

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)
Thomas Lee Geddie, #351166,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

2014-CP-43-2142

CERTIFIED TRUE COPY
OF ORIGINAL FILED

Sherry H. Hart
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

ORDER OF DISMISSAL

RECORDED
2015 JUL 24 PM 1:31
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on October 6, 2014. Respondent made its amended return on February 19, 2015. An evidentiary hearing in to the matter was convened on April 14, 2015, at the Sumter County Courthouse. Applicant was present at the hearing and was represented by Casey Cornwell, Esquire. Respondent was represented by Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

The records before this Court indicate that The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. The Applicant was true bill indicted at the July 2011 term of the Sumter County Grand Jury for murder (2011-GS-43-1155). Timothy Murphy, Esquire represented Applicant. Applicant proceeded to a jury trial on June 4-7, 2012, before the Honorable W. Jeffrey Young. Applicant was subsequently found guilty as indicted. Judge Young sentenced Applicant to life in prison without the possibility of parole.

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A timely Notice of Appeal was filed on Applicant's behalf and an Anders brief was submitted. By unpublished opinion filed June 11, 2014, the South Carolina Court of Appeals dismissed the appeal. State v. Geddie, Un, Op. 2014-UP-219 (S.C. Ct. App. 2014). The Remittitur was issued on June 27, 2014.

ALLEGATIONS

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

1. Ineffective Assistance of Counsel.
 - a. Failing to investigate and adequately prepare for trial.
 - b. Failure to meet with Applicant and discuss defense
 - c. Failure to interview 5 fact witnesses
 - d. Failure to hire investigator to interview the witnesses
 - e. Failure to investigate the background of State witness Cedric Hilton and the crime scene
 - f. Failure to move to quash the indictment.
 - g. Failure to object to violation of Applicant's right to speedy trial.
 - h. Failed to enter Applicant's statement into evidence and request an alibi instruction be given to the jury.
 - i. Ineffective for requesting a mere presence jury charge
 - j. Failing to file a motion to suppress Budweiser beer bottle with Applicant's no. 5 fingerprint on it.
2. Prosecutorial Misconduct
 - a. Failing to disclose that there was a plea agreement with Kelvin Green.
3. Due Process Violation – 14th Amendment and Article 1 § 3 of the S.C. Constitution.

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. The State presented testimony from Timothy Murphy, Esquire. (hereinafter "Trial Counsel"). This Court also had before it a copy of the trial transcript, the Sumter County Clerk of Court records, Applicant's South Carolina Department of Correction records, appellate records, the PCR application, and return.



During the evidentiary hearing, Applicant testified that he met with Trial Counsel twice prior to trial. Applicant stated they met once at the preliminary hearing and once approximately one to three weeks prior to trial. Applicant stated Trial Counsel was supposed to retain an investigator. Applicant stated that they were never able to discuss the evidence or case. Applicant stated that they did not go over any legal issues. Applicant stated that they did discuss the finger print found on the beer bottle. Specifically, Applicant stated a fingerprint from his right pinky finger was found on a beer bottle located at the crime scene.

Applicant stated he gave Trial Counsel various witnesses to investigate. Specifically, Applicant stated he asked Trial Counsel to interview Conrad Dinkins, Delores Dinkins, James Martin, Sandy Geddie, and a Pastor Nathaniel. Applicant further stated that when Kelvin Green (hereinafter "Green") testified, it looked like he was "play acting." Applicant stated that Trial Counsel should have cross-examined Green on his demeanor. Applicant stated Trial Counsel should have challenged his indictment because it was not true billed. Applicant further claimed that his sentence is invalid because he and Trial Counsel never signed the sentencing sheet.

Following Applicant's testimony, Trial Counsel was called to testify by the State. Trial Counsel stated that he was appointed to represent Applicant. Trial Counsel stated that he met with Applicant at least thirteen times. Trial Counsel stated that he filed for and reviewed all Rule 5 and Brady material. Trial Counsel stated that he provided Applicant with a complete copy of the discovery prior to trial.

Trial Counsel stated that Applicant consistently denied ever being at the scene. Trial Counsel stated that he had never heard the names of the potential witnesses Applicant claimed he failed to interview. Trial Counsel stated that Applicant requested he look into Tommy Stavis, Carleton Bracey, a Mr. Lowery, and a Mr. Toney. All of whom were inmates at the local jail.

A handwritten signature in black ink, appearing to be the initials 'B/S' followed by a flourish.

Trial Counsel stated Applicant told him that they would establish that when co-defendant Green was getting a haircut at the jail, he told them that he was going to put the blame on the Applicant for the murder.

Trial Counsel stated that his investigator, Mr. Hilditch, interviewed these witnesses. Toney and Lowery told him that they didn't know anything about Green stating he was going to put the blame on Applicant. Trial Counsel stated Carlton Bracey told Mr. Hilditch that Green said he was going to shift blame to Applicant, but Carlton Bracey would not cooperate. Trial Counsel stated that he interviewed Stavis and Stavis said that Green told him that he was going to shift the blame to Applicant. However, Trial Counsel stated Stavis said that Applicant told him that he and Green were both present at the scene of the murder, that he was not he shooter, and he was just there to commit the robbery. Trial Counsel testified that Stavis told him Applicant fled the scene when Green pulled out the gun and later helped Green hide the gun. Trial Counsel stated Stavis later recanted his statement because he was not offered a time cut in in exchange for his testimony. Trial Counsel stated that he contemplated calling Stavis as a witness, but ultimately chose not to call Stavis due to the uncertainty as to what Stavis would say on the stand.

Trial Counsel stated that he had various people tell him that Green was schizophrenic, smoking crack, and drinking beer. Trial Counsel noted that Green did not give Applicant's name in his first interview. Trial Counsel stated that Green was hoping to receive a plea deal due to his cooperation.

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. Specifically, this Court finds Trial Counsel's testimony credible and Applicant's testimony not credible. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

INEFFECTIVE ASSISTANCE OF TRIAL 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 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."

Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

1. Ineffective assistance of counsel for failing to meet prior to trial.

The Applicant claims Trial Counsel met with him only two times, once at the preliminary hearing and once 1-3 weeks before trial. Applicant claims that at the second meeting, Trial Counsel said he was going to hire an investigator, but he never did. Applicant claims Trial Counsel never reviewed facts, evidence, strategies or defenses with him. Applicant claims Counsel did discuss a beer bottle with his fingerprint on it. However, this Court find's credible Trial Counsel's testimony that he met with the Applicant at least thirteen times in advance of trial, beginning with the preliminary hearing on October 21, 2010, then the bond hearing on November 1, 2010, and then eleven more times from November 15, 2010 through June 4, 2010. Trial Counsel also wrote the Applicant three times and gave him a copy of his discovery. This Court find's credible Trial Counsel's testimony that he talked to Applicant multiple times about the Applicant's version of events, i.e., that he was not present at all at the scene. Also, it is clear from trial counsel's testimony that he did hire an investigator, Chris Hilditch. Mr. Hilditch interviewed several witnesses as discussed below. Based off of the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test – that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland – that he was prejudiced by Trial Counsel's performance.



2. Ineffective assistance of counsel for failing to interview various witnesses.

The Applicant claims he gave trial counsel the names of several witnesses to talk to, Conrad Dinkins, Delores Dinkins, James Martin, Sandy Geddie, and a Pastor Nathaniel. None were called to testify at trial. However, none were called to testify at the PCR hearing either, so this court cannot consider what evidence they may have provided. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998). (Holding an applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial).

Trial Counsel's credibility on this issue is bolstered by the fact that Applicant did give him the names of several inmate witnesses from the local jail to speak to including Tommy Stavis, Carleton Bracey, a Mr. Lowery, and a Mr. Toney. These witnesses would supposedly establish that when co-defendant Kelvin Green (who ultimately testified for the State in exchange for a great plea deal) was getting a haircut at the jail, he told them that he was going to put the blame on the Applicant for the murder. Mr. Hilditch interviewed these witnesses and Trial Counsel also talked to Stavis, whom he also represented. Toney and Lowery told Mr. Hilditch that they did not know anything about Green's statement that he was going to shift the blame on to Applicant. Bracey told Hilditch that Green did say that he was going to place the blame on Applicant, but Bracey refused to cooperate. Stavis related that Green did say he was going to blame the Applicant. However, Stavis also stated that the Applicant told him that he and Green were both present at the scene, that he was not the shooter, and that he was just there to be a part of the robbery. Stavis said the Applicant told him that when Green pulled out the gun, he (the Applicant) ran. The Applicant told Stavis he helped Green hide the gun. Trial counsel testified that Stavis then recanted because he wanted a time cut. Trial counsel thought



about calling Stavis to testify but decided not, citing the uncertainty as to what Stavis would actually say on the witness stand. This Court finds credible Trial Counsel's testimony that he revealed all of this to the Applicant and that the Applicant agreed none of these jail witnesses should be called to testify.

Based off of the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test – that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland – that he was prejudiced by Trial Counsel's performance.

3. Ineffective assistance of counsel for failing to cross-examine co-defendant Green.

The Applicant claims that when Green testified, it looked like he “was play acting.” Applicant claims Trial Counsel should have cross-examined Green on his demeanor. This claim has no merit. Trial counsel cross-examined Green extensively and a predominant part of his closing argument attacked Green's credibility. Specifically, Trial Counsel pointed out the fact that Green was schizophrenic, smoking crack, drinking beer, and that he helped plan the robbery. (Tr. p. 267 line 12—p. 268 line 6). He also pointed out multiple times that Green failed to give law enforcement the Applicant's name during his first statement, and that he was hoping to receive a ten year sentence for armed robbery for cooperating, instead of a potential life sentence for murder. (Tr. p. 271 line 11—p. 272 line 22). Based off of the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test – that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial

Counsel committed either errors or omissions to prove the second prong of Strickland – that he was prejudiced by Trial Counsel’s performance.

4. Ineffective assistance of counsel for failing to challenge his indictment.

The Applicant claims the indictment in this case was never true billed. The court held the record open for this issue to be clarified, and the court has been provided with a copy of the true billed indictment. Therefore, this claim has no merit.

5. Conviction is invalid because he and Trial Counsel never signed the sentencing sheet.

The Applicant claims his conviction is invalid because he and Trial Counsel never signed the sentencing sheet. This claim has no merit, as trial counsel and a defendant found guilty by a jury never sign sentencing sheets. These sheets are typically signed only upon entry of a guilty plea, and there is no requirement they be signed after a jury verdict of guilty.

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

[signature to follow]



CONCLUSION

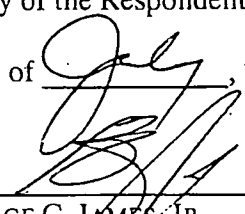
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel 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 (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 the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.


IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 8 day of July, 2015.



GEORGE C. JAMES, JR.
Presiding Judge
Third Judicial Circuit



South Carolina