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January 17, 2018

RECEIVED

JAN 22 2018

S.C. SUPREME COURT

The Honorable Daniel E. Shearhouse
Clerk, Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

RE: Alonza Dennis v. State of South Carolina; Case #: 2014-CP-10-5496

Dear Mr. Shearhouse:

Enclosed for filing is the Notice of Appeal (original and clocked copy) in the above Post-Conviction Relief (PCR) case. Also enclosed are the following:

- (1) Proof of Service of the Notice of Appeal on the Respondent;
- (2) The Order of Dismissal; and
- (5) A Request for Representation on Appeal.

The Applicant - Appellant was represented by me as indigent, pursuant to my contract with the South Carolina Commission on Indigent Defense (SCCID) to handle PCR case. By copy of this letter, I am forwarding a duplicate set of documents to the SCCID.

The Request for Representation on Appeal and the Affidavit in Support, thereof, are signed by me as attorney for Applicant - Appellant. Should you need anything further, do not hesitate to contact me.

Thank you for your time and attention to this matter.

Sincerely,



Rodney D. Davis
South Carolina Bar #: 12396
4000 Faber Place Drive, Suite 300
Charleston, SC 29405
(843) 323-4353
Davis@LowcountryLawOffice.com

✓ Enclosure(s). As stated above.
RDD/mmt

cc: Megan H. Jameson, Assistant Attorney General
Kimberly McCall, Appellate Division, SCCID

RECEIVED

JAN 22 2018

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable William H. Seals, Jr.

Case #: 2014-CP-10-5496

Alonza Dennis,

Appellant.

v.

State of South Carolina,

Respondent.

NOTICE OF APPEAL

Alonza Dennis appeals the denial of his Post Conviction Relief (PCR) application in this case. The application for relief was denied following an evidentiary hearing before the Honorable William Seals on January 12, 2017. Counsel for the Appellant received a filed copy of the Order of Dismissal on or about December 21, 2017.

January 12, 2018



Rodney D. Davis
400 Faber Place Drive, Suite 300
Charleston, SC 29405
Attorney for Appellant

Other Counsel of Record:
Alicia Olive
Assistant Deputy Attorney General
State of South Carolina
P.O. Box 11549
Columbia, SC 29211-1549
Attorney for Respondent

RECEIVED

JAN 22 2018

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable William H. Seals, Jr.

Case #: 2014-CP-10-5496

Alonza Dennis,

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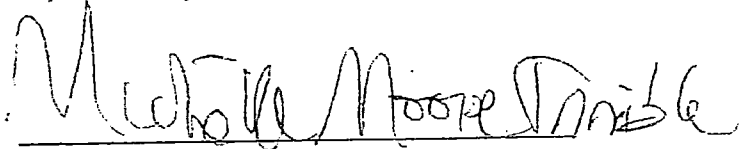
State of South Carolina,

Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the State by mailing a copy of it to the address of record, Megan H. Jameson, P.O. Box 11549, Columbia, South Carolina 29211-1549, on January 12, 2018.

January 12, 2018



Michelle Moore Trimble
Paralegal to Rodney D. Davis
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400 Faber Place Drive, Suite 300
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Attorney for Appellant

Other Counsel of Record:
Alicia Olive, Assistant Attorney General
State of South Carolina
P.O. Box 11549
Columbia, SC 29211-1549
Attorney for Respondent

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CLERK OF SUPERIOR COURT

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STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
)
Alonza Dennis, SCDC # 128392,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No.: 2014-CP-10-5496

ORDER OF DISMISSAL

FILED
2017 DEC 13 AM 9:34
CLERK OF COURT

This matter comes before the Court by way of an application for post-conviction relief filed September 9, 2014, by Alonza Dennis (Applicant). Respondent made its Return on April 27, 2015, requesting an evidentiary hearing be held. An evidentiary hearing into the matter was convened January 12, 2017, at the Charleston County Courthouse. Applicant was present at the hearing and represented by Rodney D. Davis, Esquire. Assistant Attorney General Alicia Olive from the South Carolina Attorney General's Office appeared on behalf of the State. Following the evidentiary hearing, this Court denied the application. This order follows.

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. On October 5, 2009, a Charleston County Grand Jury indicted Applicant for assault and battery with intent to kill ("ABWIK" or "ABIK"), attempted armed robbery, and possession of a firearm during a crime of violence. Andrew Grimes, Esquire, and Megan Ehrlich, Esquire, both of the Charleston County Public Defender's Office, represented Applicant.

Assistant Solicitors Jennifer Shealy and Timmy Finch of the Ninth Circuit Solicitor's Office prosecuted the case.

On March 14, 2011, Applicant proceeded to a jury trial in the Charleston County Court of General Sessions before the Honorable Roger M. Young, Sr., circuit court judge. On March 16, 2011, the jury returned a verdict of guilty on the ABWIK charge, guilty on the possession of a firearm during a crime of violence charge, and not guilty on the attempted armed robbery charge. Judge Young sentenced Applicant to the mandatory sentence of life without the possibility of parole based upon a prior conviction in the State of New York for rape in the first degree.

On March 25, 2011, Applicant filed a Motion to Reconsider the Sentence. However, on May 11, 2011, Judge Young issued an Order denying the Motion to Reconsider.

On May 17, 2011, Applicant filed a Notice of Appeal and an appeal was perfected on his behalf by Appellate Defender LaNelle C. Durant of the South Carolina Commission on Indigent Defense—Office of Appellate Defense. On appeal, Applicant argued “the trial court erred in (1) admitting testimony that he offered to sell a purportedly stolen gun to buy crack cocaine shortly before the shooting; (2) refusing to charge the jury on assault and battery of a high and aggravated nature (ABHAN); (3) sentencing him to life without parole (LWOP); and (4) admitting his two written statements into evidence.” State v. Dennis, 402 S.C. 627, 631, 742 S.E.2d 21, 23–24 (Ct. App. 2013). Following briefing and oral argument, the South Carolina Court of Appeals affirmed Applicant's convictions and sentences. Id. Applicant's subsequent petition for rehearing and petition for certiorari to the South Carolina Supreme Court were denied. The Remittitur was returned to the circuit court on August 27, 2014.

EVIDENCE PRESENTED AT TRIAL¹

The Shooting

On June 22, 2009, Applicant fired five shots at Moses Alford. (Tr. p. 182.) Out of the five shots, three of the bullets hit Alford.

Earlier that day, Applicant went to the home of La Seto Gibson ("Quan"). Quan's cousins, Kaylab Wright and Trevor Gibbs, were also at Quan's house. (Tr. pp. 224-225.) Quan called Alford to see if he could purchase some clothes.² (Tr. pp. 166-167; Tr. p. 225.) Alford agreed to meet Quan at the Kangaroo gas station in McClellanville. (Tr. p. 168.)

According to Gibbs, Applicant wanted to rob Alford; however, Quan, Wright, and Gibbs left Applicant at Quan's house because they did not want to be involved in a robbery. (Tr. pp. 229-230.) Quan's grandfather drove Applicant to the Kangaroo where Quan, Wright, and Gibbs were located. Applicant got into Quan's car. Quan and Wright got out of Quan's car and went to Alford's car to look at the clothing. (Tr. p. 177.) Wright returned to Quan's car because he did not like any of the clothes. (Tr. p. 234.)

At some point, Wright took Applicant's gun from him. Applicant wanted his gun back. (Tr. p. 235.) Wright gave Applicant his gun back and told Applicant to not do anything stupid. (Tr. pp. 235-236.) Upon Applicant's request, Wright let Applicant out of the car. (Tr. p. 236.)

While Alford was looking in the back seat of the car for an article of clothing, Applicant approached Alford's car.³ (Tr. pp. 179-181.) Applicant pointed a gun at Alford and said, "Give

¹ This factual recitation comes from the Initial Brief of Respondent filed in Applicant's direct appeal.

² Alford owned his own clothing business in Georgetown, but he would occasionally bring clothes to customers. (Tr. pp. 162-163.)

³ Alford later identified Applicant in a photo lineup as the man that shot him. (Tr. p. 181.)

me everything.” (Tr. pp. 180-182.) When Alford reached for his gun,⁴ Applicant shot Alford in the arm, leg, and back. (Tr. p. 182; Tr. p. 480.) At trial, Applicant testified he did not intend to kill Alford; he just wanted to scare Alford. (Tr. p. 484; Tr. p. 508.) However, Applicant testified he shot to the side of Alford instead of shooting in the air. (Tr. p. 507.) After Applicant shot Alford, Applicant ran into the woods. (Tr. p. 184.)

On the day of the shooting, Peggy Owen testified she saw Applicant hide behind a car in her driveway, and Applicant ran away when the police got close. (Tr. p. 293-294.) Shortly thereafter, a canine unit found Applicant. (Tr. p. 311.) The police found a crack pipe in Applicant’s pocket. (Tr. p. 492; Tr. p. 549.)

Two days after the shooting, the police found the gun Applicant used to shoot Alford in a drainage pipe near Owen’s house. (Tr. pp. 295-297; Tr. pp. 334-337.) At trial, Investigator Kathy Kjellman testified that no shell casings were found at the scene of the shooting. (Tr. p. 363.) However, revolvers do not eject shell casings. Moreover, the gun found in the drainage pipe near Owen’s house was a revolver.

During Applicant’s direct examination, Applicant’s trial counsel elicited Applicant’s prior conviction for grand larceny. (Tr. p. 464.)

The Stolen Gun / Crack Use

According to Gibbs, on the day of the shooting, Applicant tried to sell him a revolver. (Tr. pp. 212-213; Tr. pp. 225-229.) Applicant told Gibbs he stole the revolver, and he needed to sell the gun in order to get another “blast” (i.e. crack). (Tr. p. 228.)

⁴ Alford carried two guns in his car for protection. (Tr. pp. 171-172.) Alford had a concealed weapons permit for both guns.

Applicant's trial counsel argued: "When [Applicant] woke up on the morning of June 22, [Applicant] didn't have a gun. [Applicant] didn't have a plan to rob anyone, and he certainly didn't have plans of shooting anyone." (Tr. p. 150.) Additionally, Applicant's trial counsel argued that Applicant's co-defendants provided Applicant with the gun. (Tr. p. 152.) Moreover, Applicant's trial counsel argued that Quan, Wright, and Gibbs told Applicant to grab the gun in the back seat right before the robbery. (Tr. p. 152.)

Applicant's trial counsel objected to Gibbs' testimony regarding the stolen gun and drug use. Regarding Applicant's drug use, Applicant's trial counsel argued the testimony was more prejudicial than probative. (Tr. p. 213.) In addition, Applicant's trial counsel argued motive was not an element of the crime, and the testimony regarding Applicant's drug use went to Applicant's character. (Tr. p. 214.) With respect to the testimony regarding Applicant stealing a gun, Applicant's trial counsel argued the testimony was more prejudicial than probative.

After hearing all arguments, the trial judge held the testimony regarding the stolen gun was probative to rebut Applicant's trial counsel's contention that Applicant did not have a gun on the morning of the shooting. (Tr. p. 215.) Furthermore, the trial judge held the testimony regarding Applicant's need for crack was admissible to establish motive.

The Statements

After the canine unit found Applicant, the police brought Applicant back to the Kangaroo. (Tr. pp. 40-41.) At that time, Applicant was under arrest for trespassing. (Tr. pp. 78-79.) Detective Wagner conducted a gun residue test on Applicant, and Detective Albert Casale

read Applicant his rights under Miranda.⁵ (Tr. pp. 41-43; Tr. p. 47.) According to Detective Casale, Applicant cooperated and did not seem to be confused or intoxicated. (Tr. p. 45; Tr. p. 48.) Detective Casale told Applicant that if Applicant wanted to talk to the police, then he needed to sign the waiver form. (Tr. p. 47.) Applicant told Detective Casale that he did not really want to talk “at that time.”⁶ (Tr. p. 48; Tr. pp. 51-52.) At that point, Detective Casale secured Applicant in the car and informed Applicant that Detective Charles Lawrence would speak to Applicant later that day. (Tr. pp. 47-48; Tr. pp. 52-53.) Thereafter, Deputy Robert Thornley transported Applicant to the police headquarters. (Tr. p. 271.)

Approximately five to six hours after Detective Casale advised Applicant of his rights at the Kangaroo station, Detective Kip Cooke advised Applicant of his rights at the police headquarters. (Tr. p. 55; Tr. p. 57; Tr. p. 129.) While Detective Cooke was advising Applicant of his rights, Detective Lawrence came into the room. (Tr. p. 57.) Applicant signed the waiver of rights form. (Tr. p. 61.) Detective Casale left the room in order to work on another case.

At 9:04 p.m. Detective Lawrence began the interview. (Tr. p. 91.) Neither Detective Cooke nor Detective Lawrence knew that Applicant told Detective Casale that he did not want to talk “at that time.” (Tr. p. 67; Tr. pp. 99-100.) Furthermore, Applicant never told Detective Lawrence he did not want to talk. (Tr. pp. 81-82.) Moreover, Applicant never asked for an attorney. (Tr. p. 62; Tr. p. 82.)

⁵ Miranda v. Arizona, 384 U.S. 436 (1996; see State v. Lynch, 375 S.C. 628, 633 n. 5, 654 S.E.2d 292, 295 n. 5 (Ct. App. 2007 (“The well-known Miranda rights are that the accused must be informed of: the right to remain silent; any statement made may be used as evidence against him or her; and the right to the presence of an attorney.”) (citations omitted).

⁶ Applicant did not request an attorney.

During the interview, Detective Lawrence did not make any promises or threats. (Tr. p. 82.) Applicant made a statement essentially denying any involvement in the robbery. Applicant stated he did not know why he was under arrest. The interview lasted approximately two hours. (Tr. p. 81.)

On June 29, 2009, after learning new developments in the case, Detective Lawrence decided to interview Applicant again. (Tr. pp. 84-85.) Detective Lawrence transported Applicant to the police headquarters and read Applicant his Miranda rights. (Tr. p. 84; Tr. p. 86.) Applicant signed the acknowledgment and waiver of rights form. (Tr. pp. 87-89.) Detective Lawrence did not make any threats or promises. (Tr. p. 89; Tr. p. 381.) Although Applicant claimed Detective Lawrence told him that if the federal authorities picked up his case it would be hard on him, Detective Lawrence testified he never threatened to turn over Applicant's case to the federal authorities. (Tr. pp. 82-83; Tr. pp. 111-112.) However, Detective Lawrence did inform Applicant that Alford identified Applicant as the shooter. (Tr. p. 90.) At that point, Applicant made a statement. (Tr. pp. 90-91.)

According to Applicant's June 29th statement, Quan, Wright, and Gibbs wanted to rob someone, and they wanted Applicant to be involved. (Tr. p. 106.) However, before the robbery took place, they told Applicant that they did not need him. Quan, Wright, and Gibbs left Quan's house, and Quan's grandfather gave Applicant a ride to the Kangaroo. Applicant saw Quan, Wright, and Gibbs at the Kangaroo. They "forced" Applicant into Quan's car. They told Applicant to get the gun and rob Alford. Someone told Alford to give "us" your money. At that point, Alford went for his gun as he attempted to run away from Applicant. Applicant admitted he shot Alford; however, Applicant claimed he only shot Alford to keep Alford from shooting

him. Applicant's testimony at trial was largely consistent with his June 29th statement. (Tr. pp. 467-485.) However, at trial, Applicant admitted no one threatened or forced him to rob and shoot Alford; Applicant was just scared of Quan, Wright, and Gibbs. (Tr. pp. 504-505; Tr. p. 509; Tr. p. 514.)

The Jury Charges

At the close of the evidence, Applicant's trial counsel asked the trial judge to instruct the jury on assault and battery of a high and aggravated nature (ABHAN). (Tr. p. 543.) Applicant argued Applicant shot the victim under a heat of passion and sudden provocation, and Applicant did not do anything to provoke the difficulties. Moreover, Applicant claimed Applicant had no ill will toward Alford. (Tr. p. 543-544.) In addition, Applicant argued that in murder cases, voluntary manslaughter was given as a jury instruction in heat of passion cases as a lesser-included offense of murder. (Tr. p. 545.) Therefore, Applicant claimed the evidence supported a charge of ABHAN as a lesser-included offense of ABWIK. Ultimately, the trial judge denied Applicant's request and refused to charge ABHAN. (Tr. p. 544.)

The Sentencing

During sentencing, Applicant argued that he should not be sentenced to LWOP because the State did not prove the New York conviction met the elements of what would be considered a most serious offense under South Carolina law. (Tr. p. 600.) However, the State provided a signed and sealed Certificate of Disposition Indictment that stated Applicant was convicted of "Rape 1st Degree PL 130.35 03 BF," which was the equivalent of South Carolina's criminal sexual conduct with a minor offense ("CSC with a minor"). (Tr. p. 602.) Furthermore, the State provided a rap sheet and paperwork, which stated Applicant forcibly raped his ten year old step-

niece, twice on same day. (Tr. pp. 601-602.) After hearing the arguments, the trial judge sentenced Applicant to life without parole. (Tr. p. 603.) Applicant filed a Motion to Reconsider the Sentence accompanied with a Memorandum of Law in Support of Motion to Reconsider. The trial judge denied Applicant's Motion to Reconsider the Sentence.

ALLEGATIONS RAISED

In his application, Applicant alleged he is being held in custody unlawfully based on allegations of:

1. Ineffective assistance of counsel.
 - a. Counsel failed to prepare and preserve the coercion of the officer's testimony and the testimony of the co-defendant.
 - b. Counsel failed to prepare and investigate the victim's testimony saying one thing and the co-defendant's saying the other.
 - c. Counsel failed to prepare and investigate my arrest for probable cause.
2. My arrest did not have any probable cause.
3. The victim and the co-defendant's testimony did not prove the guilt of the defendant.

In its Return, the State moved to dismiss the allegations regarding his arrest and lack of evidence to establish his guilt as non-cognizable grounds for relief pursuant to the post-conviction relief act. See S.C. Code Ann. § 17-27-20(a)(6) (2003) ("Any person who has been convicted of, or sentenced for, a crime and who claims . . . [t]hat the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy; may institute, without paying a filing fee, a proceeding under this chapter to secure relief. Provided, however, that this section shall not be construed to permit collateral attack on the ground that the evidence was insufficient to support a conviction."). At the start of the evidentiary hearing, Respondent renewed its motion

to dismiss these two grounds for relief. Applicant stated he had no objection to the State's motion to dismiss. Therefore, this Court finds these allegations must be denied and dismissed.

Additionally, Applicant proceeded forward on an allegation that counsel was ineffective for failing to obtain a copy of Detective Lawrence's personnel file and impeach him with the file.

SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

At the evidentiary hearing, trial counsel Megan Ehrlich testified. She testified she was the lead attorney handling Applicant's case and had assistance from Andrew Grimes, a fellow public defender who has since passed away. (PCR Tr.6). She testified Applicant was questioned by law enforcement three separate times, including June 22, 2009, and seven days later on June 29, 2009. (PCR Tr. 7, 9, 31). She testified the lead detective handling this case was Detective Lawrence, who was present when Applicant gave at least two of his statements. (PCR Tr. 7-8). She testified the defense tried to suppress these statements and Grimes handled the pre-trial motion to suppress hearing. (PCR Tr. 7-9). She testified the defense theory for why these statements should be suppressed was that Applicant initially said he did not want to speak to law enforcement and law enforcement continued to question him. (PCR Tr. 9, 31-32). She testified that three different detectives were involved in the questioning of Applicant and none of his statements were recorded. (PCR Tr. 10). She testified law enforcement did not do a report pertaining to any of Applicant's statements. (PCR Tr. 10-11). She testified defense counsel argued Applicant's statements were coerced, but that there was no allegation of physical abuse or threats of harm to Applicant. (PCR Tr. 47). Trial counsel testified Applicant testified at the motion to suppress hearing and during trial. (PCR Tr. 11). She testified the trial court denied the motion to suppress and the statements were introduced at trial. (PCR Tr. 11).

Trial counsel testified that three years after Applicant's trial, in 2014, she was made aware that Detective Lawrence was fired from the Sheriff's Office for having a sexual relationship with a suspect's mother in a homicide investigation. (PCR Tr. 11, 13). She testified this made her think of Applicant's case and how crucial Detective Lawrence's testimony had been in Applicant's case. (PCR Tr. 11). She testified she sought and obtained a copy of Detective Lawrence's personnel file pursuant to a Freedom of Information Act (FIOA) request. (PCR Tr. 11-12, 14). She testified Detective Lawrence's personnel file was quite large and contained numerous instances that she could have used to attack his credibility, including lying about speaking with parents in a missing child investigation, shooting at another vehicle that almost hit his car while he was off-duty, and circumstances surrounding a domestic dispute. (PCR Tr. 13-16, 21-23). She testified the personnel file also revealed Detective Lawrence's investigative skills were marked as 2.5 out of 4 on an evaluation. (PCR Tr. 13-4). She testified she was not aware of any of this information at the time of Applicant's trial in 2011 and had not reason to suspect Detective Lawrence was untruthful or did not perform his job adequately at the time of Applicant's trial. (PCR Tr. 15, 22, 29). She testified if she had known Detective Lawrence had all of these issues before trial, she also would have requested the personnel file for Detective Cook to try to attack the validity of Applicant's statements further. (PCR Tr. 17-18). She elaborated that Detective Cook did not prepare a report of his interrogation of Applicant and was testifying from memory of events that transpired more than two years earlier. (PCR Tr. 18). She testified it was not her standard practice at the time of Applicant's trial to obtain the personnel files of detectives who worked on her clients' cases, but she does this more frequently now. (PCR Tr. 33, 53).

Trial counsel testified the case involved Applicant and three cousins, who were younger than Applicant and appeared to be more sophisticated and could manipulate Applicant. (PCR Tr. 19, 49). She testified two cousins gave statements to law enforcement immediately after they were arrested, but the third cousin, Trevor Gibbs, did not initially provide a statement but testified at trial. (PCR Tr. 19-21). She testified the victim identified Applicant as the shooter from a photo array and that Applicant's hand tested positive for gunshot residue. (PCR Tr. 20).

Trial counsel testified there were some minor inconsistencies between the victim's statement and testimony and that provided by Gibbs, including the location of the first few shots and the color of Applicant's gun, but no major inconsistencies. (PCR Tr. 24-26, 48-49). She testified she reviewed the statements given to law enforcement and highlighted any inconsistencies in preparation for cross-examination. (PCR Tr. 47). She testified he also investigated Gibbs and was able to determine he had violated his house arrest. (PCR Tr. 48). She testified she was not able to find any much information to use for cross-examination of the victim. (PCR Tr. 48).

Counsel testified Applicant was originally arrested for trespassing and was not charged with the three offenses for which he was indicted until the following day. (PCR Tr. 26-27). She testified there was no proof that Applicant was not allowed to be on the property or had otherwise been put on trespass notice. (PCR Tr. 27). She testified there was also an allegation that Detective Lawrence had threatened Applicant by mentioning within Applicant's earshot that the case might become federal if Applicant did not cooperate with law enforcement, which defense counsel raised to the trial court. (PCR Tr. 23-24, 47). She testified she requested jury instructions on self-defense and ABHAN, but both were denied by the trial court. (PCR Tr. 50).

Trial counsel testified she and Grimes spent a significant amount of time with Applicant explaining the advantages and disadvantages of testifying at trial. (PCR Tr. 50-51). She testified that Applicant needed to testify to explain his version of events to the jury, particular once the motion to suppress his statement was denied. (PCR Tr. 51).

Next, Applicant testified on his own behalf and stated he has a tenth grade education. (PCR Tr. 35-36). Applicant testified he believes he was coerced into giving a statement to law enforcement and his attorneys should have moved for suppression on that ground. (PCR Tr. 36-39). He elaborated that Detective Lawrence said his case would be handed over to federal authorities if he did not cooperate and he only provided a statement because he was scared. (PCR Tr. 37). He testified Detective Lawrence made this statement after he was arrested for trespassing, but before he had been charged with any of the more serious charges for which he was ultimately indicted. (PCR Tr. 39). He testified Detective Lawrence was questioned about this and denied making such a statement. (PCR Tr. 38-39). Applicant testified he was apprehended by a SWAT team with a canine unit and was originally told he was not under arrest but was being detained for questioning. (PCR Tr. 40). He testified he originally told law enforcement he did not want to talk. (PCR Tr. 41). He testified it was not until he said he did not want to talk that Detective Lawrence told him he was under arrest for trespassing. (PCR Tr. 42). Applicant testified he was not on trespass notice and otherwise had not been told not to be on the property where he was apprehended. (PCR Tr. 42).

Applicant testified there were discrepancies between the testimony of the victim and Gibbs and that his attorneys should have discovered this and used it to his benefit. (PCR Tr. 44-45). Applicant testified at both the pre-trial motions hearing and at trial. (PCR Tr. 38, 46).

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 hearings. 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).

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she must prove “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. The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Courts presume 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. 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." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

After careful review of the entire record, including the testimony presented at the evidentiary hearing, based on the standard discussed above, this Court finds Applicant has failed to carry his burden in this action in regards to his allegations of ineffective assistance of counsel. Below are the findings in regards to each specific allegation of ineffective assistance of counsel raised by Applicant.

Allegation: Counsel failed to prepare and preserve arguments that his statements should be suppressed based on coercive tactics of law enforcement

Applicant asserts trial counsel was ineffective for failing to prepare and argue his statements should be suppressed based on the coercive tactics of law enforcement. Particularly, Applicant asserts trial counsel should have argued Detective Lawrence's references within Applicant's earshot that his case could become federal if he did not cooperate with law enforcement induced his June 29th statement, and therefore was inadmissible due to coercion. At trial, Applicant testified Detective Lawrence told him that if the federal authorities picked up his case it would be hard on him; in contrast, Detective Lawrence testified he never threatened to turn over Applicant's case to the federal authorities. (Tr. pp. 82-83; Tr. pp. 111-112.) During the motion to suppress hearing, trial counsel argued the statement should be suppressed, in part, based on Applicant's claims that Detective Lawrence threatened to turn his case over to federal authorities if he did not assist law enforcement. (Tr. pp. 124-25, 129). Despite this, Applicant argues trial counsel could have done more to argue for suppression based on coercion.

A review of the record shows that trial counsel questioned Applicant and law enforcement regarding coercion and threats to Applicant, particularly regarding handing his case over to federal authorities if he did not cooperate. After making these arguments, the trial court denied Applicant's motion to suppress these statements. This Court finds Applicant properly argued for suppression of Applicant's statements and therefore, did not perform deficiently. Therefore, this Court finds this allegation must be denied and dismissed with prejudice.

Allegation: Counsel failed to prepare and investigate the victim's testimony saying one thing and the co-defendant's saying the other.

Applicant asserts trial counsel was ineffective for failing to investigate into discrepancies between the statements and testimony provided by co-defendant Gibbs and the victim. Specifically, Applicant contends there were inconsistencies between the description of Applicant's gun and the location of the bullets fired from the gun. Counsel testified she was aware of these minor discrepancies and highlighted them to the jury. The record supports counsel's testimony. During closing arguments, trial counsel highlighted these inconsistencies. See Tr. 561-62. Moreover, both witnesses were thoroughly cross-examined by counsel during trial. This Court finds trial counsel performed proficiently in handling the statements and testimony of both Gibbs and the victim. This Court finds Applicant has failed to meet his requisite burden of proof and this allegation is denied and dismissed with prejudice.

Allegation: Counsel failed to prepare and investigate an argument surrounding Applicant's arrest

Applicant asserts trial counsel was ineffective for failing to properly investigate the facts surrounding his arrest. However, a review of the record reveals counsel questioned multiple witnesses regarding the validity of Applicant's arrest, how it impacted his statements to law

enforcement, and argued his arrest was improper. Therefore, this Court finds this allegation must be denied and dismissed with prejudice.

Allegation: counsel was ineffective for failing to obtain a copy of Detective Lawrence's personnel file and impeach him with said file.

Applicant asserts trial counsel was ineffective for failing to obtain a copy of Detective Lawrence's personnel file, which he asserts would have provided pivotal information that could have been used to impeach him and attack his credibility. The majority of testimony presented at the evidentiary hearing focused on this allegation. Counsel testified she obtained a copy of Detective Lawrence's personnel file after she became aware that Detective Lawrence was fired from the Sheriff's Office for having a sexual relationship with a suspect's mother in a homicide investigation. She testified she requested and received a copy of his personnel file pursuant to a FIOA request, which was not part of her standard practice. She testified the file contained several items that she could use to impeach his credibility and that she would have used this information to Applicant's benefit if she had the information prior to his trial. However, she testified she was not aware of any of this information at the time of Applicant's trial in 2011 and had no reason to suspect Detective Lawrence was untruthful or did not perform his job adequately at the time of Applicant's trial. This Court agrees and finds trial counsel performed adequately based on the available information she had at the time of Applicant's trial. Moreover, Applicant has not established Detective Lawrence's role in Applicant's case involved anything unprofessional or dishonest. Therefore, this Court finds Applicant has failed to meet his requisite burden of proof. This allegation is denied and dismissed with prejudice.

CONCLUSION

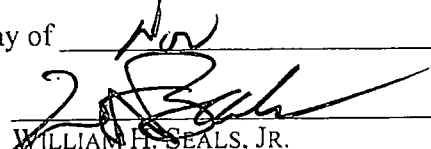
Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for is denied and dismissed with prejudice.

This Court notes Applicant must file and serve a notice of appeal within thirty days from the receipt of this Order by counsel of record 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), SCRCP, provides 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.

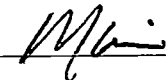
IT IS THEREFORE ORDERED:

1. This application for post-conviction relief must be denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the State.

AND IT IS SO ORDERED this 11 day of Nov, 2017.



WILLIAM H. SEALS, JR.
Presiding Judge
Ninth Judicial Circuit


_____, South Carolina



ALAN WILSON
ATTORNEY GENERAL

December 5, 2017

The Honorable Julie J. Armstrong
Charleston Clerk of Court
100 Broad St Ste 106
Charleston, SC 29401-2210

Re: Alonza Dennis, # 128392 v. State of South Carolina
2015-CP-10-5496

Dear Ms. Armstrong:

Enclosed please find the original Order of Dismissal signed by the Honorable William H. Seals, in the above-captioned case, for filing in your office.

Pursuant to Rule 71.1(f), of the South Carolina Rules of Civil Procedure, please "provide notice of entry of judgment and serve a copy of the order or judgment to the parties as provided in Rule 77(d), SCRCF."

In addition, please forward proof of service and a time stamped copy back to our office for our file.

Sincerely,

Megan Harrigan Jameson
Senior Assistant Deputy Attorney General

MHJ/jaj

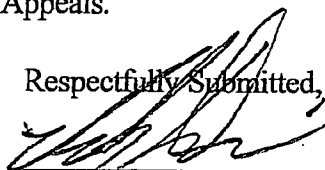
STATE OF SOUTH CAROLINA) IN THE SUPREME COURT OF SOUTH CAROLINA
COUNTY OF CHARLESTON) Case #: 2014-CP-10-5496
ALONZA DENNIS,)
Applicant.) REQUEST FOR REPRESENTATION ON APPEAL
-versus-)
STATE OF SOUTH CAROLINA,)
Respondent.)

On behalf of the request of the above-named Applicant, to be represented by the South Carolina Commission of Indigent Defense, Appellate Division (SCCID), the undersigned attorney would show unto this Honorable Court that:

1. He is the attorney for the Applicant-Appellant in the above captioned case. The Applicant-Appellant was in custody during and taken into custody immediately following the Post Conviction Relief (PCR) hearing and was not available to personally sign this request;
2. The Applicant-Appellant was represented by the undersigned attorney as an indigent, pursuant to a contract with the SCCID;
3. The Applicant-Appellant has been informed that he may request assistance from the SCCID Appellate Division in perfecting his appeal;
4. A timely Notice of Intent to Appeal has been filed on the Applicant-Appellant's behalf;
5. The Applicant-Appellant has been informed that nothing requires SCCID Appellate Division to pursue this appeal unless that office's Chief Attorney is satisfied that there is arguable merit to this appeal and that he cannot afford to hire an attorney.

At this time, the Applicant-Appellant requests the aid of the SCCID Appellate Division in perfecting his appeal to the South Carolina Court of Appeals.

Respectfully Submitted,



Rodney D. Davis
South Carolina Bar #: 12396

Charleston, South Carolina
January 17, 2018

RECEIVED

JAN 22 2018

S.C. SUPREME COURT

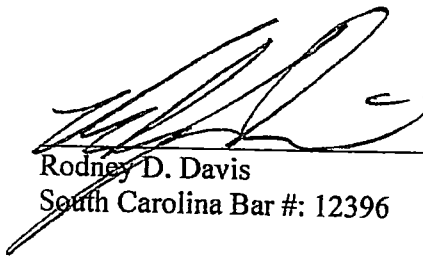
STATE OF SOUTH CAROLINA)

CASE #: 2014-CP-10-5496

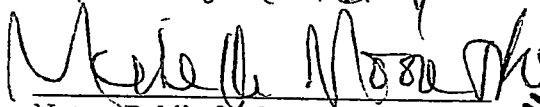
COUNTY OF CHARLESTON)

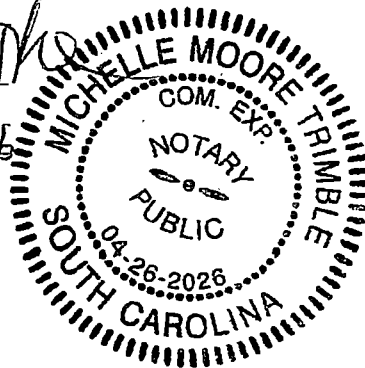
VERIFICATION

PERSONALLY appeared before me, Rodney D. Davis, being first duly sworn, deposes and says that he has read the foregoing *Request for Representation on Appeal* to be filed on behalf of the Applicant-Appellant, **Alonza Dennis**, and the same is true of his knowledge except those matters alleged on information and belief, and as to those matters, he believes them to be true.


Rodney D. Davis
South Carolina Bar #: 12396

SWORN to and subscribed to me this
17 day of January, 2018.


Notary Public for South Carolina
My Commission expires 04/26/2026



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JAN 22 2018
S.C. SUPREME COURT



Lowcountry Law Office

4000 Faber Place Drive, Suite 300

Charleston, SC 29405

Phone: 843-323-4353 Fax: 843-323-4101

E-Mail: Davis@LowcountryLawOffice.com

January 17, 2018

Kimberly McCall
South Carolina Commission on Indigent Defense
PO Box 11433
Columbia, SC 29211-1433

RE: Alonza Dennis v. State of South Carolina; Case #: 2014-CP-10-5496

Dear Ms. McCall:

Enclosed is a duplicate set of Appeal documents that I have forwarded to the Clerk of the Supreme Court of South Carolina concerning the above-listed Post Conviction Relief (PCR) case. I was appointed to the PCR case pursuant to a contract that I have with your office. I have requested that your office assume the appeal of this case.

Should you have any questions, please do not hesitate to contact me.

Thank you for your assistance with this matter.

Sincerely,



Rodney D. Davis
South Carolina Bar # 12396
4000 Faber Place Drive, Suite 300
Charleston, SC 29405
Davis@LowCountryLawOffice.com

RECEIVED

JAN 22 2018

S.C. SUPREME COURT

Enclosure(s). As stated above.
RDD/mmt