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May 1, 2018

RECEIVED

MAY 07 2018

S.C. SUPREME COURT

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

Re: Halden Hollman 354491 v State, 2015-CP-15-1054

Dear Clerk Shearouse:

Please find the enclosed Notice of Appeal, Proof of Service, and Order of Dismissal in the above Colleton County PCR action. Please return a clocked copy of the Notice of Appeal and Proof of Service in the enclosed SASE.

Should you have any additional questions please do not hesitate to contact my office.

With best regards, I am,



James K. Falk

Thank you for your assistance.

Cc:

Megan Jameson

Halden Hollman 354491.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

MAY 07 2018

S.C. SUPREME COURT

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

Honorable R. Scott Sprouse Circuit Judge

Case No.: 2015-CP-15-01054

Halden Hollman 354491.....PETITIONER

V.

State of South Carolina.....RESPONDENT

NOTICE OF APPEAL

The Petitioner Halden Hollman appeals the Honorable R. Scott Sprouse's September 14, 2017 Order of Dismissal. Undersigned counsel received notice of entry of the order on May 1, 2018. A copy of the order on appeal is attached hereto.



James K Falk
Falk Law Firm
PO Box 1058
Charleston, SC 29402

May 1, 2018

Megan Jameson Esq.
Office of S.C. Attorney General
PO Box 11549
Columbia, SC 29211-1549

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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MAY 07 2018

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

Honorable R. Scott Sprouse, Circuit Judge

Case No.: 2015-CP-15-1054

Halden Hollman 354491.....PETITIONER

V.

State of South Carolina.....RESPONDENT

CERTIFICATE OF SERVICE

I, James Falk, certify that I have today served the within notice of appeal upon the Respondent by depositing a copy of it in the U.S. Mail, postage prepaid, addressed to its attorney of record, Megan Harrigan Jameson Esq. Office of the S.C. Attorney General, PO Box 11549, Columbia, SC 29211-1549. I further certify that all parties required by Rule to be served have been served this May 1, 2018.



James K. Falk
Falk Law Firm
PO Box 1058
Charleston, SC 29402

STATE OF SOUTH CAROLINA)
COUNTY OF COLLETON)
)
)
Halden L. Hollman, #354491,)
)
v.)
)
State of South Carolina,)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
THE FOURTEENTH JUDICIAL CIRCUIT

Case no. 2015-CP-15-1054

ORDER OF DISMISSAL

This Court convened an evidentiary hearing into the matter on February 15, 2015 at Beaufort County Courthouse. Applicant was present at the hearing and represented by James Falk, Esquire. Ruston W. Neely, Esquire, of the South Carolina Attorney General's Office represented Respondent.

PATRICIA S. GRAHAM
CLERK OF COURT
COLLETON COUNTY
COMMON PLEAS
2015 SEP 28 AM 11:12

Applicant's trial counsel, Harry S. Beach, Esquire (Counsel) is deceased. However, this Court had the opportunity to listen to the testimony of Applicant and rule on his credibility. This Court had before it a copy of the trial transcript, the records of the Colleton County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the direct appeal records, and the pleadings in this matter. This Court finds as follows:

I. PROCEDURAL HISTORY

Applicant was indicted by the October 2012 term of the Colleton County Grand Jury for Burglary, 1st degree (2012-GS-15-0639). On February 25, 2013, Applicant proceeded to a jury trial. The jury found Applicant found guilty as indicted. The Honorable Perry M. Buckner, III, sentenced Applicant to confinement for twenty-five (25) years.

A notice of appeal was filed on Applicant's behalf and an appeal perfected pursuant to Anders v California 378 U.S. 738, 87 S. Ct. 1396 (1967). The South Carolina Court of Appeals

RS

dismissed Applicant's appeal. State v. Hollman, Op. No. 2014-UP-342 (filed on September 24, 2014). The Remittitur was issued on October 21, 2014.

II. ALLEGATIONS

Applicant alleged the following grounds in his application:

1. "Ineffective Assistance of Counsel"
 - a. "Failed to develop sound trial strategy"
2. "Prosecutorial Misconduct"
 - a. "Fabrication of evidence"

III. SUMMARY OF FACTS

On August 8, 2012, Applicant broke into a private residence and stole a fifty to sixty inch television and other items. Tr. 65. Billy Tanner testified he went to bed at 10:00 or 10:30 p.m. on the night in question. The following morning, he got out of bed at around 5:00 a.m. Upon entering the living room, he saw his television was missing as well as a laptop and cell phone. Tr. 70. Tanner testified the vehicles outside were broken into as well and a house key that was in one of the vehicles had been dropped on the steps to the back door. Tr. 75.

Applicant made a confession to law enforcement. Tr. 79. Applicant stated he took the television, laptop, and cell phone. Tr. 85. Applicant knew the directions to the house. Tr. 85. A witness testified that Applicant had sold him a laptop similar to the one described by Tanner earlier that year. Tr. 90.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court finds that Applicant has failed to satisfy his burden to prove that Counsels were deficient or that he was prejudiced by Counsels' alleged deficiencies. Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a

ground for relief, 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). The proper measure of performance is whether Counsels provided representation within the range of competence required in criminal cases. Id.

In evaluating allegations of ineffective assistance of counsel, the court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). 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. Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, Counsels' deficient performance must have prejudiced 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.

This Court finds Applicant's testimony lacked credibility. This Court finds that Applicant has failed to satisfy his burden to prove that Counsel's actions were deficient. Applicant also failed to prove he was prejudiced by the alleged deficiencies. This Court finds Counsel properly prepared for Applicant's trial. This Court finds Counsel elucidated valid trial strategies in defending Applicant. This Court finds Counsel rendered adequate assistance and exercised

professional judgment his decisions at trial. This Court dismisses Applicant's application for the reasons set out below:

A. Ineffective Assistance of Counsel

1. Failed to develop trial strategy.

Applicant's allegation Counsel failed to develop a trial strategy is meritless. The trial transcript shows Counsel's arguments in defense of Applicant. Counsel argued the State failed to prove its case beyond a reasonable doubt because there was no forensic evidence produced. Counsel also argued Applicant's confession was coerced by law enforcement's detention of his girlfriend. A strategic or tactical decision does not have to be articulated by counsel on the record; counsel doesn't have to personally identify his or her thinking. It is enough that the record show a basis for strategy, not that counsel announce that strategy on the record. See Wood v. Allen, 558 U.S. 290, 130 S.Ct. 841, 175 L.Ed.2d 738 (2010). Strickland itself recites that there are countless ways to provide effective assistance and even the best lawyers would not defend a particular client in the same way. 466 U.S. at 689. Counsel's arguments and strategy did not fall below the professional norm of an attorney. "The court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 118, 386 S.E.2d at 625. However, Applicant's confession and his knowledge of the whereabouts of the victim's house provided the State with overwhelming evidence of his guilt.

Furthermore, counsel provided competent representation in light of the overwhelming evidence against Applicant. See Harris v. State, 377 S.C. 66, 79, 659 S.E.2d 140, 147 (2008) (applicant cannot prove prejudice where there is overwhelming evidence of guilt). This Court finds Counsel's trial strategy was appropriate and competent in attacking Applicant's confession and the evidence presented against him.

Therefore, this Court finds Applicant failed to prove Counsel failed to develop a reasonable trial strategy or that Applicant was prejudiced by Counsel's trial strategy. Accordingly, this Court denies and dismisses this allegation.

2. Prosecutorial Misconduct

Applicant's allegation that there was prosecutorial misconduct is not an issue for post-conviction relief. Rather, this allegation is a direct appeal issue that is procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). Applicant could have raised this issue on appeal. The failure to do so has waived this allegation as grounds for relief. Regardless, it is Applicant's burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989). Further, Applicant failed to provide any credible evidence that the State offered any evidence in bad faith or elicited perjury testimony. Applicant's own assertion that a witness failed to tell the truth is not sufficient evidence on which to base this allegation. No evidence was presented or testimony elicited proving the State used false testimony in convicting Applicant. Therefore, this Court dismisses this allegation.

IV. CONCLUSION

Based on 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 Applicant must file and serve a notice of appeal within thirty (30) days from receipt 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, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCR, provides that if Applicant wishes to seek appellate review, his post-conviction relief attorney must serve and file a notice of appeal on Applicant's behalf. Applicant and his attorney are directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 14 day of September, 2017.



R. SCOTT SPROUSE
Presiding Judge
14th Judicial Circuit

Walla, South Carolina

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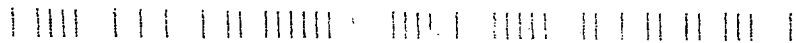


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Illinois 1818

Clerk of Court
Supreme Court of South Carolina
P.O. Box 11330
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