



THE LAW OFFICE OF NATHAN J. SHELDON,
LLC
Working on your behalf

331 E. Main St., Suite 200
Rock Hill, SC 29730
www.nathansheldonlaw.com
(803)909-9343

May 13, 2017

Daniel E. Shearouse, Clerk
The Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29201

RECEIVED

MAY 16 2017

Re.: Jerry Lee Dickey v. State
2016-CP-46-1813

S.C. SUPREME COURT

Dear Mr. Shearouse:

Please find enclosed the following documents being submitted in the above referenced case:

- 1- Notice of Appeal
- 2- Proof of Service
- 3- Copy of Judge Hayes' Order denying PCR relief

Please note that I have forwarded all of this information to appellate defense along with my Order of Appointment asking them to handle this appeal for me. Thank you and please contact me with any additional questions or concerns.

Sincerely Yours

Nathan Sheldon
The Law Office of Nathan J. Sheldon

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM YORK COUNTY
Court of Common Pleas

J. Mark Hayes, II, Circuit Court Judge

Case No. 2016-CP-46-1813

State of South Carolina,

Respondent,

v.

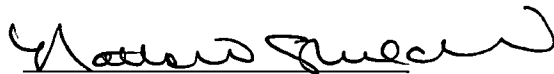
Jerry Lee Dickey,

Petitioner.

NOTICE OF APPEAL

Jerry Lee Dickey appeals the order of the Honorable J. Mark Hayes, II dated April 26, 2017 denying his request for post-conviction relief. Appellant received written notice of entry of this order on May 11, 2017.

May 13, 2017



Nathan J. Sheldon
SC Bar # 0074943
331 E. Main St., Suite 200
Rock Hill, South Carolina 29730
(803) 909-9343
Attorney for Petitioner

Other Counsel of Record:
Justin J. Hunter, Esquire
Assistant Attorney General
Post Office Box 11549
Columbia, South Carolina 29211-1549
Attorney for Respondent
(803) 734-3970

THE STATE OF SOUTH CAROLINA
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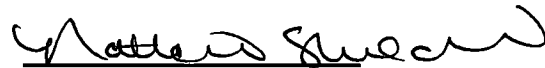
Jerry Lee Dickey,

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PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Justin J. Hunter with the Attorney General's Office by depositing a copy of it in the United States Mail, postage prepaid, on May 13, 2017 mailed to Post Office Box 11549, Columbia, South Carolina 29211-1549.

May 13, 2017



Nathan Sheldon
SC Bar # 0074943
331 E. Main St., Suite 200
Rock Hill, SC 29730
803-909-9343
Attorney for Petitioner

FORM 4

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

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2016CP4601813

Jerry Lee Dickey		South Carolina State Of	
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PLAINTIFF(S)	DEFENDANT(S)
Submitted by: Justin J Hunter	Attorney for: <input checked="" 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: _____
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 - Affirmed;
 - Reversed;
 - Remanded;
 - Other:

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
 ORDER OF DISMISSAL**

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.

S/ J MARK HAYES II	2132	5/10/2017
Circuit Court Judge	Judge Code	Date

For Clerk of Court Office Use Only

This judgment was entered on 05/10/2017, and a copy mailed first class or placed in the appropriate attorney's box on 5/10/2017, to attorneys of record or to parties (when appearing pro se) as follows:

Nathan James Sheldon PO Box 36682 Rock Hill, SC 29732

Justin James Hunter PO Box 11549 Columbia, SC
29211-1549

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

David Hamilton - Clerk of Court

Court Reporter

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), SCRPC.

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.

Esquire. On May 20, 2015, Applicant was tried in his absence before the Honorable Robin Stilwell and a jury and was subsequently found guilty as indicted. Judge Stilwell sentenced Applicant and sealed the sentence. Applicant returned to York County and was brought before the Honorable Paul Burch on August 11, 2015 to have the sentence published. Applicant was sentenced to imprisonment for ten years for the shoplifting charge and for three years for failure to stop for a blue light. Both sentences were to run concurrently.

Applicant filed a notice of appeal. By an order filed May 20, 2016, Applicant moved to withdraw his appeal. The Remittitur was sent June 8, 2016.

On June 16, 2016, Applicant filed an application for post-conviction relief alleging the following grounds:

1. Ineffective Assistance of Counsel
 - a. Failure to object to and preserve double jeopardy issue.

II. APPLICABLE LAW

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, 80 L.Ed.2d 674, 692 (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. Applicant must overcome this presumption in order 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. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any 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." Id. at 117-18, 386 S.E.2d at 625.

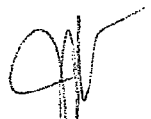
III. SUMMARY OF THE TESTIMONY

Applicant's Testimony

Applicant testified that he was accused of shoplifting a Family Dollar in Clover, South Carolina. He testified that he met with Counsel enough times prior to the trial and that Counsel contacted Applicant's aunt in Charlotte to discuss the case.

Applicant testified that he asked about a plea but was told that the solicitor did not want to offer a plea deal. He testified that he was convicted in North Carolina on October 27, 2014 for a misdemeanor of possession of stolen goods. He testified that the stolen goods that he was accused of having in his possession in North Carolina were the same goods he was accused of stealing from the Family Dollar in Clover.

Applicant testified that he was noticed for trial on Tuesday, May 19, 2015 and was tried on Wednesday, May 20, 2015. He testified that Counsel told him on Tuesday, May 19, 2015 that he could leave. Applicant further testified that his aunt did not show up at the courthouse on either day.



Counsel Phil Smith's Testimony

Counsel testified that his usual method of contact with Applicant was to call him or send letters. He testified that he was at the courthouse with Applicant ready for trial on Tuesday, May 19, 2015 but it looked like the trial was not going to be called until Wednesday, May 20, 2015. Counsel testified that he told Applicant that he needed to be at the courthouse on Wednesday for his trial. He testified that he called any and all phone numbers that he had for Applicant and also called Applicant's bondsman in attempts to get him for the trial. Counsel testified that the judge even gave him time to delay the case to make attempts to locate Applicant. Counsel testified that Applicant knew that he was supposed to be at the courthouse on Wednesday for his trial.

Counsel testified that he did not think there was any double jeopardy argument. He testified that Applicant told him that he pled in North Carolina to possessing the stolen goods he was accused of shoplifting in South Carolina. Counsel testified that he discussed this North Carolina plea with the solicitor and tried to get the South Carolina charges dismissed to no avail. Counsel admitted that any double jeopardy issue would not have been preserved because he did not object, however, he argued that there was no issue since North Carolina and South Carolina are separate sovereigns.

Appellate Defender John Strom's Testimony

John Strom, of the South Carolina Office of Appellate Defense, testified that he handled Applicant's direct appeal. He testified that there were not many appealable issues except possibly a Miranda issue. He testified that he discussed the possibility of a double jeopardy argument but this issue was not preserved for direct appeal. He testified that the appeal was eventually withdrawn and he believed the appropriate remedy would be at the post-conviction relief stage.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the trial transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

As a matter of general impression, this Court finds Counsel's testimony to be credible and persuasive on all matters. These credibility findings have been applied to the Court's findings and conclusions set forth below.

This matter came before the court as a post-conviction relief matter. Applicant was charged with shoplifting some items from Family Dollar. Since he had two or more other property crimes on his record, the State enhanced the charge. Applicant was convicted of shoplifting after a trial in his absence (he was also charged and convicted of failure to stop for a blue light). He appeared in court at the beginning of the week but for a reason not fully understood by this Court, he did not return for the trial. He was sentenced concurrently to three years for the Failure to Stop for a Blue Light charge and ten years on the Shoplifting charge.

The shoplifting occurred in South Carolina but Applicant was arrested in North Carolina after being chased by police. He was charged in North Carolina for possession of stolen goods (less than \$50.00), the stolen goods being the same items shoplifted in South Carolina from Family Dollar. It appears he waived extradition but was not immediately transported to South



Carolina. North Carolina proceeded to appoint a Public Defender for Applicant, after which, Applicant pled guilty to the North Carolina offense.

After he was sentenced on the South Carolina charge, he attempted to appeal his sentence but abandoned his appeal after receiving advice from his appellate attorney that the issue of the prior North Carolina sentence was not properly preserved by his trial attorney for appellate review.

At the present PCR hearing, the material facts are not disputed. The issue for this court is whether the North Carolina conviction precluded the South Carolina prosecution for the shopping lifting charge. After reviewing Heath v. Alabama, S.C. Code § 17-23-10, § 17-23-20, and § 44-53-410, this Court finds this application must be dismissed.

Heath v. Alabama, 474 U.S. 82, 106 S. Ct. 433, 88 L. Ed. 2d 387 (1985) explains double jeopardy and the application of the dual sovereignty doctrine. In that case, the United States Supreme Court held "[t]he dual sovereignty doctrine is founded on the common-law conception of crime as an offense against the sovereignty of the government. When a defendant in a single act violates the 'peace and dignity' of two sovereigns by breaking the laws of each, he has committed two distinct 'offences.'" Heath v. Alabama, 474 U.S. at 88, 106 S. Ct. at 437. The South Carolina Court of Appeals has reviewed this case in State v. Rice, where it held, "[u]nder the dual sovereignty doctrine, successive prosecution of the same conduct by separate sovereigns is not a violation of the federal constitutional prohibition against double jeopardy." 348 S.C. 417, 420, 559 S.E.2d 360, 362 (Ct. App. 2001) (citing Heath v. Alabama, 474 U.S. 82, 88, 106 S.Ct. 433 (1985)).

South Carolina Code §17-23-20 states "Whenever a municipal court or a magistrates court shall have acquired jurisdiction by reason of a person committing an act which is alleged to

be in violation of a municipal ordinance and which is in violation of the criminal law of this State a conviction or an acquittal by the first court acquiring jurisdiction shall be a complete bar to a trial by another court for the same alleged unlawful act or acts." This Court does not read § 17-23-20 to include municipal courts or magistrate courts in other states. This Court believes a reasonable interpretation to be that the legislature meant to bar subsequent prosecutions of criminal laws of this state when the prior conviction or acquittal was in South Carolina municipal or magistrate court. To support this reading, this court looks to § 44-53-410 where the legislature clearly set forth the bar of subsequent prosecution for Controlled Substances in South Carolina when the Federal Government of "another state" has already convicted or acquitted an accused. Similar language is not found in § 17-23-20. Without similar language being used, this Court is constrained to conclude that the South Carolina legislature has waived its right under Heath v. Alabama to forgo the prosecution of the shoplifting charge as a sovereign state. Accordingly, this Court finds that Applicant's allegation must be dismissed.

V. CONCLUSION

Based on the foregoing facts, the Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Applicant failed to demonstrate that Counsel's performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

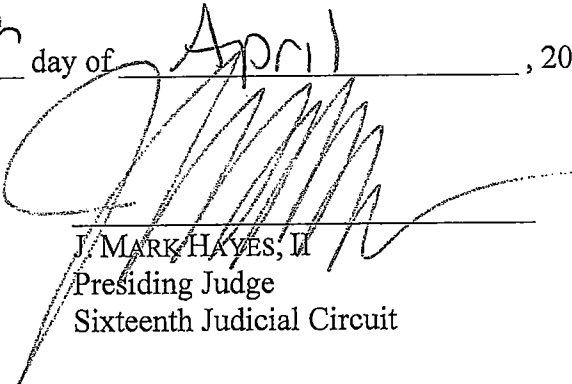
The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d

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), SCRCR, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 26th day of April, 2017.



J. MARK HAYES, II
Presiding Judge
Sixteenth Judicial Circuit

York, South Carolina