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JUN 26 2017

S.C. SUPREME COURT

Arthur K. Aiken

A. Bea Hightower

June 21, 2017

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

Re: Christopher T. Wilson v. State of South Carolina
Civil Action No.: 2015-CP-32-2060

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JUN 23 2017

SC Court of Appeals

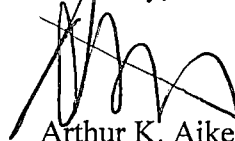
Dear Ms. Kitchings:

I am appointed counsel for the Applicant, Christopher T. Wilson, in the above captioned post-conviction relief case. I have enclosed, for filing in your office, a Notice of Appeal and Motion to Proceed in Forma Pauperis for this case. Please return file stamped copies to me.

By copy of this letter with the filings enclosed, I have filed these filings in the Lexington County Court of Common Pleas and have served these filings on the Office of the Attorney General for South Carolina. Please call with any questions.

Thank you for your help

Sincerely,



Arthur K. Aiken

art@aikenandhightower.com

cc: Clerk, Lexington County Court of Common Pleas (w/enclosures)
Office of the Attorney General for South Carolina (w/enclosures)
Christopher T. Wilson (w/enclosures)

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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JUN 26 2017

APPEAL FROM LEXINGTON COUNTY S.C. SUPREME COURT
Court of Common Pleas

Eugene C. Griffith, Jr., Circuit Court Judge

Case No. 2015-CP-32-2060

Cristopher T. Wilson.....Applicant/Appellant

v.

State of South Carolina.....Respondent/Respondent

NOTICE OF APPEAL

This is a post-conviction relief case. Appellant appeals from the Order of Dismissal entered in this case on May 8, 2017. Appellant received written notice of the entry of the Order of Dismissal entered on May 8, 2017 on May 23, 2017. A copy of the Order of Dismissal appealed from is attached.

June 21, 2017



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ATTORNEYS FOR APPELLANT

OTHER COUNSEL OF RECORD:
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ATTORNEYS FOR RESPONDENT

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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JUN 26 2017

S.C. SUPREME COURT

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Eugene C. Griffith, Jr., Circuit Court Judge

Case No. 2015-CP-32-2060

Cristopher T. Wilson.....Applicant/Appellant

v.

State of South Carolina.....;...Respondent/Respondent

PROOF OF SERVICE

I certify that, on June 21, 2017, I served the Notice of Appeal and Motion to Proceed in
Forma Pauperis by mailing copies of those filings to the following:

Office of the Attorney General for South Carolina
PO Box 11549
Columbia, SC 29201

and

Office of the Lexington County Clerk of Court
205 E. Main Street
Lexington, SC 29072

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SC Court of Appeals

SIGNATURE ON THE FOLLOWING PAGE



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Columbia, SC
June 21, 2017

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED
JUN 26 2017
S.C. SUPREME COURT

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Eugene C. Griffith, Jr., Circuit Court Judge

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JUN 28 2017
SC Court of Appeals

Case No. 2015-CP-32-2060

Cristopher T. Wilson.....Applicant/Appellant

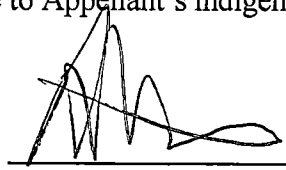
v.

State of South Carolina.....Respondent/Respondent

MOTION TO PROCEED *IN FORMA PAUPERIS*

I, Arthur K. Aiken, hereby Motion the Court to allow Appellant to proceed in this matter without requirement of the filing fee and other applicable fees. The Appellant was appointed counsel for the Appellant in this post-conviction relief case. and appellate counsel will be provided by the South Carolina Commission on Indigent Defense due to Appellant's indigence.

June 21, 2017



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possession with intent to distribute (PWID) marijuana (2014-GS-32-0157). He was represented by Robert T. Williams, Sr., Esquire. On March 19, 2015, Applicant proceeded to trial by jury before the Honorable Donald B. Hocker, Jr., where he was convicted of the lesser included offense of trafficking in cocaine base – 10-28 grams, second offense (-0155); as indicted for trafficking in cocaine, 10-28 grams, second offense (-0156); and the lesser include offense of possession of more than one ounce of marijuana, second or subsequent offense (-0157). Applicant was found not guilty of possession of a weapon during the commission of a violent crime. Judge Hocker sentenced applicant to confinement for eight (8) years on each cocaine conviction and one (1) year on the marijuana charge. Each sentence was set to run concurrently, with credit for three days' time served. Applicant did not appeal his convictions or sentence.

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 and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This 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).

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 SCRCP 71.1(e)). Where the application alleges ineffective assistance of counsel 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 (1984); Butler, 286 S.C. at 442, 334 S.E.2d

at 814.

First, the applicant must show that counsel's performance "fell below an objective standard of reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

Second, Counsel's 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." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; see Strickland v. Washington, 466 U.S. 668, 688, 692, 104 S. Ct. 2052, 2065, 2067 (1984) ("[T]he defendant must show that counsel's representation fell below an objective standard of reasonableness [and] . . . any deficiencies in counsel's performance must be prejudicial to the defense in order to constitute ineffective assistance under the Constitution."); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006) ("PCR applicant must prove: (1) that counsel failed to render reasonably effective assistance under prevailing professional norms; and (2) that the deficient performance prejudiced the applicant's case.").

This Court will now address each allegation of ineffective assistance of counsel:

Allegation #1: Failure to file an appeal

Applicant testified his counsel never discussed appeal with him. Applicant claims that had he known about his right to appeal, he would have asked his attorney to file an appeal to

challenge subject matter jurisdiction.

Trial counsel testified that he spoke with Applicant in between the jury verdict and sentencing and Applicant did not ask him to file a direct appeal. Trial counsel believes he did advise Applicant of his direct appeal rights and confirms Applicant did not ask him to file a direct appeal before, during, or after the trial. Trial counsel did not believe there was a basis to appeal; Applicant was convicted of two lesser offenses, found not guilty on another charge, and received eight years for his three convictions. Trial counsel believed Applicant's sentence could have been worse.

"Following a trial, counsel is required to make certain the defendant is made fully aware of the right to appeal." Turner v. State, 380 S.C. 223, 224-25, 670 S.E.2d 373, 374 (2008) (internal citations omitted). Unless defendant intelligently waived the appeal, counsel must either initiate an appeal or comply with the procedure in Anders v. California, 386 U.S. 738 (1967). Id. (citing to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974)).

Here, trial counsel testified that he believed he advised Applicant of his right to appeal, that he saw no basis to appeal, and that Applicant never indicated he wanted to appeal. The Court finds trial counsel's testimony more credible than Applicant's and concludes Applicant knowingly waived his right to file a direct appeal and Applicant is not entitled to a belated appeal.

Allegation #2: 404(b)

Applicant also testified that trial counsel should have challenged the admission of the video because intent was not issue for the jury and Applicant believed it was prejudicial.

Trial counsel testified that while the state did not have to prove intent, it did have to prove knowledge in the case. Further, Applicant was originally facing charges of possession with

intent to distribute, but the jury convicted him of the lesser included charge of possession. Finally, counsel testified that the confidential informant in the case was not likeable, and he believed showing the videos helped challenge the credibility of the state's case.

“[W]here counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel.” Watson v. State, 370 S.C. 68, 72, 634 S.E.2d 642, 644 (2006) (citing Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992)). “Counsel's performance is accorded a favorable presumption, and a reviewing court proceeds from the rebuttable presumption that counsel ‘rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.’” Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (quoting Strickland, 466 U.S. at 690, 104 S.Ct. 2052). “Accordingly, when counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel.” Id. (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)). “Courts must be wary of second-guessing counsel's trial tactics; and where counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992) (citing Goodson v. United States, 564 F.2d 1071 (4th Cir. 1977)).

In Watson, the Supreme Court reversed a PCR court's determination that counsel was ineffective for failing to prevent the introduction of hearsay testimony of several witnesses who testified about the abuse allegations against the defendant. Watson, 370 S.C. at 72, 634 S.E.2d at 644. The Supreme Court held that “counsel articulated a valid reason for failing to object to the hearsay testimony” where that reason was that counsel “wanted to avoid the possibility that the prosecution would have shown the video of the victim talking about the sexual abuse.” Id.

As with Watson, trial counsel had a “valid reason for employing a certain strategy [and] such conduct [should] not be deemed ineffective assistance of counsel.” Watson, 370 S.C. at 72, 634 S.E.2d at 644 (citing Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992)). Counsel testified he wanted to highlight the confidential informant and use the video to challenge the credibility of the state’s case. Trial counsel also testified that the State could argue it had a burden to prove Applicant’s knowledge, and to prove the possession with intent to distribute charge. Trial counsel was able to successfully secure a not guilty on the weapons charge and reduced charges by way of two lesser included verdicts from the jury, one of which was linked to the distribution charge. Not only was this not ineffective assistance, Applicant has not established any prejudice from trial counsel’s reasonable strategy.

Therefore, this Court finds Applicant has failed to meet his burden of proving counsel’s performance was deficient or that he was prejudiced thereby and, accordingly, finds this allegation is denied.

**Allegation #3, 4, 5:
Jury Charges - Trafficking; Jury Charges – Relevance; and Jury Charges –
Constructive Possession**

Applicant argues his trial counsel should have challenged the jury instructions for being overly broad, not relevant to the charges, and incorrect as to constructive possession. Applicant argues that because the jury required an Allen charge, it’s likely the confusion caused the jury to find him guilty.

Trial counsel testified he did not object because he did not see a reason to object. He did not find it unusual that the jury instructions gave the statute and then clarified. He also did not find the jury instructions to be harmful to his client. He believed any confusion in the instructions was more harmful to the state’s case. In this instance, the jury did in fact find

Applicant not guilty of the weapon charge and found him guilty of the lesser included charges in two instances.

The transcript shows the trial court charged the jury that the “State must prove beyond a reasonable doubt that the defendant knowingly sold, manufactured . . . and was knowingly in actual or constructive possession and knowingly attempted to become in actual or constructive possession of the powder cocaine and the crack cocaine.” (Trial Tr. p. 473, l. 20 - p. 474, l. 4.) The trial court went on to charge that “[w]ith respect to possession, to prove possession the State must prove beyond a reasonable doubt that the defendant had both the power and the intent to control the disposition or use of the powder cocaine and/or the crack cocaine.” (Trial Tr. P. 474, ll. 21-25.) The trial court’s further charge of constructive possession is found on pages 475-476 of the trial transcript and does not differ from the law as outlined by the Court of Appeals in State v. Muhammed, 338 S.C. 22, 26–27, 524 S.E.2d 637, 639 (Ct. App. 1999):

Conviction of possession requires proof of possession, either actual or constructive, coupled with knowledge of its presence. State v. Hudson, 277 S.C. 200, 284 S.E.2d 773 (1981). “Actual possession occurs when the drugs are found to be in the actual physical custody of the person charged with possession. To prove constructive possession, the State must show a defendant had dominion and control, or the right to exercise dominion and control....Constructive possession can be established by circumstantial as well as direct evidence, and possession may be shared.” Id. at 202-03, 284 S.E.2d at 774-75.

Applicant failed to present specific and compelling evidence that trial counsel committed either errors or omissions in his representation of the Applicant. Accordingly, this Court concludes Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. This Court also finds Applicant has failed to prove the second prong of Strickland: that he was prejudiced by trial counsel’s performance.

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, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

CONCLUSION

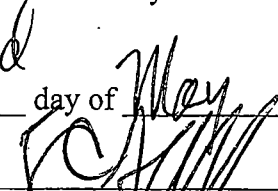
Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations before or during his trial. Trial counsel was not deficient in any manner, and Applicant was not prejudiced by his representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

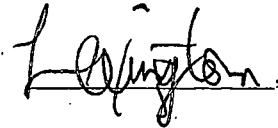
IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 3rd day of May, 2017.



EUGENE C. GRIFFITH, JR.
Presiding Judge
Eleventh Judicial Circuit

, South Carolina.

Aiken & Hightower, P.A.
2231 Devine Street, Suite 201
Columbia, SC 29205

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JUN 23 2017

SC Court of Appeals

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
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Columbia, South Carolina 29211

