

The Supreme Court of South Carolina

Ivan A. Lee,

Petitioner,

v.

State of South Carolina,

Respondent.

The Honorable Deadra L. Jefferson
Charleston County
Trial Court Case No. 2010-CP-10-08915

ORDER

The request for an extension until April 25, 2012 to serve and file the Petition for Writ of Certiorari and Appendix is granted. Pursuant to this Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY *Shonda J. Shealy*
Clerk

Columbia, South Carolina *Chief Deputy*

March 26, 2012

cc: Appellate Defender Dayne C. Phillips
Assistant Attorney General Matthew J. Friedman



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

 ORIGINAL

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

March 26, 2012

RECEIVED

MAR 26 2012

S.C. Supreme Court

Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

C

Re: Ivan A. Lee v. State of South Carolina

Dear Mr. Shearouse:

The petition for writ of certiorari and appendix in the above-referenced case are due to be served and filed today. Because of my present workload, I respectfully request a thirty-day extension of this deadline. No prior extensions have been requested in this case.

By copy of this letter to Assistant Attorney General Matthew Friedman, I am informing him of this request.

Thank you for your assistance in this matter.

Sincerely,

Dayne C Phillips
Assistant Appellate Defender

DCP/fkb

cc: Matthew Friedman, Esquire



SCCID

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Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

January 25, 2012

RECEIVED

JAN 25 2012

The Honorable Daniel E. Shearouse
Clerk, S.C. Supreme Court
Post Office Box 11330
Columbia, SC 29211

S.C. Supreme Court

Dear Mr. Shearouse:

The following case falls under the 60 day rule for appeals, and the date we received the transcript is listed to the side.

Ivan A. Lee v. State of South Carolina

1/25/2012

I would appreciate you beginning our time limits from the above date, and if you need additional information, or have any questions please contact me.

Thank you for your assistance in this matter.

Sincerely,

Sharon A. Graham
Administrative Coordinator



SCCID

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Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

RECEIVED

NOV 18 2011

November 18, 2011
S.C. Supreme Court

Ms. Anne Bouley Meyer
Circuit Court Reporter
P O Box 12093
Charleston, SC 29422

Dear Ms. Meyer:

Please provide us with the following transcript:

Ivan A. Lee v. State of South Carolina Case #: 10-CP-10-08915

County: Charleston Date of Trial: September 15, 2011

Presiding Judge: Deadra L. Jefferson

To ensure prompt payment, please sign and complete the enclosed CID FORM 3500 and include the original criminal case number (Indictment number) where the space is provided.

Please number the lines on the paper from 1-25, and include any and all recorded motions, pre and post-trial. Additionally, please transcribe the jury selection, and the State and defense counsel's opening and closing arguments.

If you are aware of any co-defendants or if the Attorney General's Office has already requested a transcript, please let us know.

Sincerely,

Sharon A. Graham
Administrative Coordinator

cc: S.C. Supreme Court
Attorney General's Office

DODDS and HENNESSY, L.L.P.
ATTORNEYS-AT-LAW

WILLIAM J. HENNESSY, JR.
DAVID F. SANTOS

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LAWRENCE A. DODDS, JR.
M. ANTHONY STITH, JR.

973 Houston Northcutt Blvd., Suite 101
Mt. Pleasant, SC 29464
(843) 881-1022
FAX (843) 884-0351
EMAIL astith@doddsandhennessy.com

REPLY TO CHARLESTON ADDRESS

November 8, 2011

via Regular Mail

South Carolina Supreme Court
1231 Gervais Street
Columbia, SC 29201

RE: Appeal from Denial of Post Conviction Relief (PCR)
Ivan Lee #276823 v. State of South Carolina
Case no. 2010-CP-10-8915

RECEIVED

NOV 09 2011

S:C: SUPREME COURT

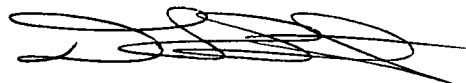
Dear Sir or Madam:

Please be advised I was court-appointed counsel for the above captioned individual, but the application for Post Conviction Relief was denied. Mr. Lee wishes to appeal, and as such, please find enclosed the following for filing in connection with the above captioned matter:

1. Notice of Appeal
2. Proof of Service
3. Copy of Orders denying Post Conviction Relief.

I ask you please file the originals and return filed copies to me in the postage paid return envelope. Should you have any question or comment, please do not hesitate to contact me. Thank you for your cooperation and assistance and with kindest regards, I remain

DODDS & HENNESSY



David F. Santos

Enclosure(s)

cc: Mr. Ivan Lee #276823
Lieber Correctional Institution
P.O. Box 205
Ridgeville, SC 29472

SC Office of Appellate Defense
PO Box 11433
Columbia, SC 29211-1433

Matthew J. Friedman, Esq.
SC Attorney General's Office
P.O. Box 11549
Columbia, SC 29211

Hon. Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401-2258

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Hon. Deadra L. Jefferson, Circuit Court Judge

RECEIVED

NOV 09 2011

S.C. SUPREME COURT

Case no. 2010-CP-10-8915

Ivan Lee # 276823,..... Petitioner,

v.

State of South Carolina..... Respondent.

PROOF OF SERVICE

I certify that I have served the NOTICE OF APPEAL on the following parties by depositing a copy of it in the United States Mail, postage prepaid, on November 8, 2011, addressed to the following parties:

via Regular Mail
South Carolina Supreme Court
1231 Gervais Street
Columbia, SC 29201

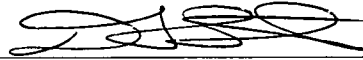
Matthew J. Friedman, Esq.
SC Attorney General's Office
P.O. Box 11549
Columbia, SC 29211

SC Office of Appellate Defense
PO Box 11433
Columbia, SC 29211-1433

Mr. Ivan Lee #276823
Lieber Correctional Institution
P.O. Box 205
Ridgeville, SC 29472

Hon. Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401-2258

DODDS & HENNESSY, LLP



David F. Santos, Esq.
1 North Adgers Wharf
Charleston, SC 29401
Phone: (843) 577-3025

Attorney for Petitioner

NOVEMBER 8, 2011

CHARLESTON, SOUTH CAROLINA

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Hon. Deadra L. Jefferson, Circuit Court Judge

Case no. 2010-CP-10-8915

Ivan Lee # 276823,..... Petitioner,

v.

State of South Carolina..... Respondent.

NOTICE OF APPEAL

Petitioner appeals the Honorable Deadra L. Jefferson's October 26, 2011, order denying post-conviction relief to the Petitioner. Undersigned counsel received notice of entry of the order on November 3, 2011. A copy of the order on appeal is attached to this notice.

Respectfully submitted,



David F. Santos, Esq.
1 North Adgers Wharf
Charleston, SC 29401
(843) 577-3025 ext. 19
Attorney for Petitioner

November 8, 2011

Other counsel of record:

Matthew J. Friedman, Esq.
SC Attorney General's Office
P.O. Box 11549
Columbia, SC 29211

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
Ivan A. Lee, #276823,)
)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
)
Respondent.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.: 2010-CP-10-8915

ORDER OF DISMISSAL

Presiding Judge: Deadra L. Jefferson
Applicant's Attorney: David F. Santos, Esq.
Respondent's Attorney: Matthew J. Friedman, Esq.
Trial Counsel: William L. Runyon, Jr., Esq.
Date of Hearing: September 15, 2011
Court Reporter: Anne Meyer

BY _____
JULIE J. ARMSTRONG
CLERK OF COURT
2011 NOV - 1 PM 4: 08
FILED

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed October 26, 2010. The Respondent filed its Return on February 3, 2010. An evidentiary hearing into the matter was convened on September 15, 2011 at the Charleston County Courthouse. The Applicant was present at the hearing and represented by David F. Santos, Esquire. Matthew J. Friedman, Esquire, of the South Carolina Attorney General's Office represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Applicant's trial counsel, William Runyon, Esquire, and Assistant Solicitor, Stephanie Bianco Linder, Esquire, also testified at the PCR hearing. This Court had before it the records of the Charleston County Clerk of Court regarding the subject convictions, the Applicant's records from the Department of Corrections, the trial transcript, the Court of Appeals' Order of Dismissal, the PCR application, the State's Return thereto, the inmate call records, a Freedom of Information Act request from

10/21/11
[Handwritten signature]

PCR counsel to the Charleston County Sheriff's Office, a letter dated March 25, 2008 from the Assistant Solicitor to Applicant, a letter dated March 26, 2008 from trial counsel to Applicant, a letter dated July 2, 2008 from counsel to Applicant, a letter dated February 4, 2008 from trial counsel to the Assistant Solicitor, a letter dated July 11, 2008 from the Assistant Solicitor to trial counsel, and digital excerpts from several telephone conversations.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Charleston County. The Applicant was indicted at the December 2006 term of the Charleston County Grand Jury for trafficking cocaine base crack (2006-GS-10-12284), possession with intent to distribute (PWID) cocaine (2006-GS-10-12283), and PWID cocaine base within proximity of a school (2006-GS-10-12282). William L. Runyon, Jr., Esquire, represented the Applicant. The Applicant proceeded to trial on July 29, 2008, after which a jury found him guilty of the lesser-included offense possession of cocaine and, as indicted, for the trafficking and proximity charges. The Honorable Thomas W. Cooper sentenced the Applicant to confinement for twenty-five (25) years for trafficking cocaine base in excess of twenty-eight (28) grams, third offense,¹ ten (10) years for PWID cocaine base within proximity of a school, and time served for possession of cocaine. The sentences were to run concurrently.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. By Order of Dismissal dated November 3, 2009, the Court of Appeals dismissed the appeal

¹ Pursuant to S.C. Code Ann. § 44-53-370(C)(2)(c), Trafficking Cocaine Base, twenty-eight (28) grams or more but less than 100 grams, third offense, carries a penalty range of twenty-five (25) to thirty (30) years and a maximum fine of fifty thousand and 00/100 (\$50,000.00) dollars, no part of which may be suspended or probation granted. This charge is also classified as serious and violent. Thus, the Applicant received the mandatory minimum sentence for trafficking cocaine base in excess of twenty-eight (28) grams, third offense.

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based on Applicant's failure to timely serve and file the Appellant's Initial Brief and Designation of Matter.

ALLEGATIONS

The Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel in that counsel
 - a. Failed to advise and communicate plea offers.
 - b. Failed to present a complete defense.
 - c. Denied Applicant's presence to be heard during suppression hearing

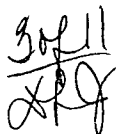
FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the hearing. This Court has further had the opportunity to observe each witness who testified at the hearing and to closely pass upon his or her credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Applicant testified Beattie Butler, Esquire, was his original attorney. He testified his first plea offer was for seven (7) years, and it was his decision to reject that offer. He testified the second offer was again for seven (7) years and he went in front of the judge and told the judge he wanted a paid attorney. He asserted there were no other plea offers.

The Applicant testified he retained Mr. Runyon as counsel, but counsel only met with him one (1) time prior to the trial. He testified he spoke with counsel on the telephone one (1) or two (2) times per month. He testified he did not know he was going to trial. Applicant contended counsel told him he was going to get sentenced to time served.² He testified he never received correspondence that he was on the trial docket, and he thought was he going to plead

² In support of his allegations that counsel informed him he would receive time served and he was unaware he was on the trial docket, Applicant entered digital recordings of phone conversations he had with counsel and with his girlfriend from the detention center. The digital recordings were entered into evidence as Applicant's Exhibits 9-10.



guilty. He asserted he never discussed potential defenses with counsel.

The Assistant Solicitor, Stephanie Bianco Linder, Esquire, testified she prosecuted Applicant's case. She testified Beattie Butler, Esquire, of the Charleston County Public Defender's Office, originally represented Applicant. She testified the first plea offer was on November 28, 2006 and was for a cap of fifteen (15) years and the dismissal of the PWID and proximity charges in exchange for a plea to the lesser-included offense of trafficking cocaine base, second offense.³ Ms. Linder testified Applicant was on the guilty plea docket for January 8, 2007. Applicant was transported to the courthouse, but he rejected the plea offer. Mr. Butler asked her to give Applicant another month or two to think about the offer. She testified she extended the offer and placed the case on the guilty plea docket for March 19, 2007, at which time the Applicant was transported and again rejected the offer. The case was placed on the trial docket for May 7, 2007, but Mr. Butler asked for one more shot at the original offer for his client. Ms. Linder testified she placed the case on a third guilty plea docket for the week of August 27, 2007. On August 29, 2007, Ms. Linder received an email from Mr. Butler indicating Applicant again rejected the offer. She testified Applicant came to court on August 30, 2007 to reject the offer on the record. She testified Lori Proctor, Esquire, stood in for Mr. Butler and explained the situation to Applicant. Applicant then rejected the offer on the record and told the court he was going to hire an attorney. At that time, the Honorable Thomas L. Hughston, Jr. informed Applicant that all offers were off the table.

Ms. Linder testified she then placed the case on the trial docket for October 1, 2007 before the Honorable Thomas W. Cooper. Applicant failed to appear for trial in October 2007,

³ Pursuant to S.C. Code Ann. § 44-53-370(C)(2), Trafficking Cocaine Base in excess of 28 grams, second offense, carries a penalty range of seven (7) to thirty (30) years and a maximum fine of fifty thousand and 00/100 (\$50,000.00) dollars.

A handwritten signature in black ink, appearing to be 'Holl' with a flourish underneath.

and a bench warrant was for issued for Applicant on October 5, 2007. Ms. Linder testified she closed the file thirty (30) days after the bench warrant was issued. She asserted the Applicant was arrested on January 28, 2008 on the bench warrant and probation violation and committed to the custody of the Charleston County Detention Center. She testified Mr. Runyon sent her a letter of representation on February 4, 2008, and she sent Mr. Runyon the discovery on February 22, 2008. Ms. Linder testified she extended the same offer to Mr. Runyon and placed the case on the guilty plea docket for April 7, 2008. At that time, Applicant rejected the offer and indicated he wanted a trial. She testified the case was placed on the trial docket for June 23, 2008 but was never reached. Applicant's case proceeded to trial on July 28, 2008. Ms. Linder asserted time served was never an option, as she could not have offered time served because she could not go below a trafficking, second offense.

Trial counsel testified he met with Applicant at the jail after being retained. He testified they discussed the 25-year mandatory minimum for trafficking cocaine base, third offense, as well as the pros and cons of pleading guilty and proceeding to trial. He testified he spoke with Applicant and the police officers. He testified he had a conversation with Ms. Linder who declined to extend another plea offer at first because an offer was extended and rejected three (3) times previously. However, Ms. Linder later renewed her previous offer. Counsel testified he communicated the plea offer to Applicant and Applicant rejected the offer, as he was only interested in accepting a plea offer that resulted in a time served sentence. Counsel testified he communicated to Applicant it was a substantial offer considering the mandatory minimum for trafficking cocaine base, third offense. Counsel testified he sent Applicant a letter on July 2, 2008 informing him that he was on the guilty plea docket the week of July 28, 2008 (Applicant's Ex. 6), and on July 23, 2008, counsel sent Applicant another letter informing him that he was on

the trial docket for the weeks of July 28, 2008 and August 11, 2008. Counsel testified there was no question Applicant understood he was on the trial docket, as Applicant had prior charges and knew how the system worked. He testified, and it is uncontested, Applicant failed to show up for his previously scheduled trial. Counsel asserted Applicant requested he procure a time served sentence, but he never promised Applicant he would be released on time served. He further explained the process in the solicitor's office, and in order for the solicitor to offer time served, she would be required to get approval from her superior. Counsel testified, in his experience, this was a simple but complicated case with a minimal chance of success if the jury believed the officer's testimony that Applicant threw down the drugs. He testified it was a weak defensible case, and he spoke with Applicant about this at length.

Ineffective Assistance of Counsel

The Applicant alleges he received 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), SCRPC; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (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, 686, 104 S. Ct. 2052, 2064 (1984); Butler, 286 S.C. at 442, 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 690, 104 S. Ct. at 2066. The 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).

Courts use a two-pronged test to evaluate 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 prevailing professional norms." Id. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). 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. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997).

This Court finds Applicant's testimony is not credible while also finding trial counsel's testimony is credible. This Court finds counsel is a trial practitioner who has over forty-four (44) years of experience in the trial of serious offenses. Counsel conferred with the Applicant on several occasions. During conferences with the Applicant, counsel discussed the pending charges, the elements of the charges and what the State was required to prove, discovery, Applicant's constitutional rights, and possible defenses or lack thereof.

Regarding Applicant's claims of ineffective assistance of counsel, this Court finds Applicant has failed to meet his burden of proof. This Court finds 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, 5, 239 S.E.2d 750, 752 (1977); Strickland, 466 U.S. at 687-88, 104 S. Ct. at 2064-65; Butler, 286 S.C. at 442, 334 S.E.2d at 814. This Court further finds counsel adequately conferred with Applicant, conducted a proper investigation, and was thoroughly competent in his representation.

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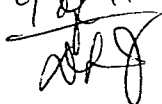
Counsel properly discussed with Applicant the pros and cons of pleading guilty and proceeding to trial. This Court finds counsel's representation did not fall below an objective standard of reasonableness.

This Court finds trial counsel properly communicated the plea offer to Applicant. This Court finds Ms. Linder's testimony credible that the plea offer never changed and that Applicant, after full disclosure of the terms of the offer, independently and voluntarily rejected the offer on at least four (4) occasions. This Court finds it was Applicant's decision to reject each offer. The Court takes judicial notice of the Solicitor's Office policy that once a plea offer is rejected, it is off the table. Thus, it was generous for Ms. Linder to renew the original offer after Mr. Runyon was retained. Applicant's allegation the plea offer was not communicated to him does not logically fit. Applicant came to court on four (4) occasions to plead guilty and rejected the same plea offer four (4) separate times. Applicant was fully aware of the extent of the offer and knew it did not include a time served sentence, which is why he rejected the offer each time. Further, the Court does not find it credible Applicant did not know he was placed on the trial docket. The Court finds counsel's testimony credible that he sent Applicant a letter informing him that he was on the trial docket for the week of July 28, 2008. Moreover, Applicant had prior charges and knew how the system worked.

This Court also finds Mr. Runyon's testimony credible that he did not promise Applicant he would be sentenced to time served. The Court has reviewed the jail's digital recordings of conversations between Applicant and counsel on May 30, 2008 and July 23, 2008. On May 30, 2008, Applicant called counsel to get an update on his case. During the conversation, Applicant asked counsel if they agreed to time served. Counsel responded that he got one person to agree, and he was waiting on a supervisor to call him back but thought the supervisor would agree to it.

Applicant called counsel again on July 23, 2008, at which time counsel advised Applicant he was on the list for the following week, and he would get Applicant time served and get him out of there. The Court finds counsel's comments to Applicant over the telephone to be in the context of an attorney-client relationship and reflect Mr. Runyon's attempts to secure a time served sentence as requested by the Applicant. Likewise, the Court does not find counsel's comments amount to the ineffective assistance of counsel. Considering the issue from the Applicant's perspective, even if he believed he was promised time served, this was certainly dispelled by conversations, subsequent to May 20, 2008 and July 23, 2008, with Mr. Runyon at the courthouse wherein Mr. Runyon clearly conveyed to him that a time served sentence was not possible. Mr. Runyon also conveyed to Applicant, in the same conversation at the courthouse, the solicitor's posture regarding any plea deal remained unchanged and included incarceration. The Court finds Mr. Runyon's testimony credible that after this conversation, the Applicant's position remained consistent that the only plea he would entertain is one that resulted in a time served sentence. There is no evidence in the record the solicitor ever offered time served, no evidence counsel promised Applicant he would get time served, and no evidence counsel communicated an actual offer of time served. It is clear from the testimony, Applicant was only interested in a plea offer for time served. Even if counsel communicated that he was working on getting Applicant time served, Applicant was fully advised of the actual offer numerous times after being transported to the courthouse to plead guilty. It is also clear there was only one offer ever on the table, and this was fully communicated to Applicant by counsel and was freely and voluntarily rejected by Applicant on four (4) occasions. Therefore, the Court finds Counsel did not fail to advise or communicate the plea offer to Applicant.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the

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Strickland test, specifically 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. The Applicant failed to show that counsel's performance was deficient. This Court also finds the Applicant has failed to prove the second prong of Strickland, specifically that he was prejudiced by counsel's performance. Applicant's complaints concerning counsel's performance are without merit and are denied and 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 the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the 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 foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial or sentencing proceedings. Counsel was not deficient in any manner, nor was the Applicant prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

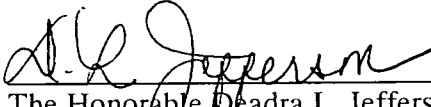
This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of written notice of entry of this Order to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate

Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely served and filed.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 26th day of October, 2011.



The Honorable Deadra L. Jefferson
Presiding Judge, Ninth Judicial Circuit

Charleston, South Carolina.

CC
AG
STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

COURT OF COMMON PLEAS
Case # 2010-CP-10-8915

Ivan Lee #276823

Applicant / Petitioner

vs.

State of South Carolina,

Respondent.

ORDER

2011 SEP 20 AM 8:11
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

This post-conviction relief case came before the court for a hearing. Having now heard this matter, the court orders as indicated herein.

- 1. The application for post-conviction relief is hereby: denied granted under advisement; a formal order will be filed (see below - No.6)
- 2. Motion(s) was/were heard in this case and the court orders:
 - The motion to dismiss and/or for summary judgment is hereby granted denied under advisement based upon the statute of limitations and/or the successive nature of the application or other reason as follows:
- 3. A conditional order of dismissal was previously filed in this case. Upon review of the matter, the court finds:
 - Good cause as to why the case should not be dismissed has been shown in response to the order of dismissal; therefore, a hearing on the merits of the application shall be scheduled.
 - The court has considered the response to the conditional order of dismissal and finds that good cause has not been shown or no response has been filed to the conditional order of dismissal; therefore, the application is hereby dismissed.
- 4. The application was freely, voluntarily, and intelligently withdrawn as indicated on the record; therefore, this case is dismissed with prejudice without prejudice.
- 5. Other: _____
- 6. The court further orders:
 - The Attorney General Applicant's counsel is directed to submit to the court a proposed order and to serve the order on opposing counsel within 20 days.
 - Both sides are directed to submit proposed orders to the court and to serve the orders on each other within _____ days.
 - The court does not request proposed orders.

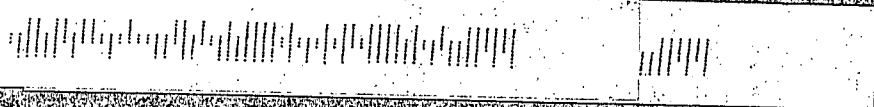
IT IS SO ORDERED.

Date: September 13, 2011

D. L. Jefferson
Deadra L. Jefferson
Chief Administrative Judge

Charleston, S.C.

Court Reporter : ~~Sharon Vizer Hanks~~
Anne M. ...



DODDS and HENNESSY, L.L.P.
ATTORNEYS AT LAW
ONE NORTH ADGERS WHARF
CHARLESTON, SC 29401

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