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May 16, 2018

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

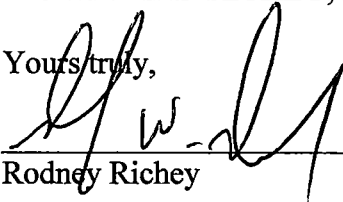
Re: Christopher Martin v. State of South Carolina
Case No: 2017-CP-11-0248

Dear Mr. Shearouse:

Please find enclosed a Notice of Appeal and an affidavit of service for the same. Also, I have enclosed a copy of the Order from which the appeal is taken. Thank you for your help and if you should have any questions please feel free to call me.

RICHEY AND RICHEY, P.A.

Yours truly,


Rodney Richey

RWR/
enclosures

cc: Valerie Garcia Giovanoli, Esquire

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MAY 21 2018

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM CHEROKEE COUNTY
Court of Common Pleas

HONORABLE GRACE GILCHRIST KNIE

2017-CP-11-0248

CHRISTOPHER MARTIN, SCDC# 307574

APPELLANT,

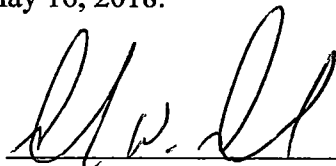
against

STATE OF SOUTH CAROLINA,

RESPONDENT.

NOTICE OF APPEAL

Christopher Martin appeals the denial of his Post Conviction Relief. The Post Conviction Relief Action was heard and denied by the Honorable Grace Gilchrist Knie, Circuit Judge on January 29, 2018 an Order issued on May 9, 2018 and filed on May 14, 2018. The Appellant received notice of the judgment on May 16, 2018.



Rodney W. Richey, Esquire
Attorney for the Appellant
33 Market Point Drive
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Attorney for Applicant

Other Counsel of Record:
Valerie Garcia Giovanoli, Esquire
Office of Attorney General State of SC
Post Office Box 11549
Columbia, SC 29211-1549

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S.C. SUPREME COURT

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APPEAL FROM CHEROKEE COUNTY
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CHRISTOPHER MARTIN, SCDC# 307574

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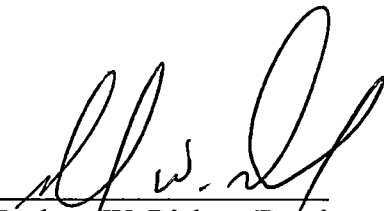
STATE OF SOUTH CAROLINA,

RESPONDENT.

AFFIDAVIT OF SERVICE

I certify that I have served the Notice of Appeal on the State of South Carolina by depositing copy of it in the United States Mail, postage prepaid, on May 16, 2018, addressed to their attorney of record, Valerie Garcia Giovanoli, Office of Attorney General State of South Carolina, Post Office Box 11549, Columbia, SC 29211-1549.

Dated: May 16, 2018



Rodney W. Richey, Esquire
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(864) 467-0503
Attorney Appellant

Other Counsel of Record:
Valerie Garcia Giovanoli, Esquire
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Post Office Box 11549
Columbia, SC 29211-1549

RECEIVED

MAY 21 2018

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE

Christopher Martin, #307574,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2017-CP-11-0248

**ORDER OF DISMISSAL
WITH PREJUDICE**

BRANDY REED, CLERK

2018 MAY 14 AM 8:45

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CLERK OF COURT
SEVENTH JUDICIAL CIRCUIT

This matter comes before this Court by way of an application for post-conviction relief (PCR) filed by Christopher Gene Martin (Applicant) on March 27, 2017. The State (Respondent) made its return requesting an evidentiary hearing be held. An evidentiary hearing into the matter was convened on January 29, 2018 at the Spartanburg County Courthouse. Applicant was present and represented by Rodney W. Richey, Esquire. Valerie Garcia Giovanoli, Esquire, of the Office of the Attorney General represented Respondent.

At the hearing, Applicant testified on his own behalf. Don Thompson, Esquire, (Counsel) also testified. This Court had before it a copy of the Cherokee County Clerk of Court records, Applicant's records from the South Carolina Department of Corrections, the trial transcript, the direct appeal records, the PCR application, and Respondent's return.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Cherokee County Clerk of Court. In May 2014, the Cherokee County Grand Jury indicted Applicant for attempted murder following the January 7, 2014, stabbing of Nathan Hoffman following a heated exchange between the two men. (2014-GS-11-0513). Don Thompson, Esquire, represented Applicant at trial. Assistant Solicitor Clifton M.

Sams represented the State. On August 11, 2015, Applicant appeared in the Spartanburg County Court of General Sessions, where proceeded to a jury trial before the Honorable R. Keith Kelly, circuit court judge. The jury found Applicant not guilty of attempted murder, but guilty of the lesser included offense of assault and battery of a high and aggravated nature (“ABHAN”). On August 12, 2015, Judge Kelly sentenced Applicant to imprisonment for twenty years.

Applicant filed a timely notice of appeal. An appeal was perfected by Kathrine H. Hudgins Esquire, who submitted an Anders¹ brief on Applicant’s behalf and moved to be relieved as his counsel. The South Carolina Court of Appeals dismissed Applicant’s appeal and granted counsel’s motion to be relieved in an unpublished opinion. State v. Martin, Op. No. 2016-UP-465 (S.C. Ct. App. filed November 9, 2016). The remittitur was returned on November 29, 2016.

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

1. “Ineffective Assistance of Counsel”
 - a. “Attorney did not do his job.”
 - b. “Tried to fire attorney and could not, and [another] attorney could have done a better job.”
2. “Lack of DNA – No DNA was done on blood that was found.”
3. “Lack of weapon for trial and witness statements.”
4. “No weapon was found to put me at the scene and witness lied at trial.”

In its return, Respondent moved for summary dismissal of the three allegations relating to the sufficiency of the evidence, arguing these were impermissible challenges to the sufficiency of the evidence and were not cognizable grounds for post-conviction relief. Respondent also moved for a more definite statement as to the allegations of ineffective assistance of counsel.

¹ Anders v. California, 386 U.S. 738 (1967).

At the start of the hearing, Respondent renewed its motion to dismiss allegation regarding the sufficiency of the evidence as those claims are not cognizable claims under the PCR Act. Respondent also requested a more definite statement in order to clarify the allegations.

SUMMARY OF TESTIMONY AT PCR

I. Applicant testified to the following:

Applicant testified he was selling cigarettes out of his house when the victim came to his house. He did not know the victim. The victim began fighting with another guest in the house. Applicant denied stabbing the victim. Applicant also testified never discussed discovery, the State's evidence, witnesses, or anything about the case with Counsel. Applicant claims he did not get a copy of his discovery until after he was convicted and from the Clerk of Court. Although Jessica Ramsey, Applicant's fiancé at the time of trial, testified against him, Applicant claimed Counsel never discussed her potentially testifying at trial.

II. Counsel testified to the following:

Counsel has been practicing law since 1980. He is, and was at the time of Applicant's trial, the Chief Public Defender for Cherokee County. Counsel testified Applicant was originally charged with first-degree assault and battery, but the charge was later upgraded to attempted murder. Applicant was arrested in January of 2014 and Counsel was appointed in February of 2014. Shortly thereafter, Counsel had to take an extended break from the practice of law due to a cancer diagnosis and subsequent treatment. During that time, Clay Allen, Chief Public Defender for the Seventh Judicial Circuit, handled Applicant's case. Counsel could not testify as to what occurred during his time away. Counsel returned to work in February of 2015 and Applicant's trial was not until August of 2015.

Counsel had notes in his file indicating he requested and received discovery from the State. Counsel testified he reviewed the case and all of the discovery with Applicant prior to trial. Counsel recalled meeting and interviewing Jessica Ramsey, Applicant's then-fiancé and a State's witness. He then discussed what her testimony would be with Applicant. Counsel recalled the State's case was a number of different witnesses all testifying to what they saw, which culminated to a story of Applicant chasing and stabbing the victim. The stories were different based on each witness's perception and what part of the incident they could see, but they were not necessarily contradicting.

Counsel relayed a plea offer from the State for twelve years to plead to assault and battery of a high and aggravated nature (ABHAN). Counsel had a note in his file, and recalled, that Applicant turned down the offer on August 4, 2015. At the time Counsel relayed the plea offer, he expressed his concern that he did not believe Applicant had a chance of winning at trial and should accept the plea offer, but Applicant insisted on trial. Counsel advised Applicant not to testify because of his prior criminal record and because he did not believe Applicant's testimony would be beneficial to the case. Counsel advised Applicant it was ultimately his decision whether to testify. Other than Applicant's testimony, there was no evidence to present in defense of the charges.

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 had the opportunity to observe the witnesses presented at the hearing, and has weighed their testimony and credibility accordingly. Below are the findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2017). Applicant has failed to prove by a preponderance of the evidence that



Counsel was deficient or that he was prejudiced by any deficiency. A Post-Conviction Relief application is not a venue for questioning each and every decision of trial counsel. Rather, the Applicant must demonstrate by a preponderance of the evidence that trial counsel was deficient and that the deficiency prejudiced the outcome of his trial. Applicant has failed to do so.

Ineffective Assistance of Counsel

Applicant alleges he received ineffective assistance of counsel. In a PCR action, “[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). 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 v. State, 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, Id. An applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). 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 (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.

This Court finds Applicant has failed to meet his requisite burden of proof as to his allegations of ineffective assistance of counsel. Specifically, this Court finds Applicant has failed to establish both deficiency of counsel or any resulting prejudice from these alleged deficiencies. This Court finds Counsel's testimony to be credible and accordingly affords it great weight, while also finding Applicant's testimony to lack credibility. Counsel testified he reviewed discovery materials with Applicant, reviewed the numerous witness statements and concluded that while there were some discrepancies, the statements were not contradictory. He advised Applicant there was a high likelihood Applicant would be convicted at trial and advised Applicant he should accept the State's twelve year plea offer, but that Applicant declined the offer and insisted on proceeding to trial. Counsel also met with Applicant his fiancé to discuss her possibly testifying and also discussed Applicant's right to testify with him. This Court finds Counsel's performance was in accordance with professional standards required and that Applicant has failed to establish any deficiency of counsel or any requisite prejudice. Therefore, Applicant's allegations of ineffective assistance of counsel are denied and dismissed with prejudice.

Procedurally Barred Allegations

Additionally, this Court finds Applicant's allegations pertaining to the sufficiency of the evidence ("Lack of DNA – No DNA was done on blood that was found," "Lack of weapon for trial and witness statements," and "No weapon was found to put me at the scene and witness lied at trial.") are non-cognizable grounds for relief under the Uniform Post-Conviction Procedure Act and grants Respondent's motion to dismiss these allegations.

An applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;



2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy.

S.C. Code Ann. § 17-27-20. Even if the facts alleged by Applicant are true, these facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. Challenges to the sufficiency of the evidence from trial is not a cognizable claim. Post-conviction relief is only proper when the application collaterally attacks the validity of the conviction or sentence. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). Rather, these allegations constitute 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). The failure to do so has waived this allegation as grounds for relief. Therefore, this Court finds these allegations are procedurally barred and must be denied and dismissed with prejudice.

CONCLUSION

Based on all the foregoing, this Court finds and concludes Applicant has not established any violations that would require this Court to grant his application. This Court finds Applicant has failed to prove any deficiencies on the part of Counsel and further, Applicant has failed to prove prejudice from any alleged deficiencies in Counsel's representation of him. Therefore, as

Applicant has failed to meet his burden of proof in this post-conviction relief action, his application is denied and dismissed with prejudice.

This Court notifies Applicant he must file and serve a notice of appeal within thirty days from receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. An applicant has a right to an appellate counsel's assistance when they are seeking review of the denial of PCR. Austin v. State, 305 S.C. 453 (1991). If an applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. See Rule 71.1 (g), SCRCR. You must look at Rule 243 of the South Carolina Appellate Court Rules for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The application for Post-Conviction Relief is denied and dismissed with prejudice;
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

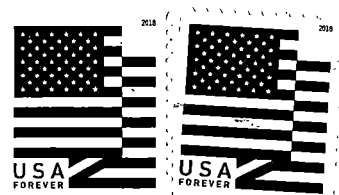
AND IT IS SO ORDERED this 9th day of May, 2018.



GRACE GILCHRIST KNIE
Presiding Judge
Seventh Judicial Circuit

Spartanburg, South Carolina

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POST OFFICE BOX 10916
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The Honorable Daniel E. Shearouse
Clerk of Court
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