



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

 ORIGINAL

Division of Appellate Defense
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Telephone: (803) 734-1343
Facsimile: (803) 734-1397

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

April 9, 2012

RECEIVED

APR 9 2012

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

S.C. Supreme Court

Re: Charles E. Copeland v. State

Dear Mr. Shearouse:

The petition for writ of certiorari and accompanying appendix is 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 Suzanne H. White Esquire, of the Attorney General's Office, of my request.

Sincerely,

Robert M. Dudek
Chief Appellate Defender

RMD/cms

cc: Suzanne H. White, Esquire



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SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
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Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

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FEB 07 2012

S.C. Supreme Court

February 7, 2012

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

Dear Mr. Shearouse:

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

Charles E. Copeland v. State of South Carolina

2/7/2012

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,

Sharon A. Graham
Administrative Coordinator



SCCID

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

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DEC - 8 2011

December 8, 2011

S.C. Supreme Court

Ms. Pamela E. Green
Circuit Court Reporter
121 Bradford Crossing Drive
Roebuck, SC 29376

Dear Ms. Green:

Please provide us with the following transcript:

Charles E. Copeland v. State of South Carolina Case #: 10-CP-42-05406

County: Spartanburg Date of Trial: June 15, 2011

Presiding Judge: Roger L. Couch

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,


Lorie French
Legal Services Coordinator

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

Shawn M. Campbell
Kenneth P. Shabel
John R. Holland

Campbell & Shabel

A T T O R N E Y S A T L A W

OF COUNSEL:
Sean Giovannetti

Sender's Email: jmoss@gc-lawfirm.com

Friday, November 18, 2011

VIA CERTIFIED MAIL

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



**Re: Charles Copeland, # 214518 vs. The
2010-CP-42-5406**

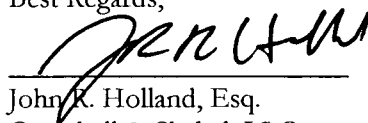
Dear Mr. Shearouse:

Enclosed for filing are an original and a copy of a notice of appeal in the above-referenced case. I have been appointed to serve as attorney for the PCR applicant, Charles Copeland, in this action. Also enclosed are the following:

- 1) Proof of service of the notice of appeal on the respondent.
- 2) A copy of the order which is to be challenged on appeal.

Insofar as this is an appeal from a Post-Conviction Relief case, I am not enclosing a filing fee, as I believe such fees are waived in these cases.

Best Regards,



John R. Holland, Esq.
Campbell & Shabel, LLC
P.O. Box 1793
Spartanburg, S.C. 29304
Telephone: 864-583-0001
FAX: 864-583-1199
Attorney for Appellant

cc: client
Ms. Suzanne H. White, Assistant Attorney General

RECEIVED
NOV 21 2011
S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

The Honorable Roger L. Couch, Circuit Court Judge

Case No. 2010-CP-42-5406

Charles Copeland, # 214518,

Plaintiff/Applicant

vs.


State of South Carolina,

Respondent

NOTICE OF APPEAL

Charles Copeland, South Carolina Department of Corrections Number 214518, hereby appeals the order of the Honorable Roger L. Couch dated November 1, 2011 in Case Number 2010-CP-42-5406.

November 18th, 2011


John R. Holland, Esq.
Campbell & Shabel, LLC
104 N. Daniel Morgan Ave, Suite 201
Spartanburg, S.C. 29306
Telephone: 864-583-0001
FAX: 864-583-1199
Attorney for Applicant

Other Counsel of Record:

Suzanne H. White, Esq.
Assistant Attorney General
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211-1549
Tel: (803) 734-3970
Fax: (803) 253-6283
Attorney for Respondent

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NOV 21 2011
S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

The Honorable Roger L. Couch, Circuit Court Judge

Case No. 2010-CP-42-5406

Charles Copeland, # 214518,

Plaintiff/Applicant

vs.

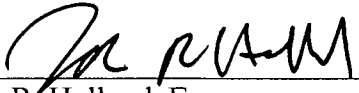
State of South Carolina,

Respondent

PROOF OF SERVICE

I certified that I have served the Notice of Appeal by depositing a copy of it in the United States Mail, postage prepaid, on the State of South Carolina, addressed to its attorney of Record, Suzanne H. White, Assistant Attorney General, Office of the Attorney General, Post Office Box 11549, Columbia, South Carolina 29211-1549

November 18th, 2011



John R. Holland, Esq.
Campbell & Shabel, LLC
104 N. Daniel Morgan Ave, Suite 201
Spartanburg, S.C. 29306
Telephone: 864-583-0001
FAX: 864-583-1199
Attorney for Applicant

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
 Charles E. Copeland, #214518,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
)

IN THE COURT OF COMMON PLEAS
 SEVENTH JUDICIAL CIRCUIT

2010-CP-42-5406

ORDER OF DISMISSAL

This matter comes before the Court by way of an Application for Post-Conviction Relief filed October 8, 2010. The Respondent made its Return on or about April 27, 2011. An evidentiary hearing into the matter was convened on June 15, 2011, at the Spartanburg County Courthouse. The Applicant was present at the hearing and was represented by John R. Holland, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. Also testifying was Pamela Young, Applicant's fiancé, and John G. Reckenbeil, Esquire. This Court also had before a copy of the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, and the State's Return

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 SPARTANBURG COUNTY
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 M. HOPEBLANKLEY

PROCEDURAL HISTORY

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Spartanburg County Clerk of Court's orders of commitment. The Spartanburg County Grand Jury indicted the Applicant at the July 2010 term of General Sessions for possession with intent to distribute methamphetamine or cocaine base (10-GS-42-3917), two counts of distribution of cocaine base and/or crack cocaine (10-GS-42-3918, -3919), and two

Handwritten initials/signature

counts of distribution of crack cocaine within one half mile of school (10-GS-42-3920, -3921) . John G. Reckenbeil, Esquire, represented the Applicant. On July 26, 2010, the Applicant pled guilty to all charges with the exception of the two proximity charges, which were *nolle prossed* as a result of Applicant's agreement to plead guilty. The Honorable R. Lawton McIntosh sentenced the Applicant to concurrent sentences of ten years suspended to five years and three years of probation on each charge. The Applicant did not appeal his conviction or sentence.

ALLEGATIONS

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

1. Ineffective assistance of counsel, in that;
 - a. Counsel failed to show up for the preliminary hearing,
 - b. Counsel refused to return phone calls,
 - c. Counsel informed Applicant that in order to receive discovery materials, Applicant would have to go to trial,
 - d. Counsel failed to properly investigate,
2. Illegal search and seizure, in that;
 - a. Police conducted a warrantless stop and search of Applicant's automobile based on information provided by confidential informant, and
3. Denial of preliminary hearing; and
4. Denial of Discovery (Rule 5, Brady), in that;
 - a. Prosecution failed to disclose exculpatory information.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

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Ineffective Assistance of Counsel

The Applicant alleges he received 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, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, 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. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland).

This Court finds that the Applicant has failed to meet his burden of proof as to the

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allegations that Counsel was ineffective for failing to properly investigate the case, communicate with Applicant, and share discovery materials with the Applicant. This Court finds Counsel's testimony to be more credible than Applicant's testimony. Applicant testified that Counsel promised Applicant that he would receive a sentence of eighteen months of probation. Applicant testified that Counsel never shared discovery materials with him, except for the weight of the drugs found on the day of Applicant's guilty plea. Applicant testified that he asked Counsel once to see the discovery materials. Applicant also testified that Counsel never returned Applicant's phone calls and did not show up to represent the Applicant at Applicant's preliminary hearing. Applicant testified that he did not answer the Court's questions truthfully at his guilty plea because he answered how Counsel advised him to. Ms. Young testified that Counsel told Applicant that he would receive a sentence of eighteen months and he could work with the police.

Counsel testified that the Applicant was facing a potential sentence of sixty-five years for all of the charges. Counsel testified that the Applicant was arrested after he sold drugs to two confidential informants and then was pulled over in his vehicle and searched pursuant to a search warrant. Counsel testified that the Applicant never discussed the desire of going to trial so Counsel tried to negotiate with the State and they were willing to dismiss two of the charges. Counsel testified that he informed the Applicant that probation could be a possibility because the charges were only 0-15 and non-violent, but he did not promise an eighteen month probationary sentence. Counsel also testified that he talked about the discovery with the Applicant, but did not show it to him so as not to lose the deal.

As to Applicant's other claims that the search and seizure were illegal, that he was denied his right to a preliminary hearing, and the prosecution failed to disclose exculpatory information,

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this Court finds that these claims should be denied and dismissed. First, because the Applicant's plea waives any non-jurisdictional defects and defenses, including challenges to the sufficiency of the evidence. "Where a defendant voluntarily, intelligently, and understandingly enters a plea of guilt, this makes it unnecessary for the State to offer evidence to prove the offense charged in the warrant or indictment." State v. Allen, 261 S.C. 448, 200 S.E.2d 684, 686 (1973). This is because the guilty plea "admits all matter of fact averments of the accusation." Id. Second, the Applicant failed to present any evidence or testimony in support of these claims at the hearing. Therefore, the Applicant failed to meet his burden of proof and these claims are denied and dismissed.

Summary

This Court finds in regards to the allegation of ineffective assistance of counsel, the Applicant's testimony and Ms. Young's testimony are not credible, while also finding plea counsel's testimony is credible. This Court further finds plea counsel adequately conferred with the Applicant, conducted a proper investigation, was thoroughly competent in his representation, and that plea counsel's conduct does not fall below the objective standard of reasonableness.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test - that plea counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that plea counsel committed either errors or omissions in his representation of the Applicant.

This Court also finds the Applicant has failed to prove the second prong of Strickland - that he was prejudiced by plea counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier supra. Therefore, this allegation is denied.

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PARTANBURG COUNTY
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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 cautions 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. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 1st day of November, 2011.



 Roger L. Couch
 Presiding Judge

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 SPARTANBURG COUNTY
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Campbell & Shabel, LLC
104 N. Daniel Morgan Ave
Suite 201
Spartanburg, SC 29306

Charles Copeland

VIA CERTIFIED MAIL
The Honorable Daniel Shearouse
Clerk, Supreme Court of South Carolina
Post Office Box 11330
Columbia, South Carolina 29211