

The Supreme Court of South Carolina

Freddie Richard Jones, Petitioner,

v.

State of South Carolina, Respondent.

The Honorable Lee S. Alford
York County
Trial Court Case No. 2011-CP-46-00717


ORDER

For good cause shown, the request for an extension until May 9, 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 and must be signed by the appropriate attorneys.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY



Clerk

Columbia, South Carolina

April 10, 2012

cc: Appellate Defender Dayne C. Phillips
Assistant Attorney General J. Rutledge Johnson

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to York County
Lee S. Alford, Circuit Court Judge

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S.C. Supreme Court
ORIGINAL

FREDDIE RICHARD JONES,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

MOTION FOR AN EXTENSION OF TIME
IN WHICH TO FILE THE PETITION FOR WRIT OF
CERTIORARI AND APPENDIX

(2)

Counsel for Freddie Richard Jones respectfully requests an extension of thirty (30) days in which to file the petition for writ of certiorari and appendix in this case. This motion is made pursuant to the Order of the South Carolina Supreme Court dated March 18, 2009. This is a second request for an extension. In support of this request, counsel shows:

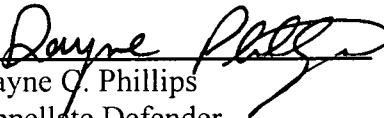
1. The petition for writ of certiorari and appendix is due to be served and filed with the Court today, April 9, 2012.
2. Counsel for Mr. Jones respectfully submits that extraordinary circumstances exist which warrant the granting of an additional extension of time. Given the number of extensions previously granted and the order in which counsel attempts to manage his caseload, counsel hopes that no further extension requests will be required.
3. On April 6, 2012 counsel filed the petition for writ of certiorari and appendix in Ricky Dale Gilstrap v. State. On March 26, 2012 counsel filed the petition for writ of certiorari in the

Court of Appeals and appendix in State v. Bradley Scott Senter. On March 21, 2012 counsel filed the petition for writ of certiorari and appendix in Tina Sumter v. State. On March 19, 2012 counsel filed the petition for writ of certiorari and appendix in Cedric Perkins v. State. On March 13, 2012 counsel filed the petition for writ of certiorari and appendix in Billy S. Tucker v. State. On March 6, 2012, counsel filed the petition for writ of certiorari and appendix in Victor Brown v. State.

4. Counsel makes this request in good faith and not for purpose of delay.
5. Counsel for the Attorney General's office has been informed of this request.

WHEREFORE, the undersigned counsel would respectfully request a thirty day extension, in which to file the petition for writ of certiorari and appendix in this case based upon the above exigent circumstances. Counsel requests that time limits for filing the petition be held in abeyance pending a ruling on this motion.

Respectfully submitted,


Dayne C. Phillips
Appellate Defender

Attorney for Petitioner

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to York County
Lee S. Alford, Circuit Court Judge

FREDDIE RICHARD JONES,

PETITIONER,


V.

STATE OF SOUTH CAROLINA,

RESPONDENT

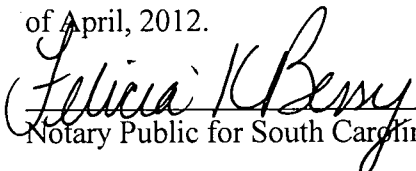
CERTIFICATE OF SERVICE

I certify that a true copy of the motion for an extension of time in which to file the petition for writ of certiorari and appendix in the above case has been served upon J. Rutledge Johnson, Esquire, this 9th day of April, 2012.


Dayne C. Phillips
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 9th day
of April, 2012.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: June 21, 2020.

The Supreme Court of South Carolina

Freddie Richard Jones, Petitioner,

v.

State of South Carolina, Respondent.

The Honorable Lee S. Alford
York County
Trial Court Case No. 2011-CP-46-00717

ORDER

The request for an extension until April 9, 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



Clerk

Columbia, South Carolina

March 12, 2012

cc: Appellate Defender Dayne C. Phillips
Assistant Attorney General Harrison D. Brant



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
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Telephone: (803) 734-1330
Facsimile: (803) 734-1397

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

March 9, 2012

Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

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MAR 9 2012

S.C. Supreme Court

Re: Freddie Richard Jones v. State of South Carolina

Dear Mr. Shearouse:

The petition for writ of certiorari and appendix in the above-referenced case are due to be served and filed today. Because of my present workload, I respectfully request a thirty-day extension of this deadline. No prior extensions have been requested in this case.

By copy of this letter to Assistant Attorney General J. Rutledge Johnson, I am informing him of this request.

Thank you for your assistance in this matter.

Sincerely,

Dayne C. Phillips
Assistant Appellate Defender

DCP/fkb

cc: J. Rutledge Johnson, Esquire



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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

January 10, 2012

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

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JAN 10 2012

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.

Freddie Richard Jones v. State of South Carolina

1/9/2012

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

PCR

The Brooks Law Offices, LLC

Charles T. Brooks, III
Attorney

309 Broad Street
Sumter, South Carolina 29150
Post Office Box 3512, Sumter, SC 29151
Post Office Box 291226, Columbia, SC 29229
OFFICE: (803) 418-5708
FAX: (803) 934-9618 TOLL FREE: (877) 770-8792
Email: cbrooks@ctbrooks.com

Irma R. Brooks
Attorney

October 27, 2011

South Carolina Supreme Court
PO Box 11330
Columbia, SC 29211

RE: Freddie Richard Jones v State of South Carolina
Case No. 2011-CP-46-0717

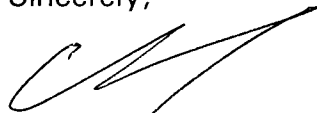
Dear Sir or Madam:

Enclosed herewith you will find the **Notice of Appeal, Order of Dismissal**, along with a **Proof of Service** in reference to the above named Applicant.

If you have any questions or concerns, please contact my office at the number stated above.

With kind regards, I am

Sincerely,



Charles T. Brooks, III
CTB/jlb

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OCT 31 2011

S.C. SUPREME COURT

Enclosed as stated

Cc: Harrison D. Brant, Office of Attorney's General
South Carolina Office of Appellate Defense
Freddie Richard Jones, 197889

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM YORK COUNTY
Court of Common Pleas
Honorable Lee S. Alford. Circuit Court Judge

Case No: 2011-CP-46-0717

Freddie Richard Jones,..... Appellant
S.C.D.C. No.: 197889

v.

The State.....Respondent

NOTICE OF APPEAL

Freddie Richard Jones appeals his Denial for Post Conviction Relief in this case. The Order of Dismissal was imposed and signed by the Honorable Lee S. Alford, on October 24, 2011, which I, Charles T. Brooks, III, received on October 27, 2011.

October 27, 2011


Charles T. Brooks, III
309 Broad Street
Post Office Box 3512
Sumter, South Carolina 29151
(803) 418-5708
Attorney for Appellant

RECEIVED

OCT 31 2011

S.C. SUPREME COURT

Other Counsel on Record:
Harrison D. Brant, Esquire
Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-3970

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM YORK COUNTY
Court of Common Pleas
Honorable Lee S. Alford, Circuit Court Judge

Case No: 2011-CP-46-0717

Freddie Richard Jones.....Appellant
S.C.D.C. No.: 197889

v.
The State.....Respondent

PROOF OF SERVICE

I, the undersigned, do hereby certify that on this 27th day of October, 2011, I served the foregoing Notice of Appeal, Order of Dismissal, as well as Proof of Service in this matter by depositing a true copy of it in the United States Mail, postage prepaid, on October 27, 2011 addressed to the following as indicated below:

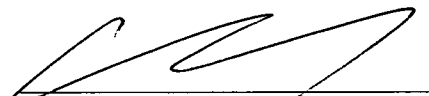
South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

South Carolina Office of Appellate Defense
1330 Lady Street, Suite 401
PO Box 11589
Columbia, SC 29211-1589

Office of Attorney's General
Attn: Harrison D. Brant, Esquire
Post Office Box 11549
Columbia, South Carolina 29211-1549

Freddie Richard Jones, 197889
Lee Correctional Institution
990 Wisacky Highway
Bishopville, South Carolina, 29010

Dated: October 27, 2011



Charles T. Brooks, III
Attorney for the Appellant
309 Broad Street
Sumter, South Carolina 29150
(803) 418-5708

FILED-RECEIVED
STATE OF SOUTH CAROLINA)
2011 OCT 26 AM 8:43)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

DAVID HAMILTON)
C.C.P. & GS)
YORK COUNTY, SC)

2011-CP-46-0717

Freddie Richard Jones, #197889,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

ORDER OF DISMISSAL

This matter comes before the Court by way of Application for Post-Conviction Relief filed February 18, 2011. The Respondent filed its Return on April 28, 2011. An evidentiary hearing into the matter was convened at the Moss Justice Center in York County on June 1, 2011. The Applicant was present at the hearing and was represented by Charles T. Brooks, III, Esquire. The Respondent was represented by Assistant Attorney General Harrison D. Brant.

The Applicant testified on his own behalf at the hearing. The Applicant's trial counsel, Harry A. Dest, Esquire, and B.J. Barrowclough, Esquire, also testified at the hearing. This Court had before it the records of the York County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the Applicant's appellate records, and the trial transcript.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for York County. The Applicant was indicted at the July 2006 term of the York County Grand Jury for Violation of the South Carolina Education Lottery Act (2006-GS-46-2262), Burglary, Second Degree (2006-GS-46-02264), and

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Grand Larceny (2006-GS-46-2265). The Applicant was represented by Harry A. Dest, Esquire, and B. J. Barrowclough, Esquire. On October 17, 2006, the Applicant proceeded to a jury trial before the Honorable R. Ferrell Cothran, Jr. On October 18, 2006, the Applicant was found guilty as indicted of all three charges. The Applicant was sentenced to life without parole for Burglary, second degree, two (2) years for Violation of the S.C. Education Lottery Act, and five (5) years for Grand Larceny. All sentences were run concurrent to each other.

A notice of appeal was filed, and an appeal was perfected on the Applicant's behalf by Robert M. Pachack, Esquire.¹ The South Carolina Court of Appeals affirmed. State v. Jones, 2010-UP-297 (filed June 1, 2010). The Remittitur was sent on June 17, 2010.

ALLEGATIONS

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

1. Ineffective assistance of counsel
 - a) "Failure to investigate"
 - b) "Denial to put up a meaningful defense"
 - c) "Inadequate advise not to testify"

2. "Illegal search and seizure violation of Fourth Amendment"
 - a) "Misstatement of facts given to judicial official to obtain search warrant"
 - b) "Inadequate oath and affirmation"

STATEMENT OF FACTS

In the early morning hours on March 28, 2006, the Woodlands Grocery Store in York, South Carolina was burglarized. The alarm went off around 12:15 a.m., and the police arrived at

¹ On appeal, the Applicant raised the following issue: Whether the trial court erred by allowing the state to admit evidence of appellant's two prior burglary convictions where they held no probative value since the undisputed evidence was that the burglary occurred in the nighttime and the prejudicial impact on appellate was significant?

the scene soon thereafter at around 12:22 a.m. (Tr. 90). However, no one was found in the store. The evidence indicated the burglar climbed up on a dumpster adjacent to the store to get onto the roof as the K-9 unit made a hit on the dumpster and a footprint was found it. (Tr. 97; 124). Entry into the store was then made by breaking into a vent which led into the store's barroom. (Tr. 108-109). The burglar then broke out of the barroom by busting through an inside window with a stool. (Tr. 95-96, 108-109). Drops of blood were found in the hallway by the window on the broken glass. (Tr. 95-96; 113-114). A piece of this bloody, broken glass was collected as evidence. (Tr. 113-113). The burglar cut off the store's video camera system before taking beer, lottery tickets, and money from the store. (Tr. 96-97; 101; 112; 115).

Blood drops were found on the floor in front of the counter where the lottery tickets were kept, and there was also a trail of blood leading from the point of entry in the back hallway to the front door of the store. (Tr. 110-112). The burglar tried to exit out through the front door by smashing the door's window with a pack of Pepsi, but the glass did not break and the pack was left by the door. (Tr. 99; 110). The burglar then threw a stool through the store's front window, leaving the stool and broken glass on the ground in front of the window. (Tr. 82). Among the items stolen were about \$200 in beer and cigarettes, twelve lottery tickets, and \$1500 cash. (Tr. 162; 166).

The next morning, the owner of another store, Southern Convenience, called police and notified them that two stolen lottery tickets had been cashed there. (Tr. 124-125). The police ran the serial numbers of each stolen lottery ticket which indicated they were part of the batch of tickets stolen from Woodlands Grocery. (Tr. 126-127). A review of the video tape from Southern Convenience showed that the Applicant was the person who cashed in those tickets. (Tr. 127-128).

The Applicant was then arrested and questioned at the Moss Justice Center. (Tr. 129). Officers noticed the Applicant appeared to have a fresh cut on his right hand, and his pants and shirt also had drops of blood on them. (Tr. 129-130; 139). The Applicant was not found, however, with any cash, cigarettes, or other proceeds from burglary on him. (Tr. 164). Officers read the Applicant his Miranda rights, and the Applicant indicated he understood his rights and agreed to talk. (Tr. 131-132). The Applicant then gave a statement indicating a man named Frank Johnson had given him a ride home the night of the burglary. (Tr. 59-60; 136-137). Johnson then pulled behind Woodlands Grocery and climbed up on the roof. The Applicant heard an alarm going off so he walked up to the front of the store. Johnson then busted out the front window with a chair and handed the Applicant three 24-ounce beers out the window. The Applicant asserted this is probably when he cut his finger. Johnson also took a jar with cash donations in it, cigarettes, watches, and beer. Johnson later sold the Applicant the two lottery tickets he cashed in at Southern Convenience the next morning.

Police obtained a warrant to search the Applicant's house. (Tr. 154). Police wanted to find a boot that matched the footprint found on the dumpster at the scene, but no matching boot was found at the Applicant's house. (Tr. 155). However, DNA testing conducted on the bloody piece of glass collected from the hallway of the store confirmed that the blood belonged to the Applicant. (Tr. 222-223). Johnson was arrested as a result of the Applicant's statement, but he was combative and refused to say anything. (Tr. 137). Police never obtained a search warrant to search Johnson's house. (Tr. 155). Other than the Applicant's statement, no other evidence was ever found implicating Johnson's involvement. (Tr. 137). Johnson was charged with burglary, but his case was never true-billed by the grand jury. (Tr. 181).

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 (2003).

The Court interprets each of the Applicant's claims to be allegations of 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 "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, 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.

Failure to Suppress DNA Evidence

The Applicant alleges his defense attorneys were ineffective for failing to suppress the DNA evidence that was used against him at trial. The Applicant testified his attorneys should not have allowed the State to use this DNA evidence when the chief investigating officer testified individuals at the crime scene did not follow the rules. He stated that if crime scene procedure had been followed, his DNA would not have been found at the scene. Counsel Dest testified they tried to show that there was no photograph or other evidence showing exactly where the bloody glass was found, or that it could have been kicked or moved to the location where it was found. However, Dest testified there was no way to keep the DNA evidence out as there was no chain of custody issue sufficient to suppress it.

The record shows Detective John Naylis collected evidence from the crime scene. Detective Naylis testified he collected a piece of bloody, broken glass from the hallway inside the store to conduct DNA testing on. (Tr. 113; 119-122). He testified that, typically, when an item is being taken into evidence the original location of the item is marked with a yellow evidence marker and a picture is taken. (Tr. 172). However, he did not do that in this case, and testified as to the location where he found the bloody glass from memory. (Tr. 173). In addition, a crime scene report indicated the level of scene contamination at the scene was "heavy" because of the number of people walking through the area. (Tr. 175).

This Court finds no merit in the allegation that the Applicant's DNA would never have been found at the scene if crime scene procedure had properly been followed. The fact the evidence collected was not marked and photographed in accordance with standard crime scene procedures may affect the weight to be afforded the evidence, but not its admissibility. The detective was still able to testify from memory where he collected the evidence from. Moreover, the fact standard crime scene procedures were not followed does not, in this case, negate the fact the DNA test concluded the blood collected matched that of the Applicant. The same conclusion is reached in consideration of the contamination of the scene as a result of foot traffic. Neither of these facts could have mistakenly caused the Applicant's DNA to be found at the scene. The Applicant does not argue the chain of custody of the DNA evidence was defective, nor does he present any evidence to support such a claim. Therefore, the DNA evidence was admissible, and the Applicant's defense attorneys were not deficient for failing to suppress it. Accordingly, this claim is denied and dismissed as being without merit.

Failure to Investigate Frank Johnson/ Meaningful Defense

The Applicant testified his attorneys should have done more to investigate Frank Johnson, his alleged accomplice or co-conspirator. The Applicant testified his charges should have been dropped because Johnson's charges were dropped. Counsel Dest testified the Applicant told them Johnson was responsible for committing the burglary; however, they could not control what the prosecution did with the investigation of Johnson's case or his charges. He testified Johnson was at SCDC at the time of the Applicant's trial, and there was no indication he was willing to appear and accept guilt for the burglary. Further, he testified their defense strategy was to put as much blame on Johnson as possible. He stated this was their only viable

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defense, but they were limited by the “hand of on is the hand of all theory” and accomplice liability.

This Court finds the allegation is without merit. To the extent the Applicant alleges his attorneys should have done more to investigate Johnson, the Applicant failed to prove how further investigation would have benefitted him. See Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995). Moreover, as defense counsel testified, they had no control over the State’s prosecution and investigation of Johnson. There is no indication Johnson would have appeared in court and testified to his own detriment in a manner favorable to the Applicant, nor does the Applicant allege Johnson would have done so. Accordingly, the allegation is without merit, and the Applicant failed to prove any prejudice resulting from any such alleged deficiency.

In addition, the fact that Johnson was never indicted or convicted is irrelevant to the Applicant’s conviction. The Applicant confessed to aiding and abetting the crime. Evidence also showed that the Applicant’s blood was found inside the store, and he later cashed in two lottery tickets stolen from the Woodlands Grocery. There was sufficient evidence for the jury to find the Applicant guilty of burglary. There was also sufficient evidence to find the Applicant guilty of aiding or abetting the crime, and thus guilty as a principal under accomplice liability theory. The Applicant’s defense attorneys otherwise presented evidence in a practical manner to show that a third party was guilty of committing the burglary, and the jurors should not feel comfortable with the fact the State was not pursuing the main perpetrator. Under the facts of this case, this Court finds defense counsel articulated a reasonable trial strategy, and the Applicant was afforded a meaningful defense. See Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992) (“Courts must be wary of second-guessing counsel’s trial tactics; and where counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed

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ineffective assistance of counsel”). Accordingly, this claim is denied and dismissed.

Illegal Search and Seizure

The Applicant alleges his attorneys failed to challenge the illegal search of his home. The record reveals police obtained a warrant to search the Applicant’s home for evidence linking him to the burglary, including any shoes which matched the footprint found on the dumpster. (Tr. 154). However, as a result of the search police found no such evidence. The evidence which did link the Applicant to the crime – his DNA, his statement, the lottery tickets he cashed in, the cut on his hand, and his bloody clothes – was not discovered as a result of the search warrant. Therefore, even if the Applicant could prove the search of his home was illegal, he could not prove how he was prejudiced by the fruits of the search. This Court finds the Applicant has failed to meet his burden of proving either his attorneys were deficient in this regard, or that any such alleged deficiency prejudiced him. Accordingly, this claim is denied and dismissed.

Inadequate Advice Not to Testify

The Applicant failed to present any evidence or testimony on this issue. The record reveals the trial court instructed the Applicant regarding his right to remain silent and his right to testify in his own defense, and the Applicant stated he did not want to testify. (Tr. 239-241). Therefore, the Applicant failed to meet his burden of proof, and this claim is denied and dismissed.

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

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This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by counsel’s performance. This Court concludes Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. Therefore, the allegation of ineffective assistance of counsel is denied.

CONCLUSION

Based on all the foregoing, this Court finds and concludes 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.

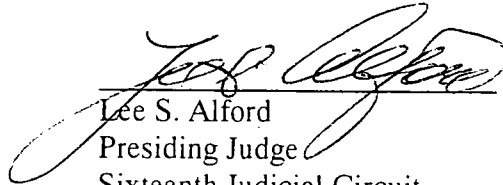
This Court advises the parties that in order to secure the appropriate appellate review, notice of appeal must be served and filed within thirty (30) days after receipt by counsel of notice of entry of this order. See Rules 203 and 243 of the South Carolina Appellate Court Rules. This Court notes that post-conviction relief counsel must advise an applicant of the right to seek appellate review of a post-conviction relief order. State v. Bray, 366 S.C. 137, 620 S.E.2d 743 (2005). Also, pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (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 an applicant’s behalf.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

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AND IT IS SO ORDERED this 24th day of October, 2011.



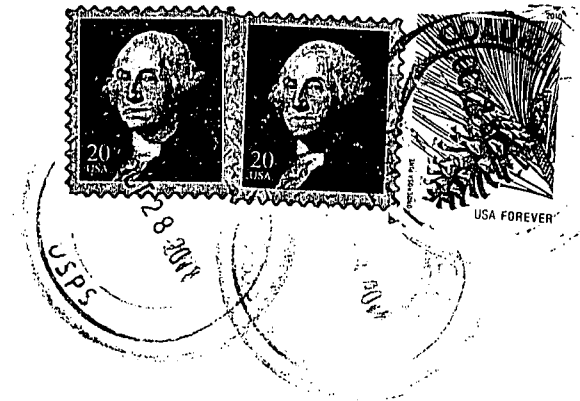
Lee S. Alford
Presiding Judge
Sixteenth Judicial Circuit

York, South Carolina.

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2010

CHARLES T. BROOKS, III
THE BROOKS' LAW OFFICES, LLC
309 BROAD STREET
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*Maddie
Richard
Jones*



South Carolina Supreme Court
PO Box 11330
Columbia, SC 29211