

Hugh W. Welborn

Attorney at Law
Post Office Box 173
913 Carolina Circle
Anderson, South Carolina 29622

Office (864) 226-5787
Fax: (864) 224-3738

email to:
hughwelborn@bellsouth.net

May 24, 2016

RECEIVED

South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

MAY 27 2016

In RE: Carlos Scott, #302450 vs. State of South Carolina
Case #: 2015-CP-04-1146

S.C. SUPREME COURT

Dear Sir/Madam:

Please find enclosed herewith the original and one (1) copy of the Appellant's Notice of Appeal in connection with the foregoing matter which I ask that you file for record, returning the clocked copy to my office. I also enclose a copy of the Order of Dismissal and the original Proof of Service on Patrick Schmeckpeper, Office of the Attorney General. Please use the enclosed self-addressed envelope to return the clocked copy to my office.

With kind regards,



Hugh W. Welborn

HWW/sba

cc: Office of the Appellate Defense
Office of the Attorney General
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
APPEAL FROM ANDERSON COUNTY
COURT OF COMMON PLEAS
HONORABLE BROOKS P. GOLDSMITH

2015-CP-04-1146

CARLOS ANTONIO SCOTT, #302450

APPELLANT,

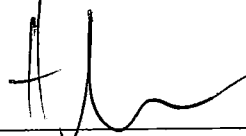
VS

STATE OF SOUTH CAROLINA,

RESPONDENT.

NOTICE OF APPEAL

Carlos Antonio Scott, #302450 appeals the denial of his Post Conviction Relief. The Post Conviction Relief Action was heard and denied by the Honorable Brooks P. Goldsmith, Circuit Court Judge on February 9, 2016, and Order of Dismissal issued on May 10, 2016, and filed on May 17, 2016. The Appellant received Order of Dismissal on May 24, 2016.



Hugh W. Welborn
Attorney for the Appellant
Post Office Box 173
Anderson, South Carolina 29622
(864) 226-5787
Attorney for Carlos Antonio Scott, #302450

Other Counsel of Record:
Patrick Schmeckpeper
Office of Attorney General State of SC
Post Office Box 11549
Columbia, South Carolina 29211

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM ANDERSON COUNTY
COURT OF COMMON PLEAS

HONORABLE BROOKS P. GOLDSMITH

2015-CP-04-1146

CARLOS ANTONIO SCOTT, #302450

APPELLANT,

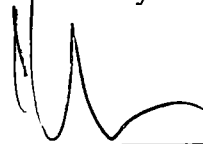
VS

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 depositing a copy of it in the United States Mail postage prepaid on May 24, 2016, addressed to its attorney of record Patrick Schmeckpeper, Office of the Attorney General, Post Office Box 11549, Columbia, South Carolina 29211-1549



Hugh W. Welborn
Attorney for the Appellant
Post Office Box 173
Anderson, South Carolina 29622
(864) 226-5787
Attorney for Carlos Antonio Scott, #302450

Anderson, South Carolina

24 May, 2016

Hugh W. Welborn

Attorney at Law
Post Office Box 173
913 Carolina Circle
Anderson, South Carolina 29622

Office Telephone:
(864) 226-5787

Fax:
(864) 224-3738

May 24, 2015

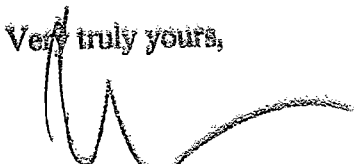
South Carolina Office of Appellate Defense
P. O. Box 11589
Columbia, South Carolina 29211-1589

In RE: Carlos Scott, #302450 vs. State of South Carolina
Case #: 2015-CP-04-1146

Dear Sir or Madam:

In connection with the foregoing matter, please be advised that I was the Court Appointed Attorney and enclose herewith a copy of my appointment. I also enclose copies of all documents you requested for filing a copy of the Appellant's Notice of Appeal in this matter together with a copy of the Order and Proof of Service. I ask that your office assume representation of this indigent Applicant.

Very truly yours,



Hugh W. Welborn

HWW/sba
Enclosures

cc: South Carolina Supreme Court
Court of Appeals
Office of Attorney General



STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
 COUNTY OF ANDERSON) TENTH JUDICIAL CIRCUIT

Carlos Antonio Scott,
 S.C.D.C. No. 302450

A TRUE COPY
 MAY 17 2016
Richard S. Kater
 CLERK OF COURT

C.A. No. 2015-CP-04-1146

)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

ORDER OF DISMISSAL
 (with prejudice)

COMMON PLEAS AND
 GENERAL SESSIONS

2016 MAY 17 AM 11:15

FILED CLERK'S OFFICE
 ANDERSON SC

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on May 12, 2015. Respondent filed its Return on October 1, 2015. An evidentiary hearing into the matter was convened on February 9, 2016, at the Anderson County Courthouse. Applicant was present at the hearing and was represented by Hugh W. Welborn, Esquire. Respondent was represented by Patrick Schmeckpeper, Esquire, of the South Carolina Attorney General's Office.

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 May 2012 term of Anderson County General Sessions for burglary, 1st degree (2012-GS-04-1261), kidnapping (2012-GS-04-1262), and armed robbery and possession of a weapon during the commission of a violent crime (2012-GS-04-1263). He was subsequently indicted at the February 2013 term of Anderson County General Sessions for Grand Larceny, greater than \$10,000 (2013-GS-04-0361); kidnapping (2013-GS-04-0364); and armed robbery. Scott McElhannon, Esquire, represented Applicant. On July 25, 2013, Applicant pled guilty as



indicted. His sentencing was deferred until June 18, 2014, when the Honorable Alexander Macaulay sentenced him to an aggregate sentence of forty (40) years imprisonment, suspended upon the service of twenty (20) years. Applicant did not appeal his plea or sentence.

Allegations

In his application for post-conviction relief, Applicant alleged he was being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. "Lawyer failed to request time before guilty plea"
 - b. "and he didn't file for a direct appeal"

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 reviewed the Clerk of Court records regarding the subject guilty pleas, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the transcripts and documents from the prior proceedings, and the legal arguments of counsel. Pursuant to S.C. Code Ann. §17-27-80 (2016), this Court makes the following findings of fact and conclusions of law based upon all of the probative evidence presented.

Ineffective Assistance of Counsel

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged 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. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant must overcome this presumption 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. 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, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). 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." Id. at 117-18, 386 S.E.2d at 625. Because Applicant pled guilty, he must show there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

Failure to File Direct Appeal

Applicant first alleges counsel was ineffective for failing to file a direct appeal. To waive a direct appeal, a defendant must make a knowing and intelligent decision not to pursue the appeal. Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986); White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974).

While trial counsel is required to make certain the defendant is made fully aware of the right to appeal, the standard for a guilty plea differs. Turner v. State, 380 S.C. 223, 224, 670 S.E.2d 373, 374 (2008). Absent extraordinary circumstances, such as when there is reason to think a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal) or when the defendant reasonably demonstrated an interest in appealing, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea. Id. at 225, 670 S.E.2d at 374 (citing Roe v. Flores-Ortega, 528 U.S. 470, 120 S.Ct. 1029, 145 L.Ed.2d 985 (2000); Weathers v. State, 319 S.C. 59, 459 S.E.2d 838 (1995)). “Acts inconsistent with the continued assertion of a right, such as a failure to insist upon the right, may constitute waiver.” Bonnette v. State, 277 S.C. 17, 18, 282 S.E.2d 597, 598 (1981) (citing 92 C.J.S. Waiver, p. 1063 (1955)).

This Court finds credible Counsel’s testimony that Applicant did not ask for an appeal, but instead thanked him for his help and for the deal he received. Counsel’s testimony that he did not receive a letter from Applicant requesting an appeal is also credible. Further, in light of counsel’s credible testimony that Applicant thanked him for his help and for the deal he received, Applicant’s testimony that he wrote a letter to counsel requesting an appeal, but received no response, is not credible. This Court also notes that Applicant did not produce the letter or any evidence that he had sent anything to counsel from the department of corrections. As there is no credible testimony or evidence in the record in support of Applicant’s claims, this Court finds he has failed to meet his burden. This allegation is therefore denied and dismissed.

Failure to Request Credit for Time Served

Applicant’s allegation that counsel was ineffective for failing to request credit for time served is entirely refuted by the record. During Applicant’s sentencing hearing, counsel



informed the judge that Applicant had "been in [jail] for 952 total days," and asked "for credit for 952 days." Sentencing Tr., p. 9, l. 5-7. The sentencing judge then ordered that Applicant "be given credit for time served pursuant to Section 24-13-40 to be calculated by the Department and applied by the Department of Corrections. . . ." Sentencing Tr., p. 13, l. 21-24.

Accordingly, this allegation is without merit. The record reflects that Applicant is entitled to credit for time served pursuant to Section 14-13-40. To the extent Applicant believes the Department of Corrections has incorrectly determined his sentence, this is not the proper forum for making that determination. See Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000) (Administrative Procedures Act provides appropriate remedy for challenging Department of Corrections' final decision on non-collateral or administrative matters).¹

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, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

CONCLUSION

Based on the foregoing, this Court finds that the Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

¹ This Court notes for the record, however, that Section 24-13-40 of the South Carolina Code mandates prisoners receive credit for the time they served prior to trial unless one of two exceptions exist, either: (1) the prisoner was an escapee or (2) the prisoner was already serving a sentence on a different offense. See State v. Boggs, 388 S.C. 314, 316, 696 S.E.2d 597, 598 (Ct. App. 2010). Counsel stated on the record Applicant had been in prison for 952 total days. Assuming counsel's representation to the Court was accurate, and unless Applicant was an escapee or serving a sentence on a different offense, Applicant is entitled to 952 days time served.



This Court notes that Applicant must file and serve a notice of intent to appeal within thirty (30) days from receipt of this Order to secure the appropriate appellate review. See Rule 203, SCACR. Rule 71.1(g), SCRCF; Bray v. State, 336 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant's counsel to file and serve notice of appeal. The Applicant's attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely filed.

IT IS THEREFORE ORDERED

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

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

[Handwritten Signature]

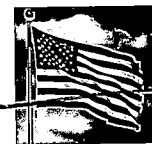
 BROOKS P. GOLDSMITH
 Presiding Judge
 Tenth Judicial Circuit

2, South Carolina

A TRUE COPY
 MAY 17 2016
Richard W. Kelly
 CLERK OF COURT

CLERK'S OFFICE
 ABERDEEN SC
 2016 MAY 17 2M 11:15
 COMMON PLEAS AND
 GENERAL SESSIONS

Hugh W. Welborn
Attorney At Law
P.O. Box 173
Anderson, SC 29622



South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

2921101830 8009

