stated she discussed circumstantial evidence with Applicant, as well as her trial strategy. Counsel admitted she did not call any witnesses at trial, but her strategy was to make the State meet its burden of proof. Counsel articulated that a benefit to Applicant testifying was to allow the jury to hear his version of events. She had no reservations concerning Applicant's testimony; however, one benefit of Applicant not testifying was that she was able to preserve last closing argument. Even so, Counsel prepared as if Applicant would testify. Counsel then stated she did not recall telling the trial judge that she advised Applicant not to testify. Counsel again articulated that she advised Applicant on the pros and cons of testifying versus not testifying. She further testified that the Applicant was nervous however, if he wanted to testify she would not have stopped him because ultimately it was his decision. She further testified that she was aware he had a seventh (7th)

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grade education and that she had no difficulty or concerns regarding his ability to understand her or participate in his defense.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court had the opportunity to observe the witnesses on the witness stand and hear their testimony. 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), SCRPC). 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, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. See Strickland at 690, 104 S. Ct. at 2066. 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,

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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.

This Court had the opportunity to observe the witnesses on the witness stand and hear their testimony. This Court also has read the trial transcript and appellate records, all of which assists the Court in judging the witnesses' credibility. This Court finds the Applicant's testimony regarding Counsel's ineffectiveness is not credible, while also finding Counsel's testimony is persuasive and credible.

This Court finds Counsel's representation of Applicant in this case well above the professional norms. Counsel fully investigated this case and assisted Applicant in his defense. Counsel fully advised Applicant concerning his right to testify or remain silent. This Court also finds the trial court fully explained Applicant's rights concerning his testimony to him (Tr. Vol. 3, 113: 11-25; 114-117). Counsel did not threaten or coerce Applicant into not testifying. It was Applicant's decision, and his alone, not to testify in this case (Tr. Vol. 4, 34: 12-25; 35: 1-18).

Further, Applicant failed to give Counsel the names of any witnesses to investigate or call on his behalf. See Strickland v. Washington, 466 U.S. 668, 691, 104 S. Ct. 2052, 2066 (1984) ("The reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions. Counsel's actions are usually based, quite properly, on informed strategic choices made by the defendant and on information supplied by the defendant."). Moreover,

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SAG

Applicant failed to produce any witnesses at the PCR hearing to show Counsel's failure to call witnesses on Applicant's behalf prejudiced his trial. See Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998) (An Applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial). Thus, 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 (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:

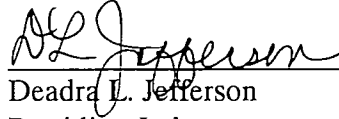
1. That the Application for Post-Conviction Relief must be denied and

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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

5/11, 2016
Charleston, South Carolina



Christopher L. Murphy
Post Office Box 2008
Mt. Pleasant, SC 29465

The Honorable Daniel E. Shearouse
Clerk of South Carolina Supreme Court
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