

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge
Case No. 2013-CP-39-1052

RECEIVED

NOV -8 2016

S.C. SUPREME COURT

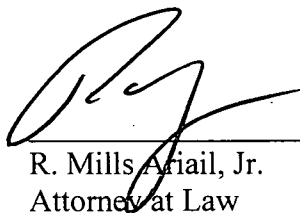
Christopher Murray,..... Appellant,

v.

State of South Carolina Respondent.

NOTICE OF APPEAL

Appellant appeals the Honorable Edward W. Miller's Order of Dismissal dismissing Appellant's application for post-conviction relief. On October 1, 2015, the Honorable Edward W. Miller signed an order dismissing Appellant's application for post-conviction relief with prejudice. Appellant, through counsel, did not receive a written notice of entry of this order until November 3, 2016. A copy of the Honorable Edward W. Miller's Order of Dismissal is attached.



R. Mills Atrial, Jr.
Attorney at Law
11 North Irvine St., Suite 11
Greenville, SC 29601
Telephone (864) 232-9390
Facsimile (864) 232-9392
Attorney for Christopher Murray

Greenville, South Carolina
November 4, 2016

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

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Christopher Murray,..... Appellant,

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CERTIFICATE OF SERVICE

I, Denise Tanner LaBeck, paralegal to R. Mills Ariail, Jr., do hereby certify that on this November 04, 2016, 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:

Karen C. Ratigan, Esq.
Assistant Attorney General
PO Box 11549
Columbia, SC 29211

Pickens County Clerk's Office
Pickens County Courthouse
214 East Main Street
Pickens, SC 29671

Christopher Murray SCDC# 00345729
McCormick Correctional Institution
286 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
Denise Tanner LaBeck

November 04, 2016

CLERK OF COURT
 PICKENS COUNTY
 SOUTH CAROLINA
 STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
 C.A. No. 2013-CP-39-1052

COUNTY OF PICKENS 2015 OCT 27 P 2:29

Christopher Robert Murray,
 S.C.D.C. No. 345729,
 Applicant,
 v.
 State of South Carolina,
 Respondent.

ORDER OF DISMISSAL

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed August 15, 2013. The Respondent made its return on April 8, 2014. An evidentiary hearing was held on April 22, 2015 at the Greenville County Courthouse. The Applicant was present and represented by R. Mills Ariail, Jr., Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's trial counsel, Gary Mallard, Esquire. The Court had before it the trial transcript, the Pickens County Clerk of Court records, the South Carolina Department of Corrections records, the PCR application, the return, and the appellate records.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Pickens County Clerk of Court. The Applicant was indicted at the January 2011 term of the Pickens County Grand Jury for murder (2011-GS-39-0026). He was represented by Gary Mallard, Esquire.

After the State brought the case to trial, the Applicant was found guilty. On April 20,

2011, the Honorable G. Edward Welmaker sentenced the Applicant to forty years imprisonment.

A notice of appeal was filed at the South Carolina Court of Appeals. Breen R. Stevens, Esquire of the South Carolina Commission on Indigent Defense, Division of Appellate Defense perfected the appeal. The Court of Appeals affirmed the Applicant's conviction and sentence on June 26, 2013. State v. Murray, 404 S.C. 300, 744 S.E.2d 607 (Ct. App. 2013). The Remittitur was sent on July 15, 2013.

ALLEGATIONS

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

1. Ineffective assistance of counsel:
 - a. Did not object to witness committing perjury.
 - b. Did not ask questions of substance in cross-examination of witnesses.
 - c. Did not interview witness prior to trial.
 - d. Did not investigate witness for impeachment purposes.

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

Ineffective Assistance of Counsel

The 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).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel’s ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052).

The Applicant stated he and trial counsel discussed self-defense and his story that the gun “went off” while he was wrestling with the victim. The Applicant stated he also told the police this shooting was in self-defense. The Applicant stated that, in order to prove self-defense, trial counsel should have discredited the State’s witnesses because they lied. The Applicant stated he asked trial counsel to question the firearms examiner about whether she examined the live round.

Trial counsel testified he reviewed the following with the Applicant: the discovery materials, the Applicant’s version of events, the elements of the charges, and possible defenses. Trial counsel testified they argued self-defense at trial. Trial counsel testified the Applicant asked him to contact Faye Brissey and that, upon speaking with her, it was clear she would be a State witness. Trial counsel testified Brissey’s trial testimony was consistent with what she had told him. Trial counsel testified he also called Brissey as defense witness to clarify some inconsistencies. Trial counsel testified he did not recall the Applicant requesting he ask the

firearms examiner a specific question.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have discredited State witnesses in order to help prove his self-defense argument. Initially, this Court notes that, while the Applicant stated on cross-examination that he wanted trial counsel to discredit State witnesses for allegedly lying, he failed to specify the names of these witnesses – other than Faye Brissey. He also failed to specify the portions of the trial transcript that he argued were untruthful and should have been attacked. As such, this Court finds the Applicant failed to meet his burden of proof. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174. Regarding Brissey, the Applicant’s chief contention is that trial counsel could have bolstered his self-defense argument if he had challenged Brissey’s testimony as false and impeached her with her statements. This Court notes, however, that during trial counsel’s questioning of Brissey during the defense case, Brissey stated “the things I said in my statement wasn’t really true because I was scared.” (Trial transcript, p.408). This was before the jury as a factor in their determination of her credibility. See State v. Pipkin, 359 S.C. 322, 327, 597 S.E.2d 831, 833 (Cl. App. 2004) (noting the jury is “the finder of fact and weigher of credibility”). The Applicant has failed to allege with any specificity what other questions trial counsel could have asked Brissey that would have affected the outcome of his trial. See Cherry v. State, 300 S.C. at 117-18, 386 at 625.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have more thoroughly questioned the State’s firearms expert. This Court finds the Applicant has failed to articulate what line of questioning trial counsel could have pursued that would have supported his self-defense argument. Further, the Applicant did not present a firearms expert at the PCR hearing, so any discussion of the methodology used by the State’s expert is speculative.

See Dempsey v. State, 363 S.C. 365, 370, 610 S.E.2d 812, 815 (2005) (finding that, as the applicant failed to have an expert testify at the evidentiary hearing, “any finding of prejudice is merely speculative”).

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that trial counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that trial 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 trial counsel’s performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

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 testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

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 and sentencing proceedings. Counsel was not deficient and the Applicant was not prejudiced by counsel’s representation. Therefore, this PCR application must be denied and dismissed with prejudice.

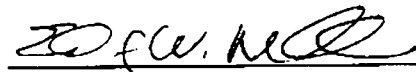
This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His

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 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 1 day of July, 2015.


Edward W. Miller
Presiding Judge
Thirteenth Judicial Circuit

Greenville, South Carolina.



CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

State of South Carolina ^{2015 OCT - 7 P 2: 29}
The Circuit Court of the Thirteenth Judicial Circuit

Edward W. Miller
Judge

Greenville County Courthouse
305 E. North Street, Suite 219
Greenville, SC 29609-4751
Phone: (864) 467-8559
Fax: (864) 233-4173

October 5, 2015

Pat Welborn
Pickens County Clerk of Court
Pickens County Courthouse
214 E. Main Street
Pickens, SC 29671

RE: *Christopher R. Murray v. State of South Carolina*, CA No. 2013-CP-39-1052

Dear Clerk:

Enclosed please find an order of dismissal for the above referenced case to be filed and mailed to the parties. The order was signed by The Honorable Edward W. Miller on October 2, 2015.

Sincerely,

A handwritten signature in black ink, appearing to read "Hood Dawson".

Hood Dawson
Law Clerk to the Honorable Edward W. Miller
305 E. North Street, Suite 219
Greenville, South Carolina 29601
(864) 467-8558
(864) 233-4173 Fax
emillerlc@sccourts.org

R. MILLS ARIAIL, JR.
ATTORNEY AT LAW

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PHONE 864.232.9390 • FAX 864.232.9392 • E-MAIL MILLS@RMALAWOFFICE.COM

November 4, 2016

RECEIVED

NOV -8 2016

S.C. SUPREME COURT

Via US Mail

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

Re: Notice of Intent to Appeal from Christopher Robert Murray vs. State of South Carolina C.A. No.: 2013-CP-39-1052

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 Edward W. Miller'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 Pickens 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)

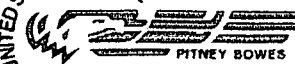

R. MILLS ARIAIL, JR.

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