

ROSS AND ENDERLIN, PA
ATTORNEYS AT LAW

August 8, 2017

Mr. Daniel E. Shearouse
Clerk, The S.C. Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

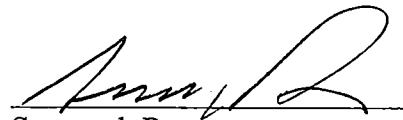
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AUG 11 2017
S.C. SUPREME COURT

Re: Gregory Price v. State
2016-CP-42-02489

Dear Mr. Shearouse:

Enclosed you will find the original Notice of Appeal in the above matter along with Proof of Service upon the Respondent and the Order of Dismissal. These matters are being referred to the Office of Appellate Defense.

Sincerely,



Susannah Ross
Attorney at Law

enclosure

cc: Office of the Attorney General
Office of Appellate Defense
Spartanburg County Clerk of Court

330 E. COFFEE ST. • GREENVILLE/SC • 29601
PHONE: (864) 242-0029
E-MAIL: SUSANNAH@ROSSENDERLIN.COM

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AUG 11 2017

THE STATE OF SOUTH CAROLINA
In The Supreme Court

S.C. SUPREME COURT

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Robin B. Stillwell, Circuit Court Judge

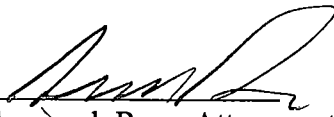
2016-CP-42-02489

Gregory Price, Appellant,
v.
The State, Respondent.

NOTICE OF APPEAL

Gregory Price appeals the Honorable Robin B. Stillwell's Order of Dismissal filed July 28, 2017.

This 8 day of August, 2017.


Susannah Ross, Attorney at Law
330 E. Coffee St.
Greenville, SC 29601
(864) 242-0029
Attorney for Appellant

Other Counsel of Record:
Alicia Olive, Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211
(803) 734-3970
Attorney for Respondent

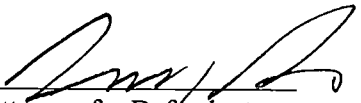
STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
GREGORY PRICE,)
)
APPELLANT,)
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)
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VS.)
)
)
)
THE STATE OF SOUTH CAROLINA,)
)
RESPONDANT.)
_____)

IN THE SUPREME COURT

CERTIFICATE OF SERVICE
BY MAIL

1. I am the attorney for the Applicant in the above-captioned matter.
2. Regular communication by mail exists throughout the state of South Carolina and this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Notice of Appeal** on the above-captioned matter on the following person by depositing the same in the United States mail with proper postage affixed thereto:

Attorney General
Alan Wilson
P.O. Box 11549
Columbia, SC 29211



Attorney for Defendant

This 8 day of August, 2017

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AUG 11 2017
S.C. SUPREME COURT

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) FOR THE SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG)

Gregory Daniel Price,) Case No.: 2016-CP-42-02489
S.C.D.C. No. 240729,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

ORDER OF DISMISSAL

CLERK OF COURT
SPARTANBURG COUNTY
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M. HOPE BLACKLEY

This matter comes before the Court by way of an application for post-conviction relief filed by Gregory Daniel Price (“Applicant”) on July 6, 2016. Respondent made its return on or about May 1, 2017. The Court convened an evidentiary hearing into the matter on June 26, 2017, at the Spartanburg County Courthouse in Spartanburg, South Carolina. Applicant was present at the hearing and represented by Susannah C. Ross, Esquire. Johnny Ellis James Jr., of the South Carolina Attorney General’s Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant’s plea counsel, James A. Check, Esquire (“Counsel”) also testified. The Court had before it Applicant’s records from the South Carolina Department of Corrections, a copy of the original plea transcript, the records of the Spartanburg County Clerk of Court regarding the subject convictions, the pleadings, and the exhibits introduced at the hearing. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. Applicant was indicted at the May

2009 term of the Spartanburg County Grand Jury for possession of cocaine base (2009-GS-42-02694) and two counts of distribution of cocaine base (2009-GS-42-02697, -02698).

Applicant secured release on bond on terms filed with the Spartanburg County Clerk of Court on February 16, 2009. Applicant thereafter left the state. Applicant failed to appear in Court and a bench warrant was issued for his arrest on February 8, 2012. He was arrested in Howard County, Maryland on July 24, 2013, for conduct occurring in that state.¹ The Maryland charges were dismissed on May 19, 2014, at which time Applicant was served a warrant for his fugitive status in South Carolina. Applicant waived extradition on May 20, 2014, and was thereafter transported to South Carolina on June 4, 2014.

Applicant was subsequently charged with two counts of forgery, value less than \$10,000 (2015-GS-42-02773, -02775). James A. Cheek, Esquire, represented Applicant, and Grady B. Anthony, of the Seventh Circuit Solicitor's Office, prosecuted the case.

On August 4, 2015, Applicant waived presentment and pled guilty to the forgery charges.² Applicant also pled guilty to possession of cocaine base. Finally, Applicant entered an Alford³ plea to both counts of distribution of cocaine base. The Honorable L. Casey Manning sentenced Applicant to imprisonment for concurrent terms of seven years for each count of distribution and five years on each of the other charges. Applicant did not appeal his pleas or sentences.

Present Application

In his post-conviction relief application, Applicant alleges he is being held unlawfully for the following reasons:

¹ To wit: first-degree assault and armed robbery. See Md. Code Ann., Crim. Law § 3-202; §3-403.

² Applicant was sentenced pursuant to the law as it existed at the time the crimes were committed: December 2009. Accordingly, Applicant pled to forgery, value less than \$5,000.

³ North Carolina v. Alford, 400 U.S. 25 (1970).

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1. Ineffective Assistance of Counsel, in that:
 - a. "Plea counsel made erroneous prejudicial statement to Judge Manning, stating that Applicant had been running for 7 years."
 - b. "Applicant only received partial credit for 446 days credit due to the lack of plea counsel's investigation and overall ineffectiveness in presenting to the Court that Applicant has been in pre-trial detention since July 24, 2013 and held on detainers until August 4, 2015."
 - c. "Plea counsel was aware of State's recommendation of 0-10 year plea offer. However, plea counsel never relayed plea offer to Applicant[.]"
 - d. "Plea counsel understood that Applicant never received his Rule 5 (motion for discovery) and but for this, Applicant would not have [pled] guilty. Plea counsel failed to effectively represent Applicant by not relaying his denial of due process to Judge Manning in [mitigation] of sentencing."
2. "Denial of Due Process"

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At the evidentiary hearing, Applicant proceeded forward on the allegations as stated in his application and excerpted above.

II. 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 records submitted to it by the parties and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented.

A. Ineffective Assistance of Counsel

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she must prove "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." Butler at 442, 334 S.E.2d 441 (quoting Strickland v. Washington, 466 U.S. 668, 686 (1984)). The proper measure

139

of performance is whether an attorney provided representation within the range of competence required in criminal cases. Id.

“[C]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Butler at 442, 334 S.E.2d 441 (quoting Strickland at 690). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989). “Judicial scrutiny of counsel’s performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel’s assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel’s defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable.” Strickland, 466 U.S. at 689; Edwards v. State, 392 S.C. 449, 456-57, 710 S.E.2d 60, 64 (2011). “[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel.” Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. 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 at 117, 386 S.E.2d at 625 (citing Strickland at 688). 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 at 117-18, 386 S.E.2d at 625 (citing Strickland at 694). The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. Strickland at 696. A court need not first determine whether counsel’s performance was deficient before examining the prejudice suffered by the

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defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. at 696-97.

IAC Allegation #1 – Seven Years Remark

The Court finds that Applicant has proven neither prong of Strickland with respect to Counsel's statement to the Court that Applicant had been in Maryland for seven years. The specific exchanges in question read as follows:

THE COURT: How long was he gone, absconded? How long was he living in Maryland before they finally caught up with him?

[COUNSEL:] Seven years, Judge.

...

[COUNSEL:] Yes, sir, Your Honor, and I'd just bring to the court's attention that he is offering these charges under Alford for the reason that they happened so –

THE COURT: He doesn't even remember them.

[COUNSEL:] He doesn't remember them, your Honor.

THE COURT: How could he?

[COUNSEL:] But he's, but he's acknowledging he was involved in some behaviors that –

THE COURT: Yes.

[COUNSEL:] – sounds like what the state has against him. Your Honor, he has been gone for seven years.

Tr. 25, ll. 18-21; p. 26, l. 22 – p. 27, l. 7. At the evidentiary hearing, Applicant testified that since the bench warrant for his arrest was issued in 2012, he had only been on the run for one year before his arrest in Maryland. Counsel testified that the basis for his "seven years" remark

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was that Applicant admitted to going back and forth to Maryland several times while out on bond.

The Court finds Counsel's testimony credible. Counsel's remarks to Judge Manning were justly founded on Counsel's knowledge derived from Applicant's statements to him. Counsel's first remark in response to a direct question from the bench. Counsel's second remark was in explanation of the Alford plea. Applicant has failed to meet his burden of demonstrating that Counsel was deficient in making this remark or that it brought any prejudice upon him. Accordingly, Applicant's request for relief based upon this allegation is **DENIED**.

IAC Allegation #2 – Failure to Secure Credit for Time Served

The Court finds that Applicant has proven neither prong of Strickland with respect to Counsel's efforts to secure for him credit for time served and rejects his argument that he is entitled to credit for his time served since his Maryland arrest. South Carolina law provides that:

In every case in computing the time served by a prisoner, full credit against the sentence shall be given for time served prior to trial and sentencing[.] . . . Provided, however, that credit for time served prior to trial and sentencing shall not be given: (1) when the prisoner at the time he was imprisoned prior to trial was an escapee from another penal institution; or (2) when the prisoner is serving a sentence for one offense and is awaiting trial and sentence for a second offense in which case he shall not receive credit for time served prior to trial for a reduction of his sentence for the second offense.

S.C. Code Ann. § 24-13-40. While a convict is held subject to a South Carolina detainer, he is constructively in South Carolina custody, and may receive credit for time spent incarcerated in another jurisdiction pursuant to that detainer. Robinson v. State, 329 S.C. 65, 71, 495 S.E.2d 433, 436 (1998); see also Kephart v. State, 277 S.C. 395, 396, 289 S.E.2d 402 (1982) ("We have held that where a non-escapee is imprisoned in another state while contesting extradition, he is entitled to credit on any subsequent sentence given by a South Carolina court."). The convict may also receive this credit by notifying the South Carolina Department of Corrections that he is

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unable to personally submit to South Carolina custody to commence the service of his sentence. Robinson at 71, 495 S.E.2d at 436. However, where imprisonment in another jurisdiction is not in service of a South Carolina sentence, the convict is not necessarily entitled to such credit. Delahoussaye v. State, 369 S.C. 522, 528, 633 S.E.2d 158, 163 (2006) (citing Oglesby v. Leeke, 263 S.C. 283, 286-87, 210 S.E.2d 232, 233-34 (1974)).

Applicant testified that after his July 24, 2013, arrest in Maryland, he was denied bond due to the outstanding South Carolina bench warrant. The Court does not find credible Applicant's implicit speculation that he would have been granted bond in Maryland but for the South Carolina bench warrant. Additionally, there is no evidence that Applicant ever informed S.C.D.C. of his incarceration in Maryland pursuant to Robinson.

It was uncontested that Applicant was not served a fugitive warrant until the Maryland charges were dropped on May 19, 2014; until that time Applicant was incarcerated purely on the basis of the severe allegations against him by the State of Maryland. The Court's calculations show that 442 days passed from May 19, 2014, to Applicant's plea on August 4, 2015. Applicant received credit for 446 days of time served, encompassing that entire period and then some. The Court can find no basis on which Applicant is entitled to any additional credit for time spent incarcerated in Maryland, awaiting trial for crimes alleged to have occurred in Maryland, while fugitive from South Carolina. Accordingly, Applicant's request for relief based upon this allegation is **DENIED**.

IAC Allegation #3 – Failure to Communicate Plea Offer

The Court finds that Applicant has failed to prove either prong of Strickland with respect to his allegation that Counsel failed to communicate a plea offer of 0-10 years. Applicant alleged in his application that Counsel did not communicate a 0-10 offer, that Applicant signed a 0-15 offer, and that Counsel failed to object when the State recommended a sentence of 1-10

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years. Counsel indicated the offer he received from the State was a recommendation of 1-10 years. The Court finds Counsel's testimony credible and Applicant's testimony not credible. The Court also finds Applicant's argument as to prejudice facially nonsensical—an offer of 0-15 years would not have been better than the offer of 1-10 that Applicant actually received. It is evident from the records that Applicant was sentenced within the range of the plea offer actually submitted, let alone the fictional offers to which Applicant testified. Accordingly, Applicant's request for relief based upon this allegation is **DENIED**.

IAC Allegation #4 – Failure to Attain Rule 5 & Brady Materials

The Court finds that Applicant has failed to prove either prong of Strickland with respect to his allegation that he never received his Rule 5 and Brady materials. Applicant testified at the evidentiary hearing that he never received discovery and, as such, could not prepare for trial. Counsel testified that another attorney filed for discovery. Counsel additionally testified that he had direct access to the solicitor's file, who maintained an open file policy. Counsel testified that he does not share information about confidential informants.

The Court finds Applicant's testimony not credible and finds Counsel's testimony credible. The Court finds that Applicant and Counsel had full access to all Rule 5 and Brady materials. Accordingly, Applicant's request for relief based upon this allegation is **DENIED**.

B. Denial of Due Process

The Court finds that Applicant has failed to demonstrate any deprivation of due process. Applicant alleged in his application that discovery violations by the State denied due process. For the reasons set forth in Section A.4 above, the Court finds that Applicant and Counsel had full access to all Rule 5 and Brady materials. The Court also finds that Applicant's complaint that he was being "railroaded" is fundamentally undercut by his filing *pro se* speedy trial motions. Accordingly, Applicant's request for relief based upon this allegation is **DENIED**.

CLERK OF SUPERIOR COURT
SPARTANBURG, SOUTH CAROLINA
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III. CONCLUSION

Based on all the foregoing, this Court finds and concludes that 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.


This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel 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 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 27 day of JULY, 2017.

GREENVILLE, South Carolina


 ROBIN B. STILWELL
 Presiding Judge
 Seventh Judicial Circuit

CLERK OF COURT
 SPARTANBURG COUNTY
 2017 JUL 28 PM 2:09
 M. HOPE BLACKLEY

Spartanburg County

Spartanburg County Court House
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M. Hope Blackley
Clerk of Court
July 28, 2017

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

Gregory David Price
Applicant # *240129*

7TH JUDICIAL CIRCUIT

CASE # *2017CPA-2489*

State
VS
Respondent

CERTIFICATE OF SERVICE

I certify that, on this date, I served a copy of the *Order Dismissal*
In this action dated *7-28, 2017* on *7-28-17*

By mailing to him/her, at his/her last known address, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

Armina Arnone
Debra Deibel
Susanab Ross

7-28-17
(Date)

Corie Skay
(Signature)



State of South Carolina
The Circuit Court of the Thirteenth Judicial Circuit

Robin B. Stilwell
Judge

Greenville County Courthouse
305 East North Street, Suite 315
Greenville, SC 29601-2113
Phone: (864) 467-8406
Fax: (864) 235-3625
rstilwellj@sccourts.org

July 26, 2017

The Honorable Hope Blackley
Spartanburg County Clerk of Court
180 Magnolia Street, Suite 500
Spartanburg, SC 29306

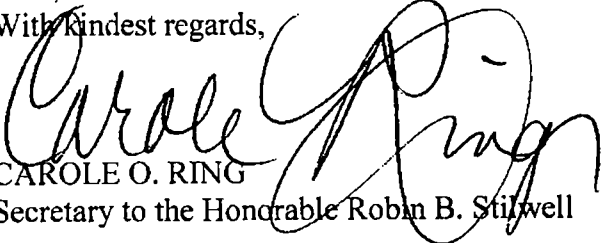
RE: Thomas R. Osborne vs. State of South Carolina
2014-CP-42-04604
Gregory Daniel Price vs. State of South Carolina
2016-CP-42-02489

Dear Ms. Blackley:

Enclosed herewith please find two Orders of Dismissal in the above-referenced matters. Judge Stilwell has asked that I send them to you for filing and for distribution to all interested parties.

Please let me know if you should need anything else regarding these matters.

With kindest regards,


CAROLE O. RING
Secretary to the Honorable Robin B. Stilwell

cor
Enclosures

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SPARTANBURG COUNTY
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SUSANNAH ROSS ESQ.

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