

05/22/2018 Supreme Court
of
South Carolina

Appeal from Sumter County

Alexander B Wilson

Applicant

VS

State of South Carolina

Respondent

Re: Trial Court # 2011-GS-43-00698

Appellate # 2014-002659

Lower Case # 2016-CP-43-1333

PROOF OF SERVICE

I the undersigned do hereby certify that
on this day 22nd of May 2018 I served A
Foregoing Notice of Appeal as well as proof of
service in this matter by depositing A true
copy in the United States Mail on May 22 2018
Address to the following as indicated below:

Supreme Court of
South Carolina
Post office Box 11330
Columbia SC, 29211

South Carolina
Attorney General
Post office Box 11549
Columbia SC
29211

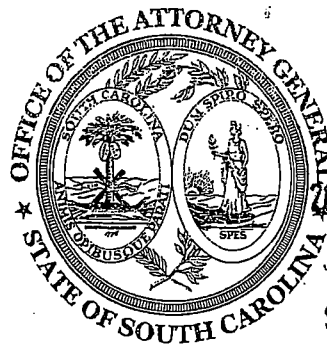
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MAY 25 2018

S.C. SUPREME COURT

Sign

Alexander B. Wilson Jr



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2018 APR -9 PM 4:57

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

ALAN WILSON
ATTORNEY GENERAL

April 5, 2018

The Honorable James C. Campbell
Clerk of Court, Sumter County
215 North Harvin St.
Sumter, SC 29150-4974

Re: Alexander B. Wilson, Jr., v. State of South Carolina
2016-CP-43-1333

Dear Mr. Campbell:

Enclosed please find an original and a copy of the Order of Dismissal in connection with the above referenced case. Please file the original and return a certified copy to me in the self-addressed envelope provided for your convenience. Also please serve a copy on opposing counsel.

Sincerely,

Julie A. Coleman
Assistant Attorney General

JAC:ces
Enclosures

cc: Timothy L. Griffith, Esquire

Esquire. On December 4, 2014, Applicant was found guilty but mentally ill of murder and sentenced by the Honorable W. Jeffrey Young to imprisonment for the remainder of his natural life.

Applicant filed a timely notice of appeal. An appeal was perfected and an Anders brief was submitted. The South Carolina Court of Appeals dismissed Applicant's appeal in an opinion filed June 22, 2016. State v. Wilson, Op. No. 2016-UP-310 (S.C. Ct. App. 2016). The Remittitur was returned on July 8, 2016.

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. "Three weeks before trial advise[d] to testify."
 - b. "Counsel did not object to lay testimony."
 - c. "Compelled to be a witness against myself."
 - d. "Defendant mental state was determined by lay witness."

At the outset of the evidentiary hearing, Respondent moved to dismiss allegation "d" because the allegation is a direct appeal allegation that is improper for post-conviction relief and had already been raised and ruled upon in Applicant's direct appeal. Applicant voluntarily withdrew this allegation in response to the motion, and proceeded forward only on the remaining three allegations.

III. SUMMARY OF RELEVANT TESTIMONY PRESENTED

Applicant's testimony

At the evidentiary hearing, Applicant testified that he had taken his medicine that day and felt good, and he knew what was going on. He stated he had previously been found mentally incapable to stand trial four times. Applicant testified that he was alleged to have killed two

people—his mother, and the clone that was impersonating his mother. Applicant stated he only met with Trial Counsel three times before his trial, and Trial Counsel did not advise him of his right to testify or his right to remain silent. He stated Trial Counsel told him to testify at trial. Applicant stated Trial Counsel sent him a letter, and after Applicant received it, he decided to testify. He stated Trial Counsel did not advise him of the consequences of testifying, and he thought that if he did not testify he could not win the case. He stated Trial Counsel failed to object to his brother's testimony about Applicant's mental state at the time of the crime, and he should have objected because his brother was a lay witness.

Trial Counsel's testimony

Trial Counsel testified he had practiced law for twenty-one years. He stated he was appointed to represent Applicant and represented him for two years prior to his trial. He testified Applicant was accused of murdering his mother by beating her to death with a baseball bat. He stated Applicant's brother came home, walked in the house, and saw Applicant standing there with a baseball bat ready to swing at him, and his deceased mother laying face-down on the floor with blood everywhere. Trial Counsel testified that Applicant seemed to believe that the woman he killed was not his mother, but was an evil clone that was impersonating his mother. He stated this case had big mental health issues, and Dr. Thomas Martin was appointed to help him handle the case, and Dr. Martin conducted a mental evaluation on Applicant. Trial Counsel testified that the State's doctor testified that Applicant was guilty but mentally ill.

Trial Counsel testified his trial strategy was to let the jury see and hear Applicant "in all of his glory" at trial to convince them that he was insane. His strategy was to put Applicant on the stand because it was the best way to prove he was insane and could not understand that he was doing wrong because he believed he was killing an evil clone, not his mother. Trial Counsel



stated he discussed the decision to have Applicant testify with Applicant over the phone, when they met at the jail, and before the trial. He stated his strategy was to argue to the jury that "you've got to be crazy to do this to your momma." Trial Counsel opined that if Applicant had not testified at trial, their chances of winning the case would have been worse.

Trial Counsel testified the evidence of Applicant's guilt was overwhelming. He stated there was no question that Applicant committed the crime, but the only question for the jury was why he committed the crime. He stated it all came down to either a not guilty by reason of insanity verdict or a guilty but mentally ill verdict. Trial Counsel testified he was not concerned about the fact witnesses' testimony because the facts were not in dispute.

Trial Counsel testified he saw no reason to object to the testimony of Applicant's brother, Jerome, at the time of the trial. He stated Jerome talked about Applicant's past mental health history, and Trial Counsel did not believe Jerome was encroaching into an expert area of testimony. Trial Counsel testified he did not want to antagonize Jerome in front of the jury. He stated Jerome was mild-mannered, not a "fire and brimstone" witness. Trial Counsel stated at the trial Jerome made it sound like he was saying "my brother has problems and he should have been taking his medicine," and that's what he meant when he said Applicant "knew what he was doing." He stated he did not object to Jerome's testimony as a mental health witness because Jerome did not place himself as an expert witness. He stated Jerome was a helpful witness to him because he told the jury that Applicant had mental health problems, which supported his trial strategy.



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), SCRCPP; 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).

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. With respect to guilty pleas, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (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 has asserted several allegations of ineffective assistance of counsel. This Court finds these claims to be meritless and they should be denied and dismissed with prejudice. After considering the testimony, judging the credibility of the witnesses, and reviewing the materials presented to the court, this Court finds Applicant has failed to meet his burden of proof. Accordingly, post-conviction relief is denied. Each individual allegation is addressed below.

Applicant's decision to testify at trial

Applicant alleges he was compelled to be a witness against himself at trial, and he was not properly advised of the risks and benefits of testifying or his right not to testify at trial. These allegations are meritless. The trial transcript shows Applicant was fully advised of his right to testify at trial as well as his right to remain silent. The trial court fully reviewed these rights and advised Applicant it was entirely his decision to testify or not. Tr. 237 – 241. Applicant informed the trial court that he had no questions about the court's explanation of his rights, he had discussed the decision with his attorney, and he did wish to testify. Tr. 240, line 11-21.

Trial Counsel credibly testified that he did advise Applicant of his rights and the risks and benefits of testifying at trial. He explained that he discussed the decision with Applicant multiple times over the phone, in person at the jail, and right before the trial. Trial Counsel testified that



his trial strategy was to argue a defense of insanity, and the best way to present the defense to the jury was to have Applicant testify at trial about why he killed the evil clone that was impersonating his mother.

This Court finds it was Applicant's decision to testify at trial in alignment with Trial Counsel's strategy, and he was fully advised of his rights and the risks of testifying before he took the stand. This Court finds Trial Counsel's actions were reasonable under professional norms and nothing about his performance was deficient or prejudicial. Accordingly, Applicant has failed to meet his burden of proving that Trial Counsel was ineffective or that his constitutional rights were violated in this regard. These allegations are denied and dismissed with prejudice.

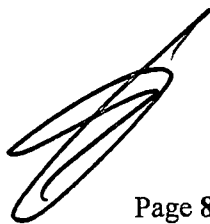
Failure to object to lay witness testimony of Applicant's mental health

This Court finds no merit in Applicant's allegation that Trial Counsel was ineffective for failing to object to the testimony of Applicant's brother, Jerome, as a lay witness giving expert opinion testimony on Applicant's mental state at the time of the crime. Trial Counsel credibly testified he saw no reason to object to Jerome's testimony because he did not believe he was holding himself out to be an expert on the subject of mental health, but he was only discussing Applicant's mental health history and his impressions of his brother's behavior at the time he witnessed him. This Court finds the choice not to object to the testimony was reasonable under the circumstances, as Jerome was not offering any opinions on Applicant's mental health in an expert manner. Jerome was simply explaining his interaction with his brother when he witnessed him immediately after the crime.

Furthermore, Trial Counsel cannot be deficient because he offered a valid strategic reason for choosing not to object to the testimony. He credibly testified that Jerome's testimony taken as

a whole helped Applicant and his defense, and Trial Counsel did not want to make Jerome look bad to the jury. Where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1996); Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). Courts must be wary of second guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992). Accordingly, this Court finds Trial Counsel was not deficient for failing to object to Jerome's testimony.

This Court further finds Applicant has failed to prove any prejudice from Trial Counsel's failure to object to Jerome's testimony. The evidence against Applicant was overwhelming, and there was no question that Applicant murdered his mother. The presence of overwhelming evidence of guilt negates any claim that counsel's performance could have reasonably affected the result of the defendant's trial. 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, (2002) (finding overwhelming evidence of guilt negated any claim that counsel's deficient performance could have reasonably affected the result of defendant's trial). While Applicant may contend that he may have been found not guilty by reason of insanity rather than guilty but mentally ill if Trial Counsel had objected to the testimony, this Court finds Applicant has failed to meet his burden of proving so. Accordingly, neither prong of the Strickland test is met, and this allegation is denied and dismissed with prejudice.

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VI. CONCLUSION

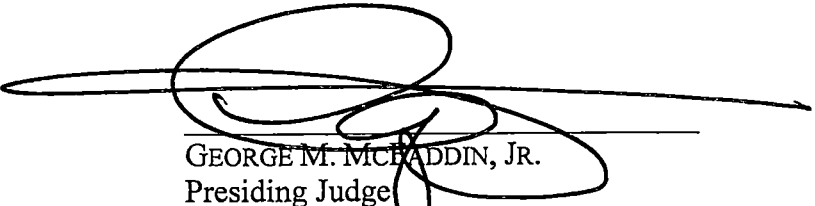
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

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; and
2. Applicant must be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 20th day of March, 2018.



GEORGE M. MCFADDIN, JR.
Presiding Judge
Third Judicial Circuit

Sumter, South Carolina

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INTEI AGENCY

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