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AUG 17 2016

THE BOOZER LAW FIRM, LLC

SC SUPREME COURT

Lance S. Boozer, Esq.*
*Also admitted in Florida

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August 15, 2016

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

The Honorable Beulah G. Roberts
Clerk of Court
P.O. Box 136
Manning, SC 29102

**RE: Charlie Belser, #331210, v. State of South Carolina
2015-CP-14-156**

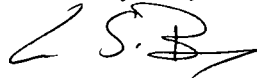
Dear Mr. Shearouse and Ms. Roberts:

Enclosed for filing is a Notice of Appeal in the above-referenced case. Also enclosed are the following:

- (1) Proof of Service of the Notice of Appeal;
- (2) A copy of the Order which is to be challenged on appeal; and
- (3) Prior Order of Appointment of Counsel.

As I was appointed to represent Mr. Belser in his PCR proceeding, I anticipate that the Office of Appellate Defense will represent Mr. Belser in this appeal.

Yours very truly,



Lance S. Boozer

Enclosure

cc: Daniel Gourley, AAG
Loriene French, OAD
Charlie Belser, #331210

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AUG 17 2016

SC SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CLARENDON COUNTY
Court of Common Pleas

The Honorable Brooks P. Goldsmith, Circuit Court Judge

Case No. 15-CP-14-156

Charlie Belser, #331210.....Petitioner,

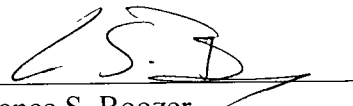
v.

State of South Carolina,.....Respondent.

NOTICE OF APPEAL

The Petitioner appeals the Honorable Brooks P. Goldsmith's Order dated May 29, 2016, denying post-conviction relief to the Petitioner. The Order was received by undersigned counsel on August 11, 2016. A copy of the Order on appeal is attached to this notice.

Respectfully submitted,



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Columbia, South Carolina
August 15, 2016

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SC SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CLARENDON COUNTY
Court of Common Pleas

The Honorable Brooks P. Goldsmith, Circuit Court Judge

Case No. 15-CP-14-156

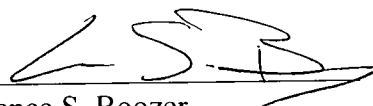
Charlie Belser, #331210.....Petitioner,

v.

State of South Carolina.....Respondent.

PROOF OF SERVICE

I, Lance S. Boozer, appointed attorney for Petitioner, certify that I have today served within Notice of Appeal upon the Respondent by depositing a copy of it in the United States Mail, postage prepaid, addressed to Assistant Attorney General Daniel Gourley, P.O. Box 11549, Columbia, SC 29211. I further certify that all parties required by Rule to be served have been served this 15th day of August, 2016.


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Columbia, SC 29201
Tele: 803-608-5543

STATE OF SOUTH CAROLINA)
 COUNTY OF CLARENDON)
)
 Charlie Belser, #331210,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 FOR THE THIRD JUDICIAL CIRCUIT

2015-CP-14-0156

ORDER OF DISMISSAL

2016 APR -8 AM 11:05
 CLARENCE J. ROBERTS
 CLERK OF COURT
 CLARENDON COUNTY, SC

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on March 30, 2015. Respondent made its return on May 1, 2015. An evidentiary hearing in to the matter was convened on March 14, 2016, at the Sumter County Courthouse. Applicant was present at the hearing and was represented by Lance Boozer, Esquire. Respondent was represented by Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clarendon County Clerk of Court. The Applicant was true bill indicted at the October 2011 term of the Clarendon County Grand Jury for criminal sexual conduct with a minor – second degree (2011-GS-14-0480). Scott Robinson, Esquire represented Applicant. Applicant proceeded to a jury trial and was convicted as indicted on January 30, 2013. The Honorable R. Ferrell Cothran, Jr., sentenced Applicant to fifteen year term of imprisonment.

**CERTIFIED COPY
 OF ORIGINAL FILED IN THIS OFFICE**
 DATE 4/8/2016
Beulah B. Roberts
 CLERK OF COURT
 CLARENDON COUNTY, SC

A timely Notice of Appeal was filed on Applicant's behalf and an Anders brief was submitted. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Belser, 2014-UP-335 (Ct. App. filed September 24, 2014). The Remittitur was issued on October, 10, 2014.

ALLEGATIONS

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

1. Ineffective Assistance of Counsel
 - a. Failure to investigate
2. Due Process Violation
 - a. No substantial proof of allegation of charge.

Applicant filed an amended application on September 30, 2016, alleging he was being held unlawfully based on the following allegations:

1. Ineffective assistance of counsel.
 - a. Failing to timely move for directed verdict.
 - b. Failing to review defense strategies, evidence, and trial strategy with Applicant prior to trial.
 - c. Ineffective assistance of prior retained counsel, Charles Barr, for failing to enter an appearance on Applicant's behalf.

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. The State presented testimony from Scott Robinson, Esquire. (hereinafter "Trial Counsel"). This Court also had before it a copy of the trial transcript, the Clarendon County Clerk of Court records, Applicant's South Carolina Department of Correction records, appellate records, the PCR application, and return.

During the evidentiary hearing, Applicant testified that he filed a post-conviction relief application seeking a new trial. Applicant stated that he was out on bond for approximately a year and half prior to his trial. Applicant stated he was initially represented by Trial Counsel.

During the course of Trial Counsel's representation, Applicant stated he retained Charles Barr, Esquire. Applicant stated that he retained Mr. Barr approximately one week before trial. Applicant stated that Mr. Barr failed to appear for the start of his trial. Applicant stated that he learned Mr. Barr was in another circuit and would not be appearing for his case. Applicant stated that he never discussed his case with Mr. Barr.

Applicant stated that Trial Counsel was in the court room and continued his representation of Applicant. Applicant stated that Trial Counsel requested a continuance because they had not met the week leading up to trial. Applicant stated that Trial Counsel told the court that they had not had a chance to properly prepare for trial. Applicant stated that the trial judge denied Applicant's motion for a continuance. Applicant stated that he never had an opportunity to talk about potential witnesses, the state's evidence against him, or possible defense against the charges. Applicant stated that they reviewed the evidence as it came up during trial.

Applicant claimed Trial Counsel was ineffective for failing to make a timely motion for a directed verdict motion. Applicant stated that Trial Counsel informed him that they had a shot at getting him acquitted because the State failed to present any evidence about his age in their case in chief. Applicant stated that the State moved to reopen the record to recall a witness to attempt to introduce evidence of his age. Applicant stated Trial Counsel strenuously objected to the judge reopening the record. Applicant stated that the Judge ultimately reopened the record and allowed the State to recall their witness. Applicant argued that Trial Counsel should have moved for a direct verdict prior to the State making their motion to reopen the record.

Applicant stated that Trial Counsel was ineffective for failing to call an expert witness to discuss the possibility of secondary transfer. Applicant explained that he was dating the victim's mother and had unprotected sex with her. Applicant explained that he would regularly use a

towel to wipe his semen off. Applicant claimed that the semen from the towel must have transferred over to the minor victim's underwear. Applicant further claimed Trial Counsel was ineffective for failing to call Dr. Keith. Applicant claimed that Dr. Keith would have testified that the rape trauma test did not come back as a positive for Applicant's DNA. Applicant further argues that Trial Counsel should have called a witness to discuss the fact that the DNA found on the underwear did not conclusively match the victim's DNA. Applicant argued that it was possible that the underwear where his semen was located was not the victim's underwear.

Trial Counsel stated that he was appointed to represent Applicant shortly after Applicant's arrest. Trial Counsel stated that he met with Applicant at least six to eight times prior to trial. Trial Counsel stated that Applicant informed him that he had retained Charles Barr about two weeks prior to Applicant's scheduled trial date. Trial Counsel stated that based on his past experience that it may not always be the case that retained counsel show up for the trial date. Trial Counsel stated that he was present on the day of Applicant's trial. Trial Counsel stated Mr. Barr did not appear because he was in another jurisdiction. Trial Counsel stated that he continued to represent Applicant during his trial. Trial Counsel stated that he moved for a continuance because he had not had his typical week of trial prep with Applicant. Trial Counsel stated that he had not prepared the case with Applicant the week leading up to Trial because Applicant refused to talk to him. Trial Counsel stated Applicant would not return calls and refused to meet after he had allegedly retained Mr. Barr. Trial Counsel stated that his continuance motion was denied.

Trial Counsel stated that he had given Applicant a copy of all discovery material before Applicant was released on bond. Trial Counsel stated that he and the applicant had an opportunity to review the State's evidence against Applicant prior to trial. Trial Counsel stated

that their strategy was to argue secondary transfer. Trial Counsel stated that he had discussions with an expert in the field of secondary transfer and got various questions to pose to the State's expert. Trial Counsel stated that he was able to elicit beneficial testimony from the State's expert about the possibility of secondary transfer. Trial Counsel stated that in his opinion eliciting favorable testimony from a State's expert is more powerful than presenting an expert in defense. Trial Counsel stated that any expert testimony they elicited during in defense would have been cumulative to what he was already able to elicit from the State's expert. Trial Counsel stated the benefit of cumulative testimony from a defense expert did not outweigh the benefit of having last closing argument.

Trial Counsel stated that he realized the State had not presented any evidence of Applicant's age prior to initially resting. Trial Counsel stated that he may have advised Applicant that they had a shot at getting the case dismissed based on the State's failure to present evidence on an element of the offense. However, Trial Counsel stated the trial judge gave a bathroom break prior to his opportunity to make his directed verdict motion. Trial Counsel stated immediately following the break, the State requested to reopen the record to recall a witness to introduce evidence of Applicant's age. Trial Counsel stated he strenuously objected to the State being allowed to reopen their case, however his objection was overruled. Trial Counsel stated that it was not a situation where he failed to make the appropriate directed verdict motion, but instead the State made the timely motion to reopen the record. Trial Counsel stated that he filed a notice of appeal and had not had any discussions with Applicant's appellate attorney.



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. Specifically, this Court finds Trial Counsel's testimony credible and Applicant's testimony not credible. 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).

INEFFECTIVE ASSISTANCE OF COUNSEL

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 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, 466 U.S. 668, (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.

1. Ineffective assistance of counsel for failing to investigate, review defense strategies, evidence and trial strategy with Applicant prior to trial.

This Court finds Applicant's allegation that Trial Counsel was ineffective for failing to investigate, review defense strategies, evidence and trial strategy with Applicant prior to trial is meritless. This Court finds Trial Counsel's action fell well within the reasonable professional norms. Trial Counsel stated that he met with Applicant at least six to eight times prior to trial. Trial Counsel stated that he provided and reviewed the State's evidence with Applicant prior to trial. Trial Counsel stated that he conferred with an expert on secondary transfer prior to trial. Trial Counsel further stated that Applicant refused to speak with him during the week leading up to trial because Applicant thought he had retained Charles Barr. A brief review of the record reveals that Trial Counsel thoroughly cross examined the State's witnesses, presented sound opening and closing arguments, argued vigorously on Applicant's behalf at all appropriate stages at trial. Furthermore, it appears to this Court that Trial Counsel was well versed on the intricacies of the case based on his testimony during the PCR hearing. This Court finds Trial Counsel was in no way deficient in his representation of Applicant.

Furthermore, Applicant failed to produce any credible evidence or arguments to Trial Counsel's failure to investigate, prepare, defend, or prepare Applicant for trial. To the contrary, Applicant merely echoes everything that was done by Trial Counsel and claims there simply should have been more done on his behalf. However, this Court must deny this allegation with



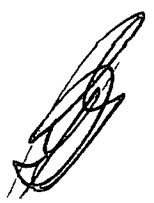
prejudice, because Applicant failed to present any credible evidence or arguments as to “what more” Trial Counsel could have done to investigate, defend, or represent Applicant.

2. Ineffective assistance of counsel for failing to make a timely directed verdict motion.

This Court finds Applicant’s allegation that Trial Counsel was ineffective for failing to make a timely directed verdict motion is meritless. This Court finds Trial Counsel’s actions fell well within the reasonable professional norms. Applicant simply argues that Trial Counsel should have made his directed verdict motion prior to the State moving to reopen the record. To the contrary, Trial Counsel credibly testified that the State simply made the motion to reopen the record following the short break taken by the trial judge. Trial Counsel stated and the record reflects, his strenuous objection to the State being allowed to reopen the record. Nothing about Trial Counsel’s handling of the directed verdict motion was deficient. Furthermore, this Court notes Applicant failed to provide this Court with any credible evidence or arguments as to what Trial Counsel could have done other than objecting to the State’s motion to reopen the record. As a result, this Court finds that this allegation must be denied and dismissed with prejudice.

3. Ineffective assistance of counsel of prior retained counsel, Charles Barr, for failing to enter an appearance on Applicant’s behalf.

This Court finds Applicant’s allegation that prior retained counsel, Charles Barr, was ineffective for failing to enter an appearance on Applicant’s behalf meritless. Applicant presented no credible evidence or arguments that Charles Barr was retained, was prepared to try the case, or even willing to represent Applicant. To the contrary, Applicant merely presents his own self-serving non-credible testimony that he had retained Charles Barr. Notably, Applicant claimed that he retained Charles Barr a week prior to trial. This Court will not speculate as to the representation that Mr. Barr could have provided had he appeared on Applicant’s behalf.



Regardless, Applicant received an effective representation by Trial Counsel. Trial Counsel's representation was neither deficient nor prejudicial. It was clear from this Court that Trial Counsel was well prepared to take this case to trial. Therefore, this Court finds that this allegation must be denied and dismissed with prejudice.

ALL OTHER ALLEGATIONS

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

[Signature to follow]

A handwritten signature in black ink, located in the bottom right corner of the page. The signature is stylized and appears to consist of several overlapping loops and lines.

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 notes that Applicant must file and serve a notice of appeal within thirty 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 post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant 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 29 day of July, 2016.



BROOKS P. GOLDSMITH
Presiding Judge
Third Judicial Circuit

_____, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CLARENDON

CHARLIE BELSER,
Plaintiff(s),
-vs-

STATE OF SOUTH CAROLINA,
Defendant(s).

) IN THE COURT OF (Select one.)
) COMMON PLEAS FAMILY COURT
) THIRD JUDICIAL CIRCUIT
) CASE NO.: 2015-CP-14-0156
) APPOINTMENT OF COUNSEL OR GAL
) (Select one.)
) ORDER
) AMENDED ORDER

TYPE OF CASE/PROCEEDING: (Check one.)

- | | | |
|--|--|--|
| <input checked="" type="checkbox"/> Post-Conviction Relief (PCR)/habeas case | <input type="checkbox"/> Adoption | <input type="checkbox"/> Juvenile |
| <input type="checkbox"/> SVP case | <input type="checkbox"/> Custody and/or Visitation | <input type="checkbox"/> Abuse and Neglect |
| <input type="checkbox"/> Minor Name Change | <input type="checkbox"/> Other: | |

It appears that CHARLIE BELSER, who is a litigant in this case, is entitled to court-appointed counsel or a guardian ad litem.

It further appears that: (Select only one.)

- counsel/guardian ad litem has not yet been appointed by the court; therefore, an appointment for counsel/guardian ad litem is necessary.
- counsel or a guardian ad litem was previously appointed by the court but has indicated either a possible conflict of interest, an entitlement to exemption, or other good cause warranting the appointment of new counsel or guardian ad litem based on: _____
- counsel was previously appointed by the court but has not indicated that the litigant has retained private counsel and is no longer entitled to appointed counsel.
- court appointed counsel has obtained _____, Esquire as substitute counsel pursuant to Rule 608(h)(2); provided, however, only the member who originally received the appointment and who sought substitute counsel shall receive credit.
- Other:

Therefore, it is ordered that LANCE BOOZER, hereby is appointed as (Select one.)

counsel lead counsel (if capital PCR case) guardian ad litem
for the above-named person. Any counsel or GAL previously appointed is/are hereby relieved.

(If Death Penalty PCR Case) It is further ordered that _____, Esquire, is hereby appointed as second counsel in this capital PCR case.

The clerk of court is directed to forward a copy of this order to all persons entitled to notice.

IT IS SO ORDERED THIS 21ST DAY OF APRIL, 2015.

Beverly B. Roberts
 Circuit Judge Clerk of Court

CERTIFIED TRUE COPY
 OF ORIGINAL FILED IN THIS OFFICE
 DATE 4/21/2015
 Beverly B. Roberts
 CLERK OF COURT
 CLARENDON COUNTY, SC

NOTICE: SC Supreme Court Order of September 29, 2006, requires appointed counsel entitled to payment from the Office of Indigent Defense (OID) to register the case online with OID within fifteen (15) days of this appointment at www.sccid.sc.gov, and further directs that reimbursement vouchers be submitted directly to SCCID and not to the trial judge or clerk of court. See SCCID website for further details.

THE BOOZER LAW FIRM, LLC

807 Gervais Street, Suite 203
Columbia, SC 29201



The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

