

THE EPPS LAW FIRM, LLC

┆ LITIGATION ATTORNEY || LEGAL COUNSELOR ┆

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June 1, 2017

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RECEIVED

JUN 05 2017

SC Court of Appeals

RE: Joseph Dante Satterwhite, Appellant, v. State of South Carolina, Respondent
Circuit Court Case No. 2015-CP-11-0807

Dear Ms. Kitchings:

Enclosed for filing is a notice of appeal in the above case. Also enclosed are the following:

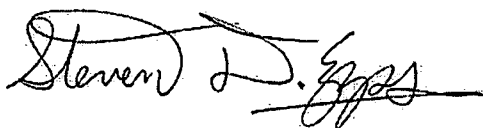
- (1) Proof of service of the notice of appeal on the respondent, and
- (2) A copy of the order which is to be challenged on appeal.

I am mailing a second set of documents to be returned to me in the self-enclosed stamped envelope once they have been filed with the Court. No filing fee is being paid regarding this matter as this is the appeal of a post-conviction relief matter.

Should you require anything further from me, do not hesitate to ask.

With warm regards, I remain,

Very truly yours,



Steven D. Epps

RECEIVED

JUN 07 2017

S.C. SUPREME COURT

SDE/jfm
Enclosures: As stated above

Ct of App. – Filing Notice of Appeal, etc.

June 1, 2017

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Cc: Client

Valerie Giovanoli, Esq.
Assistant Attorney General
S.C. Attorney General's Office
Post Office Box 11549
Columbia, SC 29211

Cherokee County Clerk of Court
P.O. Box 2289
Gaffney, SC 29342
(2 copies; 1 for file and 1 to return)

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NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHEROKEE COUNTY
Court of Common Pleas

Robin B. Stilwell, Circuit Court Judge

Case No. 2015-CP-11-0807

Joseph Dante Satterwhite,

Appellant,

v.

State of South Carolina,

Respondent.

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JUN 05 2017

SC Court of Appeals

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JUN 07 2017

S.C. SUPREME COURT

NOTICE OF APPEAL

Joseph Dante Satterwhite appeals the order of the Honorable Robin B. Stilwell dated April 19, 2017. Appellant received written notice of entry of this order on May 1, 2017. Further, Appellant received written notice of the denial of his motion to reconsider the above order on June 1, 2017.

June 1, 2017

Respectfully submitted,
EPPS LAW FIRM, LLC



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ATTORNEY FOR APPELLANT

Other Counsel of Record:
Valerie Giovanoli, Esq.
Assistant Attorney General
S.C. Attorney General's Office
Post Office Box 11549
Columbia, SC 29211

PROOF OF SERVICE OF A NOTICE OF APPEAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHEROKEE COUNTY
Court of Common Pleas

Robin B. Stilwell, Circuit Court Judge

Case No. 2015-CP-11-0807

RECEIVED

JUN 05 2017

SC Court of Appeals

Joseph Dante Satterwhite,

Appellant,

v.

State of South Carolina,

Respondent.

RECEIVED

JUN 07 2017

S.C. SUPREME COURT

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the State of South Carolina by depositing a copy of it in the United States Mail, postage prepaid, on June 1, 2017 addressed to its attorney of record, Valerie Giovanoli, Esq., Assistant Attorney General, Post Office Box 11549, Columbia, SC 29211.

June 1, 2017

Respectfully submitted,
EPPS LAW FIRM, LLC


STEVEN D. EPPS (SC Bar # 72722)

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ATTORNEY FOR APPELLANT

RECEIVED

JUN 05 2017

SC Court of Appeals

Joseph Dante Satterwhite, #355341

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or
	<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

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/ Robin B. Stilwell
 Circuit Court Judge

2158
 Judge Code

4/24/2017
 Date

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHEROKEE)
)
 Joseph Dante Satterwhite, #355341,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 IN THE SEVENTH JUDICIAL CIRCUIT

Case No.: 2015-CP-11-0807

**ORDER OF DISMISSAL
 WITH PREJUDICE**

FILED IN THE OFFICE
 CLERK OF COURT
 2017 APR 24 A 8:28
 CHEROKEE COUNTY, SC

This matter comes before this Court by way of an application for post-conviction relief (PCR) filed by Joseph Dante Satterwhite (Applicant) on October 30, 2015. The State (Respondent) made its return on July 1, 2016, moving for a more definite statement and requesting an evidentiary hearing be held. An evidentiary hearing into the matter was convened on March 24, 2017 at the Spartanburg County Courthouse. Applicant was present and represented by Steven D. Epps, Esquire. Valerie Garcia Giovanoli, Esquire, of the Office of the Attorney General represented Respondent.

At the hearing, Applicant testified on his own behalf. Don A. Thompson, Esquire, testified for the State. This Court had before it a copy of the Cherokee County Clerk of Court records, Applicant's records from the South Carolina Department of Corrections, the PCR application, Respondent's return, the trial transcript, and Applicant's direct appeal records.

PROCEDURAL HISTORY

Joseph Dante Satterwhite ("Applicant") is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Cherokee County Clerk of Court. The Applicant was indicted at the July 2012 term of the Cherokee County Grand Jury for murder and possession of a firearm during the commission of a violent crime (2012-GS-11-0736,

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counts 1 and 2). Don A. Thompson, Esquire, represented Applicant. On May 14, 2013, Applicant proceeded to trial before the Honorable J. Derham Cole and a jury. On May 15, 2013, the jury convicted Applicant as indicted. Judge Cole sentenced Applicant to imprisonment for a term of life for murder, and the possession of a weapon charge was vacated pursuant to S.C. Code Ann. § 16-23-490(A).

A timely Notice of Appeal was filed on Applicant's behalf pursuant to Anders v. California.¹ The South Carolina Court of Appeals dismissed Applicant's appeal in an unpublished opinion. State v. Satterwhite, 2014-UP-378 (S.C. Ct. App. filed November 5, 2014). The Remittitur was returned on November 21, 2014.

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

1. Ineffective assistance of counsel, in that:
 - i. Counsel failed to investigate properly;
 - ii. Counsel failed to object to numerous trial deficiencies;
2. Denial of due process.

At the evidentiary hearing, Applicant proceeded on his claims of ineffective assistance of trial counsel contained in his application. Applicant did not specify his claim of denial of due process, nor did he proceed upon such claim at the evidentiary hearing. Therefore, this Court deems Applicant's second claim abandoned.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has had the opportunity to observe the witnesses presented at the hearing and has weighed their testimony and credibility accordingly.

¹ 386 U.S. 738 (1967).

Below are the findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2017).

As a matter of general impression, this Court finds the testimony of Counsel Thompson to be credible. Counsel has been practicing law since 1980 and has served as Chief Public Defender for Cherokee County since August of 1999. This Court further finds that the testimony by Applicant is not credible.

Ineffective Assistance of Counsel

Applicant alleges he received ineffective assistance of counsel. 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), SCRPC). 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 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, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). First, the 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*. Second, counsel's deficient performance must have prejudiced the Applicant such that

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"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.

1. Failure to investigate properly:

Applicant failed to meet his burden of proving Counsel was ineffective for failing to investigate his case properly. Applicant testified that when he was arrested in Greensboro, North Carolina, he was diagnosed with bipolar disorder and schizophrenia. According to Applicant, the psychiatrist at the jail in North Carolina prescribed him Halodol (an antipsychotic medication used to treat psychotic disorders like schizophrenia), Cogentin (an anti-tremor medication used to treat the involuntary movements caused by Halodol), and Valium (a anxiolytic and sedative used to treat anxiety and muscle spasms). Applicant testified that he had never used the drugs before and they made him feel different. The medications made him foggy and made it difficult from him to communicate. However, Applicant testified that he was not on the medication while detained in Cherokee County because he could not see a psychiatrist there. This Court notes that the record indicates that Applicant was arrested in Greensboro, North Carolina the day after the incident – March 15, 2012 – and was extradited back to Cherokee, South Carolina on May 18, 2012. Applicant did not give a statement until May 29, 2012, while detained in Cherokee County. Applicant claims that had Counsel reviewed his medical records and brought up that he was heavily medicated when he gave an implicating statement to law enforcement, his statement would have been suppressed. However, Applicant did not present said medical records to support his claim. Furthermore, the record indicates that Counsel did thoroughly cross examine the State's witnesses with regard to any alleged influence of medication during a pre-trial Jackson v. Denno²

² Jackson v. Denno, 378 U.S. 368 (1964).

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hearing. However, the motion to suppress Applicant's statement was denied by the trial court, finding the statement was given freely and voluntarily. Trial Tr. p. 66.

Counsel also testified that at no point in his representation of Applicant did Counsel have any difficulty in communicating with Applicant or have any indication that a mental evaluation was necessary. Nor, did Applicant inform him of any mental illnesses from which he suffered. Counsel moved to suppress Applicant's prior statement to law enforcement, and based on the testimony of three different law enforcement officers present at the time of the statement that Applicant did not appear to be under the influence of anything, the Court denied his motion. This Court finds that Counsel was not deficient in his investigation of the existence, or lack of, any mental health issues or in his attempt to suppress the prior statement of Applicant to law enforcement.

Applicant also testified that although Counsel represented him approximately one year prior to Applicant's trial, that Counsel was out of work receiving cancer treatment for 6-8 months of that year, and thus did not have sufficient time to prepare for trial. Counsel testified that he took time off from work to receive cancer treatment in 2014 and that Applicant's trial occurred in May of 2013. This Court finds Counsel's testimony on this issue more credible as Counsel is better informed of the dates of his own cancer treatment. Furthermore, Counsel testified that he had ample time to prepare the case for trial and, in fact, was prepared for trial. This Court finds Counsel was prepared for trial.

Applicant also claimed that his father was having an affair with his girlfriend – the victim of the murder – and because of that, the father and his wife lied in their statements to law enforcement and at trial. Applicant claims that Counsel failed to thoroughly cross examine them because of his failure to investigate the surrounding circumstances. Additionally, Applicant claims

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that had Counsel thoroughly investigated, Counsel could have called Applicant's neighbor who would have testified on Applicant's behalf. Counsel testified that he and/or his investigator interviewed the father, the father's wife, and the neighbor. Counsel elaborated that he did not press the father on his prior inconsistent statement any more than what is evident from the transcript, because the father had told him he *actually saw his son shoot the victim*. Luckily for Applicant, the father did not testify to that fact. Counsel also explained that he was aware that the father's wife had had a stroke and her testimony and memory were not very good or helpful to the state. Counsel indicated that a more rigorous cross examination of an elderly woman with little memory would not have benefitted Applicant's case. Lastly, Counsel testified that the neighbor indicated that he did not witness anything more than the post-shooting commotion (gun shots, loud voices, numerous people, police cars, crime scene team, etc.). This Court finds Counsel's testimony with regard to the interviews of witnesses to be credible. This Court further finds no deficiency in Counsel's cautious, cross-examination of Applicant's father and the father's wife. Counsel committed no error in not calling Applicant's neighbor to testify at trial, based on the information gathered in his interview.

Applicant claimed that he never saw or was provided with any autopsy records. Applicant also claimed that the x-ray of the victim's skull was not provided to him and that the solicitor first shared the x-ray at trial. Applicant believes the x-ray would have corroborated Applicant's version of the facts – that the victim tripped and fell into the bullet Applicant shot after they had been arguing about an alleged affair. Applicant admitted that the doctor who performed the autopsy and prepared all of the reports testified at trial to the bullet wound entering at a straight, horizontal angle from the back of the head to the front – consistent with the State's theory that Applicant shot the victim directly in the back of the head. However, Applicant's opinion of the x-ray is that it

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shows the bullet entered at an angle – consistent with Applicant’s theory of shooting toward the ground and the victim’s head falling into the bullet. Applicant admitted he has no education, experience, or training in radiology.

Counsel testified that he requested, received and reviewed with Applicant all of the discovery in this case. Counsel testified that the autopsy records may have come at a later date than the initial discovery, but that he would have seen and reviewed them with Applicant prior to trial. This Court finds Counsel more credible on this issue. This Court finds that Counsel’s cross-examination with regard to the angle at which the bullet penetrated the victim’s skull was effective, especially in light of the evidence against Applicant. This Court further finds Counsel committed no error by not presenting evidence of or implying a layman’s opinion of an x-ray, that contradicts that of a qualified-expert, forensic pathologist.

2. Failure to object to numerous trial deficiencies:

Applicant also claimed that Counsel was deficient for failing to thoroughly cross-examine witnesses or object to the crime scene investigative procedures and state’s exhibits entered at trial. However, Counsel’s cross-examination and lack of objections to certain evidence was consistent with the defense’s entire theory of the case. Applicant admitted that he shot the victim, but claimed that the shooting was accidental. Therefore, cross-examination of crime scene investigators, forensic pathologists, and other law enforcement officers would yield little to help Applicant’s theory of accident. This Court notes that Counsel was consistent in asking all of the State’s witnesses, except for the father and the father’s wife (who were present during the shooting), the same question: if they were present when the incident occurred. Objecting to the crime scene photos admitted at trial would not have benefitted Applicant’s case either, as they did not contradict his theory of the case. This Court finds no deficiency in Counsel’s cross examination of the State’s

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witnesses and for not objecting to some of the evidence admitted. This Court further finds Applicant's allegations that the crime scene investigative procedures were not proper to be meritless.

Finding no deficiencies on the part of Counsel, this Court finds that Applicant has failed to meet his burden as required by Strickland to prove Counsel committed any errors or omissions that prejudiced him at trial. Therefore, the claim of ineffective assistance must be denied and dismissed with prejudice.

CONCLUSION

Based on all the foregoing, this Court finds Applicant has not established any violations that would require this Court to grant him relief. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice. This Court also finds that Applicant failed to specify his other allegations or present evidence as to those other allegations, and thus, this Court deems the other allegations abandoned.

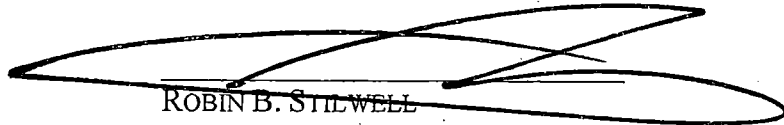
This Court notifies Applicant that he must file and serve a notice of appeal within thirty (30) days from receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. An applicant has a right to an appellate counsel's assistance when they are seeking review of the denial of PCR. Austin v. State, 305 S.C. 453 (1991). If an applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. See Rule 71.1 (g), SCRCP. You must look at Rule 243 of the South Carolina Appellate Court Rules for appropriate procedures for appeal.

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IT IS THEREFORE ORDERED THAT:

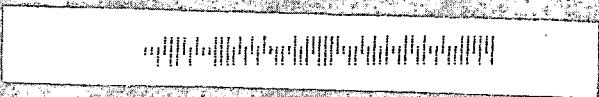
1. The application for Post-Conviction Relief is denied and dismissed with prejudice;
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 19 day of April, 2017.



ROBIN B. STILWELL
Presiding Judge
Seventh Judicial Circuit

Greenville, South Carolina



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Spartanburg, SC 29301

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