

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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SEP 26 2016

APPEAL FROM YORK COUNTY
Court of Common Pleas

S.C. SUPREME COURT

J. Derham Cole, Circuit Court Judge

Case No: 2014-CP-46-1306

Christopher Poage,

Petitioner,

v.

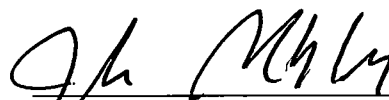
The State of South Carolina

Respondent.

NOTICE OF APPEAL

Christopher Poage appeals the Honorable J. Derham Cole August 23, 2016 order denying post-conviction relief to the Petitioner. Undersigned counsel received notice of entry of the order on August 30, 2016. A copy of the order on appeal is attached to this notice.

September 26, 2016



John Mobley
THE MOBLEY LAW FIRM, P.A.
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Post Office Box 11549
Columbia SC 29211
Attorney for Respondent

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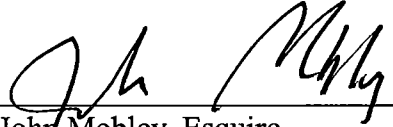
The State of South Carolina

Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the Respondent by depositing a copy of it in the United States Mail, postage prepaid, on September 26, 2016, addressed to attorney of record, Rutledge Johnson, South Carolina Attorney General's Office, Post Office Box 11549, Columbia, SC 29211.

September 26, 2016



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Attorney for Respondent

**STATE OF SOUTH CAROLINA
 COUNTY OF YORK
 IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2014CP4601306**

Christopher Poage		South Carolina State Of
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PLAINTIFF(S)	DEFENDANT(S)
Submitted by: Justin J. Hunter	Attorney for: <input type="checkbox"/> Plaintiff <input checked="" type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (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. See Page 2 for additional information.
- 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; (formal order to follow) Statement of Judgment by the Court:

ORDER OF DISMISSAL

ORDER INFORMATION

This order ends does not end the case.
 Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
n/a	n/a	n/a
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

<i>s/ J. Derham Cole</i>	2053	8/23/2016
Circuit Court Judge	Judge Code	Date

For Clerk of Court Office Use Only

This judgment was entered on **August 24, 2016**, and a copy mailed first class or placed in the appropriate attorney's box on **August 24, 2016**, to attorneys of record or to parties (when appearing pro se) as follows:

John Terrence Mobley 925 Calhoun St. Columbia, SC
29201

James Rutledge Johnson PO Box 11549 Columbia, SC
29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

Court Reporter

David Hamilton - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)
)
 Christopher Poage,)
 S.C.D.C. No. 347355,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 OF THE SIXTEENTH JUDICIAL CIRCUIT
 2014-CP-46-1306

ORDER OF DISMISSAL

FILED - COPIES
 2016 AUG 24 AM 8:30
 DAVID HANCOCK
 C.C.P. CLERK
 YORK COUNTY, SC

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed April 24, 2014. Respondent made its Return on or about August 20, 2014. An evidentiary hearing into the matter was convened on January 20, 2015, at the Moss Justice Center in York, South Carolina. Applicant was present at the hearing and represented by John Mobley, Esquire. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office represented Respondent. At the hearing, Applicant testified on his own behalf. Applicant's trial counsel, Brad Rawlinson, Esquire, also testified. Sixteenth Circuit Solicitor Kevin Brackett also testified. This Court had before it a copy of Applicant's records from the York County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's PCR Application, and Respondent's Return.

I. PROCEDURAL HISTORY

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court's orders of commitment. Applicant was indicted at the July 2011 term of the York County Grand Jury for Burglary, 1st degree (2011-GS-46-2267), Kidnapping (2011-GS-46-2265) and Criminal Conspiracy (2011-GS-46-2264). Brad Rawlinson, Esquire,

(hereinafter "Counsel") represented him. On August 8-10, 2011, Applicant proceeded to a jury trial pursuant to which he was found guilty of all charges as indicted. The Honorable John C. Hayes, III sentenced Applicant to confinement for thirty (30) years for Burglary, 1st degree; thirty (30) years, concurrent, for Kidnapping; and five (5) years, concurrent for Criminal Conspiracy.

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). The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Poage, 2013-UP-397 (filed October 13, 2014). The Remittitur was issued on November 18, 2013.

PCR Application

On April 24, 2014, Applicant filed an application for post-conviction relief alleging the following grounds:

- I. Ineffective Assistance of Trial Counsel
 - a. "Failure to request lesser included charges"
 - b. "Failure to object to inadmissible hearsay"
 - c. "Failure to object to evidence tending to inject passion/sympathy in the trial"
 - d. "Failure to advise regarding substantial assistance"
 - e. "Failure to present evidence of duress"
 - f. "Failure to engage in plea negotiations"
 - g. "Failure to request jury charges"

II. SUMMARY OF TESTIMONY

Applicant's Testimony

Applicant testified that he was only proceeding on the ground of ineffective assistance of counsel in that Counsel did not advise him nor make a motion regarding the possibility of a reduction in sentence due to substantial assistance to the State pursuant to S.C. Code § 17-25-65.

Applicant testified that Counsel did not advise him of S.C. Code § 17-25-65 dealing with the State asking for a reduced sentence due to Applicant's assistance. He testified that his testimony was crucial to prosecuting his codefendant.

Counsel Brad Rawlinson's Testimony

Counsel testified that Applicant's statement to law enforcement was the crux of the State's case against him. He testified that he did not advise Applicant of S.C. Code § 17-25-65. Counsel testified that he did talk to Applicant about testifying against his codefendant.

Solicitor Kevin Brackett's Testimony

Sixteenth Circuit Solicitor Kevin Brackett testified that he handled Applicant's case. He testified that Applicant gave a statement but his codefendant did not give a statement to law enforcement. Solicitor Brackett further testified that the State could not prosecute Applicant's codefendant because Applicant did not testify at trial. He testified that Applicant's credibility was an issue.

Regarding S.C. Code § 17-25-65, Solicitor Brackett testified that for Applicant to get a reduction in sentence, the State has to make a motion.

III. APPLICABLE LAW

In a post-conviction relief action, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel 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, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

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. 668. Applicant must overcome this presumption in order 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. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any 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.

IV. 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 has reviewed the Clerk of Court records regarding the subject convictions, the trial transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

As a matter of general impression, this Court finds Counsel's testimony to be credible and persuasive on all matters. These credibility findings have been applied to the Court's findings and conclusions set forth below.

Ineffective Assistance of Counsel

This Court finds that Counsel demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, 466 U.S. at 668; Butler, 286 S.C. 441, 334 S.E.2d 813. This Court finds that Applicant has failed to show that Counsel was deficient regarding S.C. Code § 17-25-65. This Court finds that Counsel has no duty to file a motion for a reduced sentence pursuant to this code section as the section clearly states that such a motion is to be filed by the State.¹ This Court also finds that Counsel has no duty to advise Applicant regarding the possibility of the State making a motion for a reduced sentence due to substantial assistance. As Counsel had no duty to give such advice, this Court finds that Counsel was not deficient for failing to do so.

Furthermore, Applicant has failed to show that he was prejudiced by Counsel's actions. Even assuming arguendo that Counsel was required to advise of the possibility of the State making a motion for a reduced sentence pursuant to S.C. Code § 17-25-65, Applicant has failed to show that the State would have, by its discretion, made such a motion or that the motion would have been successful in reducing his sentence. As Applicant has failed to meet his burden on both prongs of Strickland, this allegation must be dismissed.

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 Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds Applicant has abandoned any such allegations.

¹ See S.C. Code Ann. § 17-25-65 ("A motion made pursuant to this provision shall be filed by that circuit solicitor in the county where the defendant's case arose.")

IV. CONCLUSION


Based on the foregoing facts, the Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Applicant failed to demonstrate that Counsel's performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt 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, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.


IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 23rd day of August, 2016.



J. DERHAM COLE
Presiding Judge
Sixteenth Judicial Circuit


_____, South Carolina