

**RICHEY AND RICHEY** *A PROFESSIONAL ASSOCIATION*  
ATTORNEYS AT LAW

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RECEIVED

December 27, 2016

JAN - 3 2017

S.C. SUPREME COURT

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

Re: William Joe Phillips vs. The State of South Carolina  
Case No: 2015-CP-23-4910

Dear Mr. Shearouse:

Please find enclosed a Notice of Appeal and an affidavit of service for the same. Also, I have enclosed a copy of the Order from which the appeal is taken. Please file the copies and return them to me. I have enclosed a self-addressed stamped envelope.

Thank you for your help and if you should have any questions please feel free to call me.

RICHEY AND RICHEY, P.A.

Yours truly,

  
\_\_\_\_\_  
Rodney Richey

RWR/tlg  
enclosures  
cc: Patrick Schmeckpepper, Esquire

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

HONORABLE JOHN C. HAYES, III

2015-CP-23-4910

WILLIAM JOE PHILLIPS, SCDC#: 355787

RECEIVED

JAN -3 2017

S.C. SUPREME COURT

APPELLANT,

against

STATE OF SOUTH CAROLINA,

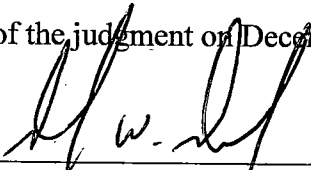
RESPONDENT.

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**NOTICE OF APPEAL**

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William Joe Phillips appeals the denial of his Post Conviction Relief. The Post Conviction Relief Action was heard and denied by the Honorable William Joe Phillips, Circuit Judge on December 6, 2016 and Order issued on December 8, 2016 and filed on December 21, 2016. The Appellant received notice of the judgment on December 23, 2016.



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Rodney W. Richey  
Attorney for the Appellant  
Post Office Box 10916  
Greenville, South Carolina 29603  
(864) 467-0503

Other Counsel of Record:  
Patrick Schmeckpepper, Esquire  
Office of Attorney General State of SC  
Post Office Box 11549  
Columbia, SC 29211-1549

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

HONORABLE JOHN C. HAYES, III

2015-CP-23-4910

WILLIAM JOE PHILLIPS, SCDC#: 355787

RECEIVED

JAN - 3 2017

S.C. SUPREME COURT

APPELLANT,

against

STATE OF SOUTH CAROLINA,

RESPONDENT.

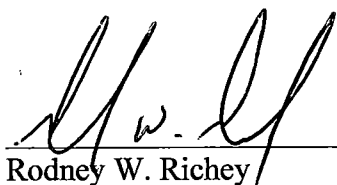
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**PROOF OF SERVICE**

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I certify that I have served the Notice of Appeal on the State of South Carolina by depositing copy of it in the United States Mail, postage prepaid, on December 27, 2016 addressed to their attorney of record, Patrick Schmeckpepper, Office of Attorney General State of South Carolina, Post Office Box 11549, Columbia, SC 29211-1549.

Dated: December 27, 2016



---

Rodney W. Richey  
Attorney for the Appellant  
Post Office Box 10916  
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(864) 467-0503

Other Counsel of Record:  
Patrick Schmeckpepper, Esquire  
Office of Attorney General State of SC  
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Columbia, SC 29211-1549

STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE  
CASE NO: 2015CP2304910

William Joe Phillips vs. South Carolina State Of

**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.
- 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: \_\_\_\_\_

FILED-CLERK OF COURT  
GREENVILLE CO., S.C.  
PAUL B. WICKENSIMMER  
2016 DEC 21 PM 3 06

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;  Statement of Judgment by the Court:  
Dated at Greenville, South Carolina, this .

Court Reporter:

\_\_\_\_\_  
PRESIDING JUDGE - John C Hayes, III

This judgment was entered on the , and a copy mailed first class this , to attorneys of record or to parties (when appearing pro se) as follows:

Rodney Wade Richey PO Box 10916 Greenville,  
SC 29603-0916

Patrick Lowell Schmeckpeper PO Box 11549  
Columbia, SC 29211

\_\_\_\_\_  
ATTORNEY(S) FOR THE PLAINTIFF(S)

\_\_\_\_\_  
ATTORNEY(S) FOR THE DEFENDANT(S)

\_\_\_\_\_  
Paul B. Wickensimer Greenville County Clerk Of Court  
- Clerk of Court

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GREENVILLE )  
 )  
 William Joe Phillips, )  
 )  
 SCDC No. 355787, )  
 )  
 )  
 Applicant, )  
 )  
 vs. )  
 )  
 State of South Carolina, )  
 )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 THIRTEENTH JUDICIAL CIRCUIT

C.A. No.: 2015-CP-23-4910

FILED-CLERK OF COURT  
 GREENVILLE CO. S.C.  
 PAUL B. WICKENSIMMER  
 2016 DEC 21 PM 3 06

ORDER

ENTERED COMPUTER

Applicant filed this application for Post-Conviction Relief August 7, 2015. This matter was heard December 6, 2016. Applicant was represented by Rodney W. Richey, Esquire. The State was represented by Patrick Schmeckpeper, Esquire.

Applicant is currently incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant at the January 2013 term of General Sessions for accessory before the fact to a felony<sup>1</sup> (2013-GS-23-0094A). Cassandra Gorton, Esquire represented the Applicant at trial.

After the State called the case to trial, the Applicant was found guilty. On June 12, 2013, the Honorable C. Victor Pyle, Jr. sentenced Applicant to life imprisonment.<sup>2</sup>

A notice of appeal was filed at the South Carolina Court of Appeals. Robert M. Dudek, Esquire of the South Carolina Commission on Indigent Defense, Division of Appellate Defense

<sup>1</sup> The underlying felony was murder.

<sup>2</sup> The State subsequently *not proressed* charges of murder (2012-GS-23-2841, count 1) and possession of a weapon during commission of a violent crime (2012-GS-23-2841, count 2).

and David L. Paavola, Esquire represented the Applicant on appeal. The Court of Appeals affirmed the Applicant's conviction and sentence. *State v. Phillips*, Op. No. 2015-UP-100 (S.C. Ct. App. filed March 4, 2015). The remittitur was sent on March 24, 2015.

In his application for post-conviction relief, Applicant alleges grounds he does not currently pursue. These are therefore considered abandoned.

At his hearing, Applicant pursued solely a claim that trial counsel was ineffective in not recognizing his limited mental abilities and therefore not making special accommodations based on same.

Applicant alleges ineffective assistance of counsel as a ground for relief. 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 on as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Strickland*, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. *See Cherry v. State*, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove counsel's performance was deficient. Under this prong, attorney

performance is measured by its "reasonableness under prevailing professional norms." *Cherry v. State*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 688, 104 S. Ct. at 2065). 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. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." *Johnson v. State*, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing *Strickland*, 466 U.S. at 688, 104 S. Ct. at 2052).

Applicant's mother testified that Applicant cannot read or write and that he has, throughout his school years, been designated a "slow learner." She testified Applicant's teachers said he was "special" and needed classes in "special education."

Applicant testified he could not read or write and was in "slow learner" classes in school. He testified trial counsel, Cassandra P. Gorton, Esq. was aware of his limitations.

Trial counsel confirmed the testimony of Applicant and his mother and testified Applicant was functionally illiterate. However, she testified she did not see any need for a mental evaluation of applicant and that, in her opinion, he was competent to stand trial.

The crux of Applicant's complaint revolves around his use of his girlfriend, Emily Gentry, to assist him in preparing for trial. Ms. Gentry was Applicant's girlfriend at the time and the sister of his co-defendant. Ultimately, she testified for the State at trial. Applicant's claim is that trial counsel was ineffective in allowing him to utilize Ms. Gentry to assist Applicant in his trial preparations.

Trial counsel testified she advised Applicant not to use Ms. Gentry in the preparation of his defense. She testified she told Applicant that Ms. Gentry may be a witness for the State, to which Applicant replied she would not do that.

Applicant's use of Ms. Gentry in assisting him was by his own choice. Applicant chose, over counsel's advice, to let Ms. Gentry attend meetings with trial counsel and to go over with and explain to him the discovery material.

Trial counsel testified that Applicant was "street smart," failed to show for numerous appointments with her, and was told by her that the possibility of a conviction was high based on a recorded jail call.

Applicant's post-conviction relief counsel argues that in spite of trial counsel's testimony, she knowingly allowed Ms. Gentry to act as a sort of "interpreter" for Applicant. This position, post-conviction relief counsel argues, is shown by trial counsel, in attempting to serve Applicant as best she could despite his ill-advised use of Ms. Gentry, comparing Ms. Gentry to an interpreter for the deaf.

Trial counsel analogizing Ms. Gentry to an interpreter for the deaf is just that, an analogy. The point trial counsel made, whether or not the trial judge bought it, was that in light of her role assisting Applicant, Ms. Gentry should, in fairness, be barred from offering any testimony as to incriminating conduct or statements made by Applicant in her presence. Such position of trial counsel, made out of necessity created solely by Applicant, does not rise to the level of lack of competent representation. The Applicant had hoisted himself on his own petard. Trial counsel's successful effort to protect Applicant from his own ill-conceived use of Ms. Gentry does not constitute trial counsel's approval of Applicant's reliance on Ms. Gentry. Rather, it is an act of

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forced acceptance of Applicant's conduct in an effort to save Applicant from himself. Fortunately for him, her intervention on his behalf saved him from the perhaps dire consequences of his rejection of counsel's advice regarding Ms. Gentry.

A review of Ms. Gentry's trial testimony reveals that she testified to facts within her own knowledge and not about any post-event (the murder) conduct or comments from Applicant. When she started to testify about her post-event trip to trial counsel's office with Applicant, trial counsel objected. After the objection, the State did not pursue this line of questioning. (Trial Record p. 286, ll. 12-20).

Application of the *Strickland* and *Cherry* tests make it inarguable that trial counsel's representation of Applicant passes these tests and that Applicant has failed to carry his burden of proof. The greater weight or preponderance of the evidence shows that trial counsel's representation of Applicant was well within the range of competence required of counsel in criminal cases. Further, trial counsel's representation of Applicant was well within the standard of reasonableness under professional norms.

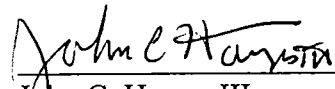
Therefore, Applicant's Application for Post-Conviction Relief is denied and dismissed with prejudice.

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.

Doc #5

IT IS SO ORDERED.

December 8<sup>th</sup>, 2016  
Greenville, South Carolina

  
\_\_\_\_\_  
John C. Hayes, III  
Presiding Judge #6

RICHEY AND RICHEY, P.A.  
POST OFFICE BOX 10916  
GREENVILLE, SC 29603

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