

R. MILLS ARIAIL, JR.
ATTORNEY AT LAW

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August 16, 2016

RECEIVED

AUG 22 2016

SC SUPREME COURT

Via US Mail

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

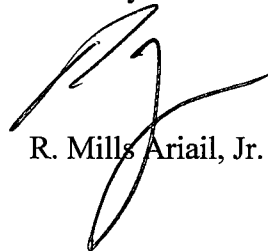
Re: *Notice of Intent to Appeal from State of SC v. Kinjta Kadeem Sadler*
C.A. No.: 2015-CP-23-2831

Dear Mr. Shearouse:

I was Court Appointed in the above referenced matter, and I expect that appellate defense will handle the appeal and petition for certiorari. On behalf of my client, enclosed for filing please find the Notice of Appeal and proof of service. I've enclosed a copy of the Honorable R. Knox McMahon's Order of Dismissal to be challenged on appeal. By copy of this letter, I am also serving my client, counsel for the State of South Carolina, the South Carolina Commission of Indigent Defense - Appellate Defense Division and the Greenville County Clerk's Office.

Thank you for your assistance in this matter and if you have any questions, please feel free to contact me.

Sincerely,
LAW OFFICE OF R. MILLS ARIAIL, JR.
Attorney at Law



R. Mills Ariail, Jr.

RMAjr/dl
Enclosures (as stated)

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

SC SUPREME COURT

R. Knox McMahon, Circuit Court Judge

Case No. 2015-CP-23-2831

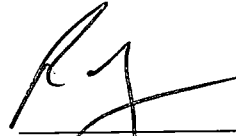
Kinjta Kadeem Sadler,..... Appellant,

v.

State of South Carolina Respondent.

NOTICE OF APPEAL

Appellant appeals the Honorable Knox McMahon's Order of Dismissal dismissing Appellant's application for post-conviction relief. On July 29, 2016, the Honorable R. Knox McMahon signed an order dismissing Appellant's application for post-conviction relief with prejudice. Appellant, through counsel, received written notice of entry of this order on August 12, 2016. A copy of the Honorable R. Knox McMahon's Order of Dismissal is attached.



R. Mills Ariail, Jr.
Attorney at Law
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Greenville, SC 29601
Telephone (864) 232-9390
Facsimile (864) 232-9392
Attorney for Kinjta Kadeem Sadler

Greenville, South Carolina
August 16, 2016

STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE

COUNTY OF GREENVILLE

CASE NO: 2015CP2302831

IN THE COURT OF COMMON PLEAS

Kinjta Kadeem Sadler vs. South Carolina State Of

FILED-CLERK OF COURT
GREENVILLE, S.C.
PAUL B. WICKENSIMER
2016 AUG 9 PM 2:28

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 (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 Greenville, South Carolina, this: _____

Court Reporter:

PRESIDING JUDGE - R Knox McMahon

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

R. Mills Ariail Jr. 11 North Irvine Street, Suite 11
Greenville, SC 29601

Patrick Lowell Schmeckpeper PO Box 11549
Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court
- Clerk of Court

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Kinjta Kadeem Sadler,
S.C.D.C. No. 353966

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS

) THIRTEENTH JUDICIAL CIRCUIT

) C.A. No. 2015-CP-23-2831

) ENTERED COMPUTER

) ORDER OF DISMISSAL
(with prejudice)

2016 AUG 9 PM 2 21

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL J. HIGHTOWER

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on April 29, 2015. Respondent filed its Return on December 4, 2015. An evidentiary hearing into the matter was convened on April 22, 2016, at the Greenville County Courthouse. Applicant was present and testified at the hearing. Also present and testifying was Applicant's trial counsel, Thomas Quinn, Esquire. Applicant was represented by Mills Ariail, Jr., Esquire. Respondent was represented by Patrick Schmeckpeper, Esquire, of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant at the May 2012 term of General Sessions for seven counts of attempted murder (2011-GS-23-9239, -9240, -9241, -9242, -9243, -9244, -9245). Thomas Quinn, Esquire represented the Applicant.

After the State called the case to trial, the Applicant was found guilty. On January 12, 2013, the Honorable Edward W. Miller sentenced the Applicant to concurrent sentences of 20

years on each count.

A notice of appeal was filed at the South Carolina Court of Appeals. Robert M. Pachak, Esquire of the South Carolina Commission on Indigent Defense, Division of Appellate Defense perfected the appeal in the form of an Anders¹ brief. The Court of Appeals dismissed the appeal. State v. Sadler, Op. No. 2015-UP-013 (S.C. Ct. App. filed January 14, 2015). The Remittitur was sent on February 4, 2015.

Allegations

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

1. Illegal Incarceration.
2. Ineffective assistance of counsel.
 - a. Counsel was ineffective for failing to present the time and date of my true bill indictments.
 - b. Counsel was ineffective for failing to investigate this case by failing to interview potential witnesses.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court reviewed the Clerk of Court records regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the transcripts and documents from the prior proceedings, and the legal arguments of counsel. Pursuant to S.C. Code Ann. §17-27-80 (2015), this Court makes the following findings of fact and conclusions of law based upon all of the probative evidence presented.

¹ Anders v. California, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967).

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), 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, 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." Id. at 117-18, 386 S.E.2d at 625.

Failure to Call Witnesses

This Court finds Applicant has failed to meet his burden. Counsel's testimony on the subject is credible, and demonstrates that he decided not to call alibi witnesses a part of a valid

trial strategy. Counsel testified that his theory was that there was not sufficient evidence to place Applicant at the scene. Counsel also said there were credibility problems with the witnesses who implicated Applicant, and the record reflects that those issues were brought out on cross-examination. Counsel explained that he believed the case was going well at trial, and his concern was that by presenting an alibi defense, he would be putting all of their eggs in one basket, to the point where the jury would either believe the alibi or convict Applicant. Counsel also said the time for Applicant's alibi did not match. This Court finds that counsel's reasoning and performance with respect to an alibi defense was objectively reasonable, and pursuant to a valid trial strategy. Accordingly, Applicant has failed to meet his burden to show deficiency. Regardless, Applicant has failed to show prejudice. In order to support a claim that counsel was ineffective for failing to interview or call potential alibi witnesses, a PCR applicant must produce the witnesses at the PCR hearing or otherwise introduce the witnesses' testimony in a manner consistent with the rules of evidence. See Glover v. State, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). Applicant has failed to do either, and has therefore failed to meet his burden. This allegation is denied and dismissed with prejudice.

Deficiency in Indictment

Applicant further alleges that the Grand Jury did not convene to indict him. He said that he talked to counsel about it, but counsel just gave him another copy of his true bill indictment. This Court finds Applicant has failed to meet his burden. Applicant has not presented any credible evidence that his indictment was invalid, or that counsel was ineffective in failing to object to his indictments. Applicant's assertion, standing alone, is not sufficient to overcome the presumption of regularity and legality attending the proceedings before the Grand Jury, and simply based on that assertion, this Court cannot assume the State abused the grand jury process

in order to obtain a finding of probable cause to prosecute. See State v. James, 321 S.C. 75, 472 S.E.2d 38, 40 (Ct. App. 1996) (*certiorari denied* Dec. 19, 1996). Moreover, counsel testified that the indictments adequately put them on notice of what they needed to defend against, and that had there been any issues he would have raised them. This allegation is therefore 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, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

[Signature follows]

CONCLUSION


Based on the foregoing, this Court finds that the Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. 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 intent to appeal within thirty (30) days from receipt of this Order to secure the appropriate appellate review. See Rule 203, SCACR, Rule 71.1(g), SCRCP; Bray v. State, 336 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant's counsel to file and serve notice of appeal. The Applicant's attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice 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. Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 29 day of July, 2016.



R. KNOX MCMAHON
Presiding Judge
Thirteenth Judicial Circuit


_____, South Carolina

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

R. Knox McMahon, Circuit Court Judge

Case No.2015-CP-23-2831

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SC SUPREME COURT

Kinjta Kadeem Sadler..... Appellant,

v.

State of South Carolina Respondent.

CERTIFICATE OF SERVICE

I, Denise Tanner LaBeck, paralegal to R. Mills Ariail, Jr., do hereby certify that on this August 16, 2016, I served upon the below named Respondents copies of the **NOTICE OF APPEAL** by depositing copies of the same via U.S. Mail, postage prepaid, Registered Mail in an envelope addressed as set forth herein below:

Patrick Schmeckpeper, Esq.
Assistant Attorney General
PO Box 11549
Columbia, SC 29211
Attorney for the State of South Carolina

Greenville County Clerk's Office
Greenville County Courthouse
305 East North Street
Greenville, SC 29601

Kinjta Kadeem Sadler SCDC# 353966
McCormick Correctional Institute
386 Redemption Way
McCormick, SC 29899

SC Commission of Indigent Defense
Division of Appellate Defense
PO Box 11433
Columbia, SC 29211-1433

Denise Tanner LaBeck
Denise Tanner LaBeck

August 16, 2016