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September 2, 2016

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

RE: Philip Shuler v. State of South Carolina; Case No.: 2014-CP-10-7474

Dear Mr. Shearhouse:

Please find enclosed for filing, the Notice of Appeal (original) in the above Post-Conviction Relief (PCR) case. A copy of the enclosed Notice of Appeal with regard to the above referenced matter was forwarded, for filing, to the Charleston County clerk's office. However, I have not yet received the stamp-filed copy of same. Due to the inclement weather, the clerk's office was closed today and will be closed on Monday, September 6, 2016 in observance of the Labor Day holiday. As such, the stamp-filed copy of the Notice of Appeal is forthcoming.

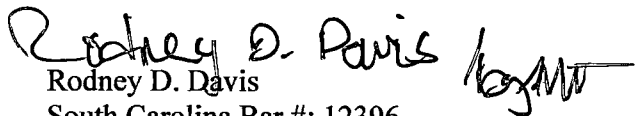
Enclosed are the following:

- (1) Proof of Service (original) of the Notice of Appeal on the Respondent;
- (2) The Order of Dismissal &
- (3) A Request for Representation on Appeal.

The Applicant-Appellant was represented by me as an indigent pursuant to my contract with the South Carolina Commission on Indigent Defense (SCCID) to handle PCR cases. By copy of this letter, I am forwarding a duplicate set of documents to the SCCID.

The Request for Representation on Appeal and the Affidavit in Support, thereof, are signed by me as attorney for Applicant-Appellant. Thank you for your time and attention to this matter.

Sincerely,


Rodney D. Davis

South Carolina Bar #: 12396
4000 Faber Place Drive, Suite 300
Charleston, SC 29405
(843) 323-4353
Davis@LowcountryLawOffice.com

RECEIVED

Enclosure(s). As stated above.
RDD/mmt

SEP 06 2016

cc: J. Rutledge Johnson, Assistant Attorney General
Kimberly McCall, Appellate Division, SCCID

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

John C. Hayes, III, Circuit Court Judge

Case No.: 2014-CP-10-7474

Philip Shuler,

Appellant,

v.

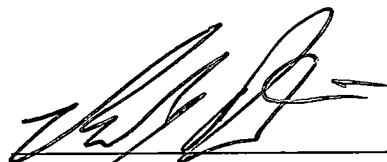
State of South Carolina,

Respondent.

NOTICE OF APPEAL

Philip Shuler appeals the denial of his Post Conviction Relief (PCR) application in this case. The application for relief was denied following an evidentiary hearing before the Honorable John C. Hayes, III, on August 1, 2016.

August 29, 2016.



Rodney D. Davis
400 Faber Place Drive, Suite 300
Charleston, SC 29405
Attorney for Appellant

Other Counsel of Record:
J. Rutledge Johnson, Assistant Attorney General
Office of the Attorney General, State of South Carolina
P.O. Box 11549
Columbia, SC 29211-1549
Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

John C. Hayes, III, Circuit Court Judge

Case No.: 2014-CP-10-7474

Philip Shuler,

Appellant,

v.

State of South Carolina,

Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the State by mailing a copy of it to the address of record, J. Rutledge Johnson, P.O. Box 11549, Columbia, South Carolina 29211-1549, on August 30, 2016.

August 30, 2016



Michelle Moore Trimble
Paralegal to Rodney D. Davis
Lowcountry Law Office
400 Faber Place Drive, Suite 300
Charleston, SC 29405
Attorney for Appellant

Other Counsel of Record:
J. Rutledge Johnson
Assistant Attorney General
State of South Carolina
P.O. Box 11549
Columbia, SC 29211-1549
Attorney for Respondent

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 Philip Shuler, #196792,)
)
 Applicant,)
)
 vs.)
)
 State of South Carolina,)
)
 Respondent,)

IN THE COURT OF COMMON PLEAS
 NINTH JUDICIAL CIRCUIT

C.A. No.: 2014-CP-10-7474

RECEIVED

SEP 06 2016

ORDER

S.C. SUPREME COURT

Applicant filed this Post-Conviction Relief application on December 8, 2014. The case was heard before the undersigned on August 1, 2016. Applicant was represented by Robert Davis, Esquire; the Respondent was represented by J. Rutledge Johnson, Esquire.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Charleston County Clerk of Court's Orders of Commitment. The Applicant was indicted by the August 2009 term of the Charleston County Grand Jury for Armed Robbery (2009-GS-10-6160). Mary Ford, Esquire, represented him. On September 19-21, 2012, the Applicant proceeded to a jury trial pursuant to which he was found guilty as indicted. The Honorable Deadra L. Jefferson sentenced the Applicant to confinement for eleven (11) years.

A notice of appeal was filed on Applicant's behalf and an appeal was perfected pursuant to Anders v. California, 386 U.S. 738 (1967). Robert M. Dudek, Esquire, represented the Applicant on appeal. The South Carolina Court of Appeals dismissed the appeal and granted Counsel's motion to be relieved. State v. Shuler, 3013-UP-455 (filed December 11, 2013). The Remittitur was issue on January 8, 2014.

je

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

1. "Ineffective Assistance of Trial Counsel"
 - a. "Trial Counsel was ineffective for failing to have applicant's armed robbery offense reduced to strong armed robbery where the victim could not determine applicant was the robber and whether applicant was armed"
 - b. "Failing to motion the judge to dismiss the armed robbery offense because the victim could not substantiate 'whether the applicant had a gun'"
2. "Prosecutorial Misconduct/Brady Violation"
 - a. "The State had to submit substantial circumstantial evidence that applicant was the robber and that represented to the victim that he was armed with a deadly weapon, or that the victim reasonably believed applicant had a weapon"

A two-pronged test is used 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 v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (citing Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984)). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690. The applicant must overcome this presumption in order to receive relief. Cherry, 300 S.C. at 118.

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 (quoting Strickland, 466 U.S. at 694). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 187, 480 S.E.2d 733, 735 (1997). In other words, where

ineffective assistance of counsel is alleged as a ground for relief, the Petitioner must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland, 466 U.S. at 691; see also Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In his application, Applicant raises issues regarding the sufficiency of the evidence to prove armed robbery in the guise of ineffective assistance of counsel. There is no evidence to indicate the indictments for armed robbery were insufficient, therefore counsel was not ineffective for failing to have the charge dismissed pre-trial. During trial, counsel moved for directed verdict alleging the insufficiency of the State's evidence to establish armed robbery, but the Court denied the motion. Further, trial counsel asked the Court for the lesser included offense of strong armed robbery and received a jury instruction to that effect. The Court finds trial counsel's judgment to be reasonable. As a result, Applicant has failed to demonstrate trial counsel was deficient in her representation.

According to Applicant's testimony at his hearing, it appears one large contention as to his trial counsel is that there was limited communication prior to his trial. He testified they only met twice, and he received a letter from counsel in between those meetings informing him of an offer from the Solicitor of a 10-year plea agreement shortly before trial was to begin. Applicant claims communication during this time frame could have led to continued negotiation.

Trial counsel in turn testified that she attempted to reach Applicant several times by phone and by letter in between their two meetings, but was unable to do so. In addition, she stated the Solicitor was not prepared to make an offer prior to when Applicant was notified, so even if trial counsel was able to speak to him at an earlier time, there would have been no offer

to contemplate or negotiate. Further, it is not trial counsel who had control over the Solicitor's actions and could not force an offer to be made.

The Court finds trial counsel to be credible. Though the Court finds this testimony to be outside the scope of the PCR application, to the extent Applicant's claim may go towards trial counsel's failure to reduce Applicant's charge to the lesser included, there is nothing to support the conclusion that trial counsel did not act with reasonable professional judgment, and there is no prejudice to the Applicant to suggest his trial would result in a different conclusion.

Applicant further testified at the hearing there were two potential alibi witnesses who saw him at a bar in the vicinity of the crime scene during the time the crime took place. He claims these witnesses should have been vetted to determine a defense. However, Applicant did not present these alleged witnesses during the PCR hearing to support his assertion. Furthermore, this claim is outside the scope of the application, as "ineffective assistance of counsel" is not all-encompassing and does not include a failure to investigate claim.

I further find that any other claims not addressed specifically herein are insufficient to establish ineffective assistance of counsel.

Wherefore, I find Applicant has not carried his burden of proof, and has neither proven trial counsel was ineffective, nor proven any prosecutorial misconduct.

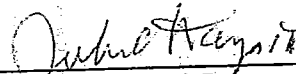
Therefore, Applicant's application for Post-Conviction Relief is denied and dismissed with prejudice.

This Court hereby advises Applicant that he must file and serve a Petition for Writ of Certiorari within thirty (30) days of the service of this Order to secure appellate review. See Rules 203 and 243, South Carolina Appellate Court Rules (SCACR). The Applicant's attention

is directed to Rule 243, SCACR, for the procedures following the filing and service of the

Petition.

IT IS SO ORDERED.



John C. Hayes, III
Presiding Judge #5

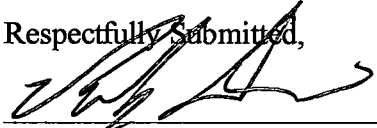
August 3rd, 2016
Charleston, South Carolina

STATE OF SOUTH CAROLINA) IN THE SUPREME COURT OF SOUTH CAROLINA
)
 COUNTY OF CHARLESTON)
)
) CASE NO.: 2014-CP-10-7474
)
 PHILIP SHULER,)
)
) Applicant.)
)
 -versus-) REQUEST FOR REPRESENTATION ON APPEAL
)
 STATE OF SOUTH CAROLINA,)
)
) Respondent.)

On behalf of the request of the above-named Applicant, to be represented by the South Carolina Commission of Indigent Defense, Appellate Division (SCCID), the undersigned attorney would show unto this Honorable Court that:

1. He is the attorney for the Applicant-Appellant in the above captioned case. The Applicant-Appellant was in custody during and taken into custody immediately following the Post Conviction Relief (PCR) hearing and was not available to personally sign this request;
2. The Applicant-Appellant was represented by the undersigned attorney as an indigent, pursuant to a contract with the SCCID;
3. The Applicant-Appellant has been informed that he may request assistance from the SCCID Appellate Division in perfecting his appeal;
4. A timely Notice of Intent to Appeal has been filed on the Applicant-Appellant's behalf;
5. The Applicant-Appellant has been informed that nothing requires SCCID Appellate Division to pursue this appeal unless that office's Chief Attorney is satisfied that there is arguable merit to this appeal and that he cannot afford to hire an attorney.

At this time, the Applicant-Appellant requests the aid of the SCCID Appellate Division in perfecting his appeal to the South Carolina Court of Appeals.

Respectfully Submitted,


 Rodney D. Davis
 South Carolina Bar #: 12396

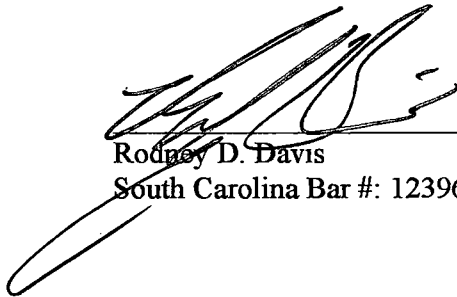
Charleston, South Carolina
8/29, 2016.

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)

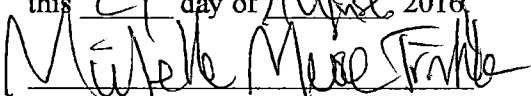
CASE NO: 2014-CP-10-7474

VERIFICATION

PERSONALLY appeared before me, Rodney D. Davis, being first duly sworn,
deposes and says that he has read the foregoing *Request for Representation on Appeal* to be
filed on behalf of the Applicant-Appellant, **Philip Shuler**, and the same is true of his
knowledge except those matters alleged on information and belief, and as to those matters, he
believes them to be true.



Rodney D. Davis
South Carolina Bar #: 12396

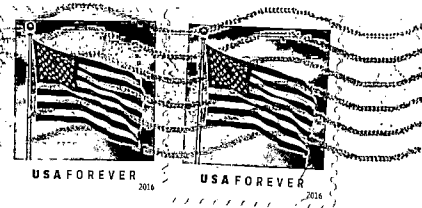
SWORN to and subscribed to me
this 29 day of August, 2016.

Notary Public for South Carolina
My Commission expires 9/26/2026

Lowcountry Law Office

Rodney D. Davis
4000 Faber Place Drive, Suite 300
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CHARLESTON SC 294

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The Honorable Daniel E. Shearhouse
Clerk, Supreme Court of South Carolina
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