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March 30, 2018

RECEIVED

APR 03 2018

S.C. SUPREME COURT

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

RE: Cary Ryals v State of SC; Case #: 2016-CP-08-216

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 & Grant of Appeal Pursuant to *White v State*; and
- (3) 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 cases. 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 the 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: Justin J. Hunter, Assistant Attorney General
Paula Murdoch, Appellate Division, SCCID

RECEIVED

APR 03 2018

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

The Honorable Michael G. Nettles

Case #: 2016-CP-08-216

Cary G. Ryals,

Appellant.

v.

State of South Carolina,

Respondent.

NOTICE OF APPEAL

Cary G. Ryals appeals the denial of his Post Conviction Relief (PCR) application and his conviction in this case. An evidentiary hearing was held before the Honorable Michael G. Nettles on December 4, 2017, and the Applicant was granted a review of direct appeal issues pursuant to White v. State. Counsel for the Appellant received a copy of the filed Order of Dismissal and Grant of Appellate Review pursuant to White v. State, on or about March 9, 2018.

March 28, 2018



Rodney D. Davis
Attorney for Appellant
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Other Counsel of Record:
Julie A. Coleman, Assistant Attorney General
State of South Carolina
P.O. Box 11549
Columbia, SC 29211-1549
Attorney for Respondent

RECEIVED

APR 03 2018

THE STATE OF SOUTH CAROLINA
In The Supreme Court

S.C. SUPREME COURT

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

The Honorable Michael G. Nettles

Case #: 2016-CP-08-216

CLERK OF COURT
BERKELEY COUNTY, S.C.

18 MAR 26 PM 12:41

FILED

Cary G. Ryals,

Appellant.

v.

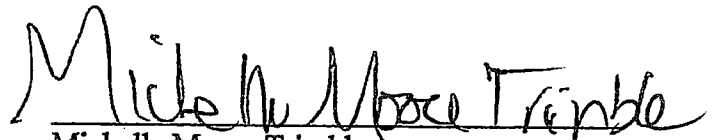
State of South Carolina,

Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the State by mailing a copy, via US Mail, to the address of record, Julie A. Coleman, P.O. Box 11549, Columbia, South Carolina 29211-1549, on March 26, 2018.

March 26, 2018



Michelle Moore Trimble
Paralegal to Rodney D. Davis
4000 Faber Place Drive, Suite 300
Charleston, SC 29405
(843) 323-4353
Davis@LowcountryLawOffice.com
Attorney for Appellant

STATE OF SOUTH CAROLINA)

COUNTY OF BERKELEY)

CARY G. RYALS, #364293)

Plaintiff,)

vs.)

STATE OF SOUTH CAROLINA)

Defendant.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO: 2016-CP-08-216

MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

2018 MAR -9
PH 4: 07
MARY P. BROOKS
CLERK OF COURT
BERKELEY COUNTY, S.C.

Plaintiff's Attorney: Rodney D. Davis, Esquire Address: Lowcountry Law Office 4000 Faber Place Drive, Suite 300 Charleston, SC 29405 Phone: _____ Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: Julie A. Coleman, Esquire Address: South Carolina Attorney General's Office PO Box 11549 Columbia, SC 29211 Phone: _____ Fax _____ E-mail: _____ Other: _____
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- 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.

Julie A. Coleman March 6, 2018
 Signature of Attorney for Plaintiff / Defendant 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: \$ _____

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

Cary G. Ryals, #364293,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS)
NINTH JUDICIAL CIRCUIT)

2016-CP-08-216)

**ORDER OF DISMISSAL AND
GRANT OF APPEAL PURSUANT TO
WHITE V. STATE¹**

2018 MAR -9 PM 4:07
MARY B. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

FILED
APD

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on January 28, 2016. Respondent submitted its return on June 13, 2016. An evidentiary hearing into the matter was convened on December 4, 2017, at the Berkeley County Courthouse. Applicant was present at the hearing and was represented by Rodney Davis, Esquire. Respondent was represented by Assistant Attorney General Julie A. Coleman of the South Carolina Attorney General's Office.

Before this Court were the records of the Berkeley County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the trial transcript, the State's Return, and the application. Based on these records and the testimony presented, the Court finds as follows:

I. PROCEDURAL HISTORY

The records before this Court indicate that Cary G. Ryals ("Applicant") is currently incarcerated with the South Carolina Department of Corrections pursuant to the Berkeley County Clerk of Court's orders of commitment. Applicant was indicted by the May 2015 term of the Berkeley County Grand Jury for Habitual Traffic Offender (2015-GS-08-801). Frampton

¹ White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974).

Durban, Jr., Esquire, represented him. Assistant Solicitor Mason West, Esquire, prosecuted the case. On June 1, 2015, Applicant proceeded to a jury trial, at which he was found guilty as indicted. The Honorable Kristi Lea Harrington sentenced Applicant to a five year term of imprisonment, and revoked in full the probation he was serving on a prior offense of assault and battery of a high and aggravated nature. Applicant did not appeal his conviction, his sentence, or his probation revocation.

II. ALLEGATIONS

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

1. "Ineffective Assistance of Counsel"
 - a. "Failure to investigate my past record"
 - b. "Failure to challenge the jurisdiction of the sentence"
 - c. "Failure to object to the improper attire"

Applicant filed an amended application on July 26, 2017, to include a challenge to his probation revocation. At the evidentiary hearing, Applicant orally amended his application to include an allegation that Applicant was denied his right to a direct appeal. This Court allowed the amendment over Respondent's objection.

III. SUMMARY OF RELEVANT TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. Trial Counsel Frampton Durban, Jr., was unavailable and did not testify.

Applicant testified that he is 49 years old and has a high school diploma. He stated he was currently serving time on a Habitual Traffic Offender (HTO) charge and probation revocation. He testified he was locked up on another charge when he hired Trial Counsel and asked him to get rid of some bench warrants for failure to appear on other charges. Applicant testified that Trial Counsel was not retained for the HTO offense, and he found out three or four

days before his trial that Trial Counsel would not be representing him. He stated that he told Trial Counsel in May of 2015 that he did not want him to represent him anymore, so Trial Counsel gave him his file. Applicant stated that Trial Counsel's secretary told him that Trial Counsel represented him on other charges, not on the HTO charge, but when he got the file, he found emails from the Solicitor with a plea offer that Trial Counsel had never relayed to him.

Applicant testified he made a motion to relieve Trial Counsel and Judge Harrington denied his motion. He stated he went to trial on June 1, 2015, and he met with Trial Counsel twice before then. He testified that he was brought to court for his trial in jail clothes, and he did not know he was going to trial that day. He stated he told Trial Counsel he did not want to go forward that day. Applicant stated Trial Counsel did not provide clothing for him to wear for trial. He stated there was no discussion of his probation, and they did not discuss sentencing of the consequences of his probation revocation. He stated he had not violated probation in any other way than being convicted of the HTO charge.

Applicant testified that he got an order in June 2016 relieving Trial Counsel from his representation. He stated that Trial Counsel was suspended from the South Carolina Bar on June 24, 2016. Applicant testified that he never saw his driving record and he did not know what his record was. He stated he asked for a copy and saw it when he was in the Berkeley County jail. He stated that the HTO was based on three prior convictions, and they were not valid.² Applicant testified the first charge from Orangeburg County is being challenged now and is still pending in Magistrate's Court. He stated the second charge was based on a car accident from August 3, 2007 that resulted in the suspension of his driver's license, but he was never actually involved in an accident on that date. He stated this accident was one of the four parts of his conviction from

² This Court allowed Applicant to testify about the alleged deficiencies in his prior convictions over Respondent's objection that any attack on the charges was untimely and Applicant had waived his right to appeal the convictions by failing to appeal them.

August 27, 2008 for driving under suspension on July 12, 2008. Applicant stated that, after investigating, he realized that SLED had no record of his arrest from that offense.

Applicant testified that he hired Veronica Smalls, an attorney, after his trial to look into his record. A letter from Ms. Smalls was introduced into evidence.³ Another letter from SLED was introduced into evidence, as well.

The State presented no witnesses at the evidentiary hearing, due to the unavailability of Trial Counsel, and relied on the transcript and the record before the Court in support of their argument.

IV. APPLICABLE LAW

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that 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 (1985). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

³ The letter was admitted over Respondent's objection to relevance to this action, as Smalls did not represent Applicant at trial or on direct appeal.

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.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant alleges Trial Counsel was ineffective in his representation surrounding his trial. This Court finds Trial Counsel was not ineffective in any regard. Although Trial Counsel was unavailable to testify at the evidentiary hearing, it is clear from the record before the court that Trial Counsel's actions were reasonable given the circumstances of this case. Strickland requires this Court to presume Trial 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 (1985). Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). This Court finds Applicant has not done so. Applicant has failed to meet his burden of proving that Trial Counsel was deficient on any ground.

This Court also notes that, while evidence was presented that Trial Counsel was suspended from the practice of law after this trial, Applicant has failed to prove that his suspension was in any way related to his trial or that the suspension affected this trial. Trial Counsel is presumed competent under Strickland, and this Court finds no reason to find Trial Counsel's action in this trial were ineffective simply because he was later suspended from the practice of law. Each individual allegation is addressed as follows:

Failure to investigate Applicant's prior record

Applicant alleges Trial Counsel was ineffective for failing to investigate his prior record and challenge the convictions for driving under suspension that formed the basis of his habitual traffic offender conviction. This allegation is meritless as any investigation into the prior convictions would have been fruitless, Applicant did challenge the prior convictions while testifying at trial, and Applicant can show no prejudice because the prior convictions are valid.

At trial, the State introduced testimony of Marie Waring of the South Carolina Department of Motor Vehicles, as well as Applicant's DMV driving record. This evidence represented that Applicant had at least three prior convictions for driving under suspension. The first conviction was from May 5, 2009, the second from August 27, 2008, and the third from January 15, 2008. The State also introduced a letter to Applicant from the DMV putting him on notice of his Habitual Traffic Offender status because he had accumulated three major suspensions from those dates. The letter was sent on May 20, 2009, and notified Applicant that he was no longer allowed to drive a vehicle, but he had thirty days to appeal this notice. Tr. 48. Applicant did not file an appeal or dispute the notice of habitual traffic offender status. The record before the Court indicates that Applicant signed a domestic return receipt indicating that he received the letter on May 22, 2009. State's Ex. #3, Tr. 76. The State also introduced a letter

sent on October 10, 2008, notifying Applicant that he had two major suspensions, and if he got another he would be under habitual traffic offender status. Tr. 51.

Applicant disputed the accuracy of this evidence at trial. When he took the stand, Applicant explained to the Solicitor on cross-examination and to the jury that he never received notice that his license was suspended or he was on habitual traffic offender status, and that, although the address the notice was sent to was his proper mailing address, the signature on the domestic return receipt was not really his signature because it was not his handwriting and it was not how he spelled his name. Tr. 76. He testified that he did not appeal or challenge the notice of habitual traffic offender status because he never received it, and if he had he would have appealed. Tr. 78. However, he testified that had received other prior suspension notices in the past and he did not appeal them because he did not believe it was necessary to appeal them. Tr. 78, line 3-5.

At the evidentiary hearing, Applicant raised the same objections to his prior convictions. Applicant introduced two letters as evidence that SLED had no record of his arrest or conviction for driving under suspension from August 27, 2008. He testified again that the mailing address the DMV notice was sent to was his proper mailing address, but he never received it or knew about it. He stated his signature on the document indicating he had received the notice was forged by someone else and he had not actually signed it. Applicant further testified that the car accident which led to the suspension of his license causing the May 9, 2009 conviction for driving under suspension never happened. He stated he was never involved in a car accident on that date, so his license never should have been suspended.

This Court finds Applicant's testimony at trial and at the evidentiary hearing on these issues to be not credible. Applicant has offered no proof for his claims other than his word that

someone forged his signature and he was never really in a car accident where his DMV records indicated he was. Applicant introduced at the PCR hearing records of prior traffic tickets that had been dismissed, but these tickets are unrelated to the convictions he challenges. Applicant's argument that SLED had no record of his arrest or conviction from August 27, 2008, has no bearing on this proceeding. Applicant's conviction is based on his driving record from the South Carolina Department of Motor Vehicles, not from his record at SLED. Applicant's DMV driving record accurately shows his valid prior convictions on the dates in question, and the convictions fully support his current HTO conviction. This Court finds Applicant has failed to present any credible evidence that his prior convictions were invalid.

This Court notes that, even if Applicant's allegations were true about how he was never involved in a car accident which resulted in the suspension of his license, this would not have affected his conviction for driving under suspension. Regardless of whether his license should or should not have been suspended, the record clearly shows Applicant was aware that his license was suspended and Applicant drove a motor vehicle anyway, and was then arrested and convicted of driving under suspension. The circumstances surrounding why his license were suspended have no bearing on the fact that he still drove a motor vehicle with a suspended license. This Court finds any challenge to the May 5, 2009 conviction on this ground would be meritless.

Regardless, even if Applicant had presented credible evidence that his prior convictions were invalid, Applicant waived his right to challenge the convictions by failing to file an appeal after he was given notice. Applicant did not appeal the convictions either through the DMV or through any form of post-conviction relief action. The convictions he now challenges occurred nearly ten years ago, and his records indicate he was aware of the convictions. Applicant waived

his right to challenge these convictions by choosing not to timely appeal them. Applicant cannot use this post-conviction relief action to attempt to vacate convictions from nearly ten years ago. Accordingly, any investigation Trial Counsel could have done would have been fruitless and would not have changed the outcome of the trial, because the prior convictions still stand.

Although Applicant alleges Trial Counsel was ineffective for failing to investigate his prior record, he has failed to present any credible evidence that Trial Counsel did not investigate his record and was not aware of the prior convictions or the circumstances around them. Furthermore, Applicant testified at trial about his complaints regarding his prior convictions. The jury was presented with the information he wanted them to know about why he believed the prior convictions were invalid, and they still found him guilty. This Court finds that even if Trial Counsel had argued what Applicant wanted him to argue about his prior convictions, the result of the trial would have been no different.

This Court accordingly finds Trial Counsel was not deficient for failing to investigate or challenge Applicant's prior convictions, and Applicant has failed to prove that the outcome of the trial would have been different if he had. Neither prong of the Strickland test is met, and this allegation is denied and dismissed with prejudice.

Failure to challenge jurisdiction

Applicant alleges the trial court did not have subject matter jurisdiction over his charges. An applicant may challenge the subject matter jurisdiction of the trial court and such a claim is one that may be raised at any time. See Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001), overruled in part by Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). However, "[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters." Gentry, 363 S.C. 93; See also S.C. Const. Art. V, § 7. Thus, Applicant must present evidence that his case is of some class

over which the circuit court does not have the authority to preside. Applicant's conviction involved a criminal charge in General Sessions Court. Thus, the circuit court had subject matter jurisdiction. Applicant has failed to present any evidence that the convictions he challenges in this application are in a class over which the circuit court does not have the authority to provide. Therefore, this allegation is denied and dismissed with prejudice.

Failure to object to improper attire

Applicant alleges Trial Counsel was ineffective for failing to object to the trial proceeding when Applicant was wearing his prison clothing and was not provided with civilian attire to wear for trial. Applicant claims he was unaware that he was being brought to trial when he appeared in court the day of his trial was unable to make arrangements for court-appropriate attire. This Court finds that, although Trial Counsel may have been deficient on this ground, Applicant can show no prejudice resulting from Trial Counsel's failure to object or request a continuance based on his lack of clothing.

This exact issue was addressed by the South Carolina Supreme Court in Humbert v. State, 345 S.C. 332, 337-38, 548 S.E.2d 862, 865 (2001). In Humbert, the applicant proceeded to trial in his prison jumpsuit, and he was advised to turn the jumpsuit inside-out so that the prison emblem was not visible to the jury. Defense counsel did not request the trial judge continue the case until he could obtain proper clothing. Defense counsel died two years prior to the PCR evidentiary hearing and was unavailable to testify. In that case, the PCR court found defense counsel may have been deficient, but the applicant had not met his burden of proving prejudice. The Supreme Court agreed, holding that the record supported the PCR judge's finding counsel was deficient by allowing the trial to proceed while petitioner was dressed in prison clothing. Humbert, at 337, 548 S.E.2d at 865. The court found it "generally improper for a defendant to

appear for a jury trial dressed in readily identifiable prison clothing.” Id. However, the court found there was no reasonable probability the outcome of his trial would have been different had Humbert not been dressed in his prison jumpsuit because of the overwhelming evidence of his guilt. Humbert, at 338, 548 S.E.2d at 865.

This Court finds Applicant’s case nearly identical to Humbert and must apply its findings now. Although Trial Counsel may have been deficient in failing to request a continuance to object to the trial proceeding until Applicant could change into civilian attire, this Court finds Applicant can establish no prejudice based on the overwhelming evidence against him. As discussed below, Applicant does not dispute that he was driving a motor vehicle on the day in question. Although Trial Counsel challenged the validity of this traffic stop leading to this habitual traffic offender charge for driving under suspension, the evidence presented clearly shows the justification for the valid traffic stop and that Applicant was driving a motor vehicle with a suspended driver’s license. Applicant had three prior convictions for driving under suspension, which were all admitted into evidence, and though Applicant challenged their accuracy and validity both at trial and at the PCR hearing, the prior convictions remain intact and accurate, and form a valid basis for his HTO offense.

The evidence against Applicant for this offense was clear and overwhelming. Accordingly, this Court finds Applicant can show no resulting prejudice from Trial Counsel’s failure to object to the trial proceeding with Applicant in prison attire. Therefore, the second prong of the Strickland test is not met, and this allegation must be denied and dismissed with prejudice.

Failure to challenge probation revocation

Applicant alleges Trial Counsel was ineffective for failing to challenge his probation revocation after he was convicted of the habitual traffic offender charge. This allegation is meritless. The record is clear that a term of his probation was to not be convicted of any new charges. Tr. 110. Applicant's conviction for this offense, as well as multiple magistrate convictions during his probationary term and several other pending charges in the Solicitor's Office at the time of trial, formed the basis for the full revocation of his probation. Tr. 104. Trial Counsel offered mitigation on Applicant behalf, and Applicant informed the trial court during sentencing that he had no other probation violations. Tr. 106-109.

This Court finds Trial Counsel was not deficient for failing to challenge the probation revocation because there is nothing more he could have said or done to challenge it. Furthermore, Applicant raised his objections and all the reasons he believed he should not have been revoked to the trial court at sentencing, so there is no prejudice. The trial judge heard all the information Applicant believed was necessary and she revoked his probation in full, which was within her discretion. This Court finds Applicant has failed to meet either prong of the Strickland test, and this allegation is denied and dismissed with prejudice.

OVERWHELMING EVIDENCE

Applicant cannot meet his burden to show that he was prejudiced by any alleged deficiencies because there is overwhelming evidence of his guilt. See Franklin v. Catoe, 346 S.C. 563, 570 n. 3, 552 S.E.2d 718, 722 n. 3 (2001); cert. denied, 535 U.S. 1114, 122 S.Ct. 2332, 153 L.Ed.2d 162 (2002) (finding overwhelming evidence of guilt negated any claim that counsel's deficient performance could have reasonably affected the result of the defendant's trial); Geter v. State, 305 S.C. 365, 367, 409 S.E.2d 344, 346 (1991) (concluding reasonable probability of a

different result does not exist when there is overwhelming evidence of guilt); cf. Ford v. State, 314 S.C. 245, 248, 442 S.E.2d 604, 606 (1994) (holding respondent failed to prove prejudice from trial counsel's failure to request an alibi charge where there was overwhelming evidence of guilt).

The evidence presented at trial clearly indicates that Applicant had three prior convictions for driving under suspension—one from May 5, 2009, one from August 27, 2008, and another from January 15, 2008. Although Applicant attempted at trial and at the evidentiary hearing to call those prior convictions into question, the convictions still stand and have not been vacated. Accordingly, they form a valid basis for the HTO conviction in question. Applicant does not dispute that he was driving a motor vehicle on the day he was arrested for this charge. Although Trial Counsel challenged the validity of this traffic stop leading to this habitual traffic offender charge for driving under suspension, the evidence presented clearly shows the justification for the valid traffic stop and that Applicant was driving a motor vehicle with a suspended driver's license. All elements of the crime were clearly met, and although Trial Counsel raised arguments to challenge the evidence and the traffic stop, the evidence presented overwhelmingly supported the jury's guilty verdict.

As a result, Applicant can show no prejudice from any of the allegations raised in his PCR application as no deficiency on behalf of trial counsel could have reasonably changed the outcome of trial, and these allegations are denied and dismissed with prejudice.

FAILURE TO PERFECT AN APPEAL

Applicant alleges Trial Counsel was ineffective for failing to file and perfect a direct appeal of his HTO conviction after his trial. The record before the Court indicates that Applicant asked Trial Counsel to appeal the conviction, and Trial Counsel filed a notice of intent to appeal

with the Solicitor's Office. However, the notice of appeal was never filed with the Clerk of Court. It appears from the record that Trial Counsel intended to perfect the appeal, but for some reason, the appeal was never perfected. This Court finds Applicant did not knowingly and voluntarily waive his right to appellate review of his conviction, and grants him a belated review of direct appeal issues pursuant to White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974) (holding that where an accused establishes in a post-conviction relief hearing that he was unconstitutionally deprived of his statutory right to a direct appeal, the South Carolina Supreme Court may grant a belated review of direct appeal issues).

VI. CONCLUSION

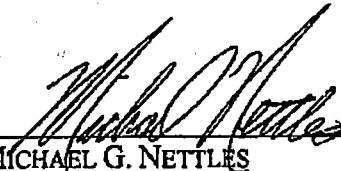
Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

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

IT IS THEREFORE ORDERED:

1. That the application for Post-Conviction Relief is denied and dismissed with prejudice in regard to all allegations.
2. That the Applicant is granted a belated review of direct appeal issues pursuant to White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974). Within thirty days of service of this Order, counsel for Applicant must file a Notice of Appeal to secure the appropriate review of Applicant's convictions. Counsel and the Applicant are directed to Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986) and South Carolina Appellate Court Rule 227(g) for the appropriate procedure for securing belated appellate review.
3. Applicant must be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 1 day of March, 2018.



MICHAEL G. NETTLES
Presiding Judge
Ninth Judicial Circuit

Florence, South Carolina

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

The Honorable Michael G. Nettles

Case #: 2016-CP-08-216

Cary G. Ryals,

Appellant.

v.


State of South Carolina,

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March 28, 2018



Rodney D. Davis
Attorney for Appellant
4000 Faber Place Drive, Suite 300
Charleston, SC 29405
Davis@LowcountryLawOffice.com

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

11:30
18 MAR 26 PM 12:41
JAMES P. SROVHA
CLERK OF COURT
BERKELEY COUNTY, S.C.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM BERKELEY COUNTY
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The Honorable Michael G. Nettles

Case #: 2016-CP-08-216

MAURY P. CROWIN
CLERK OF COURT
BERKELEY COUNTY, S.C.

18 MAR 26 PM 12:41

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Cary G. Ryals,

Appellant.

v.

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, via US Mail, to the address of record, Julie A. Coleman, P.O. Box 11549, Columbia, South Carolina 29211-1549, on March 26, 2018.

March 26, 2018

Michelle Moore Trimble

Michelle Moore Trimble
Paralegal to Rodney D. Davis
4000 Faber Place Drive, Suite 300
Charleston, SC 29405
(843) 323-4353
Davis@LowcountryLawOffice.com
Attorney for Appellant

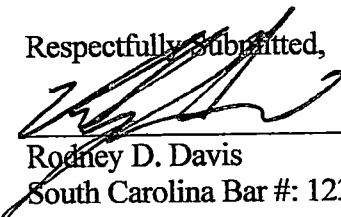
STATE OF SOUTH CAROLINA)	IN THE SUPREME COURT OF SOUTH CAROLINA
)	
COUNTY OF BERKELEY)	CASE #: 2016-CP-08-216
)	
CARY G. RYALS,)	
)	
Applicant.)	REQUEST FOR REPRESENTATION ON APPEAL
)	
-versus-)	
)	
STATE OF SOUTH CAROLINA,)	
)	
Respondent.)	

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
3/26, 2018.

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)
)

CASE #: 2016-CP-08-216

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, **Cary G. Ryals**, 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
26th day of March, 2018.



Notary Public for South Carolina
My Commission expires 11/17/2026



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

March 30, 2018

Paula Murdoch
South Carolina Commission on Indigent Defense
PO Box 11433
Columbia, SC 29211-1433

RE: Cary Ryals v State of SC; Case #.: 2016-CP-08-216

Dear Ms. Murdoch:

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

Enclosure(s). As stated above.

RDD/mmt

Rodney D. Davis
Lowcountry Law Office
4000 Faber Place Drive
Suite 300
Charleston SC 29405



Daniel Shearhouse, Clerk
Supreme Court of South Carolina
PO Box 11330
Columbia SC 29211-1330



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