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RECEIVED

JUN 04 2018

May 29, 2018

S.C. SUPREME COURT

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

Re: William Douglas Zeigler, SCDC# 154981 vs. State of South Carolina
Case No: 2017-CP-23-1495

Dear Mr. Shearouse:

Please find enclosed a Notice of Appeal and a Proof of Service for the same. Also, I have enclosed a copy of the Order from which the appeal is taken. Please filed the copies that I have enclosed and return the copies to me. 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: DeShawn H. Mitchell

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

HONORABLE G. THOMAS COOPER

2017-CP-23-1495

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JUN 04 2018

S.C. SUPREME COURT

WILLIAM DOUGLAS ZEIGLER, SCDC# 154981

APPELLANT,

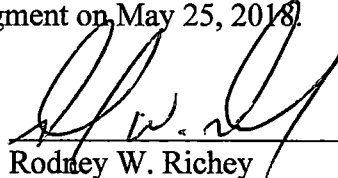
against

STATE OF SOUTH CAROLINA,

RESPONDENT.

NOTICE OF APPEAL

William Douglas Zeigler appeals the denial of his Post- Conviction Relief. The Post Conviction Relief Action was heard and denied by the Honorable Letitia H. Verdin, Circuit Judge on October 24, 2017 and Order issued on May 18, 2018 and filed on May 22, 2018. The Appellant received notice of the judgment on May 25, 2018.



Rodney W. Richey
Attorney for the Appellant
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Other Counsel of Record:
DeShawn H. Mitchell, Esquire
Office of Attorney General State of SC
Post Office Box 11549
Columbia, SC 29211-1549

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

HONORABLE G. THOMAS COOPER

2017-CP-23-1495

RECEIVED

JUN 04 2018

S.C. SUPREME COURT

WILLIAM DOUGLAS ZEIGLER, SCDC# 154981

APPELLANT,

against

STATE OF SOUTH CAROLINA,

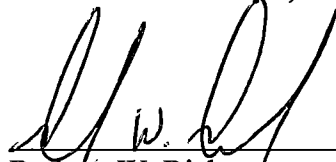
RESPONDENT.

PROOF 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 28, 2018, addressed to their attorney of record, DeShawn H. Mitchell, Office of Attorney General State of South Carolina, Post Office Box 11549, Columbia, SC 29211-1549.

Dated: May 25, 2018

RICHEY & RICHEY, P.A.



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STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
William Douglas Zeigler, #154981)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

2017-CP-23-1495

ORDER OF DISMISSAL

18 MAY 22 AM 8:34
Paul Wickenhauser - DOC GVL SC

This matter comes before the Court by way of an application for post-conviction relief filed on March 6, 2017 by William Douglas Zeigler (Applicant). Respondent made its Return on or about July 28, 2017. An evidentiary hearing into the matter was convened on October 24, 2017, at the Greenville County Courthouse in Greenville, South Carolina. Applicant was present and represented by Rodney W. Richey, Esquire. Respondent was represented by DeShawn H. Mitchell, Esquire of the South Carolina Attorney General's Office.

At the hearing, Applicant testified on his own behalf. Applicant's Trial Counsel Randall L. Chambers, Esquire also testified. This Court had before it a copy of the records of the Greenville County Clerk of Court regarding the Applicant's convictions, the transcript from Applicant's trial, the PCR application, Respondent's Return, Applicant's records from the Department of Corrections and Applicant's appellate records. After reviewing the record and everything presented, this Court finds Applicant has failed to establish any constitutional deprivations entitling him to post-conviction relief and denies this application.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Greenville County Clerk of Court. In May 2015, the Greenville County Grand Jury indicted Applicant for criminal sexual conduct (CSC), first degree (2013-GS-

23-8196), kidnapping (2013-GS-23-8197), and possession of cocaine base (crack cocaine) (2014-GS-23-0245). Randall Lee Chambers, Esquire, represented Applicant. Assistant Solicitor L. Mark Moyer, Esquire prosecuted the case. On June 1-2, 2015, Applicant proceeded to trial before the Honorable Edward W. Miller. The jury found Applicant guilty as indicted. Judge Miller sentenced Applicant to imprisonment for thirty years each for CSC and kidnapping, and three years for possession of cocaine.

Applicant filed a timely notice of appeal. David Alexander, Esquire, of the Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals dismissed Applicant's appeal after review pursuant to Anders¹ on November 23, 2016. State v. Zeigler, Op. No. 2016-UP-494 (S.C. Ct. App. filed November 23, 2016). The remittitur was returned to the circuit court on December 13, 2016.

FACTUAL HISTORY

The facts underlying the charges are as follows: on July 12, 2013, the victim, in an intoxicated state, asked the Applicant to give her a ride home. Trial Tr. pg. 66, Line 16- pg. 67, Line 15. Instead of taking her home, the victim alleged Applicant took to his trailer and raped her. Trial Tr. pg. 69, Lines 10-23. The Applicant alleged that the victim was intoxicated when he agreed to give her a ride home, but would not tell him where, so after driving around he took her back to his house. Trial Tr. pg. 73, Line 7, 21- pg. 74, Line 2. After arriving at his home, Applicant admitted to using cocaine. Trial Tr. pg. 267, Line 14- pg. 268, Line 1. After they entered Applicant's home, he alleged they engaged in consensual sexual intercourse. Trial Tr. pg. 74, Lines 3-4, pg. 270, Lines 17-19.

ALLEGATIONS

1. "Ineffective Assistance of Counsel."

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

SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTARY HEARING

Applicant's Testimony

Applicant testified Trial Counsel represented him. He testified regarding the facts of his case. Applicant testified the sex with the victim in his case was consensual and that the injuries the victim sustained were self-inflicted.

Trial Counsel's Testimony

Trial Counsel testified he represented Applicant. He testified he met with Applicant on several occasions, discussed his charges, the state's evidence and the potential sentences Applicant faced. Trial Counsel testified the State extended Applicant a plea offer of twenty years. He testified he discussed the plea deal with Applicant but he rejected it.

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 can weigh their testimony and credibility accordingly. These credibility findings have been applied to the Court's findings and conclusions set forth below. Below are the findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2017).

In a post-conviction relief action, the 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, 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. at 443, 334 S.E.2d at 814. The

proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 689. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove that counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Id. (quoting Strickland v. Washington, 466 at 688). 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.

Ineffective Assistance of Counsel

This Court finds Trial Counsel's testimony credible. Based upon this Court's observations of Applicant at the hearing and the inconsistency of his testimony, the Court finds Applicant's testimony not credible. This Court finds Trial Counsel provided effective assistance in this case. Trial Counsel is a trial practitioner who had experience in the trial of criminal offenses. Trial Counsel conferred with Applicant on multiple occasions, during which time Trial Counsel discussed the pending charges, the State's evidence, possible defenses and courses of action, and answered all of Applicant's questions. Additionally, this Court finds the underlying factual basis for the conviction involves a sexual assault incident. Both the victim and Applicant testified at trial with the Applicant testifying the sex was consensual. Trial Tr. pg. 270.

Accordingly, having reviewed the full trial transcript, this Court finds that Trial Counsel was well-versed in the factual allegations, that Trial Counsel asked appropriate questions which were relevant to Applicant's theory of the case, and that Trial Counsel's pretrial discussions with Applicant were sufficient and were not deficient in any respect. Therefore, this Court finds Applicant has failed to prove the first prong of the Strickland test - that Counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present compelling evidence that Counsel committed either errors or omissions in his representation of Applicant. This Court also finds Applicant has failed to prove the second prong of Strickland - that he was prejudiced by Counsel's performance. This Court concludes Applicant has not met his burden of proving Trial Counsel failed to request a competency evaluation. The allegation is denied and dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any violations 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 Applicant that he must file and serve a notice of appeal within thirty (30) 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), SCRPC. Refer to 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.

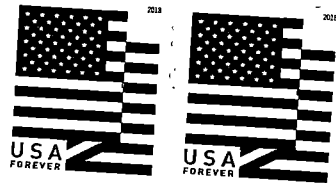
AND IT IS SO ORDERED this 18 day of May, 2018.



LETITIA H. VERDIN
Presiding Judge
Thirteenth Judicial Circuit

Greenville South Carolina

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The Honorable Daniel E. Shearouse
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