

The Law Office of Tristan M. Shaffer

Litigation • Injury Law • Criminal Defense

July 5, 2017

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

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JUL 07 2017

S.C. SUPREME COURT

Re: Charles Dupree v. State 2013-CP-34-0160

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:
Johnny E. James
Marlboro County Clerk of Court

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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JUL 07 2017

APPEAL FROM MARLBORO COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Roger E. Henderson, Circuit Court Judge

Case No. 2013-CP-34-0160

Charles Dupree # 235404,

Petitioner,

v.

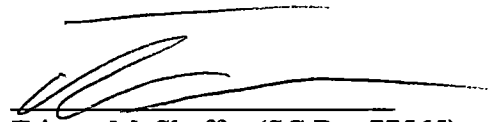
The State of South Carolina,

Respondent.

NOTICE OF APPEAL

Petitioner appeals the Order of the Honorable Roger E. Henderson dismissing this post-conviction relief action filed on November 28, 2016. Petitioner received this Order on June 5, 2017.

July 5, 2017



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Attorney for Petitioner

Other Counsel of Record:
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South Carolina Attorney General's Office
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Attorney for Respondent

THE STATE OF SOUTH CAROLINA
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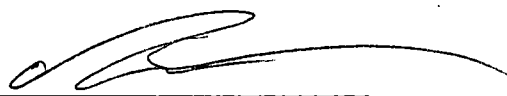
The State of South Carolina,

Respondent.

PROOF OF SERVICE

I certify that I have 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 on the date listed below.

July 5, 2017



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Attorney for Respondent

STATE OF SOUTH CAROLINA
COUNTY OF MARLBORO

Charles Dupree, #235404,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FOURTH JUDICIAL CIRCUIT

Case No. 2013-CP-34-0160

ORDER OF DISMISSAL

This matter came before the Court by way of an Application for Post-Conviction Relief filed August 15, 2013. Respondent filed a return and motion for more definite statement on or about June 17, 2015. The Court convened an evidentiary hearing into the matter on January 11, 2016, at the Horry County Courthouse. Applicant was present and represented by Tristan M. Shaffer, Esquire. Jessica E. Kinard, Esquire of the South Carolina Attorney General's Office, represented Respondent.

Applicant and Applicant's plea counsel, Kyle M. Hobbs, Esquire testified at the hearing. The Court had before it a copy of the plea transcript, the records of the Marlboro 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:

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Marlboro County Clerk of Court. In May 2012, the Marlboro County Grand jury indicted Applicant for financial transaction card fraud (2012-GS-34-0271). In September 2012, the Grand Jury indicted Applicant for sixteen (16) counts of Financial identity Fraud (2012-GS-34-565 through -577, -579 through 582). Kyle M. Hobbs, Esquire,

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MARLBORO COUNTY, S.C.

represented Applicant. On March 6, 2013, Applicant pled guilty as indicted on all counts. The Honorable J. Michael Baxley sentenced Applicant to concurrent terms of ten (10) years imprisonment for each charge.

Applicant did begin the process of appeal but, on September 5, 2013, Applicant signed an Affidavit withdrawing his direct appeal. The South Carolina Court of Appeals issued an order of dismissal on September 11, 2013. The Remittitur followed on September 30, 2013.

II. Allegations

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

1. "Ineffective Assistance of Counsel"
 - a. "Conflict of Interest"
 - b. "Illegal Sentence – Docket No:2012-GS-34-0217"

At the call of the case, Applicant's counsel orally moved to amend his application to change the ground before the court from ineffective assistance of counsel to an allegation that his sentence exceeded the maximum authorized by law pursuant to S.C. Code Ann. §17-27-20(A)(3). The state consented to this amendment and testimony was taken on this issue.

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

Applicant testified that he wanted to go to trial on his charges, and wanted someone to investigate his case. He further stated that counsel encouraged him to plead guilty. He testified that, though he did illegally obtain and provide financial information to others, none of the payments made with that information benefitted him in any way. He lastly stated that he did not remember anything because he was on medicine at the time, but he precisely recalled the nature and amount of several transactions, thus calling into question his credibility before this Court. Applicant testified that he felt that the sentence on one of his charges was incorrect, and this was elaborated upon during argument by his attorney.

Counsel testified that he met five (5) or six (6) times with the Applicant and discussed his case thoroughly. He testified that the first plea offers from the solicitor's office were relatively low and he encouraged Applicant to take them, but that Applicant was not ready to plead and intended to pay restitution. As the time passed, the plea offers became less and less favorable. Applicant had provided a thorough statement to the police, which did not work in his favor, nor would it help him at trial. Counsel recalled that Applicant has a very powerful memory. This Court found counsel's testimony very credible.

Improper Sentence

Counsel for Applicant argued that Applicant's sentence on indictment 2012-GS-34-0217 was improper and exceeded the amount authorized by law. This charge was for a violation of S.C. Code Ann. § 16-14-0060(A), financial transaction card fraud, while all of his other charges were violations of S.C. Code Ann. § 16-13-510(B), financial identity fraud. Applicant was sentenced to ten (10) years for each charge, though the first charge (-0217) carries a maximum of one (1) year. It is clear from the face of the sentencing sheets and a plain reading of the

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WILLIAMSON COUNTY, S.C.
CLERK OF COURT

applicable statutes that this is an improper sentence. Respondent consented to the remanding of this single charge for re-sentencing to comply with the statute.

Ineffective Assistance of Counsel

Though Applicant abandoned this issue before the hearing, some testimony was presented regarding it. This Court does not find it necessary to undergo a full analysis of the elements and aspects involved; however, upon cursory presentation of the facts, this case does not appear to be one that would pass the tests outlined in Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984).

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), SCRCP, 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.



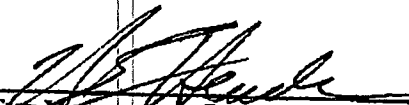
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MARLBOROUGH COUNTY, S.C.

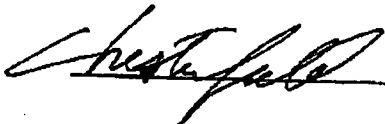
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IT IS THEREFORE ORDERED THAT:

1. The indictment 2012-GS-34-0217 must be remanded for re-sentencing to comply with S.C. Code Ann. § 16-14-60;
2. The remainder of the Application for Post-Conviction Relief is denied and dismissed with prejudice; and
3. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 10th day of November, 2016.

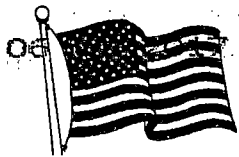

THE HONORABLE ROGER E. HENDERSON
Presiding Judge
Fourth Judicial Circuit


Chesterfield, South Carolina

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HARBOND COUNTY, S.C.

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