

The Law Office of Tristan M. Shaffer

Litigation • Injury Law • Criminal Defense

January 28, 2018

Daniel Shearouse
Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

RECEIVED

JAN 31 2018

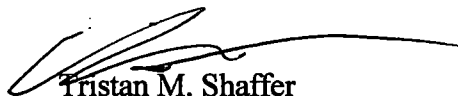
S.C. SUPREME COURT

Re: Ronald Gooden # 191688 v. State (2013-CP-22-1007)

Dear Mr. Shearouse,

Please find the enclosed Notice of Appeal, Certificate of Service, and Order of Dismissal in the above referenced case.

Sincerely,



Tristan M. Shaffer

CC: Georgetown County Clerk of Court
Johnny James
Ronald Gooden
Paula Murdoch (via e-mail)

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

William H. Seals, Circuit Court Judge

Case No. 2013-CP-22-1007

Ronald E. Gooden # 191688,

Petitioner,

v.

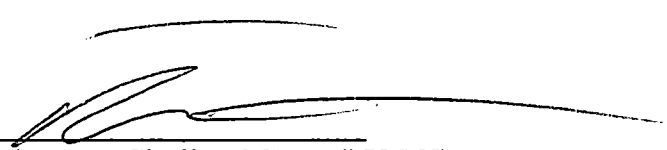
The State of South Carolina,

Respondent.

NOTICE OF APPEAL

Petitioner appeals the order dismissing his post-conviction relief action filed January 16, 2018 and received by Petitioner on January 28, 2018.

January 28, 2018



Tristan M. Shaffer (SC Bar # 77565)
P.O. Box 1027
Chapin, SC 29036
(803) 941-7514
Attorney for Petitioner

Other Counsel of Record:
Johnny E. James, Jr.
South Carolina Attorney General's Office
P.O. Box 11549
Columbia, South Carolina 29211
Attorney for Respondent

RECEIVED

JAN 31 2018

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

William H. Seals, Circuit Court Judge

Case No. 2013-CP-22-1007

RECEIVED

JAN 31 2018

S.C. SUPREME COURT

Ronald E. Gooden # 191688,

Petitioner,

v.

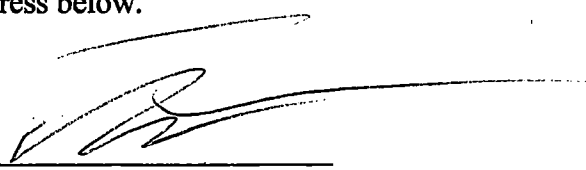
The State of South Carolina,

Respondent.

CERTIFICATE OF SERVICE

I certify that on the date below I served the Notice of Appeal on The State of South Carolina by mailing a copy to the Respondent at the address below.

January 28, 2018


Tristan M. Shaffer (SC Bar # 77565)
P.O. Box 1027
Chapin, SC 29036
(803) 941-7514
Attorney for Petitioner

Other Counsel of Record:
Johnny E. James, Jr.
South Carolina Attorney General's Office
P.O. Box 11549
Columbia, South Carolina 29211
Attorney for Respondent

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF GEORGETOWN)

Ronald Edward Gooden,) Case No.: 2013-CP-22-01007
S.C.D.C. No. 191688,)

Applicant,)

ORDER OF DISMISSAL

v.)

State of South Carolina,)

Respondent.)

FILED
GEORGETOWN COUNTY
2018 JAN 16 AM 10:56
ALMA Y. WILLIAMS
CLERK OF COURT

This matter comes before the Court by way of an application for post-conviction relief filed by Ronald Edward Gooden ("Applicant") on October 1, 2013. Respondent made its return on or about May 14, 2014. The Court convened an evidentiary hearing into the matter on Thursday, September 21, 2017, at the Horry County Courthouse in Conway, South Carolina. Applicant was present at the hearing and represented by Tristan M. Shaffer, Esq. Johnny Ellis James Jr., of the South Carolina Attorney General's Office, represented Respondent.

Only Applicant's trial counsel, C. Reuben Goude, Esq. ("Counsel") testified at the evidentiary hearing. The Court had before it Applicant's records from the South Carolina Department of Corrections, a copy of the original trial transcript, the records of the Georgetown County Clerk of Court regarding the subject convictions, Applicant's direct appeal records, and the pleadings. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Georgetown County Clerk of Court. Applicant was indicted at the March 2011 term of the Georgetown County Grand Jury for attempted murder (2011-GS-22-00054). C.

Reuben Goude, Esq. represented Applicant, and Erin Bailey, of the Fifteenth Circuit Solicitor's Office, prosecuted the case. On October 26, 2011, Applicant proceeded to trial before the Honorable Benjamin H. Culbertson and a jury. The jury found Applicant guilty of the lesser-included offense of assault and battery of a high and aggravated nature on October 27, 2011. Judge Culbertson sentenced Applicant to imprisonment for a term of 20 years.

Applicant filed a timely notice of appeal and a direct appeal was perfected by LaNelle Cantey Durant, Esq., who raised the following issue on appeal:

The trial court erred in admitting Gooden's 1992 conviction for strong armed robbery for impeachment purposes. This was subject to a Rule 403 analysis for prejudice since it was distinguished from State v. Al-Amin, 353 S.C. 405, 578 S.E.2d 32 (Ct. App. 2003).

The parties proceeded to oral arguments on April 10, 2013. By unpublished opinion decided April 24, 2013, the South Carolina Court of Appeals affirmed Applicant's convictions, finding the issue raised on appeal was not preserved for appellate review. State v. Gooden, Op. No. 2013-UP-167 (S.C. Ct. App. filed April 24, 2013). The Remittitur was issued on June 3, 2013.

Present Application

In his post-conviction relief application, Applicant alleges he is being held unlawfully for the following reasons:

1. "Ineffective [Assistance] of Trial Counsel on several fronts"
 - a. "Failed to make [continuous] objection of prior conviction"
 - b. "Failed to request Blair Hearing"
 - c. "failed to request to be evaluated for criminal responsibility"

At the evidentiary hearing, Applicant withdrew the second and third allegations and proceeded only on the first allegation that Counsel was ineffective for failing to make a continuous objection regarding Applicant's prior conviction.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the records submitted to it by the parties and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented.

A. Ineffective Assistance of Counsel

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.” Butler at 442, 334 S.E.2d 441 (quoting Strickland v. Washington, 466 U.S. 668, 686 (1984)). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Id.

“[C]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Butler at 442, 334 S.E.2d 441 (quoting Strickland at 690). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989). “Judicial scrutiny of counsel’s performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel’s assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel’s defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable.” Strickland, 466 U.S. at

689; Edwards v. State, 392 S.C. 449, 456-57, 710 S.E.2d 60, 64 (2011). “[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel.” Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)).

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 at 117, 386 S.E.2d at 625 (citing Strickland at 688). 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 at 117-18, 386 S.E.2d at 625 (citing Strickland at 694).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. Strickland at 696. A court need not first determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. at 696-97.

LAC Allegation #1 – Failure to Continuously Renew Objection

Applicant alleges Counsel was ineffective for failing to continuously object to the admission of Applicant’s 1992 conviction for strong-arm robbery. The South Carolina Rules of Evidence provide that evidence that an accused has been convicted of a crime may be introduced for the purpose of attacking his credibility if, among other grounds, the crime involved dishonesty or false statement, regardless of punishment. Rule 609(a)(2), SCRE.

Evidence of a conviction under this rule is not admissible if a period of more than ten years has elapsed since the date of conviction *or of the release of the witness from the confinement imposed for that conviction*, whichever is the later date, unless the court determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect.

Rule 609(b), SCRE (emphasis added). At the time of Applicant's 2011 trial, robbery was a crime of dishonesty, such that the admission of prior robbery convictions did not require analysis of its probative value versus its prejudicial effect. State v. Al-Amin, 353 S.C. 405, 424-25, 578 S.E.2d 32, 42-43 (Ct. App. 2003) (overturned by State v. Broadnax, 414 S.C. 468, 779 S.E.2d 789 (2015)).

At trial, the admissibility of Applicant's 1992 conviction for strong-arm robbery was raised to the trial court *in limine*. Tr. 32-38. Applicant was released from confinement on January 18, 2002, within the 10 year window at the time of trial. Tr. 32, ll. 8-15. Regardless, Counsel argued that the conviction itself occurred some 20 years prior and was "too remote and not relevant and the prejudicial effect since it happened 20 years ago outweighs any credibility issues in this case[.]" Tr. 33, ll. 3-8. The trial court weighed the probative value against the prejudicial effect of admitting impeachment with the prior conviction and initially held that he would not permit its use. Tr. 33-35. The State alerted Judge Culbertson to State v. Al-Amin and, after a brief recess, the trial court reversed its holding and permitted the use of the robbery for impeachment purposes. Tr. 36-37.

Applicant testified at trial in his own defense. Tr. 143-91. Among other extensive details, Applicant testified that he previously threatened the victim and his associates that he would set them on fire if they did not cease harassing him. Tr. 162, ll. 4-6. Applicant testified to finding a gas can next to a lawnmower on the way to the store, dousing the victim with the fuel, and to igniting him. Tr. 171-73. Applicant denied that he wished to kill the victim, only that he

wished for the victim to leave him alone. Tr. 174, ll. 3-11. Applicant turned himself in very shortly after the attack, declaring "It's me. I did it." Tr. 82-83, 103-04 (quoted admission), 173. On cross-examination of Applicant at trial, the State impeached Applicant with the conviction without further objection from Counsel. Tr. 186, ll. 7-17.

At the evidentiary hearing, Counsel indicated he no longer had Applicant's file, as he had shredded it upon retirement. Nonetheless, Counsel launched into an exhaustive recollection of the facts of the case, from which Counsel recalled concluding that Applicant had no defenses available to him. Counsel testified he could not get a deal from the solicitor and that Applicant would not win at trial. Counsel recalled getting good testimony from some of the State's witnesses and that Applicant was ultimately convicted only of the lesser-included ABHAN.

As to the prior conviction, Counsel testified that he lost the preliminary hearing due to Al-Amin. Counsel argued that he did not wish to object in front of the jury and draw any further attention to Applicant's prior conviction for strong-arm robbery. Counsel took the position that, absent the objection, the prior record would make no difference to the jury.

The Court finds no deficiency on the part of counsel or prejudice therefrom. Counsel clearly articulated multiple valid strategic reasons to not object to the reference to Applicant's prior robbery conviction and, as such, this Court will not deem his counsel ineffective. See Stokes v. State, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992). Furthermore, any conceivable error by Counsel in this case was harmless in light of the uncontroverted and overwhelming testimony from numerous witnesses, including Applicant's own admissions at the time of the crime *and* at the time of trial, that he lit the victim on fire. This Court finds that given the facts of the case, Applicant received the best possible outcome from the impressive efforts of extremely competent counsel. Accordingly, Applicant's request for relief is **DENIED**.

III. CONCLUSION

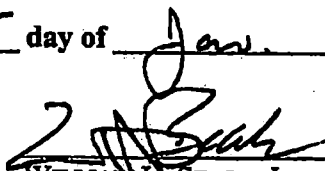
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.


This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 5 day of Jan., 2018.

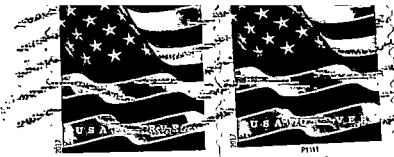

WILLIAM H. SEALS, JR.
Presiding Judge
Fifteenth Judicial Circuit


_____, South Carolina

Law Office of Tristan M. Shatter
P.O. Box 1027
Chapin, SC 29036

COLUMBIA SC 29211

29 JAN 2018 PM 4:11



Daniel Shearouse
Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

29211-133030

