



LAW OFFICE OF
JEREMY A. THOMPSON
LLC

July 31, 2015

RECEIVED

AUG 03 2015

The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
P.O. Box 11330
Columbia, SC 29211-1330

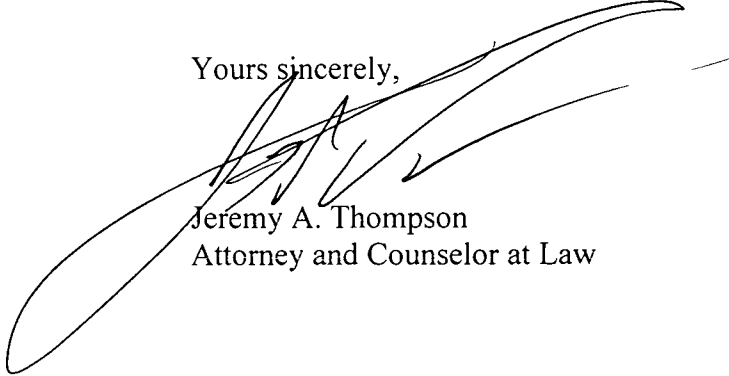
S.C. SUPREME COURT

RE: Dedric L. Isreal v. State of South Carolina; 2014-CP-32-2121

Dear Mr. Shearouse:

Enclosed please find the original and two (2) copies of my Notice of Appeal in the above-captioned action. I would appreciate your filing the original, clocking the copies, and returning the two (2) clocked copies to me in the envelope provided. I would note that Judge Goldsmith issued a written Order of Dismissal in this case which was filed with the Lexington County Clerk of Court's Office on June 15, 2015. A copy of that Order is also enclosed. Although I was retained to represent Mr. Isreal on his PCR action, he is seeking court-appointed counsel for this appeal. In accordance with Rule 608, SCACR, I will be providing Appellate Defense with my client's completed affidavit of indigency so that Appellate Defense can determine whether or not they will represent him on this appeal. With my thanks for your assistance in this matter and my best regards, I am,

Yours sincerely,


Jeremy A. Thompson
Attorney and Counselor at Law

JAT/
Enclosures

cc: J. Walter Whitmire, Assistant Attorney General (w/ Notice of Appeal)
Loriene P. French, South Carolina Office of Appellate Defense (w/ Notice of Appeal)
Dedric Isreal (w/ Notice of Appeal)

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Brooks P. Goldsmith, Presiding Judge

2014-CP-32-2121

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DEDRIC L. ISREAL,

S.C. SUPREME COURT

Petitioner,

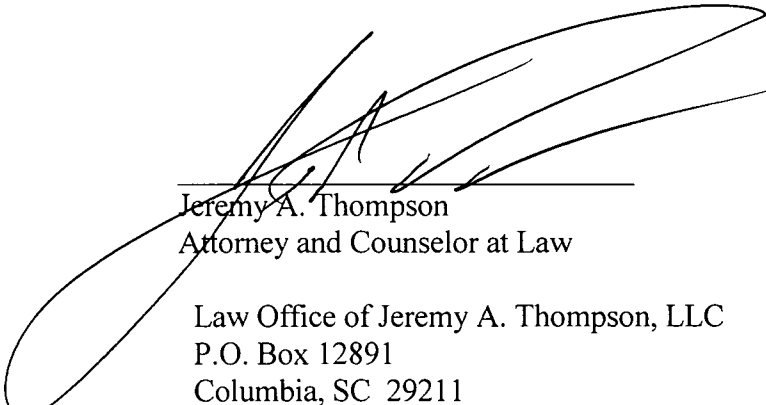
v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Dedric L. Isreal, appeals the Order of Dismissal denying his Application for Post-Conviction Relief filed June 15, 2015, and received by counsel on July 20, 2015, issued by the Honorable Brooks P. Goldsmith, presiding judge.



Jeremy A. Thompson
Attorney and Counselor at Law

Law Office of Jeremy A. Thompson, LLC
P.O. Box 12891
Columbia, SC 29211
803-779-2555 Phone
803-779-2556 Fax
jeremyatlaw@yahoo.com E-mail

ATTORNEY FOR PETITIONER

This 31st day of July, 2015.

Other Counsel of Record:
J. Walter Whitmire, Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211
Attorney for Respondent
(803) 734-3737

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Brooks P. Goldsmith, Presiding Judge

2014-CP-32-2121

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S.C. SUPREME COURT

DEDRIC L. ISREAL,

Petitioner,

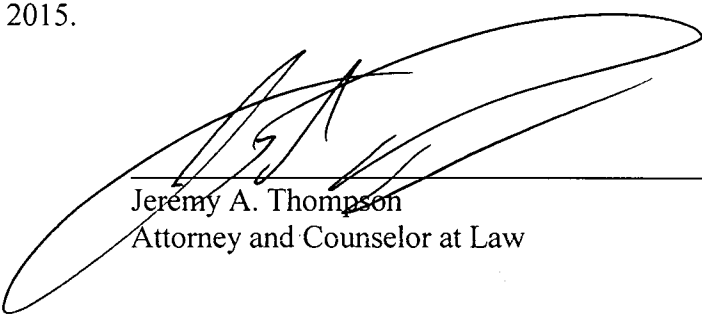
v.

STATE OF SOUTH CAROLINA,

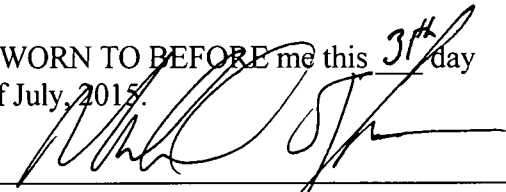
Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the Petitioner's Notice of Appeal in the above-entitled case has been served upon opposing counsel, J. Walter Whitmire, Assistant Attorney General, P.O. Box 11549, Columbia, SC 29211, by mailing in an envelope properly addressed with postage prepaid on this 31st day of July, 2015.


Jeremy A. Thompson
Attorney and Counselor at Law

SWORN TO BEFORE me this 31st day
of July, 2015.



Notary Public for South Carolina
My Commission Expires: 7/10/2022

(L.S.)

JUL202015

FILED

ORIGINAL

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
 COUNTY OF LEXINGTON) ELEVENTH JUDICIAL CIRCUIT
 Dedric L. Isreal,) C.A. No. 2014-CP-32-2121
 Applicant,)
 v.) **ORDER OF DISMISSAL**
 State of South Carolina,) **(with prejudice)**
 Respondent.)

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on June 6, 2014. Respondent made its return on September 23, 2014. An evidentiary hearing into the matter was convened on April 20, 2015, at the Lexington County Courthouse. Applicant was present at the hearing and was represented by Jeremy A. Thompson, Esq. Respondent was represented by Walt Whitmire, Esq., of the Office of the Attorney General.

PROCEDURAL HISTORY

The Lexington County grand jury indicted Applicant for indecent exposure (2014-GS-32-1155). He was represented by Barry B. George, Esq. On April 2, 2014, Applicant entered a guilty plea before the Honorable William P. Keesley. Judge Keesley accepted the plea and sentenced Applicant to a term of three (3) years imprisonment suspended upon the service of a term of five (5) years probation. Applicant did not appeal his sentence or conviction.

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

1. Ineffective Assistance of Trial Counsel;
 - a. Counsel presented a defective mitigation strategy in sentencing that expose the Plea Judge to Applicant's medical history of deviant behavior; thus causing prejudice by the Plea Judge's decision to place Applicant on the Sex Offender Registry.

- b. Counsel failed to adequately communicate his mitigation strategy to Applicant.

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 (1985).

As a matter of general impression, Applicant's PCR action is without legal basis. However, this Court allowed Applicant to proffer his case-in-chief and notes the following impressions: counsel's testimony was convincing and his performance in presenting Applicant's successful mitigation defense was exemplary. Counsel succeeded in keeping Applicant, a repeat offender, out of prison. This Court finds counsel's feat to be remarkable in light of the State's evidence of the egregious aggravating circumstances of the offense.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (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, 104 S.Ct. 2052, 2064, (1984); Butler, 286 S.C. at 441, 334 S.E.2d at 813.

A.

Upon hearing arguments from both parties and upon due deliberation, this Court grants Respondent's motion for a directed verdict as to both allegations of ineffective assistance of counsel. When reviewing the grant of a summary judgment motion, the appellate court applies

the same standard which governs the trial court under Rule 56(c), SCRPC: summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. White v. J.M. Brown Amusement Co., 360 S.C. 366, 601 S.E.2d 342 (2004). "Summary judgment is appropriate where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Belton v. Cincinnati Ins. Co., 360 S.C. 575, 602 S.E.2d 389 (2004).

First, Respondent argued that "placement on the registry" was collateral consequence to Applicant's conviction and sentence; and as such, the Strickland PCR inquiry is limited to whether a defense attorney, who under no duty to advise his client of a collateral consequence, provides correct advice. Thus, a qualitative inquiry on whether a defense attorney's performance enhanced the prospect of collateral consequence is incognizable in this forum and cannot as a matter of law support a grant of PCR relief. See Smith v. State, 329 S.C. 280, 283, 494 S.E.2d 626, 628 (1997);

In response, Applicant argued that once a defense attorney ventures to advise the convicted of a collateral consequence, the duty to provide correct advice extends to any aspect of the attorney's performance that may have enhanced the prospect of the collateral consequence.

This Court agrees with Respondent and summarily dismisses Applicant's PCR action as a matter of law for the following reasons: First, "[The Court] recently held sex offender registration, regardless of the length of time, is non-punitive and therefore no liberty interest is implicated. Hendrix v. Taylor, 353 S.C. 542, 579 S.E.2d 320 (2003). "The intent of the legislature in enacting the sex offender registry law is to protect the public from those offenders who may re-offend." State v. Walls, 348 S.C. 26, 558 S.E.2d 524 (2002). Second, the sex

offender registry, similar to parole eligibility “has been held to be a collateral consequence of sentencing of which a defendant need not be specifically advised before entering a guilty plea. Smith v. State, 329 S.C. 280, 283, 494 S.E.2d 626, 628 (1997) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). “However, if the defendant's attorney undertakes to advise the defendant about parole eligibility and gives erroneous advice, then the plea may be collaterally attacked.” Id.

In the case at bar, this Court finds Smith v. State, and its progeny to be controlling. Whether it be parole eligibility, sex offender registry, or commitment proceedings for the SVP program, the governing jurisprudence allows Applicant to proceed on an allegation of ineffective assistance of counsel that his guilty plea was rendered involuntary based upon inaccurate advice from counsel on whether the conviction either compelled registration or qualified for discretionary review for registration. Thus, this Court agrees with Respondent that a qualitative inquiry concerning whether counsel’s successful presentation of his mitigation case adversely impacted Applicant on Judge Keesley’s decision to order registration is incongruous because registration is non-punitive and does not implicate a liberty interest. Similarly, Applicant’s second allegation that counsel’s performance was ineffective for failing to advise on the matter is summarily denied and dismissed as a matter of law for the reasons stated above. Therefore, Applicant’s PCR action is summarily denied and dismissed with prejudice.

This Court also grants Respondent’s motion for summary dismissal on the alternative ground that Applicant’s PCR Action moves for relief that is unavailable in this forum. Applicant argues that this Court has the authority to order specific performance to remand for a defacto declaratory judgment hearing on whether Applicant’s conviction qualifies him for the sex offender registry. This Court disagrees with Applicant, accepts Respondent’s argument, and

finds that Davie v. State provides for either (1) a new sentencing hearing; (2) the traditional, full bundle of sticks, vacation of the conviction and remand. Davie v. State, 381 S.C. 601, 675 S.E.2d 416 (2009). Therefore, Applicant's PCR action is independently summarily denied and dismissed with prejudice on the additional grounds.

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 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 notes that that Applicant must file and serve a notice of appeal within thirty 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 post-conviction relief. Rule 71.1(g), SCRCR, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the 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 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 this 3 day of JUNE, 2015.



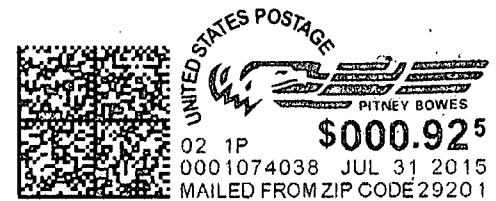
BROOKS P. GOLDSMITH
Presiding Judge
Eleventh Judicial Circuit

_____, South Carolina



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JEREMY A. THOMPSON
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