

THE

GIESE

LAW FIRM, LLC

RECEIVED

MAR -8 2017

S.C. SUPREME COURT

March 6, 2017

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

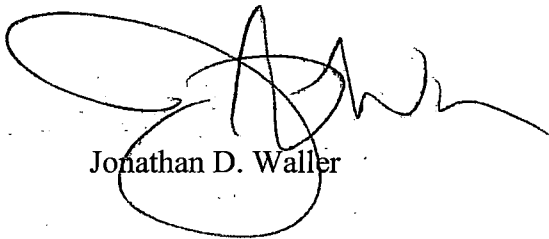
Re: Claude Reed vs. State of South Carolina
C/A No: 2014-CP-21-0626

Dear Mr. Shearouse:

Please find enclosed one (1) original and one (1) copy each of Applicant's Notice of Appeal and Certificate of Service in the above referenced case. I would appreciate you filing the original and returning the clocked copies in the enclosed envelope.

I was appointed to represent Mr. Reed in this matter and am also enclosing a copy of the Order of Dismissal. If you have any questions, please do not hesitate to ask. My telephone number is 803-708-6767.

Sincerely,



Jonathan D. Waller

Cc: Johanna C. Valenzuela, South Carolina Office of Attorney General

Enclosures

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM FLORENCE COUNTY
William H. Seals, Jr., Circuit Court Judge

2014-CP-21-0626

RECEIVED

MAR -8 2017

S.C. SUPREME COURT

Claude Reed, #305676,

Appellant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Claude Reed, #305676, appeals the Order of Dismissal denying his Application for Post-Conviction Relief filed February 15, 2017 issued by the Honorable William H. Seals, Jr., Presiding Judge, Twelfth Judicial Circuit.



Jonathan D. Waller

Giese Law Firm
SC Bar No.: 76290
1315 Blanding Street
Columbia, SC 29201
803-708-6767 (phone)
803-708-6769 (fax)
jonathanwallerlaw@gmail.com
ATTORNEY FOR PETITIONER

This 6 day of March, 2017.

Other Counsel of Record:

Johanna C. Valenzuela, Senior Assistant Deputy Attorney General

Post Office Box 11549

Columbia, SC 29211

(803) 734-3319

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM FLORENCE COUNTY
William H. Seals, Jr., Circuit Court Judge

2014-CP-21-0626

RECEIVED

MAR -8 2017

S.C. SUPREME COURT

Claude Reed, #305676,

Appellant,

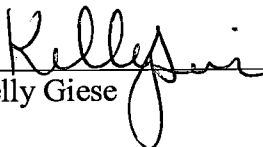
v.

STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the Appellant's Notice of Appeal in the above-entitled case has been served upon opposing counsel, Johanna C. Valenzuela, Assistant Deputy Attorney General, by mailing in an envelope properly addressed with postage prepaid on this 6th day of March 2017, to his office located at P.O. Box 11549, Columbia, SC 29211.



Kelly Giese

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

FILED

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2014CP2100626

| | | | |
|---------------|---------------------|-------------------------|--|
| Claude E Reed | 2017 FEB 16 PM 2:21 | South Carolina State Of | |
|---------------|---------------------|-------------------------|--|

| | |
|---|---|
| PLAINTIFF(S) | DORIS POULOS O'HARA CCCP & GS DEFENDANT(S) |
| Submitted by: _____ Attorney for: <input type="checkbox"/> Plaintiff <input 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:

CERTIFIED: A TRUE COPY
 CLERK OF COURT
 FLORENCE COUNTY
 S.C.

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 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) |
|--|--|--|
| | | |
| | | |
| | | |

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.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

Judge Code

2/16/2017

Date

For Clerk of Court Office Use Only

This judgment was entered on **February 15, 2017**, and a copy mailed first class or placed in the appropriate attorney's box on **February 17, 2017**, to attorneys of record or to parties (when appearing pro se) as follows:

Jonathan D Waller 1315 Blanding Street Columbia, SC
29201

Lindsey Ann McCallister PO Box 11549 Columbia, SC
29211-1549

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Doris P. O'Hara

Court Reporter

Doris Poulos O'Hara - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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) IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE) FOR THE TWELFTH JUDICIAL CIRCUIT
Claude Reed,) C.A. No. 2014-CP-21-0626
S.C.D.C. No. 305676,)
Applicant,)
v.) ORDER OF DISMISSAL
State of South Carolina,)
Respondent.)

2017 FEB 15 PM 1:04
DORIS POULOS O'HARRA
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.
FILED

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed March 13, 2014. An evidentiary hearing into the matter was convened on August 10, 2016, at the Florence County Courthouse. Applicant was present and represented by Jonathan Waller, Esquire. Respondent was represented by Senior Assistant Deputy Attorney General Johanna C. Valenzuela.

Applicant and Applicant's plea counsel, William Grove, Esquire, testified at the hearing. This Court also had before it all relevant pleadings and documents, the Clerk of Court records for Florence County, the South Carolina Department of Corrections' records, Applicant's appellate records, and Applicant's plea transcript.

PROCEDURAL HISTORY

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Florence County Clerk of Court's orders of commitment. Applicant was indicted at the September 2012 term of the Florence County Grand Jury for Failure to Stop for a Blue Light, Kidnapping, Burglary First Degree, Armed Robbery, Grand Larceny, and Resisting Arrest (2012-GS-21-1218). Applicant was represented by Will Grove, Esquire.

CERTIFIED: A TRUE COPY
Doris Poulos O'Hara
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

On March 14, 2013, Applicant pleaded guilty as indicted. The Honorable D. Craig Brown sentenced Applicant to concurrent terms of three (3) years imprisonment for failure to stop, thirty-five (35) years imprisonment for burglary first degree, thirty (30) years imprisonment for armed robbery, and five (5) years imprisonment for grand larceny.

Applicant filed a timely Notice of Appeal; however, it was dismissed by the South Carolina Court of Appeals for failing to provide a sufficient explanation under Rule 203(d)(1)(B)(iv). The Remittitur was sent on December 6, 2013.

In his application for post conviction relief, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. Counsel did not object to State's use of juvenile record.
 - b. Counsel failed to object to armed robbery charge where no weapon was involved.
 - c. Failure to appeal Applicant's plea.

Prior to the PCR hearing, Applicant, through counsel, informally, and with the consent of Respondent, amended his application to seek relief in the alternative for a resentencing with the correct juvenile record.

SUMMARY OF THE TESTIMONY

Applicant testified he met with plea counsel two to three times prior to his plea and did discuss the element involving the gun. Applicant also testified he remembered thinking it was not right that his juvenile record was being presented to the court.

Plea counsel testified he met with Applicant three to five times prior to the guilty plea. He discussed with Applicant his different versions of what happened the day of his arrest. Plea counsel agreed the state's evidence was overwhelming. Plea counsel explained that Applicant did not ever indicate he did not understand anything, but counsel agreed the gun was a sticking

point for Applicant. Plea counsel remembered feeling surprised when the court asked about the juvenile record, but he was not in possession of any information to the contrary of what was presented by the prosecutor. Plea counsel said before the plea, Applicant had some reservations but he did want to plead guilty and it was Applicant's decision to do plead.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Ineffective Assistance of Counsel

Applicant alleges he received ineffective assistance of counsel when counsel failed to object to the state's reference to his juvenile record during the guilty plea and failed to object to the armed robbery charge where there "was no gun."

In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCPP). Where ineffective assistance of counsel is alleged as a ground for relief, 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 v. State, 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. at 441, 334 S.E.2d at 813. Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, 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, 466 U.S. at 668, 104 S.Ct. at 2064). Second, counsel's deficient performance must have prejudiced 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.

Juvenile Convictions

Applicant argues his attorney was ineffective for failing to object to the prosecutor discussing Applicant's juvenile record. But, a sentencing judge "may appropriately conduct an inquiry broad in scope, largely unlimited as to either the kind of information he may consider, or the source from which it may come." Hayden v. State, 283 S.C. 121, 123, 322 S.E.2d 14, 15 (1984) (quoting United States v. Tucker, 404 U.S. 443, 92 S.Ct. 589 (1972)). Further, plea counsel testified he was not aware of any incorrect information, and Applicant presented no evidence the juvenile record was incorrect.

Gun

Applicant argues his counsel should have challenged the charge involving a gun because there was no gun. However, while under oath at the plea, Applicant agreed with the facts as they pertained to each of the charges. (Guilty Plea Tr. pp. 22-23.) The State's facts included that a gun was reported stolen from the victim's home, the victim testified Applicant threatened to shoot her, and a gun was later recovered with some of the other stolen items. (Guilty Plea Tr. pp. 14-22.) Applicant apologized to the victim at the plea and accepted responsibility. (Guilty Plea Tr. pp. 27-28.)

Accordingly, this Court finds Applicant has failed to prove the first prong of the Strickland test for both allegations: that Counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present specific and compelling

evidence that Counsel committed either errors or omissions in his representation of Applicant. This Court also finds Applicant has failed to prove the second prong of Strickland: that he was prejudiced by Counsel's performance.

Therefore, having reviewed the pleadings, considered the applicable law, reflected upon the testimony and evidence at the plea, and considered the arguments of counsel, this Court finds Applicant is not entitled to relief.

Appeal

Applicant presented no evidence at the hearing related to plea counsel's failure to appeal. That allegation is dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes 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 notifies Applicant that he must file and serve a notice of appeal within thirty (30) 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 PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on Applicant's behalf. Your attention 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. Applicant must be remanded to the custody of the Respondent.

IT IS SO ORDERED.



WILLIAM H. SEALS, JR.
Presiding Judge
Twelfth Judicial Circuit

2/11/2017 (date)
Miami, South Carolina

2017 FEB 15 PM 1:01
DORIS POULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

FILED

CERTIFIED: A TRUE COPY
Doris Poulos O'Hara
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

THE

GIESE

LAW FIRM, LLC

1315 Blanding Street
Columbia, SC 29201

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

886707.21

\$0.880

**US POSTAGE
FIRST-CLASS**

062S0009473977
29201



www.usps.com