

The Supreme Court of South Carolina

Alonzo Harvin,

Petitioner,

v.

State of South Carolina,

Respondent.

The Honorable James R. Barber
Richland County
Trial Court Case No. 2008-CP-40-08865

ORDER

The request for an extension until May 7, 2012 to serve and file the Petition for Writ of Certiorari and Appendix is granted. Pursuant to this Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY Shirley J. Shealy
Clerk

Columbia, South Carolina *Chief Deputy*

April 6, 2012

cc: Appellate Defender Kathrine H. Hudgins
Assistant Attorney General Robert D. Corney



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

ORIGINAL

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

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

April 5, 2012

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

RECEIVED
APR - 5 2012
S.C. Supreme Court

Re: Alonzo Harvin v. The State

Dear Mr. Shearouse:

The Petition for Writ of Certiorari and accompanying appendix are due to be served and filed with the Court today. However, because of my heavy workload at this time, I am requesting a thirty day extension in which to serve and file the petition.

By copy of this letter, I am informing Robert D. Corney, Esquire, of the Attorney General's Office, of my request.

Sincerely,

Kathrine H. Hudgins
Appellate Defender

KHH/lec

cc: Robert D. Corney, Esquire



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332

Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1343
Facsimile: (803) 734-1397

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

February 6, 2012

RECEIVED

FEB 06 2012

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

S.C. Supreme Court

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.

Alonzo Harvin v. State of South Carolina

2/6/2012

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,

Loriene French
Legal Services Coordinator



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

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

December 1, 2011

RECEIVED

DEC - 1 2011

S.C. Supreme Court

Ms. Karen Ambroziak
Circuit Court Reporter
1083 Langford Road
Blythewood, SC 29016

Dear Ms. Ambroziak:

Please provide us with the following transcript:

Alonzo Harvin v. State of South Carolina Case #: 08-CP-40-08865

County: Richland Date of Trial: August 29, 2011

Presiding Judge: James R. Barber, III

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,


Lorlene French
Legal Services Coordinator

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

RECEIVED

NOV 17 2011

Linda Amason
Attorney at Law
Post Office Box 8602
Columbia, South Carolina 29202
(803) 606-1339

S.C. SUPREME COURT

November 14, 2011

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

RE: Alonzo Harvin 157738 vs. State of South Carolina
Docket No.: 2008-CP-400-8865

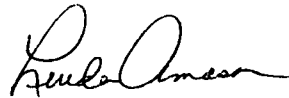
Dear Ms. Gee:

I recently filed a Notice of Appeal in this case with your office. Afterwards I realized it should have been filed with the Supreme Court. I spoke with your deputy clerk Claire who advised me that you would transfer the appeal to the Supreme Court. I apologize for the inconvenience and thank you for your assistance.

I also wanted to advise you that I was court-appointed in this case. Therefore, I have contacted Katherine Hudgins with the Office of Appellate Defense and she will be taking over the case from this point.

Thank you, and with kindest regards, I am

Yours truly,



Linda Amason

cc: Brian Petrano, Esquire
Katherine Hudgins, Esquire

RECEIVED

NOV 16 2011

SC Court of Appeals

NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM RICHLAND COUNTY

COURT OF COMMON PLEAS

JAMES R. BARBER 3RD, CIRCUIT COURT JUDGE

C/A # 2008-CF-40-08865

STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

ALONZO HARVIN #11

APPELLANT,

I, ALONZO HARVIN, PRO

JAMES R. BARBER IN TH

2011. UPON RECEIPT OF

NOVEMBER 2, 2011, RECEI

(NOTICE OF 10 DAYS TO A

DATED THIS NOVEMBER 7, 2011

ALONZO HARVIN #157738

P.O. BOX 205

RIDGEVILLE S.C 29372

ASSAT OF JUDGE

EMBER 27,

COURT DATED

NOVEMBER 4, 2011

THIS APPEAL FOLLOWS.

*Just
put
in
file*

PROOF OF SERVICE OF A NOTICE OF APPEAL

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
IN THE SUPREME COURT

APPEAL FROM RICHLAND COUNTY
COURT OF COMMON PLEAS

JAMES R. BARBER (3RD), CIRCUIT COURT JUDGE

C/A # 2008-CP-400865

STATE OF SOUTH CAROLINA
RESPONDENT,

V.

ALONZO HARVIN #157738
APPELLANT

PROOF OF SERVICE

I CERTIFY THAT I HAVE SERVED NOTICE OF APPEAL ON *Brian T. Petrans*
BY DEPOSITING A COPY OF IT IN SCDC MAILROOM/BOX, POSTAGE PREPAID,
ON NOVEMBER 7, 2011, TO THE ADDRESS LISTED BELOW:

Brian T. Petrans
OFFICE OF ATTORNEY GENERAL
P.O. BOX 11549
COLUMBIA S.C 29211

Daniel E. Shearouse
P.O. Box 11330
Columbia S.C 29211
The Supreme Court of South Carolina

Richland County clerk office
1701 main st
Columbia S.C 29204

ALONZO HARVIN #157738
P.O. BOX 205
RIDGEVILLE S.C 29472

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND)	
)	
)	2008CP4008865
)	
Harvin, Alonzo Demetric, 00157738,)	
)	
Applicant,)	
)	
v.)	ORDER OF DISMISSAL
)	
State of South Carolina,)	
)	
Respondent.)	
)	

PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed December 17, 2008. The Respondent made its Return on July 7, 2009. An evidentiary hearing into the matter was convened on August 29, 2011 at the Richland County Courthouse.

The Applicant was present at the hearing and was represented by Linda J. Amason, Esquire. Brian T. Petrano of the South Carolina Attorney General's Office represented the Respondent. Prior to the PCR hearing, the Applicant moved for discovery on or about January 14, 2009 per S.C. Code § 17-27-150(A). The Applicant filed one or more amended application(s) for PCR.¹ On March 17, 2010, the parties appeared before the Honorable Alison Renee Lee, as Chief Administrative Judge for the Fifth Circuit Court of Common Pleas. Judge Lee issued an Order dated April 8, 2010 granting discovery as to the Solicitor's file and the Richland County Sheriff's Department file.

¹ It appears that the Applicant, *pro se*, submitted an amendment to his PCR application on or about November 2, 2009. The Applicant had been represented by counsel since January 15, 2009, so his *pro se* filings are not properly before this Court. Miller v. State, 388 S.C. 347, 697 S.E.2d 527 (2010).

At the hearing, the Applicant testified on his own behalf. The Applicant called Jerry Russell (then Richland County Sheriff's Department Crime Scene Investigator). The Applicant's trial counsel, Stacy Rowell, Esquire also testified. This Court had before it the records of the Richland County Clerk of Court, the transcript of the proceedings against the Applicant, the records from the Applicant's direct appeal, and the Applicant's records from the South Carolina Department of Corrections.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Richland County. The Applicant was represented by and Stacy Owings, Esquire (the co-defendant in the joint trial was represented by Robert Mills, Esquire). On August 3, 2005,² after a jury trial with the Honorable Reginald I. Lloyd, the Applicant was convicted and sentenced to life in prison for Burglary 1st (2004GS409926), and five (5) years for grand larceny (2004GS409927).³ There was a motion for a new trial filed by Applicant's counsel on August 11, 2005. There was a hearing held on the matter on October 10, 2005. By written Order dated February 2, 2006, Judge Lloyd denied the motion for a new trial.⁴

STATEMENT OF FACTS

On November 4, 2004, someone broke into a home in Richland County, South Carolina. A witness saw two people come out of the woods next to the burglarized home and get into a white van. The witness called police and gave the license plate number of the van. (Trial

² The cover page of the trial transcript indicates that the trial was on January 23, 2005. However, the other records and the certification page of the trial transcript reflect the correct date, i.e. August 3, 2005.

³ The life sentence is mandatory due to the Applicant's prior "strikes" per S.C. Code § 17-25-45. (Trial transcript, p. 402 - 414).

⁴ The Applicant's motion, the State's reply, the transcript from the hearing, and the order are all available in the file. Harvin, Alonzo Demetric. 00157738, Order of Dismissal (2008CP4008865)

Transcript, p. 101-120). Within a few minutes, deputies with the Richland County Sheriff=s Department stopped a white van coming from the direction of the home. Appellant Alonzo Demetric Harvin (AHarvin@) and another man were in the van, which contained items stolen from the home. (Trial Transcript, p.127-136, 252-283).

Prior to trial, Harvin moved to exclude any testimony regarding Ashoe print analysis.@ The circuit court ruled that the State could present testimony that a shoe print found on the residence=s back door was consistent with the soles of shoes Harvin was wearing. (Trial Transcript, p.83-85).

Virginia Wilson testified she lived approximately a block from her daughter and son-in-law, and on the morning of November 4, 2004, she noticed a white van parked on the road close to her daughter=s home. She also heard their dogs barking, so she went up to their house to check on things. On her way up to the house, she wrote down the van=s license plate number.

When she went around to the back of the house, Mrs. Wilson saw that the back door had been kicked in and was standing open. She immediately went back to her home and contacted called 911. She gave police the license plate number and description of the white van parked on the side of the road. While she was on the telephone talking to the police, she saw two people come out of the woods behind her daughter=s house, get in the van and drive away, which she reported to the police. (Trial Transcript, p.101-120).

Investigator William Gonzalez of the Richland County Sheriff=s Department testified he was patrolling the Lower Richland Boulevard area on November 2, 2004, when the dispatch call went out regarding a possible housebreaking in that area, with the description and license

number of a white van possibly involved. He met with another investigator in the area and headed toward the address given during the dispatch call. While they were enroute to the address, the investigators saw a white van coming toward them that matched the vehicle description. (Trial Transcript, p.127-131).

The investigators pulled in behind the van and followed it while they verified the license number and called for additional officers. When the van pulled into a driveway and the two occupants got out quickly, the investigators pulled in behind the van and ordered the occupants to get on the ground. Once the occupants were detained, the investigators looked inside the van and saw two rifles laying on the floor. The rifles were subsequently identified by the owner as stolen from his residence that morning. (Trial Transcript, p.131-136).

Barbara McAllister testified that she, her husband and stepson live down the road from her mother, Virginia Wilson. On the morning of November 4, 2004, Mrs. McAllister took her stepson to school and went to work. She left work and went home after her mother called her and said something was going on at her house. When she arrived at her house, the police were there, and she discovered that the house had been ransacked. (Trial Transcript, p.148-156).

William McAllister testified that he left his home at approximately 5:30 a.m. on November 4, 2004. He left work to go home after his mother-in-law called him. On his way home, he saw police cars on the side of the road with a white van and he stopped to see if it had anything to do with his home. The police officers asked him to look inside the van to see if he anything in it belonged to him. He identified the two rifles lying on the floor of the van, and subsequently provided police with documentation of ownership. (Trial Transcript, p.167-174).

Jerry Russell, a crime scene investigator with the Richland County Sheriff=s Department, was qualified as an expert in crime scene investigation. He testified he processed the scene at the McAllister=s residence, and made photographs of a shoe print found on the back door that was consistent with someone kicking in the door. (Trial Transcript, p.214-231, State=s Exhibits 31 and 32). He further testified he examined some footwear supplied to him at a later time, and observed a circular pattern in the tread that was similar to a circular pattern in the shoe print on the McAllister=s back door. He specifically stated during direct and cross examination, however, that he could not say what shoe made the shoe print. (Trial Transcript, p.237-242).

Investigator Darrell Tucker of the Richland County Sheriff=s Department testified he and Investigator Gonzalez heard the dispatch call regarding a possible housebreaking, saw a white van matching the description of a vehicle seen at the house coming from that direction, and stopped the white van after they confirmed it had the same license plate as the one seen at the house. Harvin, who was driving the van, initially gave a false name, and only gave his true identity after police identified him through his fingerprints. (Trial Transcript, p.252-283).

Direct Appeal

A timely Notice of Appeal was filed on Applicant's behalf. The issue on direct appeal was whether the circuit court properly allowed the crime scene investigator to testify that the footprint found on the door of a burglarized house had a circular pattern consistent with the pattern on shoes Appellant was wearing the day of the burglary. The South Carolina Court of

Appeals affirmed Applicant's conviction and sentence. State v. Alonzo Harvin, Op. No. 2008-UP-201 (S.C. Ct. App. filed March 24, 2008 Remittitur dated April 11, 2008).

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 (1985).

The Applicant testified at the PCR hearing, the Applicant pursued his claim of ineffective assistance of trial counsel, claiming that trial counsel was ineffective and should have had the photographs suppressed and that counsel was ineffective for failing to challenge the State regarding the chain of custody of the weapons. The Applicant claimed that while trial counsel did challenge the ownership of the guns to some extent, she could have challenged the value of the guns.* The Applicant also claimed that appellate counsel should have argued the directed verdict issue, i.e. that the trial court erred by denying the trial counsel's directed verdict motion. The Applicant explained the procedural history and his involvement in the case. The Applicant testified that he came into possession of the guns but that he never entered the victim's home. The Applicant explained that his intent was to sell the guns.

Richland County Sheriff's Department Crime Scene Investigator Jerry Russell (CSI Russell) testified that he did not recover any fingerprints on the victim's weapons that were in the Applicant's van. CSI Russell explained that he did not attempt to "dust" the weapons for fingerprints because in his professional opinion it was unlikely any prints could be recovered. CSI Russell explained that the weapons were in excellent shape but for their presence in the Applicant's oily and dusty van. He explained that it was "drizzly" that day and that graphite print

powder could ruin those guns. He explained that is why he did not check them for prints, i.e. it was unlikely that any prints would be recovered considering the circumstances and that the potential harm to the weapons was too great. He also explained that he does not remember whether the ballistics unit checked the weapons before they were ultimately returned to the owner.

Trial counsel testified that the guns were obviously a very important part of the case. Trial counsel explained that the weapons themselves were never entered into evidence and that they had been returned to the victim prior to trial. Trial counsel explained that the only evidence of the weapons at trial were the photographs of the weapons as found in the Applicant's van and the testimony of the victim and the investigators. Trial counsel explained that she saw no grounds to support a motion to suppress the evidence of the weapons. Trial counsel explained that while she did have subpoena power she would not want to help the State's case by putting the weapons into evidence. Trial counsel explained that in her experience waiving the guns around the courtroom is a solicitor's tactic. Trial counsel testified that [apart from cross examination] no investigation was done as to whether the witnesses were fabricating the existence/ownership of the guns.⁵ The Applicant questioned trial counsel as to several issues in the transcript. For example, trial counsel explained that she could have mentioned the testimony of one of the witnesses that saw individuals that could have been the burglars walking from the victim's house but that the witness did not see the burglars carrying anything, i.e. weapons. *See* transcript, p. 125. Trial counsel explained that the victim testified and identified the weapons he saw in the Applicant's van as his own. (Trial transcript, p. 171). Trial counsel explained that the

⁵ This Court notes that while not entirely credible as to the origin, the Applicant himself conceded that he had possession of the weapons in his van when he was stopped by law enforcement.

victim also had receipts that verified the serial numbers of the weapons. (Trial transcript, p. 177). Trial counsel acknowledged that the receipt was never offered in as evidence but that the original value of the weapons was not her primary concern because the first degree burglary was the LWOP offense the State was really pursuing in the case. Trial counsel explained that her main theme in argument was going to be that the State failed to prove that the weapons were the victims. Counsel explained that she was weary of asking too many questions of law enforcement as to how they verified that the weapons belonged to the victim. Her technique is obvious, i.e the "one question too many" dilemma could thwart her from keeping the issue vague and arguing a lack of evidence to the jury.⁶ Trial counsel explained that the Applicant told her that he found the guns on the side of the road, consistent with his testimony at the PCR hearing that he was going to sell the weapons. Trial counsel testified that she had an expert for the shoe print issue but that expert warned her not to call him to testify because his ultimate testimony [albeit on cross] would probably support the State's expert's opinion.

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (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,

⁶ The Applicant did not explain how any different questions would have revealed anything favorable to his defense, i.e. the Applicant has not satisfied is burden and proven any sort of prejudice regarding trial counsel's method of examination. This is not to say that her performance was in any way deficient. "A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed." Strickland v. Washington, 466 U.S. 668, 670, 104 S. Ct. 2052, 2056, 80 L. Ed. 2d 674 (1984).

466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 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, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating 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 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. As discussed throughout, the Applicant has failed to carry his burden in this action. Therefore, this Court finds that the application must be denied and dismissed.

Beyond his review of the undisputed procedural history, this Court finds Applicant's testimony is not credible.⁷ Trial counsel's testimony is both credible and well reasoned. Accordingly, this Court finds Applicant has failed to prove the first prong of the Strickland test – that counsel failed to render reasonably effective assistance under prevailing professional norms.

⁷ For the purposes of the record, this Court finds specifically that the Applicant was not credible when he testified that he simply "found" the weapons on the side of the road.

This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by counsel’s performance.

This Court finds that the Applicant’s claim regarding ineffective assistance of appellate counsel to be without merit. The Applicant claims that appellate counsel was ineffective for failing to argue that the trial court improperly denied his directed verdict motion. (Trial transcript, p. 314). On appeal from the denial of a directed verdict, an appellate court must view the evidence in the light most favorable to the State. State v. Lollis, 343 S.C. 580, 583, 541 S.E.2d 254, 256 (2001); State v. Burdette, 335 S.C. 34, 46, 515 S.E.2d 525, 531 (1999); State v. Kelsey, 331 S.C. 50, 62, 502 S.E.2d 63, 69 (1998). When ruling on a motion for a directed verdict, the trial court is concerned with the existence of evidence, not its weight. Burdette, 335 S.C. at 46, 515 S.E.2d at 531; State v. Wakefield, 323 S.C. 189, 197, 473 S.E.2d 831, 835 (Ct.App.1996). “If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury.” Lollis, 343 S.C. at 584, 541 S.E.2d at 256. “A defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged.” State v. Rosemond, 356 S.C. 426, 429, 589 S.E.2d 757, 758 (2003). The trial court clearly had ample evidence to base the denial of the directed verdict motion. *See* Trial transcript, p. 315.

Regarding the Applicant’s arguments as to the supposed weakness of the “chain of custody,” this Court notes that weapons are not a fungible item and a strict chain of custody is not required. State v. Freiburger, 366 S.C. 125, 620 S.E.2d 737 (2005). Nevertheless, the weapons were never introduced into evidence.

Finally, as explained throughout the order, there was no deficient performance regarding the weapons. The weapons were found in the Applicant's van minutes after an eye-witness to the burglary saw the broken in door and noted the license plate to the police. There is no requirement that the weapons need be placed into evidence, in addition, trial counsel explained that she would not want weapons in the courtroom because it negatively impacts the jury. The Applicant has failed to satisfy his burden of proof and demonstrate any deficient performance or any prejudice.

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. Counsel was not deficient in any manner, nor was Applicant prejudiced by counsel's representation. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

Except as discussed above, this Court finds that the Applicant failed to raise the remaining allegations set forth in his application at the hearing and has, thereby, waived them. As to any and all allegations that were or could have been raised in the application or at the hearing in this matter, but were not specifically addressed in this Order, this Court finds Applicant failed to present any probative evidence regarding such allegations. Accordingly, this Court finds that Applicant waived such allegations and failed to meet his burden of proof regarding them. Accordingly, they are dismissed with prejudice. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issue at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

This Court cautions 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 and counsel are 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 filed.

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 _____ day of _____, 2010.

The Honorable James R. Barber, III
Presiding Judge
Fifth Judicial Circuit

_____, South Carolina.

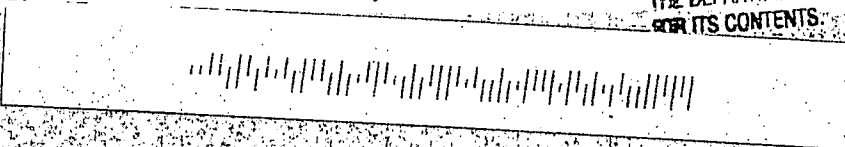
MR. ALONZO HARVIN # 157738
LIEBER CORRECTIONAL INST
136 WALBORN AVENUE
RIDGEVILLE S.C. 29422

A-B#33

FIRST CLASS



THE DEPARTMENT OF CORRECTIONS HAS NEITHER
CENSORED NOR INSPECTED THIS ITEM. THEREFORE
THE DEPARTMENT DOES NOT ASSUME RESPONSIBILITY
FOR ITS CONTENTS.



WARDEN
LIEBER CORRECTIONAL INSTITUTION
DEPARTMENT OF CORRECTIONS

RECEIVED

NOV 10 2007

MAIL ROOM
LIEBER C.I.

The Supreme Court of South Carolina
Daniel E. Shearouse
P.O. Box 11330
Columbia S.C.
29211

State of South Carolina)
County of Richl l)
Alonso Harvin, 157738)
Applicant,)
v.)
State of South Carolina)
Respondent.)

In The Court of Common Pleas
C/A No: 2008-CP-40-08865
Amendment To Application
For Post Conviction Relief

When a motion for direct verdict is made in a criminal case. When the state relies exclusively on circumstantial evidence the lower court is concerned with the existence or nonexistence of the evidence, not the weight, State v. Mitchell 535 S.E.2d 126.

To sustain such verdict every circumstance relied upon by the state must be consistent with each other and point conclusively to the guilt of the accused, see State v. Littlejohn 228 S.C. 324, 89 S.E.2d 924.

Due process requires that no person be made to suffer the onus of a criminal conviction except upon sufficient proof, defined as evidence necessary to convince a trier of fact beyond a reasonable doubt of the existence of every element of the offense, see Winship, 397 U.S. 358, 90 S.Ct. 1062, 25 L.E.2d 368 PP 2786-92. U.S.C.A. Const.Amend 14.

Applicant Harvin claim that trial court erred in failing to direct a verdict was an abuse of discretion that prejudiced the applicant right to a fair trial. While a jury weighs evidence, but when there is absence of evidence, it becomes the duty of the trial judge to direct a verdict, State v. Mitchell 535 S.E.2d 126.

In full view of the record (evidence)before the court at the time of motion for direct verdict, the state offered no proof that Harvin actually

RECEIVED

NOV 17 2011

S.C. SUPREME COURT

broke into the victims home. Considering aggravating circumstances pursuant to S.C. Code Ann § 16-11-311 A (2) burglary committed by a person with a prior offense of burglary or house breaking or a combination of both. It is therefore required by the state to prove Harvin entered the dwelling.

Applicant demonstrates eyewitness testimony:

Q. And you could not recognize the race?

A. No.

Q. And you could not identify the gender?

A. No.

Q. And you could not see what they were carrying?

A. No. (Tr.P.122 L.15-15).

This applicant herein will demonstrate the expert crime scene investigators testimony that he processed the scene, (Tr. P.227).

Q. Were you able to get any actual finger prints of that door well?

A. No mamm, I processed it but I didn't get any identifiable latents on it, (Tr.P. 228 L.18-25).

This applicant herein demonstrates the sufficient proof of corpus "delicti". The Supreme court is not concerned with the weight of the evidence, nor the credibility of the witness, but whether there was sufficient evidence to go to the jury tending to prove the corpus delicti beyond a reasonable doubt, State v. Collington 192 S.E.2d 856-59.

In the case at bar the only evidence the state presented was wholly circumstantial. Nothing in evidence nor testimony places Harvin in the victims home or fleeing the victims yard. Harvin's claim at the time of the directed verdict (Tr.P.314 L.14-22). The essential elements that are material to the states cause of action is nonexistent. Failure to direct a verdict is an abuse of discretion factual conclusion is without evidence to support, see Renney v.

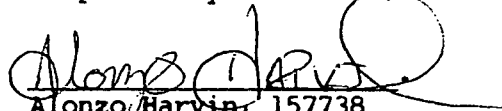
Dubbshouse 257 S.C. 562, 274 S.E.2d 290. Fontain v. Peite 354 S.E.2d 565.

Darden v. Witham 263 S.C. 183, 209 S.E.2d 42, also see Winship 397 U.S. 358,

90 S.Ct. 1062-25 L.E.2d 368 pg's. 2786-92.

The undersigned applicant hereby certifies that the foregoing motion to amend application for Post Conviction Relief complies with the mandates adopted by South Carolina state courts, and that the facts and allegations contained therein are true and complete to the best of my ability.

Respectfully Submitted,



Alonzo Harvin, 157738

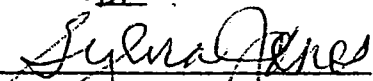
Leiber C.I. A/B

P.O. Box 205

Ridgeville, S.C 29472

Dated: June 23, 2011

Subscribed and sworn before to
me this 23rd of June, 2011.

 (LS)
Notary Public of South Carolina
My commission expires: 1/29/2018

State of South Carolina
County of Richland

In the court of common pleas
C/A no: 2008-cp-40-08865

Alonzo Harvin#157738/Applicant

Certificate of Service

v.

The State of South Carolina/Respondent

Ineffective Assistance of Appellate Counsel

Petitioner contends that his appellate counsel was ineffective for failing to raise his strongest non-frivolous issue on appeal. Petitioner was denied effective assistance of appellate counsel and his 6th Amendment rights when she failed to raise that trial court should have granted a directed verdict, upon trial counsels' motion. (See trial transcript page 314, line 16-22)

“Specifically, I move for a directed verdict, on the grounds of, I don't think the State had quite proven their case. Mr. Harvin was over in that house. All the evidence and circumstantial evidence. He was found with items from the burglary. They have not proven that he was actually in the house and robbed his particular house. They don't have any forensic evidence to place him there.....”

The State presented absolutely no evidence of “entry”, which is a critical element of burglary. (See Jackson v. Virginia, cite as 99 S. Ct at 2781) Although counsel is not required to raise every non-frivolous claim, but instead may select among them in order to maximize the likelihood of a favorable outcome. Shaidu v. Robbins 528 U.S. 259. 288. 120 S. Ct 746. 765. 145 L. Ed 2d (2000) Jones v. Barnes 463 U.S. 745. 103 S. Ct 3308. 77 L. Ed 2d 987. In assessing a claim of ineffective assistance of appellate counsel, courts must apply the Strickland test to determine if appellate counsel was deficient for failing to raise an issue and whether the defendant was prejudiced by the failure to raise the issue. (Southland v. State 337 SC 610. 524 SE 2d 833.)

Petitioner further contends that he is entitled to effective assistance of appellate counsel by constitutional mandate, and that failure to raise his non-frivolous issues constituted ineffective assistance of his appellate counsel. Petitioner demonstrates trial court error in failing to grant a directed verdict when evidence presented by prosecution was entirely circumstantial.

Evidence presented raises a suspicion that the petitioner is guilty, but no substantial evidence to support a finding that the applicant unlawfully entered the victims' home.

The factual conclusion is without evidentiary support. No one saw the applicant in or around the victims home and no fingerprints belonging to the applicant were found in or around the victims home.

Mr. Harvin demonstrates eyewitness testimony.

Q. "Did you see anyone in the house when you went to your daughters house that night?"

A. "No."

Q. "And you did not see anyone in the yard?"

A. "No."

Q. "You went to the back yard when you were in the area, and you saw the door. You didn't see immediately see anyone in the woods?"

A. "No." (See transcript pages 121 and 122, lines 22-25, and lines 1-5.)

Mr. Harvin demonstrates state witness, Investigator Tucker.

Q. "So, it is your testimony that there are no fingerprints?"

A. "I did not find any, and to my knowledge, none were found. None were recovered."

Q. "And no prints were found on any of the items that were on the couches, or no prints were found on the furniture, where these may have come from? There were no prints found at all?"

A. "That's correct."

Applicant demonstrates. Cite as 90 S. Ct 1068. Which states, "The essential of due process guaranteed by the fourteenth amendment, that no person shall be made to suffer due onus of a criminal conviction except upon proof defined as evidence necessary to convince a trier of facts beyond a reasonable doubt, of the existence of every element of the offense." In the case of Harvin v. State the prosecution relied exclusively on circumstantial evidence and the suspicion that the applicant is guilty.

Applicant claims circumstantial evidence is not sufficient to sustain a conviction where circumstances are merely suspicious, and the applicants' guilt is probable. See State v. Hackett. Cite as 55 SE 2d 696. No one saw applicant inside the victims home.

No one saw the applicant fleeing the victims home. No fingerprints of Mr. Harvins were found in or around the victims home. The State failed to prove that Harvin entered the victims home. See State v. Long 325 SE 59, 62. 480 SE 2d 62, 63. Quoting trial courts should not deny the motion where the evidence merely raises a suspicion. Without proof that Harvin entered the dwelling, the State failed to prove essential elements of the charge and crime.

Linda Amason
Attorney at Law
Post Office Box 8602
Columbia, South Carolina 29202
(803) 606-1339

November 14, 2011

The Honorable Daniel Shearhouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

RE: Alonzo Harvin 157738 vs. State of South Carolina
Docket No.: 2008-CP-400-8865

Dear Mr. Shearhouse:

I received the copy of your letter addressed to Mr. Harvin regarding his filing in the above referenced case. I mistakenly filed a Notice of Appeal and related documents with the Court of Appeals; clocked copies of the face documents are enclosed. After realizing my error, I contacted the Clerk's office at the Court of Appeals and they advised me they would transfer this case to your office. I apologize for the inconvenience.

Since I was court-appointed in this case, my involvement is ending and Katherine Hudgins, Esquire, of the Office of Appellate Defense will be representing Mr. Harvin.

Thank you, and with kindest regards, I am

Yours truly,



Linda Amason

cc: Brian Petrano, Esquire
Katherine Hudgins, Esquire

RECEIVED

NOV 15 2011

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable James R. Barber, III
Circuit Court Judge

Case No. 2008-CP-40-08865

Alonzo Demetric Harvin, #157738

Appellant,

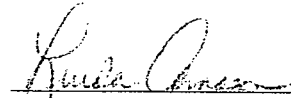
State of South Carolina,

Respondent

NOTICE OF APPEAL

Alonzo Demetric Harvin appeals the Order of the Honorable James R. Barber, III dated September 27, 2010. Appellant received written notice of entry of this order on October 11, 2011.

November 8, 2011



Linda Amason
Post Office Box 8602
Columbia, South Carolina 29202
(803) 606-1339
Attorney for Appellant

Other Counsel of Record:

Brian Petrano, Esquire
Assistant Attorney General
Rembert C. Dennis Building
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3970
Attorney for Respondent

RECEIVED

NOV 09 2011

SC Court of Appeals

RECEIVED

NOV 15 2011

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable James R. Barber, III
Circuit Court Judge

Case No. 2008-CP-40-08865

RECEIVED
NOV 09 2011
SC Court of Appeals

Alonzo Demetric Harvin, #157738Appellant,

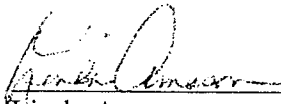
vs.

State of South Carolina.....Respondent

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the State of South Carolina by depositing a copy of it in the United States Mail, postage prepaid, on November 8, 2011, addressed to its attorney of record, Assistant Attorney General Brian Petrano, Rembert C. Dennis Building, Post Office Box 11549, Columbia, South Carolina 29211.

November 9, 2011



Linda Amason
Post Office Box 8602
Columbia, South Carolina 29202
(803) 606-1339
Attorney for Appellant

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Alonzo #157738 Harvin

Plaintiff

JUDGMENT IN A CIVIL CASE

CASE NO: 2008CP4008865

RECEIVED

NOV 09 2011

State of South Carolina

SC Court of Appeals

Defendant:

CHECK ONE:

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):
 - Rule 12(b), SCRPC.
 - Rule 41(a), SCRPC (Settled).
 - Other.
- ACTION STRICKEN (CHECK REASON):
 - Rule 49(a), SCRPC.
 - Bankruptcy.
 - Binding arbitration, subject to right to reserve to confirm, vacate or modify arbitration award.
 - Other.

RECEIVED
 2011 OCT - 9 PM 3:22
 JENNIFER W. HARRIS
 CLERK OF COURT

DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):

- Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:

- See attached order.
- Statement of Judgment by the Court.

Dated at Columbia, South Carolina, this _____ day of _____, 2011.

PRESIDING JUDGE

This judgment was entered on the _____ day of _____, 2011, and a copy mailed first class this 3 October 2011, to attorneys of record or to parties (when appearing pro se) as follows:

Alonzo #157738 Harvin
Linda Jean Amason

ATTORNEY(S) FOR THE PLAINTIFF(S)

Brian T Petrano

ATTORNEY(S) FOR THE DEFENDANT(S)

Jeanette W. Yarbrough

Clerk of Court

The South Carolina Court of Appeals

Alonzo Demetric Harvin, #157738, Appellant,

v.

State of South Carolina, Respondent.

The Honorable James R. Barber, III
Richland County
Trial Court Case No. 2008-CP-40-08865

RECEIVED

NOV 14 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. Claice Allan, Deputy
CLERK

Columbia, South Carolina

cc: Linda Amason, Esq.
Chief Appellate Defender Robert M. Dudek
Assistant Attorney General Matthew J. Friedman
The Honorable Daniel Shearouse

FILED

11/10/11

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable James R. Barber, III
Circuit Court Judge

Case No. 2008-CP-40-08865

Alonzo Demetric Harvin, #157738

Appellant,

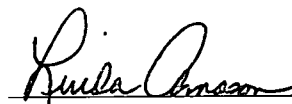
State of South Carolina,

Respondent

NOTICE OF APPEAL

Alonzo Demetric Harvin appeals the Order of the Honorable James R. Barber, III dated September 27, 2010. Appellant received written notice of entry of this order on October 11, 2011.

November 8, 2011



Linda Amason
Post Office Box 8602
Columbia, South Carolina 29202
(803) 606-1339
Attorney for Appellant

Other Counsel of Record:

Brian Petrano, Esquire
Assistant Attorney General
Rembert C. Dennis Building
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3970
Attorney for Respondent

RECEIVED

NOV 14 2011

S.C. Supreme Court

RECEIVED

NOV 09 2011

SC Court of Appeals

Linda Amason
Attorney at Law
Post Office Box 8602
Columbia, South Carolina 29202
(803) 606-1339

November 9, 2011

BY HAND DELIVERY

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


RECEIVED
NOV 09 2011
SC Court of Appeals

RE: Alonzo Harvin 157738 vs. State of South Carolina
Docket No.: 2008-CP-400-8865

Dear Ms. Gee:

Enclosed for filing please find a Notice of Appeal in the above post conviction relief case. I am also enclosing Proof of Service of the Notice of Appeal on the respondent and a copy of the order to be challenged on appeal.

Yours truly,


Linda Amason

Cc: Mr. Brian Petrano
Assistant Attorney General
Rembert C. Dennis Building
Post Office Box 11549
Columbia, South Carolina 29211

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable James R. Barber, III
Circuit Court Judge

Case No. 2008-CP-40-08865

RECEIVED

NOV 09 2011

SC Court of Appeals

Alonzo Demetric Harvin, #157738Appellant,

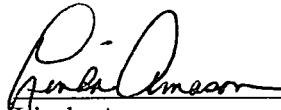
vs.

State of South Carolina.....Respondent

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the State of South Carolina by depositing a copy of it in the United States Mail, postage prepaid, on November 8, 2011, addressed to its attorney of record, Assistant Attorney General Brian Petrano, Rembert C. Dennis Building, Post Office Box 11549, Columbia, South Carolina 29211.

November 9, 2011



Linda Amason
Post Office Box 8602
Columbia, South Carolina 29202
(803) 606-1339
Attorney for Appellant

RECEIVED

NOV 14 2011

S.C. Supreme Court

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 2008CP4008865

Alonzo #157738 Harvin
Plaintiff

State of South Carolina
Defendant

RECEIVED

NOV 09 2011

SC Court of Appeals

2011 OCT -3 PM 3:22
JEANETTE W. BRIDE
CLERK OF COURT
RICHLAND COUNTY

CHECK ONE:

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):
 - Rule 12(b), SCRPC;
 - Rule 41(a), SCRPC;
 - SCRPC (Vol. Nonsuit): Rule 43(k), SCRPC (Settled); Other:
- ACTION STRICKEN (CHECK REASON):
 - Rule 40(j) SCRPC;
 - Bankruptcy;
 - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 - Other: _____

- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
 - Affirmed; Reversed; Remanded; Other
 NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; Statement of Judgment by the Court:

Dated at Columbia, South Carolina, this _____ day of _____, 2011.

PRESIDING JUDGE

This judgment was entered on the _____ day of _____, 2011, and a copy mailed first class this 3 October 2011, to attorneys of record or to parties (when appearing pro se) as follows:

Alonzo #157738 Harvin
Linda Jean Amason
ATTORNEY(S) FOR THE PLAINTIFF(S)

Brian T Petrano
ATTORNEY(S) FOR THE DEFENDANT(S)
Jeanette W. Bride
Clerk of Court

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Harvin, Alonzo Demetric, 00157738,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS

2008CP4008865

ORDER OF DISMISSAL

RICHLAND COUNTY
FILED
2011 OCT -3 PM 3:20
DEMETRIC M. ROBRIDE
Clerk, S.C. & C.S.

PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed December 17, 2008. The Respondent made its Return on July 7, 2009. An evidentiary hearing into the matter was convened on August 29, 2011 at the Richland County Courthouse.

The Applicant was present at the hearing and was represented by Linda J. Amason, Esquire. Brian T. Petrano of the South Carolina Attorney General's Office represented the Respondent. Prior to the PCR hearing, the Applicant moved for discovery on or about January 14, 2009 per S.C. Code § 17-27-150(A). The Applicant filed one or more amended application(s) for PCR.¹ On March 17, 2010, the parties appeared before the Honorable Alison Renee Lee, as Chief Administrative Judge for the Fifth Circuit Court of Common Pleas. Judge Lee issued an Order dated April 8, 2010 granting discovery as to the Solicitor's file and the Richland County Sheriff's Department file.

¹ It appears that the Applicant, *pro se*, submitted an amendment to his PCR application on or about November 2, 2009. The Applicant had been represented by counsel since January 15, 2009, so his *pro se* filings are not properly before this Court. *Miller v. State*, 388 S.C. 347, 697 S.E.2d 527 (2010).

At the hearing, the Applicant testified on his own behalf. The Applicant called Jerry Russell (then Richland County Sheriff's Department Crime Scene Investigator). The Applicant's trial counsel, Stacy Rowell, Esquire also testified. This Court had before it the records of the Richland County Clerk of Court, the transcript of the proceedings against the Applicant, the records from the Applicant's direct appeal, and the Applicant's records from the South Carolina Department of Corrections.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Richland County. The Applicant was represented by Stacy Owings, Esquire (the co-defendant in the joint trial was represented by Robert Mills, Esquire). On August 3, 2005,² after a jury trial with the Honorable Reginald I. Lloyd, the Applicant was convicted and sentenced to life in prison for Burglary 1st (2004GS409926), and five (5) years for grand larceny (2004GS409927).³ There was a motion for a new trial filed by Applicant's counsel on August 11, 2005. There was a hearing held on the matter on October 10, 2005. By written Order dated February 2, 2006, Judge Lloyd denied the motion for a new trial.⁴

STATEMENT OF FACTS

On November 4, 2004, someone broke into a home in Richland County, South Carolina. A witness saw two people come out of the woods next to the burglarized home and get into a white van. The witness called police and gave the license plate number of the van. (Trial

² The cover page of the trial transcript indicates that the trial was on January 23, 2005. However, the other records and the certification page of the trial transcript reflect the correct date, i.e. August 3, 2005.

³ The life sentence is mandatory due to the Applicant's prior "strikes" per S.C. Code § 17-25-45. (Trial transcript, p. 402 – 414).

⁴ The Applicant's motion, the State's reply, the transcript from the hearing, and the order are all available in the file. Harvin. Alonzo Demetric, 00157738, Order of Dismissal (2008CP4008865)

Transcript, p. 101-120). Within a few minutes, deputies with the Richland County Sheriff's Department stopped a white van coming from the direction of the home. Appellant Alonzo Demetric Harvin ("Harvin") and another man were in the van, which contained items stolen from the home. (Trial Transcript, p.127-136, 252-283).

Prior to trial, Harvin moved to exclude any testimony regarding a shoe print analysis. The circuit court ruled that the State could present testimony that a shoe print found on the residence's back door was consistent with the soles of shoes Harvin was wearing. (Trial Transcript, p.83-85).

Virginia Wilson testified she lived approximately a block from her daughter and son-in-law, and on the morning of November 4, 2004, she noticed a white van parked on the road close to her daughter's home. She also heard their dogs barking, so she went up to their house to check on things. On her way up to the house, she wrote down the van's license plate number.

When she went around to the back of the house, Mrs. Wilson saw that the back door had been kicked in and was standing open. She immediately went back to her home and called 911. She gave the police the license plate number and description of the white van parked on the side of the road. While she was on the telephone talking to the police, she saw two people come out of the woods behind her daughter's house, get in the van and drive away, which she reported to the police. (Trial Transcript, p.101-120).

Investigator William Gonzalez of the Richland County Sheriff's Department testified he was patrolling the Lower Richland Boulevard area on November 2, 2004, when the dispatch call went out regarding a possible housebreaking in that area, with the description and license number of a white van possibly involved. He met with another investigator in the area and

headed toward the address given during the dispatch call. While they were en route to the address, the investigators saw a white van coming toward them that matched the vehicle description. (Trial Transcript, p.127-131).

The investigators pulled in behind the van and followed it while they verified the license number and called for additional officers. When the van pulled into a driveway and the two occupants got out quickly, the investigators pulled in behind the van and ordered the occupants to get on the ground. Once the occupants were detained, the investigators looked inside the van and saw two rifles laying on the floor. The rifles were subsequently identified by the owner as stolen from his residence that morning. (Trial Transcript, p.131-136).

Barbara McAllister testified that she, her husband and stepson live down the road from her mother, Virginia Wilson. On the morning of November 4, 2004, Mrs. McAllister took her stepson to school and went to work. She left work and went home after her mother called her and said something was going on at her house. When she arrived at her house, the police were there, and she discovered that the house had been ransacked. (Trial Transcript, p.148-156).

William McAllister testified that he left his home at approximately 5:30 a.m. on November 4, 2004. He left work to go home after his mother-in-law called him. On his way home, he saw police cars on the side of the road with a white van and he stopped to see if it had anything to do with his home. The police officers asked him to look inside the van to see if he anything in it belonged to him. He identified the two rifles lying on the floor of the van, and subsequently provided police with documentation of ownership. (Trial Transcript, p.167-174).

Jerry Russell, a crime scene investigator with the Richland County Sheriff's Department, was qualified as an expert in crime scene investigation. He testified he processed the scene at the

McAllister's residence, and made photographs of a shoe print found on the back door that was consistent with someone kicking in the door. (Trial Transcript, p.214-231, State's Exhibits 31 and 32). He further testified he examined some footwear supplied to him at a later time, and observed a circular pattern in the tread that was similar to a circular pattern in the shoe print on the McAllister's back door. He specifically stated during direct and cross examination, however, that he could not say what shoe made the shoe print. (Trial Transcript, p.237-242).

Investigator Darrell Tucker of the Richland County Sheriff's Department testified he and Investigator Gonzalez heard the dispatch call regarding a possible housebreaking, saw a white van matching the description of a vehicle seen at the house coming from that direction, and stopped the white van after they confirmed it had the same license plate as the one seen at the house. Harvin, who was driving the van, initially gave a false name, and only gave his true identity after police identified him through his fingerprints. (Trial Transcript, p.252-283).

Direct Appeal

A timely Notice of Appeal was filed on Applicant's behalf. The issue on direct appeal was whether the circuit court properly allowed the crime scene investigator to testify that the footprint found on the door of a burglarized house had a circular pattern consistent with the pattern on shoes Appellant was wearing the day of the burglary. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Alonzo Harvin, Op. No. 2008-UP-201 (S.C. Ct. App. filed March 24, 2008 Remittitur dated April 11, 2008).

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 (1985).

The Applicant testified at the PCR hearing, the Applicant pursued his claim of ineffective assistance of trial counsel, claiming that trial counsel was ineffective and should have had the photographs suppressed and that counsel was ineffective for failing to challenge the State regarding the chain of custody of the weapons. The Applicant claimed that while trial counsel did challenge the ownership of the guns to some extent, she could have challenged the value of the guns. The Applicant also claimed that appellate counsel should have argued the directed verdict issue, i.e. that the trial court erred by denying the trial counsel's directed verdict motion. The Applicant explained the procedural history and his involvement in the case. The Applicant testified that he came into possession of the guns but that he never entered the victim's home. The Applicant explained that his intent was to sell the guns.

Richland County Sheriff's Department Crime Scene Investigator Jerry Russell (CSI Russell) testified that he did not recover any fingerprints on the victim's weapons that were in the Applicant's van. CSI Russell explained that he did not attempt to "dust" the weapons for fingerprints because in his professional opinion it was unlikely any prints could be recovered. CSI Russell explained that the weapons were in excellent shape but for their presence in the Applicant's oily and dusty van. He explained that it was "drizzly" that day and that graphite print

powder could ruin those guns. He explained that is why he did not check them for prints, i.e. it was unlikely that any prints would be recovered considering the circumstances and that the potential harm to the weapons was too great. He also explained that he does not remember whether the ballistics unit checked the weapons before they were ultimately returned to the owner.

Trial counsel testified that the guns were obviously a very important part of the case. Trial counsel explained that the weapons themselves were never entered into evidence and that they had been returned to the victim prior to trial. Trial counsel explained that the only evidence of the weapons at trial were the photographs of the weapons as found in the Applicant's van and the testimony of the victim and the investigators. Trial counsel explained that she saw no grounds to support a motion to suppress the evidence of the weapons. Trial counsel explained that while she did have subpoena power she would not want to help the State's case by putting the weapons into evidence. Trial counsel explained that in her experience waiving the guns around the courtroom is a solicitor's tactic. Trial counsel testified that [apart from cross examination] no investigation was done as to whether the witnesses were fabricating the existence/ownership of the guns.⁵ The Applicant questioned trial counsel as to several issues in the transcript. For example, trial counsel explained that she could have mentioned the testimony of one of the witnesses that saw individuals that could have been the burglars walking from the victim's house but that the witness did not see the burglars carrying anything, i.e. weapons. *See* transcript, p. 125. Trial counsel explained that the victim testified and identified the weapons he saw in the Applicant's van as his own. (Trial transcript, p. 171). Trial counsel explained that the

⁵ This Court notes that while not entirely credible as to the origin, the Applicant himself conceded that he had possession of the weapons in his van when he was stopped by law enforcement.

victim also had receipts that verified the serial numbers of the weapons. (Trial transcript, p. 177). Trial counsel acknowledged that the receipt was never offered in as evidence but that the original value of the weapons was not her primary concern because the first degree burglary was the LWOP offense the State was really pursuing in the case. Trial counsel explained that her main theme in argument was going to be that the State failed to prove that the weapons were the victims. Counsel explained that she was weary of asking too many questions of law enforcement as to how they verified that the weapons belonged to the victim. Her technique is obvious, i.e the "one question too many" dilemma could thwart her from keeping the issue vague and arguing a lack of evidence to the jury.⁶ Trial counsel explained that the Applicant told her that he found the guns on the side of the road, consistent with his testimony at the PCR hearing that he was going to sell the weapons. Trial counsel testified that she had an expert for the shoe print issue but that expert warned her not to call him to testify because his ultimate testimony [albeit on cross] would probably support the State's expert's opinion.

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (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,

⁶ The Applicant did not explain how any different questions would have revealed anything favorable to his defense, i.e. the Applicant has not satisfied is burden and proven any sort of prejudice regarding trial counsel's method of examination. This is not to say that her performance was in any way deficient. "A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed." Strickland v. Washington, 466 U.S. 668, 670, 104 S. Ct. 2052, 2056, 80 L. Ed. 2d 674 (1984).

456 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 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, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating 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 professional norms." Cherry, 300 S.C. at 117, 386 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. As discussed throughout, the Applicant has failed to carry his burden in this action. Therefore, this Court finds that the application must be denied and dismissed.

Beyond reviewing the undisputed procedural history, this Court finds Applicant's testimony not credible.⁷ Trial counsel's testimony is both credible and well reasoned. Accordingly, this Court finds Applicant has failed to prove the first prong of the Strickland test – that counsel failed to render reasonably effective assistance under prevailing professional norms.

⁷ For the purposes of the record, this Court finds specifically that the Applicant was not credible when he testified that he simply "found" the weapons on the side of the road.

~~This Court~~ also finds Applicant has failed to prove the second prong of Strickland – that he was ~~prejudiced~~ by counsel's performance.

This Court finds that the Applicant's claim regarding ineffective assistance of appellate counsel to be without merit. The Applicant claims that appellate counsel was ineffective for failing to argue that the trial court improperly denied his directed verdict motion. (Trial transcript, p. 314). On appeal from the denial of a directed verdict, an appellate court must view the evidence in the light most favorable to the State. State v. Lollis, 343 S.C. 580, 583, 541 S.E.2d 254, 256 (2001); State v. Burdette, 335 S.C. 34, 46, 515 S.E.2d 525, 531 (1999); State v. Kelsey, 331 S.C. 50, 62, 502 S.E.2d 63, 69 (1998). When ruling on a motion for a directed verdict, the trial court is concerned with the existence of evidence, not its weight. Burdette, 335 S.C. at 46, 515 S.E.2d at 531; State v. Wakefield, 323 S.C. 189, 197, 473 S.E.2d 831, 835 (Ct.App.1996). "If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury." Lollis, 343 S.C. at 584, 541 S.E.2d at 256. "A defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged." State v. Rosemond, 356 S.C. 426, 429, 589 S.E.2d 757, 758 (2003). The trial court clearly had ample evidence to base the denial of the directed verdict motion. See Trial transcript, p. 315.

Regarding the Applicant's arguments as to the supposed weakness of the "chain of custody," this Court notes that weapons are not a fungible item and a strict chain of custody is not required. State v. Freiburger, 366 S.C. 125, 620 S.E.2d 737 (2005). Nevertheless, the weapons were never introduced into evidence.

Finally, ~~as explained~~ throughout the order, there was no deficient performance regarding the weapons. ~~The weapons~~ were found in the Applicant's van minutes after an eye-witness to the burglary saw the broken in door and noted the license plate to the police. There is no requirement that the weapons need be placed into evidence, in addition, trial counsel explained that she would not want weapons in the courtroom because it negatively impacts the jury. The Applicant has failed to satisfy his burden of proof and demonstrate any deficient performance or any prejudice.

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. Counsel was not deficient in any manner, nor was Applicant prejudiced by counsel's representation. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

Except as discussed above, this Court finds that the Applicant failed to raise the remaining allegations set forth in his application at the hearing and has, thereby, waived them. As to any and all allegations that were or could have been raised in the application or at the hearing in this matter, but were not specifically addressed in this Order, this Court finds Applicant failed to present any probative evidence regarding such allegations. Accordingly, this Court finds that Applicant waived such allegations and failed to meet his burden of proof regarding them. Accordingly, they are dismissed with prejudice. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issue at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

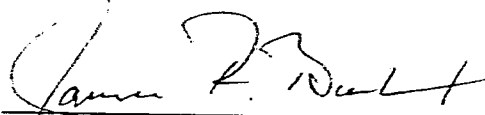
This Court cautions the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the

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), SCRCP, 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 and counsel are 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 filed.

IT IS THEREFORE ORDERED:

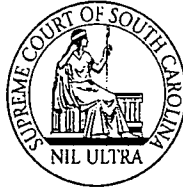
1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 27 day of SEPTEMBER, 2010.



The Honorable James R. Barber, III
Presiding Judge
Fifth Judicial Circuit

Columbia, South Carolina.



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499

November 2, 2011

Mr. Alonzo Harvin, #157738
Lieber Correctional Institution
P.O. Box 205
Ridgeville, SC 29472

Mr. Anlozo Harvin, #157738
Lieber Correctional Institution
136 Wilborn Avenue
Ridgeville, SC 29422

RE: *State v. Harvin*, 2008-CP-40-08865

Dear Mr. Harvin:

This responds to your letter that was received today. This letter has been construed as a notice of appeal.

For this matter to proceed, you will need to provide this Court with a proof of service showing that the notice of appeal has been timely served on opposing counsel. Additionally, you will need to provide this Court with a copy of the final order and any other orders that will be challenged on appeal. If these additional documents are not received within ten (10) days of the date of this letter, this matter will be dismissed.

Please note that the time to serve the notice of appeal on opposing counsel is relative short under Rules 243(b) and 203(b)(1), SCACR, and this period cannot be extended. Rule 263(b), SCACR. I have enclosed a sample proof of service along with a copy of your letter which, as indicated above, has been construed as a notice of appeal.

By copy of this letter, I am advising Linda Jean Amason, Esquire, that you have filed a notice of appeal. Since the case management system for Richland County shows that she was your counsel of record before the circuit court, I remind her that she remains your counsel of record before this Court, and that she should assist you with ensuring that the notice of appeal is properly served and filed. Rule 71.1(g), SCRCP.¹ I am providing her with a copy of your *pro se* notice of appeal.

Sincerely,

Daniel E. Shearouse

Enclosures (copy of letter and Form 7)

cc: Linda Jean Amason, Esquire (with copy of letter)

¹ That rule states, in part:

If an applicant represented by counsel desires to appeal, counsel shall serve and file a Notice of Appeal as required by Rule 243, SCACR, and shall continue to represent the applicant on appeal unless automatically relieved under Rule 602, SCACR, or allowed to withdraw under Rule 264, SCACR. If the applicant is indigent, counsel shall assist the applicant in obtaining representation by the Division of Appellate Defense of the Office of Indigent Defense.

To: The Supreme Court of South Carolina
Daniel E. Shearson, Clerk of Court
Post Office Box 11330
Columbia, South Carolina 29211

RE: ALONZO HARVIN #151738
Docket No. 2008 CP-400-8865

I Alonzo Harvin #151738 Address this letter to your office and Authority to Inform that on Oct 11, 2011 I receive notice from the Richland County clerk of court office. Informing me that my Post-conviction Relief was denied on Sept 27, 2011. P.C.R Application number 2008-CP-4008865

I am my intentions and wish to Appeal such decision Pursuant to S.C.A.C.R. Rule 203. Austin v. State 305 S.C. 453 1993

Thank you

Alonzo Harvin

RECEIVED

NOV 2 2011

S.C. SUPREME COURT

Alonzo HARVILL # 01611138

LIEBER doctreflower Inst

136 WILSON AVE,

Rockyville, SC 29422

RECEIVED

OCT 28 2011
MAIL ROOM
LIEBER C.I.

CHARLESTON SC 294

28 OCT 2011 PM 2



The Supreme Court of South Carolina

Daniel E. Shearouse, Clerk of Court

Columbia S.C. 29211

29211+9333

