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NOV 13 2017

S.C. SUPREME COURT

November 7, 2017

VIA U.S. MAIL

The Honorable Daniel E. Shearhouse
Clerk of South Carolina Supreme Court
Supreme Court Building
Post Office Box 11330
Columbia, SC 29211

Re: *Octavious Leon Carr, #313818 v. State of South Carolina*
Civil Action No.: 2015-CP-10-6026

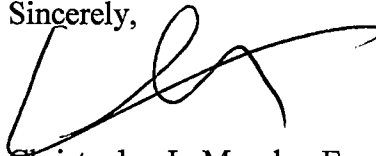
Dear Mr. Shearhouse:

Enclosed for filing, please find an original and two copies of Appellant's Notice of Appeal of the denial of his application for Post-Conviction Relief, and a Proof of Service regarding same. If you find everything in order, please file the original and return the clocked-in copies in the enclosed self-addressed envelope.

Please note, I was appointed to this and case and have copied the Office of Appellate Defense on this who will handle the appeal. Please call if you have any questions.

With kindest regards, I am

Sincerely,



Christopher L. Murphy, Esq.
chris@chrismurphyfirm.com

CLM/jh

Enclosures

cc (w/ encls.): Mr. Octavious Carr
Megan Harrigan Jameson, Senior Asst. Dep. AG
Robert M. Dudek, Esquire, Off of Appellate Defense
The Honorable Jean H. Toal
The Honorable Julie J. Armstrong, Clerk, 9th Jud. Cir.

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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NOV 13 2017

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Jean H. Toal, Circuit Court Judge

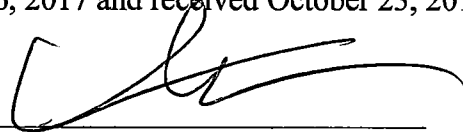
Case No.: 2015-CP-10-6026

Octavious Leon Carr, #313818 Appellant
v.
State of South Carolina Respondent

NOTICE OF APPEAL

Appellant appeals the Court's denial of his application for post-conviction relief.
Attached is the order from the court dated October 16, 2017 and received October 23, 2017.

November 7, 2017



Christopher L. Murphy
Murphy Law Offices, LLC
234 Seven Farms Drive, Suite 128
Charleston, SC 29492
Phone & Fax: (843) 800-1187
Email: chris@chrismurphylawfirm.com

Other Counsel of Record:
Megan Harrigan Jameson
Senior Asst. Deputy Attorney General
Rembert C. Dennis Building
PO Box 11549
Columbia, SC 29211-1549
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mjameson@scag.gov

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Jean H. Toal, Circuit Court Judge

Case No.: 2015-CP-10-6026

Octavious Leon Carr, #313818 Appellant
v.
State of South Carolina Respondent

PROOF OF SERVICE

I certify that I have served APPELLANT'S NOTICE OF APPEAL by delivering a copy via U.S. Mail First-Class postage prepaid on the 7th day of November, 2017, on the following:

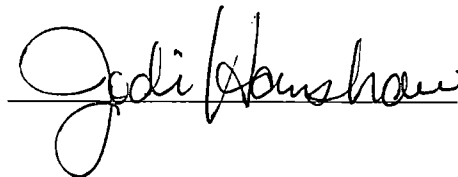
Megan Harrigan Jameson, Esquire
Senior Assistant Deputy Attorney General
SC Office of the Attorney General
PO Box 11549
Columbia, SC 29201

The Honorable Jean H. Toal
1231 Gervais Street
Columbia, SC 29201

The Honorable Julie J. Armstrong
Clerk of Court, Ninth Judicial Circuit
100 Broad Street, Suite 106
Charleston, SC 29401

Robert M. Dudek, Esquire
Office of Appellate Defense
PO Box 11433
Columbia, SC 29211-1433

Mr. Octavious Carr, SCDC #313818
Lee Correctional Institution
990 Wisacky Hwy
Bishopville, SC 29010





ALAN WILSON
ATTORNEY GENERAL

October 19, 2017

Rec'd 10/23/17

Christopher L. Murphy, Esquire
Murphy Law Offices, LLC
234 Seven Farms Drive, Suite 128
Charleston, South Carolina 29492

Re: Octavious Leon Carr, #313818 v. State of South Carolina
2015-CP-10-6026

Dear Mr. Murphy:

Enclosed please find a copy of the signed and filed **Order of Dismissal** in the above mentioned Post Conviction Relief case. With this letter, we are closing our Post Conviction Relief file in this matter.

Sincerely,

Megan Harrigan Jameson
Senior Assistant Deputy Attorney General

MHJ/cc
Enclosure(s)

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STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
)
)
Octavious Leon Carr, #313818,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

2015-CP-10-6026

ORDER OF DISMISSAL

FILED
2017 OCT 16 AM 11:13
CLERK OF COURT
JULIE J. WRIGHT

#1
JMT

This matter comes before the Court by way of an Application for Post-Conviction Relief filed November 6, 2015. Respondent made its Return on June 7, 2016. An evidentiary hearing into the matter was convened on September 12, 2016 at the Charleston County Courthouse. Christopher L. Murphy, Esquire represented Applicant. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

At the hearing, Applicant testified on his own behalf. This Court had before it a copy of the records of the Charleston County Clerk of Court, records from the South Carolina Department of Corrections, the application, the State's Return and the guilty plea transcript.

PROCEDURAL HISTORY

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Charleston County Clerk of Court's orders of commitment. The Applicant was indicted by the June, August, and October 2014 terms of the Charleston County Grand Jury for two (2) counts of forgery, one (1) count of Escape, one (1) count of Armed Robbery, one (1) count of Possession of a

Firearm during the Commission of a Violent Crime, and one (1) count of Entering a Financial Institution With the Intent to Steal (2011-GS-10-2997; -4589, -4577, -5986, -5987, -6220). Annie E. Andrews, Esquire, represented him. On April 30, 2015, the Applicant plead guilty as indicted to all charges except one (1) count of Escape, in which he waived presentment to the Grand Jury. The applicant subsequently plead guilty to Resisting Arrest. The Honorable Kristi Lea Harrington sentenced the Applicant to confinement for three hundred thirty-five (335) days for each charge of Forgery, Resisting Arrest, and Possession of a Firearm During the Commission of a Violent Crime. The Applicant was sentenced to twenty-five (25) years for each charge of Armed Robbery and Entering a Financial Institution With the Intent to Steal. The sentences run concurrently. The Applicant did not appeal his conviction or sentence.

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JBT
In his application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
2. "Violation of Constitutional Rights"
 - a. "Decisions made by trial counsel prompted applicant to enter an (sic) guilty plea involuntarily"

SUMMARY OF TESTIMONY

At the evidentiary hearing, Applicant testified he met with counsel three to four times at the county detention center for around fifteen to twenty minutes per session. Applicant stated he and counsel reviewed the evidence and that he understood the evidence and the sentence for each charge. Applicant then testified he met with counsel the day before the plea and discussed that the fifteen-year negotiated sentence was not mandatory and that he could receive a higher sentence than that.

Applicant also stated he did not know what his sentencing would be, but knew counsel was going to ask the plea judge for a sentence of twelve years.

Applicant further testified that he knew he was guilty and did not want to pursue a trial. Applicant admitted he did not have any complaints with counsel at the time of his plea. Applicant's complaints were that he barely saw his attorney and felt rushed into court.

Upon this Court's questioning, Applicant admitted that the plea judge explained the sentences to him and knew that a sentence of Life without Parole was a possibility. Applicant also knew that he would be exposed to a twenty-five year sentence. This Court then thoroughly reviewed the plea transcript with Applicant.

On re-direct examination, Applicant stated he felt somewhat threatened and coerced to plead guilty. On re-cross examination, Applicant admitted he never stopped the proceedings to explain that he felt threatened or coerced to the plea judge.

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 at the post conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

Ineffective Assistance of Counsel

Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the Applicant to prove his allegations by a preponderance of the evidence."

Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). 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, 104 S.Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

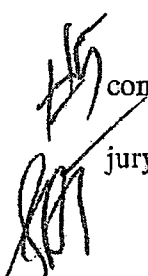
The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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JK
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." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that 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, 106 S.Ct. 366 (1985).

This Court finds the Applicant's regarding counsel's ineffectiveness is not credible.

This Court also finds counsel provided effective assistance of counsel in this case. Counsel advised Applicant of all of the charges and the sentences the charges carried. Counsel negotiated

with the State in Applicant's best interest, namely that counsel negotiated a sentence which avoided a life without parole sentence for Applicant. Applicant testified he pled because counsel was not ready to proceed to trial; this Court does not find this credible as Applicant certainly could have pursued a trial and had Counsel challenge the State's evidence. Applicant admitted nobody threatened him to plead guilty, and there were no promises other than the negotiations to entice him to plead guilty. This Court finds Applicant made the decision to plead guilty on his own accord with the help of learned, prepared counsel. Additionally, this Court finds Applicant made this decision freely and voluntarily without any threats or promises from anyone else. Furthermore, this Court finds that it was ultimately the Applicant's decision to plead guilty.

 This Court also finds the guilty plea transcript dispositive of this case as it is a contemporaneous recording of the proceedings. This Court finds the Applicant waived his rights to a jury trial.

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

This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. Therefore, these allegations are denied.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the 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 also finds as to all other allegations that Applicant failed to present evidence of such claims and thus, this Court deems them abandoned.

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), SCRCR, 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 Respondent.

AND IT IS SO ORDERED!



Jean H. Tsai

Sept 21, 2016
Columbia, South Carolina

Presiding Circuit Court Judge
Ninth Judicial Circuit
2758

2015-CP-10-6026

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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2015-CP-10-6026

Octavious Leon Carr

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Megan Harrigan Jameson, SADAG

Attorney for: Plaintiff Defendant
or
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX)**
 Affirmed; Reversed; Remanded; Other

FILED
2015 OCT 16 AM 11:15
CLERK OF COURT

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

Order of Dismissal

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

OCTAVIOUS LEON CARR, #313818

Applicant,

v.

STATE OF SOUTH CAROLINA,

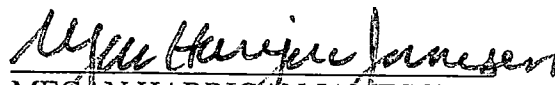
Respondent.

CERTIFICATE OF SERVICE


The undersigned hereby certifies that a true copy of the **Order of Dismissal** has been served upon the applicant by mailing one (1) copy in the United States mail, postage prepaid, addressed to:

**Christopher L. Murphy, Esquire
Murphy Law Offices, LLC
234 Seven Farms Drive, Suite 128
Charleston, South Carolina 29492**

This 19th day of October, 2017.


MEGAN HARRIGAN JAMESON
Attorney for Respondent

SWORN to before me this 19th day of October, 2017.


Notary Public for South Carolina.
My Commission Expires: 5/20/2025

Christopher L. Murphy
PO Box 2008
Mt. Pleasant, SC 29465



The Honorable Daniel E. Shearhouse
Clerk of South Carolina Supreme Court
Supreme Court Building
Post Office Box 11330
Columbia, SC 29211