

The Law Office of Tristan M. Shaffer

Litigation • Injury Law • Criminal Defense

March 27, 2017

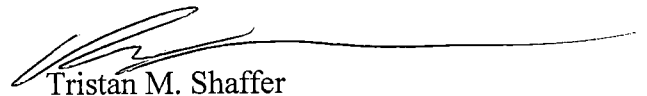
Daniel E. Shearouse
The Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

Re: Douglas Gregg v. State 2013-CP-16-0069

Dear Mr. Shearouse,

Please find the enclosed Notice of Appeal, Certificate of Service, and Order of Dismissal in the above referenced case.

Sincerely,



Tristan M. Shaffer

CC:
Valerie Giovanoli
Darlington County Clerk of Court
Paula Murdoch

RECEIVED
MAR 30 2017
S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM DARLINGTON COUNTY
Court of Common Pleas

G. Thomas Cooper, Circuit Court Judge

Case No. 2013-CP-16-0069

RECEIVED

MAR 30 2017

Douglas D. Gregg, III # 137038,

S.C. SUPREME COURT

Petitioner,

v.

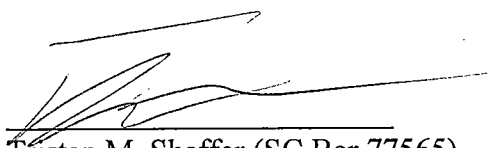
The State of South Carolina,

Respondent.

PROOF OF SERVICE

I certify that on the date below I served the Notice of Appeal on The State of South Carolina by mailing a copy to the Attorney General's Office at P.O. Box 11549, SC 29211.

March 27, 2017


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Other Counsel of Record:
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Attorney for Respondent

THE STATE OF SOUTH CAROLINA
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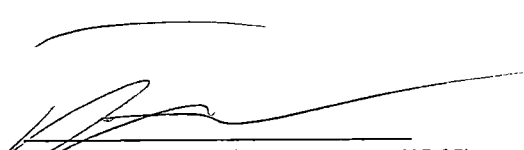
The State of South Carolina,

Respondent.

NOTICE OF APPEAL

Petitioner appeals the order dismissing his post-conviction relief action filed on February 24, 2017. This order was received by Petitioner on February 28, 2017.

March 27, 2017


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Attorney for Respondent

Scott B. Suggs

STATE OF SOUTH CAROLINA)
COUNTY OF DARLINGTON)

CLERK OF COURT / RMC)
IN THE COURT OF COMMON PLEAS)
FOR THE FOURTH JUDICIAL CIRCUIT)
DARLINGTON COUNTY, SC)

Douglas D. Gregg, III, #137038,)

Case No. 2013-CP-16-0069)

Applicant,)

v.)

ORDER OF DISMISSAL

State of South Carolina,)

Respondent.)
_____)

This matter came before the Court by way of an Application for Post-Conviction Relief filed August 29, 2012. Respondent filed a return and motion for more definite statement on or about May 16, 2013. Counsel for Applicant submitted amendments to the Respondent on or about January 4, 2014, which Respondent consented to consideration. This matter was first set for a hearing in January 2014, but the Court became aware that the remittitur from Applicant's direct appeal had not been returned, and an order staying proceedings until the return of the remittitur was signed by the Honorable R. Ferrell Cothran, Jr. on January 14, 2014. The Court convened an evidentiary hearing into the matter on July 20, 2016, at the Chesterfield County Courthouse. Applicant was present and represented by Tristan Shaffer, Esquire. Jessica E. Kinard, Esquire of the South Carolina Attorney General's Office, represented Respondent.

Applicant and Applicant's trial counsel, Rick Jones, Esquire, testified at the hearing. The Court had before it a copy of the trial transcript, the records of the Darlington County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, and the pleadings. The Court finds as follows:

SCOTT B. SUGGS
CLERK OF COURT/R.D.
DARLINGTON COUNTY, S.C.

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I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Darlington County Clerk of Court. Applicant was indicted by the Darlington County Grand Jury for kidnapping, possession of a weapon during a violent crime, larceny, grand larceny, murder, and armed robbery (2012-GS-16-0875, -0876, -0877, -0878, -0879, -0880). Rick Jones, Esquire, represented Applicant. The applicant was tried and found guilty as indicted and sentenced to life without parole plus 75 years by The Honorable Thomas A. Russo. Applicant originally appealed, however the appeal was dropped in order for the applicant to file an application for Post-Conviction Relief. The remittitur was returned on July 18, 2014.

II. Allegations

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

1. "Ineffective Assistance of Counsel"
2. "Violation of Due Process- Conviction Without the Weight of the Evidence"
3. "Subject Matter Jurisdiction"
4. "Tampering with Evidence"

Applicant's amended application included the following grounds:

1. Ineffective assistance of counsel
 - a. Failure to move to suppress evidence of Defendant's use of crack
 - b. Failure to request that the jury be instructed that there is no duty to retreat if doing so would put a person at greater risk of harm.
 - c. Failure to object to the Judge's instruction that a guest has a duty to retreat if attacked by a property owner.
 - d. Failure to argue that Defendant's statement might have fit the elements of voluntary manslaughter.
 - e. Conceding his case in opening statement.
 - f. Improper opening statement
 - g. Burden shifting
 - h. Failure to request a curative instruction

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- i. Failure to challenge in-court and out-of-court identifications
- j. Failure to object to hearsay and/or confrontation clause violation.
- k. Failure to object to vouching throughout the closing statement.
- l. Failure to argue self-defense
- m. Failure to impeach the officers regarding the placement of the alleged murder weapon.

III. Findings of Fact and Conclusions of Law

The Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the evidentiary hearing. The Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court finds Counsel's testimony credible and Applicant's testimony not credible. The Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Summary of Testimony

Douglas Gregg, III - Applicant

Applicant began his testimony by stating that though he did not testify in his own defense at trial, he would have testified that he acted in self-defense. He was under the impression that trial counsel was proceeding on a theory of self-defense because it was discussed by the two of them in pre-trial meetings, was mentioned during the State's opening argument, was mentioned in trial counsel's closing argument, and was also charged to the jury. Applicant thought that the self-defense theory would have gotten him a lesser charge, such as voluntary manslaughter. Applicant stated that he was advised by trial counsel not to testify due to his past record, but that the ultimate decision not to testify was his. Applicant testified that he was concerned about crime scene photos – there were photos that showed a knife in the car he drove from the scene, yet he remembered leaving the knife in a cornfield. When asked if he brought this up to trial counsel,

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Applicant testified that he did, and was told by trial counsel that it was not worth pursuing, as law enforcement would deny any allegations of tampering with evidence. Applicant testified that he did provide a statement to law enforcement, and would have been more thorough in his description of the events if he had known that he would not have another chance to tell his story.

Rick Jones, Esquire – trial counsel

Mr. Jones testified that he took over Applicant's case after his initial attorney, Chelsea McNeal, left the public defender's office. He had been assisting her with the case in the capacity of a more seasoned attorney, and he had represented the Applicant before. Mr. Jones recalled his understanding and memory of the facts of the case, including that there was a clear video of the convenience store robbery that occurred after the killing and persuasive testimony regarding the high speed chase that occurred. Mr. Jones remembered Applicant's statement to law enforcement being as recounted by the Applicant – that he "lost it" and stabbed his uncle to death, as well as the fact that self-defense may have been in play, which is why he used that strategy. Mr. Jones testified that he thought the Applicant's statement was good as it could have been under the circumstances. Regarding plea negotiations, Mr. Jones testified that he strongly urged the Applicant to plead to armed robbery, primarily because there was an "awful" surveillance video of the robbery, during which it seems as if Applicant smiled at the camera. Applicant stated that he would only plead to a two year sentence, with which the solicitor would not agree. There was never a plea offer for the murder charge, and Mr. Jones did not believe that the Applicant had much of a chance of prevailing on any of the charges.

Mr. Jones testified that Applicant understood all conversations that they had and asked helpful questions. At the appropriate time, Mr. Jones asked for and received jury charges for both voluntary manslaughter and self-defense, which surprised him. He did not think that any of the



charges were objectionable, and did not want to give the trial judge a chance to change his mind regarding the beneficial charges.

Mr. Jones testified that he discussed Applicant's concerns regarding the knife in the car with the Applicant, and went so far as to talk to law enforcement officers about it. It was very clear that some pictures were taken of the car that showed the knife, the knife was bagged for evidence, and more pictures were taken. There was no traction to be gained in arguing this point, so it was not raised at trial.

Regarding Applicant's decision not to testify, Mr. Jones testified that he thought any testimony that Applicant may have provided regarding self-defense would have been outweighed by the negative impact of Applicant's prior record that would have been admitted. He advised Applicant against testifying on his own behalf, and Applicant accepted that advice.

Ineffective Assistance of Counsel

In this post-conviction relief action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of trial counsel as a ground for relief, Applicant must prove trial 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." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether trial counsel provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The Court strongly presumes trial counsel rendered adequate assistance and made all



significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The Court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove trial counsel's performance was deficient. Id. Under this prong, the Court measures trial counsel's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, trial 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." Id. at 117-18, 386 S.E.2d at 625.

This Court finds Applicant has failed to show that trial counsel's performance fell below an objective standard of reasonableness. All testimony indicated that he was extremely familiar with the facts of Applicant's case. This Court finds trial counsel met with Applicant an adequate number of times and was familiar with the discovery materials. Trial counsel indicated that he explained Applicant's constitutional rights, and explained the differences between going to trial and entering a guilty plea, especially in light of the favorable plea offer that was discussed. Counsel indicated he never had trouble communicating with Applicant, and he never had any concern that Applicant did not fully understand their conversations.

Counsel refuted all allegations that Applicant made in his application as well as during his testimony including, but not limited to, the allegedly ineffective use of a self-defense argument; allegations that law enforcement tampered with evidence; and the risks of Applicant testifying on his own behalf.

Furthermore, counsel provided competent representation in light of the overwhelming



evidence against Applicant. See Harris v. State, 377 S.C. 66, 79, 659 S.E.2d 140, 147 (2008) (applicant cannot prove prejudice where there is overwhelming evidence of guilt). This Court finds that, through the presentation of evidence at the post-conviction relief hearing, Applicant has failed to demonstrate both deficiency by trial counsel, as well as any prejudice caused by trial counsel's actions. Therefore, this allegation is denied and dismissed with prejudice.

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, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

IV. CONCLUSION

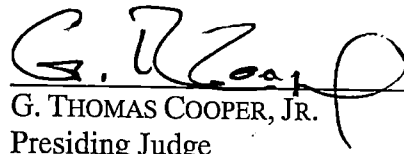
Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from 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), SCRPC, provides that if Applicant wishes to seek appellate review, his post-conviction relief attorney must serve and file a notice of appeal on Applicant's behalf. Applicant and his attorney are directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. This Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 17 day of FEBRUARY, 2017.

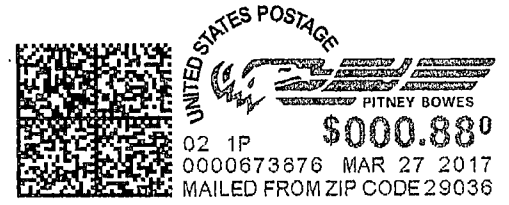
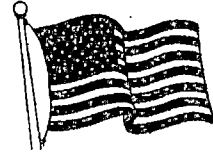


G. THOMAS COOPER, JR.
Presiding Judge
Fourth Judicial Circuit

CAUDEN, South Carolina

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SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
BARLINGTON COUNTY, S.C.

FILED



Daniel E. Shearouse
The Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211