

RECEIVED

LAW OFFICE OF
C. RAUCH WISE
Attorney & Counselor at Law
305 Main Street
Greenwood, SC 29646
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MAR 16 2018

S.C. SUPREME COURT

C. Rauch Wise

Telephone
(864) 229-5010
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(864) 229-2665

March 12, 2018

Hon. Daniel E. Shearouse, Clerk
Supreme Court of South Carolina
P.O. Box 113300
Columbia, SC 29211

Re: Jerome Campbell #349454 vs. State of South Carolina, Case No. 2014-CP-10-3019

Dear Mr. Shearouse:

I am enclosing herewith for filing the original Notice of Appeal together with the original Affidavit of Service regarding the above matter. Your help is greatly appreciated.

With kindest regards, I am

Very truly yours,


C. Rauch Wise

CRW/slt

cc Megan Harrigan Jameson
Charleston Cnty Clerk Office
Hon. William H. Seals, Jr.

RECEIVED

MAR 16 2018

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

S.C. SUPREME COURT

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

Case No 2014-CP-10-3019

Jerome Campbell, # 349454, AppLicant,

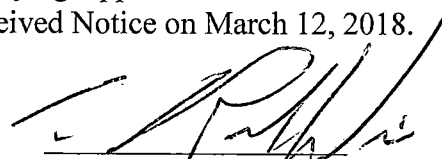
vs.

State of South Carolina, Respondent.

NOTICE OF INTENT TO APPEAL

Jerome Campbell appeals the Order of the Honorable William H. Seals, Jr. dated January 9, 2018, and filed on January 17, 2018 and the Order Denying Applicant's Motion to Alter or Amend Judgment filed on March 7, 2018. Applicant received Notice on March 12, 2018.

March 12th, 2018



C. Rauch Wise
Attorney at Law
305 Main Street
Greenwood, SC 29646
(864) 229-5010

Attorney for Applicant

OTHER COUNSEL OF RECORD

Megan Harrigan Jameson
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211-1549

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

MAR 16 2018

S.C. SUPREME COURT

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
William H. Seals, Jr., Circuit Court Judge

Case No 2014-CP-10-3019

Jerome Campbell, # 349454, Applicant,

vs.

State of South Carolina, Respondent.

AFFIDAVIT OF SERVICE

Personally appeared before me Sandy Traynham, who, after being duly sworn, deposes and says that she is the Secretary for C. Rauch Wise, Attorney for the Applicant in the above entitled case. That on March 12, 2018, she did deposit in the United States Mail with proper postage affixed thereto, a copy of the Notice of Intent to Appeal in the above case addressed to Megan Harrigan Jameson, SC Attorney General Office, P.O. Box 11549, Columbia, SC 29211

Sworn to and Subscribed

Sandy Traynham

before me this 12th day

of March, 2018.

[Signature]
Notary Public for South Carolina

My Commission Expires: 12/12/2019

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Jerome Campbell, #349454)

Plaintiff,)

vs.)

STATE OF SOUTH CAROLINA)

Defendant.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO: 2014-CP-10-3019

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney:
Clarence Rauch Wise, Bar No.
Address:
305 Main St.
Greenwood, SC 29646
Phone: _____ Fax _____
E-mail: _____ Other: _____

Defendant's Attorney:
Megan Harrigan Jameson, Bar No.
Address: South Carolina Attorney General's Office
PO Box 11549
Columbia, SC 29211
Phone: _____ Fax _____
E-mail: _____ Other: _____

- MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
- FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
- PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: _____

Estimated Time Needed: _____

Court Reporter Needed: YES / NO

SECTION II: Motion/Order Type

Written motion attached

Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Megan Harrigan Jameson
Signature of Attorney for Plaintiff / Defendant

January 4, 2018
Date submitted

SECTION III: Motion Fee

PAID - AMOUNT: \$ _____

EXEMPT:

(check reason)

- Rule to Show Cause in Child or Spousal Support
- Domestic Abuse or Abuse and Neglect
- Indigent Status State Agency v. Indigent Party
- Sexually Violent Predator Act Post-Conviction Relief
- Motion for Stay in Bankruptcy
- Motion for Publication Motion for Execution (Rule 69, SCRPC)
- Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
- Other: _____

JUDGE'S SECTION

Motion Fee to be paid upon filing of the attached order.

Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

MOTION FEE COLLECTED: \$ _____

CONTESTED - AMOUNT DUE: \$ _____

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AG
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SOL
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STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
Jerome Campbell, SCDC # 349454,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No.: 2014-CP-10-3019

ORDER OF DISMISSAL

2018 JAN 17 AM 9:48
JULIE B. BENTLEY
CLERK OF COURT

This matter comes before the Court by way of an application for post-conviction relief filed May 12, 2014, by Jerome Campbell (Applicant) alleging ineffective assistance of counsel. Respondent made its Return on March 4, 2015, requesting an evidentiary hearing be held. Thereafter, Applicant amended his application. 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 C. Rauch Wise, 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. During its September 2009 term of court, the Charleston County Grand Jury indicted Applicant for assault with intent to kill (Frank Haigler) (2009-GS-10-6730); murder (Michael German) (2009-GS-10-6731); assault with intent to kill (Anthony German) (2009-GS-10-6732); and assault with intent to kill (Michael Allen) (2009-GS-10-6733); all charges arose

from an incident on January 9, 2009. Applicant was represented by William Stephen Harris and Jason Todd Mikell. The prosecution was handled by Assistant Solicitors Gregory Voigt and Elizabeth B. Riddle of the Ninth Circuit Solicitor's Office.

On January 23, 2012, the matter was called to trial in the Charleston County Court of General Sessions before a jury and the Honorable Deadra Jefferson, circuit court judge. On January 27, 2012, the jury convicted Applicant on all four indictments. Judge Jefferson sentenced Applicant to concurrent terms of imprisonment of thirty years for murder, and ten years for each of the assault with intent to kill verdicts.

Applicant filed a timely notice of appeal and his appeal was perfected by Stephan Futeral, Esquire, and Thomas Nelson, Esquire. On appeal, Applicant argued the trial court abused its discretion by allowing the State to challenge and remove a juror without cause on the second day of trial, which he also asserted amounted to a de facto sixth preemptory challenge. Following briefing, the South Carolina Court of Appeals affirmed Applicant's convictions and sentences in an unpublished opinion. State v. Campbell, No. 2014-UP-338 (S.C. Ct. App. filed August 7, 2013). Applicant filed a Petition for Rehearing, which was denied on October 23, 2013. The Remittitur was issued on December 2, 2013.

ALLEGATIONS RAISED

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

1. Trial counsel was ineffective in that he failed to object to the trial judge charging the law of aiding and abetting when the indictment only alleged the applicant acted as the principal.
2. Trial counsel was ineffective for his failure to object to the trial judge charging

the hand of one, hand of all charge because the facts did not establish or prove the occupants of the automobile were acting in concert.

3. Trial counsel failed to object to the mutual combat charge as there was no evidence of mutual combat.
4. Trial was ineffective for not objecting to the failure to charge the law concerning the defense of others.

SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

Applicant testified first at the evidentiary hearing. He testified he was living in Charlotte at the time of the incident but was in Charleston visiting family and friends. He testified his niece was married to the brother of the man that was killed and there was a dispute about wanting to see her baby. He testified he hired counsel and that they had a good relationship. However, Applicant believed counsel should have objected to jury instructions on mutual combat, aiding and abetting, and the hand-of-one, hand-of-all jury instructions. Applicant testified he did not shoot a gun and did not encourage or conspire with anyone else to shot a gun. He testified he was in the car with Aaron Burn and John Watson when he left the scene. He also testified counsel failed to request a jury instruction on defense of others, although he acknowledged the trial court instructed the jury on self-defense. Applicant testified there was some evidence presented that his group was shot at, including sound from a surveillance video that was played during trial and gunshot residue on two of the people that were at the store. Applicant testified he was aware of the allegations against him. Applicant testified there was testimony presented at trial that at least two people with him had guns. Applicant testified he had an opportunity to testify at trial and he elected not to testify.

Trial counsel William Harris testified next. He testified Applicant's case file has been destroyed due to damage after trial, but that he remembers the case very well. He testified the case involved shots fired from a car speeding away from an apartment complex and decedent, who was standing by a gas station wall, was wounded by a ricochet bullet. He testified all the people at the store had gunshot residue on their persons, including on their hands. He elaborated that the State's expert explained the residue likely sprinkled down from the bullet as it traveled overhead, which he characterized as not credible. Counsel testified that he urged Applicant to testify so that he could tell his side of the story, but against counsel's advice, Applicant elected to testify because he did not want to be questioned by the prosecution, particularly about who was the shooter—a relative of Applicant's. Counsel testified he discussed this numerous times with Applicant and Applicant ultimately made the decision not to testify in his defense.

Counsel testified he requested a jury instruction on self-defense and defense of others, but the trial court declined to instruct the jury on defense of others. Counsel testified the trial court's refusal to charge defense of others hurt his argument during closing. He elaborated the video from the surveillance camera indicates people at the store shot towards Applicant and his group first, and the shots from Applicant's group were in response. However, counsel testified he did not make an objection to the trial court's refusal to charge defense of others following the jury charge. He testified he later regretted requesting a self- defense charge because of the particular instruction the trial court gave, including mutual combat language.

Counsel testified the indictment alleged Applicant was the shooter, not an accomplice, but the trial court instructed the jury on accomplice liability and the hand-of-one, hand-of-all. He testified there was evidence and testimony presented that there had been an altercation or dispute

earlier that day, but no evidence that Applicant or the two people in the car with him conspired to shoot anyone. However, he testified he did not object to this jury instruction. He testified he believes he did not object to this instruction because although everyone agreed Applicant was not the shooter, they were unsure who the actual shooter was, and therefore, it was not practical to argue Applicant did not conspire with the shooter when the specific shooter was unclear. Counsel testified the evidence presented showed Applicant was in the car with at least two other individuals and at least one individual from the car fired a shot. He testified there was also testimony from Frank Heyward that Applicant had driven by his house earlier the same day and said something to him while pointing a gun at him. He testified this is likely enough evidence to get a jury instruction on accomplice liability. However, counsel elaborated he believed he established to the jury that Heyward was a compulsive liar.

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: Trial counsel failed to object to the jury charge on aiding and abetting and hand-of-one, hand-of all

Applicant asserts trial counsel was ineffective for failing to object to the trial judge charging the law of aiding and abetting when the indictment only alleged the applicant acted as

the principal. Additionally, Applicant alleges trial counsel was ineffective for failing to object to the trial judge charging the hand of one, hand of all charge because the facts did not establish or prove the occupants of the automobile were acting in concert.

Counsel testified there was evidence presented that there had been an altercation or dispute earlier that day and that Applicant had driven by Heyward's home with a gun drawn, but no evidence was presented that Applicant or the two people in the car with him conspired to shoot anyone. He acknowledged it was a question for the jury as to whether Applicant and the others in the car had conspired or acted in concert to shoot the victims, and therefore, the jury instructions likely would have been given even if he had objected.

During a trial, the law to be charged is determined by the evidence presented. State v. Holland, 385 S.C. 159, 165, 682 S.E.2d 898, 901 (Ct. App. 2009). When instructing the jury on the law, the trial judge is required to charge only the current and correct law of South Carolina. State v. Buckner, 341 S.C. 241, 246, 534 S.E.2d 15, 18 (Ct. App. 2000). A trial judge's jury instructions are appropriate if they are substantially correct and adequately cover the law applicable to the particular case. State v. Foust, 325 S.C. 12, 16, 479 S.E.2d 50, 52 (1996); see State v. Adkins, 353 S.C. 312, 318, 577 S.E.2d 460, 464 (Ct. App. 2003) ("A jury charge is correct if, when the charge is read as a whole, it contains the correct definition and adequately covers the law.").

This Court agrees and finds the jury instructions on aiding and abetting and hand-of-one, hand-of-all were properly given, and any objection made by counsel would have been denied. Therefore, this allegation must be denied and dismissed with prejudice.

Allegation: Trial counsel failed to object to the jury charge on mutual combat

Applicant asserts trial counsel was ineffective for failing to object to the trial judge charging the law mutual combat when there was no evidence presented of mutual combat.

“Mutual combat exists when there is ‘mutual intent and willingness to fight.’ ” Jackson v. State, 355 S.C. 568, 571, 586 S.E.2d 562, 563 (2003) (quoting State v. Graham, 260 S.C. 449, 450, 196 S.E.2d 495 (1973)). Mutual intent is “manifested by the acts and conduct of the parties and the circumstances attending and leading up to the combat.” Id. Mutual combat bars a claim of self-defense because it negates the element of “not being at fault.” Id.

In this case, the State asserted that Applicant was not entitled to a self-defense charge based on mutual combat during the charge conference and again made similar arguments during its closing. As discussed above, the law to be charged at trial is determined by the evidence presented. See Holland, 385 S.C. at 165, 682 S.E.2d at 901. Here, there was some evidence presented that Applicant engaged in a mutual willingness to fight throughout the day of the incident. Therefore, the trial court’s instruction on mutual combat was supported by the evidence presented at trial and any objection would not have been successful. Therefore, this allegation is denied and dismissed with prejudice.

Allegation: counsel failed to object to the court’s failure to charge the law concerning the defense of others.

Applicant asserts trial counsel was ineffective for failing to object to the trial court’s refusal to instruct the jury on the law of defense of others. Counsel testified and the record reveals that counsel requested the trial court instruct the jury on defense of others during the charge conference. See Tr. P. 660-69. Ultimately, the trial court declined to instruct the jury on

the defense of others, noting there was no testimony presented that Applicant shot in defense of someone else. See Tr. P. 669. However, the trial court did instruct the jury on self-defense, which was supported by the evidence. Although Applicant acknowledges counsel requested and argued in support of a jury charge on defense of others, he alleges trial counsel was ineffective for failing to object to the lack of this particular charge at the conclusion of all jury instruction. This Court finds this argument must be denied and dismissed, as counsel acted in accordance with reasonable professional standards in requesting the defense of others instruction and arguing vigorously in support of the charge. Moreover, this Court finds Applicant cannot establish any requisite prejudice from counsel's alleged deficiency, as there is no reasonable likelihood the result of the proceeding would have been different, i.e., Applicant would have been acquitted, had counsel objected. Therefore, this allegation must be denied and dismissed with prejudice.

CONCLUSION

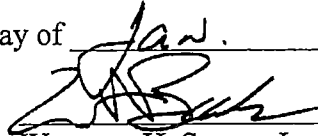
Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for is denied and dismissed with prejudice.

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), SCRCR, 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 Jerome Campbell shall remain in the custody of the State.

AND IT IS SO ORDERED this 9 day of Jan., 2018.



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

Mario, South Carolina

6-11

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
Jerome Campbell, SCDC # 349454,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No.: 2014-CP-10-3019

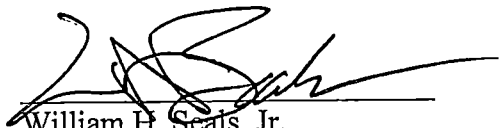
**ORDER DENYING APPLICANT'S
MOTION TO ALTER OR AMEND
JUDGMENT**

2018 MAR -7 AM 11:07
CLERK OF COURT

This matter comes before the Court by way of Applicant's "Motion to Alter or Amend." The Respondent made its Return to this motion requesting it be denied and dismissed.

This Court's Order of Dismissal denying and dismissing Applicant's post-conviction relief application was filed on January 17, 2018. Based upon careful reconsideration of all the evidence in this case and upon full consideration of Applicant's motion and Respondent's return, this Court is not persuaded to alter or amend the judgment. This Court further finds that oral argument would not aid in the reconsideration of the original judgment. Therefore, this Court finds that the original Order of Dismissal shall stand as it was written.

AND IT IS SO ORDERED this 2 day of March, 2018.


William H. Seals, Jr.
Presiding Judge
Ninth Judicial Circuit

Marion, South Carolina

LAW OFFICE OF
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March 12, 2018

Karen Andersen
PO Box 333
Huger, SC 29450

Re: Jerome Campbell #349454 vs. State of South Carolina, Case No. 2014-CP-10-3019

Dear Ms. Andersen:

The post conviction relief hearing regarding the above matter was heard before the Honorable William H. Seals, Jr., General Sessions Judge in Charleston County on January 12, 2017. My records indicate that you were the court reporter for this case.

I request that you provide me with a transcript of the proceedings.

Please let me know the estimated charge for this transcript so that I can obtain the funds to cover this request. I agree to pay the per page charge for this transcript, as provided by Rule 607, SCACR.

With kindest regards, I am

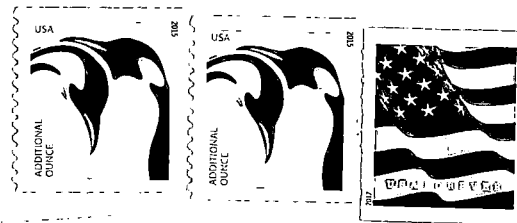
Very truly yours,


C. Rauch Wise

CRW/slt

cc SC Court Administration
Megan Harrigan Jameson
Charleston Cnty Clerk Office
SC Supreme Court
Hon. William H. Seals, Jr.

LAW OFFICE OF
C. RAUCH WISE
Attorney & Counselor at Law
305 Main Street
Greenwood, SC 29646



Hon. Daniel E. Shearouse, Clerk
Supreme Court of South Carolina
P.O. Box 113300
Columbia, SC 29211