
MURPHY LAW OFFICES, LLC
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April 19, 2018

RECEIVED

APR 23 2018

VIA U.S. MAIL

The Honorable Daniel E. Shearhouse
Clerk of South Carolina Supreme Court
Supreme Court Building
Post Office Box 11330
Columbia, SC 29211

S.C. SUPREME COURT

Re: *Anthony Heyward, #345985 v. State of South Carolina*
Civil Action No.: 2017-CP-10-2567

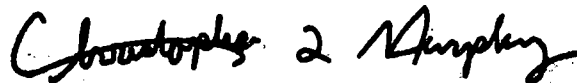
Dear Mr. Shearhouse:

Enclosed for filing, please find an original and two copies of Appellant's Notice of Appeal of the denial of his application for Post-Conviction Relief, and a Proof of Service regarding same. If you find everything in order, please file the original and return the clocked-in copies in the enclosed self-addressed envelope.

Please note, I was appointed to this and case and have copied the Office of Appellate Defense on this who will handle the appeal. Please call if you have any questions.

With kindest regards, I am

Sincerely,



Christopher L. Murphy, Esq.
chris@chrismurphyfirm.com

CLM/jh

Enclosures

cc (w/ encls.): Mr. Anthony Hewyard
Rasheeda Cleveland, Asst. AG
Robert M. Dudek, Esquire, Off of Appellate Defense
The Honorable Maite D. Murphy
The Honorable Julie J. Armstrong, Clerk, 9th Jud. Cir.

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM CHARLESTON COUNTY S.C. SUPREME COURT
Court of Common Pleas

Maite D. Murphy, Circuit Court Judge

Case No.: 2017-CP-10-2567

Anthony Heyward, #345985..... Appellant
v.
State of South Carolina Respondent

NOTICE OF APPEAL

Appellant appeals the Court’s denial of his application for post-conviction relief. Attached is the order from the court dated March 29, 2018 and received April 16, 2018,

April 19, 2018


Christopher L. Murphy
Murphy Law Offices, LLC
234 Seven Farms Drive, Suite 128
Charleston, SC 29492
Phone & Fax: (843) 800-1187
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Other Counsel of Record:
Rasheeda Cleveland
Asst. Attorney General
Rembert C. Dennis Building
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Columbia, SC 29211-1549
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rcleveland@scag.gov

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Maite D. Murphy, Circuit Court Judge

Case No.: 2017-CP-10-2567

Anthony Heyward, #345985..... Appellant
v.
State of South Carolina Respondent

PROOF OF SERVICE

I certify that I have served APPELLANT'S NOTICE OF APPEAL by delivering a copy via U.S. Mail First-Class postage prepaid on the 19th day of April, 2018, on the following:

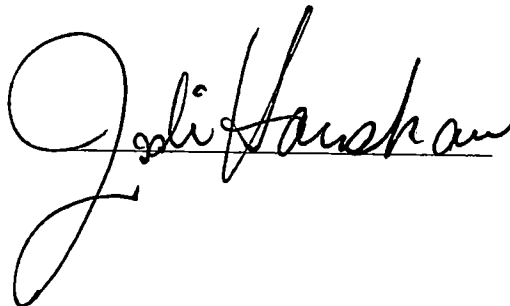
Rasheeda Cleveland, Esquire
Assistant Attorney General
SC Office of the Attorney General
PO Box 11549
Columbia, SC 29201

The Honorable Maite D. Murphy
5200 E. Jim Bilton Blvd.
St. George, SC 29477

The Honorable Julie J. Armstrong
Clerk of Court, Ninth Judicial Circuit
100 Broad Street, Suite 106
Charleston, SC 29401

Robert M. Dudek, Esquire
Office of Appellate Defense
PO Box 11433
Columbia, SC 29211-1433

Mr. Anthony Heyward, SCDC #345985
Kershaw Correctional Institution
4848 Gold Mine Highway
Kershaw, SC 29067



STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
)
 ANTHONY HEYWARD, #345985)
 Plaintiff,)
 vs.)
)
 STATE OF SOUTH CAROLINA)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 NINTH JUDICIAL CIRCUIT

CASE NO: 2012-CP-10-2567

**MOTION AND ORDER INFORMATION
 FORM AND COVERSHEET**

Plaintiff's Attorney: Christopher L. Murphy, Bar No. Address: Murphy Law Offices, LLC 234 Seven Farms Drive, Suite 128 Charleston, SC 29492 Phone: _____ Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: Rasheeda Cleveland, Bar No. Address: South Carolina Attorney General's Office PO Box 11549 Columbia, SC 29211 Phone: _____ Fax _____ E-mail: _____ Other: _____
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input checked="" type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: _____ Estimated Time Needed: _____ Court Reporter Needed: <input type="checkbox"/> YES / <input checked="" type="checkbox"/> NO	
SECTION II: Motion/Order Type	
<input type="checkbox"/> Written motion attached <input checked="" type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
<i>Hal Ch...</i> Signature of Attorney for <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant	March 26, 2018 Date submitted
SECTION III: Motion Fee	
<input type="checkbox"/> PAID - AMOUNT: \$ _____ EXEMPT: (check reason)	
<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input checked="" type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC) <input type="checkbox"/> 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: _____ <input type="checkbox"/> Other: _____	
JUDGE'S SECTION	JUDGE CODE _____
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	Date: _____
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____ <input type="checkbox"/> MOTION FEE COLLECTED: \$ _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: \$ _____	

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AG
AT
SOL
GS

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

Anthony Heyward,)
S.C.D.C. No. 345985,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
OF THE NINTH JUDICIAL CIRCUIT

2012-CP-10-2567

ORDER OF DISMISSAL

FILED
2018 APR -9 PM 3:23
JULIE J. ARMSTRONG
CLERK OF COURT
BY

This matter is before the Court by way of an application for post-conviction relief ("PCR") filed on April 18, 2012¹ by Anthony Heyward ("Applicant"). Respondent submitted its Return on November 7, 2017. An evidentiary hearing was convened on February 2, 2018 in Charleston County at the Charleston County Courthouse. Applicant was present and represented by Christopher L. Murphy, Esquire. Rasheeda Cleveland, Esquire of the South Carolina Attorney General's Office, represented the State.

Before the Court were the records of the Charleston County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, and the application.²

I. PROCEDURAL HISTORY

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 May 2010 term, the Charleston County Grand Jury indicted Applicant for trafficking in cocaine (more than 28 grams) (third offense) (2010-GS-10-3194) and possession with intent to distribute cocaine within

¹ A copy of this application was not received by Respondent until October 5, 2017.
² Respondent attempted to order a copy of the guilty plea proceeding, but received a letter from the court reporter indicating she was unable to produce a transcript because it had been more than five years since the proceeding.

proximity of a park (2010-GS-10-3195). He was represented by Marybeth Mullaney, Esquire. Assistant Solicitor Stephanie Linder prosecuted the case

On May 16, 2011, Applicant appeared in the Charleston County Court of General Sessions before the Honorable Deadra L. Jefferson, circuit court judge, and pled guilty to the lesser-included offense of trafficking in cocaine (10-28 grams) (second offense). Pursuant to negotiations between the State and Applicant, Judge Jefferson sentenced Applicant to twelve years imprisonment. The State dismissed the possession with intent to distribute cocaine within proximity of a park (2010-GS-10-3195) charge pursuant to the plea agreement. Applicant did not appeal his pleas or sentences.

II. ALLEGATIONS

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully based on an allegation of ineffective assistance of counsel for failure to investigate mitigating facts and circumstances and failure to conduct suppression hearing to have all evidence suppressed.

III. SUMMARY OF RELEVANT TESTIMONY PRESENTED

On direct examination, Applicant testified that he had a 9th grade education and no GED. He further testified that he was treated for depression when he was younger but could understand now. Applicant during his testimony, alleged that the indictment was insufficient³ before he pleaded guilty, and Counsel knew that they indictment was not sufficient. He also testified that Counsel knew the indictment was not sufficient and was not competent. However, Applicant testified that he was evaluated and found competent enough to stand trial. Applicant stated that his Counsel told him he got a twelve year offer but she did not object to errors in the case. He

³ Applicant contends that the indictment was defective because it was not filed with the clerk or given a case number when the indictments were presented to the grand jury.

also alleged that Counsel failed to conduct a suppression hearing.

On cross-examination, Applicant testified that he was not threatened or coerced; he took the twelve years over the twenty-five year deal. He also testified that he did not discuss his issues with the indictments with his attorney.

Counsel testified that she was appointed to Applicant's case while working as a public defender. Counsel recalled meeting with Applicant several times at the detention center. Counsel testified that she had Applicant evaluated by Susan Knight at MUSC, and the result was that he was competent to stand trial. Regarding plea negotiations, Counsel testified that the State offered twelve years however, Applicant wanted less time and wanted to head to trial. Counsel further recalled that Judge Jefferson helped to convince Assistant Solicitor Stephanie Linder to re-extend the twelve year offer.

Counsel recalled that jury was picked and they were prepared for trial when Applicant decided to plead. Counsel affirmed that she discussed the indictments and the elements of the offense with Applicant, and she saw no basis for challenging. She further attested that she thought it was in Applicant's best interest to plead because it was risky to go to trial because if the jury didn't see their (Applicant and Counsel) interpretation of the case, it would've have been at minimum a 25 year sentence. Regarding the suppression issue, Counsel asserted that they did not have a good argument for suppression. Similarly, Counsel testified there were no identification issues as police saw Applicant throw the drugs as they pursued him.

IV. APPLICABLE LAW

In a post-conviction relief action, an applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must

prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, the applicant must prove that counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. 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. With respect to guilty plea counsel, the applicant must show that there is a reasonable probability that, but for counsel’s alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

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 argued that his counsel was ineffective for failing to investigate his indictments. He claimed that no case numbers were assigned to them when they were presented to the grand jury. He also alleged ineffective assistance for failure to conduct a suppression hearing.

Based upon this Court's observations of Applicant at the hearing and the near total inconsistency of his testimony with any other part of the record before this Court, the Court finds Applicant's testimony not credible. Conversely, the Court finds Counsel's testimony credible. Counsel testified that she worked very hard to get a plea deal for Applicant in this case. Counsel also testified that she saw no basis for challenging the indictments and felt it was in Applicant best interest to take the plea deal. This Court finds that where an indictment is phrased substantially in the language of the statute that creates and defines the offense is ordinarily sufficient. Koon v. State, 358 S.C. 359 (2004). Moreover, an indictment is sufficient to convey jurisdiction if it apprises the defendant of the elements of the offense intended to be charged and informs the defendant of the circumstances he must be prepared to defend. Id. This Court further finds that the indictments in Applicant's case were sufficient and contained a docket number at the time they were presented to the Grand Jury.

Regarding the issue of suppression, Counsel further testified that she did not believe there was a good suppression argument because a police officer saw Applicant throw the drugs. Even if Counsel failed to seek suppression of evidence, a defendant who accepts a plea bargain on

counsel's advice does not necessarily suffer prejudice, even if it would be reversible error for the court to admit that evidence. See Premo v. Moore, 562 U.S. 115 (2011).

After hearing oral argument and reviewing all documentation provided, this Court finds no deficiency on the part of counsel, nor prejudice therefrom. Therefore, this Court finds that Applicant's application is respectfully denied.

{Conclusion and signature on the following page.}

VI. CONCLUSION

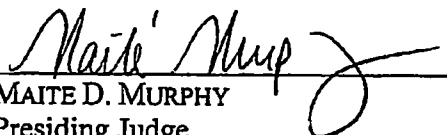
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

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 29 day of March, 2018.


MAITE D. MURPHY
Presiding Judge
Ninth Judicial Circuit


_____, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

RECEIVED
APR 23 2018
S.C. SUPREME COURT

ANTHONY HEYWARD, #345985

Applicant,

v.

STATE OF SOUTH CAROLINA,

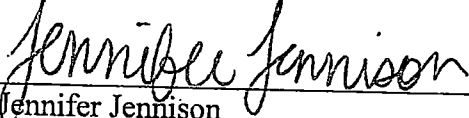
Respondent.

CERTIFICATE OF SERVICE

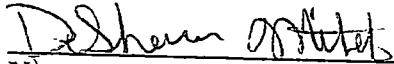
The undersigned hereby certifies that a true copy of the **Order of Dismissal** has been served upon the applicant by mailing one copy in the United States mail, postage prepaid, addressed to:

Christopher L. Murphy, Esquire
Murphy Law Offices, LLC
234 Seven Farms Drive, Suite 128
Charleston, SC 29492

This 13th day of April, 2018.


Jennifer Jennison
Legal Assistant for Respondent

SWORN to before me this 13th day of April, 2018.


Notary Public for South Carolina.

My Commission Expires: May 1st 2024



ALAN WILSON
ATTORNEY GENERAL

April 13, 2018

Christopher L. Murphy, Esquire
Murphy Law Offices, LLC
234 Seven Farms Drive, Suite 128
Charleston, SC 29492

Re: Anthony Heyward, #345985 v. State of South Carolina
2012-CP-10-2567

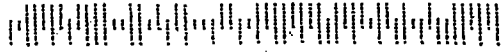
Dear Mr. Murphy:

Enclosed is a copy of the **Order of Dismissal** in the above-captioned case signed by The Honorable Maite Murphy and filed with the Charleston County Clerk of Court.

Sincerely,

Rasheeda Cleveland
Assistant Attorney General

RC/jaj
Enclosure(s)



1465



**The Honorable Daniel E. Shearhouse
Clerk of South Carolina Supreme Court
Supreme Court Building
Post Office Box 11330
Columbia, SC 29211**