

IN THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
APPEAL FROM LEXINGTON COUNTY
COURT OF COMMON PLEAS
ROBERT E. HOOD, CIRCUIT COURT JUDGE
2015-CP-32-0389

RECEIVED
JUN 20 2017
S.C. SUPREME COURT

Douglas J. Mayes, Jr.,.....Petitioner.

vs

The State of South Carolina,.....Respondent.

NOTICE OF APPEAL

Douglas J. Mayes, Jr. appeals the Honorable Robert E. Hood's May 15, 2017, Order of Dismissal With Prejudice, clocked May 19, 2017. Undersigned counsel received notice of entry of the order on June 19, 2017. A copy of the order on appeal is attached to this notice.

Respectfully submitted,



Anna R. Browder
Law Office of Anna Browder, LLC
PO Box 7284
Columbia, South Carolina 29202
Telephone: (803) 661-6758
Fax: (803) 403-8752

Attorney for the Petitioner.

June 20, 2017.

OTHER COUNSEL OF RECORD:

Jessica Kinard, Esquire
South Carolina Attorney General's Office
Post Office Box 11549
Columbia, SC 29211-1549

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PROOF OF SERVICE

I, Anna Browder, certify that I have today served the within notice of appeal upon the Respondent by depositing a copy of it in the United States Mail, postage prepaid, addressed to the attorney of record, Jessica Kinard, P.O. Box 11549, Columbia, South Carolina 29211-1549. I further certify that all parties required by Rule to be served have been served this 20th day of June 2017.

Respectfully submitted,



Anna R. Browder, Esquire
Law Office of Anna Browder, LLC
PO Box 7284
Columbia, South Carolina 29202

ORIGINAL

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)
)
Douglas J. Mayes, Jr. #334386,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

Case No.: 2015-CP-32-0389

**ORDER OF DISMISSAL
WITH PREJUDICE**

FILED
2017 MAR 19 AM 11:25
LISA H. CONNER
CLERK OF COURT
LEXINGTON SC

This matter comes before the Court by way of an application for Post-Conviction Relief filed February 3, 2015, and amended March 16, 2017. Respondent made its Return on or about December 7, 2015. An evidentiary hearing into the matter was convened on April 18, 2017 at the Lexington County Courthouse at which time the Applicant was present and represented by Anna Browder, Esquire. The Respondent was represented by Jessica E. Kinard, Esquire of the South Carolina Attorney General's Office.

At the hearing, Applicant testified on his own behalf. Applicant's plea counsel, H. Wayne Floyd, Esquire, also testified. This Court had before it a copy of the records of the Lexington County Clerk of Court regarding the Applicant's convictions, the records of his appeal, the transcript from Applicant's trial, the PCR application and amendment, Respondent's Return, and Applicant's records for the Department of Corrections.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. Applicant was indicted by the August 2011 term of the Lexington County Grand Jury for possession of cocaine – third offense (2011-GS-32-1303) and trafficking in cocaine – third offense (2011-GS-32-1304). H.Wayne

Floyd, Esquire represented Applicant. On October 1-2, 2012, Applicant proceeded to a trial before the Honorable Howard P. King and a jury. He was found guilty of trafficking cocaine and the lesser-included offense of simple possession of cocaine. Judge King sentenced Applicant to a term of imprisonment for twenty-five (25) years for trafficking, and to a term of imprisonment for ten (10) years for simple possession. These sentences were to be served concurrently.

A timely Notice of Appeal was filed and perfected on Applicant's behalf. LaNelle Durant, Esquire represented Applicant on appeal. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Mayes, Op. No. 2015-UP-018 (S.C. Ct. App. filed January 14, 2015). The Remittitur was issued on February 17, 2015.

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

1. "Ineffective Assistance of Trial Counsel"
 - a. "Failure to challenge authenticity of the search warrant and affidavit"
 - b. "Failure to inform me that the trafficking charge sentence was day for day"

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 to weigh their testimony and credibility accordingly. Below are the findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2017). This Court finds the testimony of Counsel to be credible. This Court further finds that the testimony by Applicant is not credible.

Ineffective Assistance of Counsel

When an applicant alleges ineffective assistance of counsel, 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 (1984); Butler v. State, 286 S.C. 441, 334 S.E. 2d 813 (1985).

To receive relief, an Applicant must prove that counsel’s performance was both deficient and prejudicial. Attorneys are held to an objective standard of “reasonably effective assistance” under “prevailing professional norms.” Cherry v. State, 300 S.C. 115, 117, 386 S.E. 2d 624, 625 (1989) (citing Strickland, 466 U.S. at 688). The presumption will always be that counsel was effective and the applicant must overcome this presumption to receive relief. Id., 300 S.C. at 118, 386 S.E.2d at 625. To prove prejudice, an Applicant must prove that counsel’s deficient performance was so poor that the Applicant prove that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Strickland, 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 the proceeding. Strickland, 466 U.S. at 694.

This Court finds Counsel provided effective assistance in this case. Counsel testified that he was retained by Applicant’s father, and remained Applicant’s counsel despite several attempts by Applicant to relieve him. Counsel further testified that, though they were always preparing for trial, he negotiated with the Solicitor’s office to attempt to get Applicant a satisfactory plea offer. The lowest offer he could obtain was 18 years, which Applicant would not accept. Counsel testified that he spoke with the Honorable L. Casey Manning and the solicitor while at court, and was advised by the judge that he would come significantly down from the offer if Applicant would plead; however, Applicant still refused to enter a plea. Counsel testified that he met with Applicant many times, during which he advised Applicant of all the charges and the potential sentences the charges carried as well as reviewed all of the discovery. Counsel advised

Applicant of all of his Constitutional rights, including his right to a jury trial, to remain silent, to confront accusers, and so forth. Applicant also testified to these facts, though pointed out that he did not receive a hard copy of all of the discovery until he was incarcerated. Counsel contested this issue, and testified that Applicant found several potentially helpful points during his review of the discovery.

Regarding the timeline of the case, Applicant's trial originally began approximately one year before the full trial was completed. At the time the first trial was started, Applicant was not present, as he had bonded out and left town. He was eventually re-arrested, and the trial at issue took place in October of 2012. Mr. Floyd represented Applicant the entire time.

Counsel testified that he had several strategic points that he wanted to emphasize during trial. First, he pushed the issue of whether Applicant could be proven to actually reside in the house where the drugs were found. Second, he wanted to attack the sufficiency and accuracy of the affidavits that led to the search warrant, as well as issues related to the return to the magistrate. Lastly, there were problems with the evidence – some of the drugs had become liquid between the time of the arrest and the time of trial, and the prosecution had failed to prove that the firearm found in the house was operable. Counsel testified that he believed he spoke with Applicant about all of these tactics, as well as about how the pre-trial hearings would work, including the Jackson v. Denno¹ hearing and the factors that surrounded that succeeding or failing. Lastly, counsel testified about Applicant's girlfriend, particularly regarding what she may have said to law enforcement and whether she would have been a helpful witness. Counsel testified that the girlfriend may have made the ultimately unsubstantiated claim that someone would take their child if they did not admit to possession of the drugs. He further testified that, after investigation, he did not believe that her testimony would have helped the Applicant's case.

¹ 378 U.S. 368 (1964).

Therefore, Applicant having failed to prove any deficiency by Counsel as required by Strickland, his application is denied and dismissed with prejudice.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any violations 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 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. Refer to Rule 243 of the South Carolina Appellate Court Rules for appropriate procedures for appeal.

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 15 day of May, 2017.

Robert E. Hood
Presiding Judge
Eleventh Judicial Circuit

Columbia, South Carolina

FILED
2017 MAY 19 11:11:25
LISA H. CONER
CLERK OF COURT
LEXINGTON SC

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2015CP3200389

Douglas J Mayes #334386 Jr		State of South Carolina	
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PLAINTIFF(S)	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: _____
- 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.

Circuit Court Judge	Judge Code	Date
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5/26/2017

For Clerk of Court Office Use Only

This judgment was entered on the 6th June 2017 and a copy mailed first class or placed in the appropriate attorney's box on to attorneys of record or to parties (when appearing pro se) as follows:

Anna Rawl Browder
PO Box 7284 Columbia, SC 29202

Johanna Catalina Valenzuela
PO Box 142 Columbia, SC 29202

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Lisa M. Comer/jp

Court Reporter

Lisa M. Comer - 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.
