

IN THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
APPEAL FROM LEXINGTON COUNTY
COURT OF COMMON PLEAS

RECEIVED
SEP 13 2016
S.C. SUPREME COURT

J. MARK HAYES, II, CIRCUIT COURT JUDGE

2013-CP-32-2614

William Patrick Deaton,.....Petitioner.

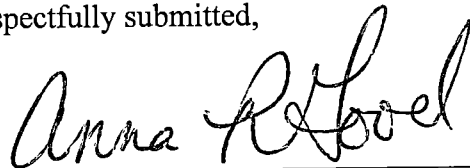
vs

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

NOTICE OF APPEAL

William Patrick Deaton appeals the Honorable J. Mark Hayes, II's August 29, 2016 Order of Dismissal. Undersigned counsel received notice of entry of the order on September 12, 2016. A copy of the order on appeal is attached to this notice.

Respectfully submitted,



Anna R. Good
Law Office of Anna Good, LLC
PO Box 7284
Columbia, South Carolina 29202
Telephone: (803) 661-6758
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Attorney for the Petitioner.

September 13, 2016.

OTHER COUNSEL OF RECORD:

Johanna Valenzuela, Esquire
South Carolina Attorney General's Office
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Columbia, SC 29211-1549

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PROOF OF SERVICE

I, Anna Good, certify that I have today served the within notice of appeal upon the Respondent by depositing a copy of it in the United States Mail, postage prepaid, addressed to the attorney of record, Johanna Valenzuela, P.O. Box 11549, Columbia, South Carolina 29211-1549. I further certify that all parties required by Rule to be served have been served this 23rd day of August 2016.

Respectfully submitted,



Anna R. Good, Esquire
Law Office of Anna Good, LLC
PO Box 7284
Columbia, South Carolina 29202

sixteen (16) years for Armed Robbery and to a concurrent term of fifteen (15) years confinement for Burglary. Applicant did not appeal his conviction or sentence.

2010-CP-32-5311

Applicant subsequently filed an application for post-conviction relief on December 14, 2010, where he alleged he was being held unlawfully for the following reasons:

1. Ineffective assistance of counsel, in that
 - a. Mitigating facts never presented to court prior to sentencing.
 - b. Counsel failure to enforce a guilty plea agreement.

Respondent filed its return on February 28, 2011. Applicant was represented in his PCR action by Aimee J. Zmroczek, Esquire. An evidentiary hearing was convened on August 5, 2012, before the Honorable W. Jeffrey Young. The State was represented by Assistant Attorney General Kaelon E. May. Applicant was present at the hearing and testified on his own behalf. Also testifying was Applicant's plea counsel, Sarah A. Hahn, Esquire. In an Order of Dismissal filed January 14, 2013, Judge Young found that counsel was not ineffective and dismissed the case with prejudice.

Applicant filed a *pro se* Notice of Appeal on April 12, 2013. The Notice of Appeal was dismissed on March 29, 2013, because it was not served within thirty (30) days. Applicant then filed a *pro se* request for the court to reconsider the order of dismissal. The Supreme Court of South Carolina issued an Order dated July 11, 2013, denying that motion without prejudice to allow Applicant to seek relief pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

Allegations

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



1. Ineffective assistance of PCR counsel:
 - a. "PCR counsel failed to serve and file Notice of Appeal."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony and evidence 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 prior PCR proceedings, the subject guilty pleas, 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 (2016), this Court makes the following findings of fact and conclusions of law based upon all of the probative evidence presented.

Austin Claim

Applicant alleges that his PCR counsel was ineffective for failing to file an appeal off of the denial of his application for post-conviction relief. This Court finds Applicant's claim is barred by the equitable doctrine of laches. Further, after hearing all the evidence presented at the evidentiary hearing, this Court finds Applicant has failed to meet his burden.

Applicable Law

There is a statutory right to seek appellate review of the denial of post-conviction relief. S.C. Code Ann. § 17-27-100 (2016). Under Austin, a defendant can appeal a denial of a PCR application after the statute of limitations has expired if the defendant either requested and was denied an opportunity to seek appellate review, or did not knowingly and intelligently waive the right to appeal. Odom v. State, 337 S.C. 256, 259-60, 523 S.E.2d 753, 754-55 (1999).



Testimony

Applicant testified that he had a conversation with counsel immediately after the PCR hearing as to whether he wanted to appeal. PCR Tr. p. 6. Applicant said counsel told him she would immediately put in for appeal. Id. Applicant said that he wrote a letter to counsel dated September 6, 2012, requesting that counsel file a proposed order granting relief or a Rule 59(e) motion. (Applicant's Exhibit 4). He said that he then wrote a letter dated March 5, 2013, requesting the status of his PCR proceedings. (Applicant's Exhibit 1). Applicant presented evidence that he then received a letter from counsel, dated March 27, 2013, explaining that she had sent him a copy of the order of dismissal on January 15, 2013. (Applicant's Exhibit 2). Applicant then presented what purports to be a request for the mail log, as well as a response from "Mrs. Jones" indicating he had no legal mail from January 2 through February 2, 2013. (Applicant's Exhibit 3).

Counsel testified that she specifically remembered Applicant because he was her first Office of Disciplinary Counsel complaint. PCR Tr. p. 13. Counsel testified Applicant submitted a complaint on this same issue, which was subsequently dismissed. Id. Counsel testified that Applicant did not ask her for an appeal immediately after the hearing. Tr. p. 15.

Counsel testified that had Applicant asked her to file an appeal for him, she would have filed an appeal. Id. Counsel explained that she is on the appointment list for post-conviction relief, and if she were to be found ineffective, then she gets taken off of that list. Id. Counsel testified that she had never seen the letter requesting that she file a 59(e), but that she would have filed one had Applicant asked her to. Id.



Counsel testified that she handles a large number of PCR applicants, and of those roughly fifty percent ask to do an appeal. PCR Tr. p. 13-14. Counsel said that once an order comes in, she has a system in place where her paralegal automatically generates a notice of appeal, so that “it’s literally just a form that [she has] to sign.” PCR Tr. p. 14.

Discussion

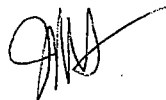
After hearing the testimony of both witnesses, this Court simply finds counsel more credible than Applicant. Counsel’s credible testimony directly refutes Applicant’s assertion that he asked her to file an appeal immediately following the evidentiary hearing. Applicant’s contrary testimony is not credible. This Court finds the exhibits submitted by the Applicant equally unpersuasive. The uncorroborated and, frankly, unauthenticated note from “Mrs. Jones” (Applicant’s Exhibit 3) – while in evidence – does not assist the Applicant in meeting his burden. In addition to unanswered questions this Court has about its authenticity, Applicant has failed to provide any context necessary for a determination that a letter from PCR counsel was never delivered. In light of Applicant’s unbelievable testimony and unpersuasive exhibits, this Court finds he has failed to meet his burden. The allegation is therefore denied and dismissed.

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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]

A handwritten signature in black ink, appearing to be the initials 'JMS' with a stylized flourish extending to the right.

CONCLUSION

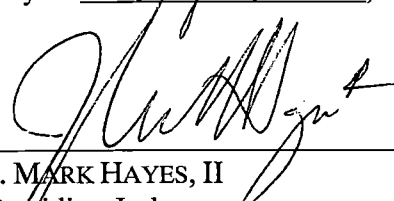
Based on the foregoing, this Court finds that the Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

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 29th day of August, 2016.



 J. MARK HAYES, II
 Presiding Judge
 Eleventh Judicial Circuit

Lexington, South Carolina

BETH A. CARRIGG
 CLERK OF COURT
 LEXINGTON, SC
 FILED
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