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JUL 24 2017

S.C. SUPREME COURT

July 20, 2017

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
PO Box 11330
Columbia, SC 29211

Re: Matthew Jackson, #365505 v. State of South Carolina
2016-CP24-00978

Dear Mr. Shearouse:

Please find enclosed a Notice of Appeal along with the accompanying Order for the above-referenced matter. By way of this letter I am copying the Office of Appellate Defense, as I was appointed to represent Mr. Jackson.

Best regards,

Ashley A. McMahan
Attorney at Law

AAM

cc: Matthew Jackson
Ruston W. Neely, Asst. Attorney General
Beaufort County Clerk of Court
Office of Appellate Defense

STATE OF SOUTH CAROLINA
In The Supreme Court

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JUL 24 2017

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas

S.C. SUPREME COURT

The Honorable Eugene C. Griffith, Jr., Circuit Court Judge

Case No. 2016-CP-24-00978

Matthew Jackson, #365505, Petitioner,

v.

State of South Carolina, Respondent.

NOTICE OF APPEAL

Applicant, Matthew Jackson, appeals the order of the Honorable Eugene C. Griffith dated June 23, 2017, and filed July 11, 2017.

July 20th, 2017

Ashley A. McMahan
ASHLEY A. McMAHAN, ESQUIRE
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Opposing Counsel:
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STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM NEWBERRY COUNTY SUPREME COURT
Court of Common Pleas

The Honorable Eugene C. Griffith, Jr., Circuit Court Judge

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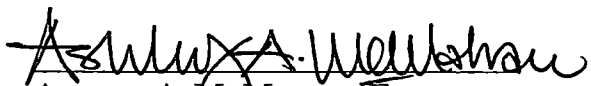
PROOF OF SERVICE

I, Ashley A. McMahan, certify that I have served the within Notice of Appeal on Respondent by depositing a copy of the same in the United States mail, postage prepaid, addressed to:

Justin J. Hunter, Asst, Attorney General
S.C. Attorney General's Office
PO Box 11549
Columbia, SC 29211-1549

I further certify that all parties required by Rule to be served have been served.

July 20th, 2017.


ASHLEY A. McMAHAN, ESQUIRE
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STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENWOOD)
)
 Matthew Jackson,)
 S.C.D.C. No. 356505,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 OF THE EIGHTH JUDICIAL CIRCUIT

2016-CP-24-978

ORDER OF DISMISSAL

FILED COMMON PLEAS
 8th JUDICIAL CIRCUIT
 GREENWOOD, SC
 2017 JUL 11 AM 9:53

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed May 6, 2016. Respondent made its Return on or about July 22, 2014. An evidentiary hearing into the matter was convened on February 27, 2017, at the Newberry County Courthouse in Newberry, South Carolina. Applicant was present at the hearing and represented by Ashley McMahan, Esquire. Justin Hunter, Esquire, of the South Carolina Attorney General's Office represented the Respondent. Applicant testified on his own behalf. Megan Flannery, Esquire, also testified. This Court also had before it a copy of the records of the York County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the Return, and the trial transcript.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Greenwood County Clerk of Court. Applicant was indicted at the June 2011 term of the Greenwood County Grand Jury for inflicting great bodily injury upon a child (2011-GS-24-1328). Applicant was represented by Meghan Flannery and Janna Nelson, Esquires. On August 7-8, 2013, Applicant underwent a trial before the Honorable Frank Addy,

Jr., and a jury and was subsequently found guilty as indicted. Judge Addy sentenced Applicant to imprisonment for twenty years provided that upon the service of twelve years the balance is suspended with five years' probation to follow.

Applicant filed a notice of appeal and an appeal was perfected by the filing of an Anders brief by Appellate Defender David Alexander. In an unpublished opinion, the South Carolina Court of Appeals affirmed Applicant's conviction. State v. Matthew Jackson, 2015-UP-360 (filed July 15, 2015). The Remittitur was sent August 3, 2015.

In his PCR application, Applicant alleges he is being held in custody unlawfully due to ineffective assistance of counsel for Counsel's "lack of experience at trial court, failure to file motion for directed verdict, and failure to have expert witness."

II. SUMMARY OF EVIDENCE PRESENTED AT PCR HEARING

Applicant's Testimony

Applicant testified that he and Counsel did not meet often prior to the trial. He testified that they met three to four times at his house and at her office. He testified that Counsel could have received a better plea offer. He testified that the solicitor offered him a fifteen year plea, a ten year plea, and a twelve year plea. He testified that he asked Counsel why the offers were for so much prison time and Counsel said the solicitor never discussed that with her. Applicant also testified that Counsel never discussed potential defenses with him. He testified that he wanted to tell his story to the trial court but never practiced testifying with Counsel prior to the trial. Applicant further testified that he went over some of the evidence with Counsel, but did not see color photographs of the child until the trial. He also testified that a motion to reconsider was not filed in his case.

Applicant testified that Counsel should have argued that the bruises on the child were just from one incident and that it was an accident. He testified that you could only see one or two bruises on the child and that if he really did beat the child then there would be more bruises.

Applicant testified that he was supposed to have an expert witness but on the second day of trial, Counsel told him that she could not be there. Applicant testified that the State's expert, Dr. Mary-Fran Crosswell, was the main expert in the case and Counsel should have cross-examined her more effectively.

Counsel Megan Flannery's Testimony

Counsel testified that she was appointed to represent Applicant as a public defender. She testified that she collaborated on the case with other attorneys in her office. Counsel testified that it took a long time for her to receive discovery. She testified that she met with Applicant at least four to five times and also communicated via telephone. She testified that they discussed his background and criminal history and also discussed his version of events. She testified that Applicant told her that he was playing with the child, accidentally dropped him, and ran out to call his mother for help. She testified that she and Applicant discussed the inconsistent statements he made to law enforcement.

Counsel testified that she told Applicant that he did not have to testify at trial but it would be necessary to his defense. She testified that he wanted to get his story out and they practiced examination questions on multiple occasions. She testified that they discussed cross-examination and not being angry while being questioned on the stand. Counsel further testified that she discussed Applicant's defenses including their main defense of accident.

Counsel testified that the case hinged on the expert testimony of Dr. Crosswell. She testified that she wanted to hire an expert and called many forensic experts and emailed the state

defense bar listserv. She testified that hiring an expert did not require money up front because a detailed accounting is required before the money is dispersed. She testified that she talked to four or five potential experts but was told that Dr. Crosswell's determination was correct, that they were not interested in testifying. She testified that she sent an evidence packet to a potential expert witness, who replied that the State was correct and that he could not see another expert helping. Counsel testified that she talked to a Dr. Naveen Parti, a radiologist in Greenville, who helped analyze the different scans and told Counsel that the scans can look different for reasons other than abuse. She testified that Dr. Parti helped with their preparation and was scheduled to testify for Applicant on the second day of trial. She testified that the night before Dr. Parti was scheduled to testify, he called Counsel and told her that he does not know how Counsel can defend child abusers and that he read the scans but the outlook did not look good. Counsel testified that as a result of Dr. Parti's sudden change, she did not want to risk his testimony harming Applicant at trial.

Counsel testified that the solicitor offered a ten year plea in March 2013 but Applicant told her he wanted to go to trial. She testified that he was offered a twelve year plea in July 2013 but when she relayed this to Applicant he told her that he did not want to plead guilty. She testified that in negotiations, she informed the solicitor that Applicant had no criminal history. She testified that she asked for a plea to a lesser included offense but was unsuccessful.

Counsel testified that her position was that the child's bruising must have happened when Applicant went to catch the falling child. She testified that she did not ask the State's expert about bruising because there was no other medical answer for it. Counsel testified that the apparent bruising was from one time and not due to any history of bruising. She testified that she cannot recall the child's complexion and if that had an effect on the bruising.



Counsel testified that she made a motion for a judgment notwithstanding the verdict and discussed that with Applicant. She testified that she is not required to file a motion to reconsider the sentence and did not want to expose Applicant to the possibility of getting a higher sentence. She testified that she showed the judge character letters on Applicant's behalf, including support from his boss and maternal grandmother. She testified that the trial judge was very clear in his opinion, telling Applicant that there was no doubt in his mind that Applicant was not guilty and telling Applicant that he believed Applicant lied on the stand.

III. 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.

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.

Ineffective Assistance of Counsel

This Court finds that Counsel demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, 466 U.S. at 668; Butler, 286 S.C. 441, 334 S.E.2d 813. This Court finds that Applicant has failed to show that Counsel was ineffective in any way during her representation. This Court finds that Counsel provided credible testimony that she negotiated plea offers on with the State and relayed the State's plea offers to Applicant but Applicant wanted a jury trial. This Court finds that Counsel discussed the discovery with Applicant and potential defenses. Applicant has failed to prove that he was prejudiced by Counsel's preparation or plea negotiations as he has failed to show that the outcome would have been different but for Counsel's actions. Likewise, Applicant has failed to prove prejudice in Counsel's plea negotiations because he testified that Counsel

relayed the plea offers and he has failed to prove that that he would have accepted one of the plea offers rather proceed to trial.

This Court finds that Counsel was not ineffective in obtaining an expert witness. This Court finds that Counsel put a large amount of effort into finding a helpful expert witness to testify on Applicant's behalf but received little to no positive feedback from potential witnesses. This Court finds that Counsel ultimately hired an expert witness and prepared him for trial, however the night before he was supposed to testify, Dr. Parti indicated to Counsel that he would not testify favorably for Applicant. This Court finds that Counsel made a strategic decision to not have Dr. Parti testify given his indication that any testimony would harm Applicant. This Court finds that Counsel effectively cross examined Dr. Crosswell given the evidence of the child's bruising and Counsel's determination that the bruises were consistent with the State's evidence.

This Court finds that Counsel was not deficient for failing to make a motion to reconsider the sentence. This Court finds that Counsel is not required to make such a motion; and, in this case, Counsel provided a reasonable explanation given Judge Addy's vocal opinion of Applicant during sentencing. This Court further finds that Applicant has failed to prove that he was prejudiced as he has failed to show that such a motion would have been successful.

As Applicant has failed to prove both prongs of Strickland in regard to Counsel's representation this Court finds that his application for post-conviction relief must be dismissed.

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



V. 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. Applicant failed to demonstrate counsels' 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), SCRCP, 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 will remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 23rd day of June, 2017.

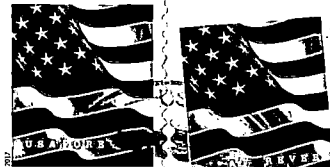
Lexington, South Carolina


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



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The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
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Columbia, SC 29211



JUL 27 2017