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S.C. SUPREME COURT

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S.C. SUPREME COURT

ALAN WILSON  
ATTORNEY GENERAL

November 16, 2016

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

**Re: Therron Richardson v. State of South Carolina**  
**2015-CP-10-0354**

Dear Mr. Shearouse:

Enclosed are the following:

1. Notice of Appeal
2. Proof of Service of the notice of appeal on the Respondent
3. A copy of the order which is to be challenged on appeal.
4. A letter ordering the PCR transcript from the court reporter

Sincerely,

Alicia A. Olive  
Assistant Attorney General

AAO/bea  
Enclosures

cc: Rodney D. Davis, Esquire  
The Honorable Julie J. Armstrong, Clerk of Court of Charleston County  
The Honorable Scarlett A. Wilson, Ninth Circuit Solicitor  
SCCID, Division of Appellate Defense  
Barton J. Vincent, Esquire  
Trisha Allen, Victims Services

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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APPEAL FROM CHARLESTON COUNTY  
COURT OF COMMON PLEAS

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The Honorable John C. Hayes, Circuit Court Judge

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Case No. 2015-CP-10-0354

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THERRON RICHARDSON, #191713,

Respondent,

v.

STATE OF SOUTH CAROLINA

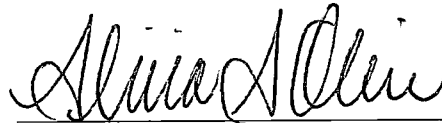
Petitioner.

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NOTICE OF APPEAL

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The State of South Carolina appeals the Honorable John C. Hayes's order dated August 9, 2016 and filed August 15, 2016 granting post-conviction relief to the Respondent. The State received notice of entry of the order on October 17, 2016. A copy of the order on appeal is attached to this notice.



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Alicia A. Olive  
Assistant Attorney General  
South Carolina Bar No. 102089  
Post Office Box 11549  
Columbia, South Carolina 29211  
Telephone: (803) 734-3737

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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

APPEAL TO CHARLESTON COUNTY  
COURT OF COMMON PLEAS

The Honorable John C. Hayes, Circuit Court Judge

Case No. 2015-CP-10-0354

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S.C. SUPREME COURT

THERRON RICHARDSON, #191713,

Respondent,

v.

STATE OF SOUTH CAROLINA

Petitioner.

PROOF OF SERVICE

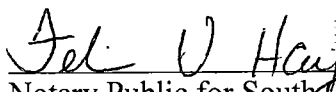
I certify that I have served the Notice of Appeal on Respondent by depositing a copy of it in the United States Mail, postage prepaid, on November 16, 2016, to Rodney D. Davis, Esquire, his attorney of record, to the address below.

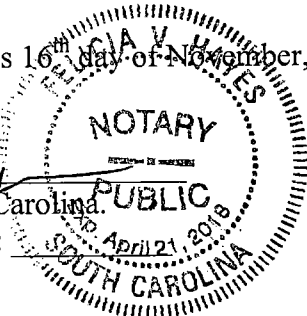
Rodney D. Davis, Esquire  
Lowcountry Law Office  
4000 Faber Place Drive, Suite 300  
Charleston, SC 29405



Alicia A. Olive  
Assistant Attorney General

SWORN to before me this 16<sup>th</sup> day of November, 2016.

  
Notary Public for South Carolina.  
My Commission Expires: April 21, 2018



CC.  
AG  
AT

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )  
 )  
Therron Richardson, #191713, )  
 )  
Applicant, )  
 )  
vs. )  
 )  
State of South Carolina, )  
 )  
Respondent, )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT

C.A. No.: 2015-CP-10-0354

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S.C. SUPREME COURT  
OFFICE OF COURT  
CLERK  
FILED

ORDER

Applicant filed this Post-Conviction Relief application on March 27, 2015. The Court heard this matter on January 15, 2015. Applicant was represented by Rodney Davis, Esquire; the State was represented by J. Rutledge Johnson, Esquire.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted at the April 2011 term of the Charleston County Grand Jury for Trafficking Cocaine (2011-GS-10-2320), Possession of a Firearm During the Commission of a Violent Crime (2011-GS-10-2321), and four counts of Unlawful Possession of a Firearm by a Person Convicted of a Crime of Violence (2011-GS-10-2323; -2324; -2325; -2326). Donna Taylor and D. Lynn Bowley, Esquires, represented the Applicant at trial and sentencing. On November 15, 2012, the Applicant proceeded to trial before the Honorable Stephanie P. McDonald and a jury, which found him guilty as indicted. Judge McDonald sentenced the Applicant to concurrent terms of five (5) years for Possession of a Firearm During the Commission of a Violent Crime, five (5) years imprisonment for each count of Possession of a Firearm by a Person Convicted of a Crime of Violence, and thirty (30) years imprisonment for Trafficking Cocaine. All charges were to be

*J. Rutledge Johnson*

served concurrently except indictment number 2011-GS-10-2320, which was to be served consecutively.

The Applicant served a timely notice of appeal, and one was perfected on his behalf. Robert Pachek, Esquire, represented the Applicant. Following briefs from both sides, the South Carolina Court of Appeals affirmed the Applicant's convictions and sentences. State v. Richardson, Op. No. 2014-UP-471 (S.C. Ct.App. filed December 17, 2014). The Remittitur was issued on January 6, 2015.

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 Counsel"
  - a. "Trial Counsel had failed to object to evidence being offered by the State during trial that had left the issue unpreserved for review on direct appeal."

Applicant's claim in an allegation of ineffective assistance of plea counsel. 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 (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. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. 117, 386 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.

Applicant testified at his PCR hearing that his trial counsel allowed evidence seized at his residence to be presented at trial without objection. Trial counsel testified she made unsuccessful pre-trial motions to suppress the subject evidence, and further renewed all previous objections at the end of the State's case. However, trial counsel did admit she did not make contemporaneous objections as each exhibit was admitted into evidence. It was on this basis that the South Carolina Court of Appeals found there was no preservation of the issues and denied Applicant's direct appeal.

Based on a review of the record and testimony at Applicant's hearing, the sole incriminating evidence against Applicant was the seized evidence.

During the PCR hearing, trial counsel testified part of the reason she did not contemporaneously object was because the vocalized objections conflicted with her trial strategy, as she felt it would place unwanted jury attention on the evidence in question. The Court recognizes this is a valid trial strategy, and thus exercise of this trial strategy cannot alone be enough to deem trial counsel to have been ineffective. See Caprod v. State, 338 S.C. 103, 525 S.E.2d 514 (2000). However, counsel's trial strategy was based on her erroneous belief that she

did not, and in fact could not, make contemporaneous objections to evidence which had been ruled admissible by the court prior to trial.

At the time of Applicant's trial, counsel was primarily practicing in the federal courts, which do not allow for contemporaneous objections. Trial counsel admitted it was based on this practice that she did not make the appropriate objections during Applicant's trial. Due to this flawed belief, the issue was not properly preserved. Trial counsel should have protected the record for appeal and was ineffective in not doing so.

There is no question trial counsel's failure to protect the record for appeal prejudiced Applicant. The failure to preserve the issue of the seizure extinguished Applicant's opportunity to have a very viable constitutional claim reviewed by an appellate court. The result in the proceeding, i.e. trial and appeal, would have been different if the record had been protected. The undersigned does not find that Applicant would have prevailed on appeal, but must, and does find the proceedings would have been different. Simply put, Applicant would have had the search and seizure issue addressed by an appellate court.

The State suggests the undersigned apply an "overwhelming evidence" review, and that such would reveal that Applicant was not prejudiced by counsel's failure to preserve the record. This suggestion is wrong for two reasons. The undersigned does not believe this Court can utilize what is in essence a harmless error analysis in reviewing a Post-Conviction Relief application. Also in this case, as earlier observed, the sole evidence against Applicant was the evidence trial counsel believed was subject to suppression.


Wherefore, I find Applicant carried his burden of proof as to elements of his stated grounds for relief, and has proven trial counsel was ineffective.

DA #A

Were it in the Court's province, the most expedient way to address this would be to allow Applicant to go forward on his appeal. However, that is not an avenue which is available to this Court.

Therefore, Applicant's application for Post-Conviction Relief is granted and Applicant shall be entitled to a new trial.

IT IS SO ORDERED.

  
\_\_\_\_\_  
John C. Hayes, III  
Presiding Judge #5

August 9, 2016  
Charleston, South Carolina



State of South Carolina  
The Circuit Court of the Sixteenth Judicial Circuit

John C. Hayes, III  
Judge

Moss Justice Center, 2nd Floor  
1675-1H York Highway  
York, SC 29745-7434  
Phone: (803) 628-3047  
Fax: (803) 628-3055  
jhayesj@sccourts.org

August 9, 2016

The Honorable Julie J. Armstrong  
Clerk of Court  
100 Broad Street, Suite #106  
Charleston, SC 29401

Re: Therron Richardson, #191713 vs. State of South Carolina  
C.A. No. 2015-CP-10-0354

Dear Ms. Armstrong:

Please file the enclosed Order and forward a clocked copy to counsel.

Thanking you, I am

Yours very truly,

A handwritten signature in cursive script that reads "Frances J. Kirkman".

Frances J. Kirkman  
Administrative Assistant to the  
Honorable John C. Hayes, III

Enclosures