

R. MILLS ARIAIL, JR.
ATTORNEY AT LAW

11 NORTH IRVINE STREET, SUITE 11 • GREENVILLE, SC 29601
PHONE 864.232.9390 • FAX 864.232.9392 • E-MAIL MILLS@RMALAWOFFICE.COM

August 16, 2017

Via US Mail

Daniel Shearouse
Clerk of Court
South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

RECEIVED

AUG 21 2017

S.C. SUPREME COURT

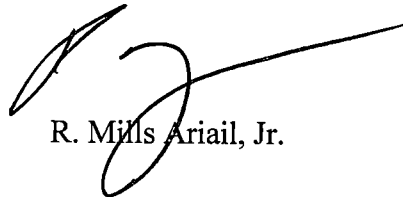
Re: Notice of Intent to Appeal from Claudius Adrian Williams vs. State of South Carolina C.A. No.: 2016-CP-04-0512

Dear Mr. Shearouse:

I was Court Appointed in the above referenced matter, and I expect that appellate defense will handle the appeal and petition for certiorari. On behalf of my client, enclosed for filing please find the Notice of Appeal and proof of service. I've enclosed a copy of the Honorable R. Scott Sprouse's Order of Dismissal to be challenged on appeal. By copy of this letter, I am also serving my client, counsel for the State of South Carolina, the South Carolina Commission of Indigent Defense - Appellate Defense Division and the Anderson County Clerk's Office.

Thank you for your assistance in this matter and if you have any questions, please feel free to contact me.

Sincerely,
LAW OFFICE OF R. MILLS ARIAIL, JR.
Attorney at Law



R. Mills Ariail, Jr.

RMAjr/dl
Enclosures (as stated)

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Scott Sprouse, Circuit Court Judge

Case No. 2016-CP-04-0512

RECEIVED
AUG 21 2017
S.C. SUPREME COURT

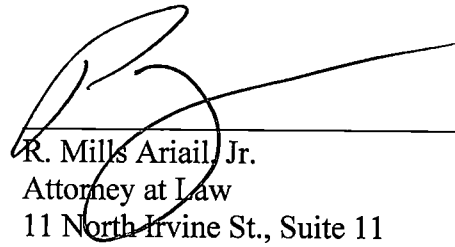
Claudius Adrian Williams,..... Appellant,

v.

State of South Carolina Respondent.

NOTICE OF APPEAL

Appellant appeals the Honorable R. Scott Sprouse's Order of Dismissal dismissing Appellant's application for post-conviction relief. On July 17, 2017, the Honorable R. Scott Sprouse signed an order dismissing Appellant's application for post-conviction relief with prejudice. Appellant, through counsel, received written notice of entry of this order on August 3, 2017. A copy of the Honorable R. Scott Sprouse's Order of Dismissal is attached.



R. Mills Ariail, Jr.
Attorney at Law
11 North Irvine St., Suite 11
Greenville, SC 29601
Telephone (864) 232-9390
Facsimile (864) 232-9392
Attorney for Claudius Adrian Williams

Greenville, South Carolina
August 16, 2017

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)
))
))
Claudius A. Williams, #299040,)
))
Applicant,)
))
v.)
))
State of South Carolina,)
))
Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

Case No. 2016-CP-04-0512

ORDER OF DISMISSAL

FILED-CLERK'S OFFICE
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COMMON PLEAS COURT
ANDERSON, SC

Presiding Judge:	R. Scott Sprouse
Applicant's Attorney:	R. Mills Ariail, Esquire
Respondent's Attorney:	Lindsey A. McCallister, Esquire
Trial Counsel:	Hugh W. Welborn, Esquire
Date of Hearing:	February 27, 2017
Court Reporter:	Diane L. Marcengill

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed February 25, 2016. Respondent made its return on or about January 19, 2017. An evidentiary hearing on the matter was convened on February 27, 2017 at the Anderson County Courthouse. Applicant was present at the hearing and represented by R. Mills Ariail, Esquire. Lindsey A. McCallister, Esquire, of the South Carolina Office of the Attorney General represented Respondent.

Applicant testified on his own behalf. Also testifying was Hugh W. Welborn, Esquire. The Court had before it the trial transcript, the Anderson County Clerk of Court records, Applicant's records from the South Carolina Department of Corrections, Applicant's application, Respondent's return, and Applicant's appellate records.

RSJ

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Anderson County Clerk of Court. Applicant was indicted at the September 2013 term of the Anderson County Grand Jury for one count of Armed Robbery (2013-GS-04-1930) and one count of Possession of a Weapon during a Violent Crime (2013-GS-04-1931). Applicant was represented by Hugh W. Welborn, Esquire. On January 27-28, 2012, Applicant proceeded to trial before the Honorable Frank Addy and a jury. Applicant was convicted as indicted on all counts. Judge Addy sentenced Applicant to confinement for a period of life without parole for Armed Robbery. In light of that sentence, Judge Addy did not impose a sentence for the weapons charge.

Applicant filed a timely Notice of Appeal, and his appeal was perfected by Tiffany Butler, Esquire, formerly of the Office of Appellate Defense, pursuant to the procedure set forth in Anders v. California, 386 U.S. 738 (1967). Applicant's convictions and sentences were affirmed by the Court of Appeals. State v. Williams, Op. No. 2016-UP-064 (S.C. Ct. App. filed February 17, 2016). The Remittitur was issued on April 26, 2016.

ALLEGATIONS

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

1. "Applicant right (sic) to effective assistance of counsel and fair trial as guaranteed by the 6th Amendment to the U.S. Constitution and S.C. law was violated by counsel's failure to file a timely pre-trial motion to suppress arrest warrants."

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 conclusion of law as required by S.C. Code Ann. Sec. 17-27-80 (2003).

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (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 (1984); Butler, 286 S.C. at 443, 334 S.E.2d at 814. 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. at 689. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 625. First, the applicant must prove that counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Id. (quoting Strickland v. Washington, 466 U.S. 668, 688 (1984)). 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. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

A. Ineffective Assistance of Counsel

Applicant testified the only issue he is raising in his application is the sufficiency of the arrest warrants. Applicant testified that Counsel provided him with discovery, they discussed the issues in his case in depth, and had good communication. Applicant testified he never asked Counsel to challenge the arrest warrants or probable cause to support his arrest because he didn't know about the issue until after he was convicted and put in jail.

Applicant contends the officer was not under oath when he spoke to the magistrate, and therefore, the arrest warrants are not valid. Applicant testified it is his belief that, because the officer's testimony at trial was only that the officer "spoke" to the magistrate who issued the warrants, the warrants were unsworn and invalid. On cross examination, Applicant acknowledged that his indictments were true billed by the grand jury in September 2013, and he does not allege any deficiencies in the grand jury process. Applicant also acknowledged that the arrest warrants indicate that the officer was sworn when he appeared before the magistrate. Applicant did not have any witnesses present to testify that the officer was not under oath at the time the warrants were obtained. Applicant testified that Counsel should have made a pre-trial motion to suppress the arrest warrants, but Applicant was satisfied with Counsel's performance otherwise.

Counsel testified he has never heard of such an issue with arrest warrants, and the officer's testimony at trial was not unusual. Counsel stated there is always testimony at trial concerning what the officer did to obtain the arrest warrant, but that testimony generally does not get into the procedural details or minutiae of the process for swearing out a warrant. Counsel testified it is standard to assume regular procedures were followed. Counsel further stated nothing about the officer's testimony at trial raised a red flag that the warrants might be

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improper. Counsel testified that he is a magistrate judge himself, and he reviewed the warrants and did not see anything within them to indicate that to indicate they might be invalid. Counsel also testified he met with Applicant at least four times prior to trial, but Applicant never raised any issues to him regarding the warrants, a lack of probable cause, or the sufficiency of the evidence, and if Applicant had, Counsel would have investigated further.

Regarding Applicant's claims of ineffective assistance of counsel, this Court finds Applicant has failed to meet his burden of proof. This Court finds Applicant's testimony regarding Counsel's ineffectiveness is not credible, while also finding Counsel's testimony is credible. Applicant challenges the arrest warrant issued against him, but Applicant has not presented any witness or other evidence to show the warrant was invalid or unsworn. Even if this Court found Applicant credible on this issue, any defects in the arrest warrant were cured by the grand jury's true bill indictment, which Applicant has not challenged. See State v. McCoy, 255 S.C. 170, 172, 177 S.E.2d 601, 602 (1970) ("The mere fact that the arrest of the appellant was unlawful, or upon a warrant not properly issued, is no bar to a prosecution on a subsequent indictment by which the court acquires jurisdiction over the person of the appellant.").

This Court finds Counsel provided effective assistance in this case. Counsel is a trial practitioner who has extensive experience in the trial of criminal offenses. Counsel conferred with Applicant on multiple occasions, during which Counsel discussed the pending charges, Applicant's constitutional rights, the State's evidence, and possible defenses.

Accordingly, this Court finds Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in his representation of Applicant. This Court also finds

Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel’s performance. Counsel testified that he reviewed the arrest warrants and found no reason to believe there were any irregularities, and Applicant never raised the issue of the sufficiency of the warrants or a lack of probable cause with Counsel. This Court concludes Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. The allegation is denied and dismissed.

B. All Other Allegations

As to any and all allegations that were raised in the application or at the hearing on this matter and not specifically addressed in this Order, this Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

CONCLUSION

Based on all the forgoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient, nor was Applicant prejudiced by counsel’s representation. Therefore, this PCR application must be denied and dismissed with prejudice. This Court also finds, as to all other allegations, that Applicant failed to present evidence of such claims and thus, this Court deems them abandoned.

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

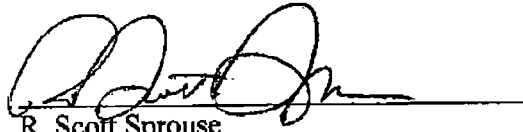
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of post-conviction relief. Rule 71.1(g), SCRCR, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 17 day of July, 2017.



R. Scott Sprouse
Presiding Judge
Tenth Judicial Circuit

Waltham, South Carolina.

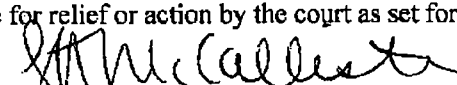
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GENERAL SESSIONS

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ANDERSON)
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CLAUDIUS A. WILLIAMS, #299040)
 Plaintiff,)
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)
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)
STATE OF SOUTH CAROLINA)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 TENTH JUDICIAL CIRCUIT

CASE NO: 2016-CP-04-00512

**MOTION AND ORDER INFORMATION
 FORM AND COVERSHEET**

Plaintiff's Attorney: R. Mills Ariail, Jr., Bar No. Address: 11 North Irvine Street, Suite 11 Greenville, SC 29601 Phone: _____ Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: Lindsey A. McCallister, Bar No. Address: PO Box 11549 Columbia, SC 29211 Phone: _____ Fax _____ E-mail: _____ Other: _____
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input checked="" type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: _____ Estimated Time Needed: _____ Court Reporter Needed: <input type="checkbox"/> YES / <input checked="" type="checkbox"/> NO	
SECTION II: Motion/Order Type	
<input type="checkbox"/> Written motion attached <input checked="" type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
<div style="display: flex; justify-content: space-between; align-items: center;"> <div style="text-align: center;">  Signature of Attorney for <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant </div> <div style="text-align: center;"> June 15, 2017 Date submitted </div> </div>	
SECTION III: Motion Fee	
<input type="checkbox"/> PAID - AMOUNT: \$ _____ EXEMPT: (check reason)	
<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input checked="" type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ <input type="checkbox"/> Other: _____	
JUDGE'S SECTION <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE CODE _____ Date: _____
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____ <input type="checkbox"/> MOTION FEE COLLECTED: \$ _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: \$ _____	

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 COMMON PLEAS AND
 GENERAL SESSIONS

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Scott Sprouse, Circuit Court Judge

Case No.2016-CP-04-00512

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State of South Carolina Respondent.

CERTIFICATE OF SERVICE

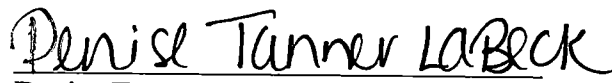
I, Denise Tanner LaBeck, paralegal to R. Mills Ariail, Jr., do hereby certify that on this August 16, 2017, I served upon the below named Respondents copies of the **NOTICE OF APPEAL** by depositing copies of the same via U.S. Mail, postage prepaid, Registered Mail in an envelope addressed as set forth herein below:

Lindsey McCallister, Esq.
Assistant Attorney General
PO Box 11549
Columbia, SC 29211
Attorney for the State of South Carolina

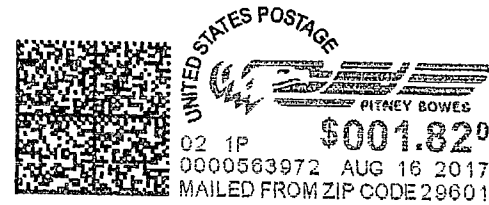
Anderson County Clerk's Office
Anderson County Courthouse
100 S. Main Street
Anderson, SC 29624

Claudius Adrian Williams SCDC# 299040
McCormick Correctional Institute
386 Redemption Way
McCormick, South Carolina 29899

SC Commission of Indigent Defense
Division of Appellate Defense
PO Box 11433
Columbia, SC 29211-1433


Denise Tanner LaBeck

August 16, 2017



LS ARIAIL, JR.

RVINE STREET, SUITE 11
VILLE, SC 29601

Daniel Shearouse
Clerk of Court
South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211