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S.C. SUPREME COURT
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July 2, 2018

VIA U.S. MAIL

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

Re: Robert Woods vs The State of South Carolina
Case No.: 2016CP2301878

Dear Mr. Shearouse:

I have been retained by Robert Woods, a Plaintiff in the above-referenced case.

Enclosed for filing are an original and one (1) duplicate copy of the following documents for the above-captioned case.

1. Appellant's Notice of Appeal;
2. Proof of Service; and
3. The Order of Dismissal filed May 17, 2018

If you wish to discuss the foregoing or need additional information, please contact me at 864-331-1630.

Thank you.

Sincerely,



Brian P. Johnson, Esquire

BPJ/mkd

cc: DeShawn H. Mitchell

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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JUL 06 2018

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
HONORABLE FRANK R. ADDY, JR.

S.C. SUPREME COURT


Case No.: 2016CP2301878

ROBERT WOODS,)
)
 PETITIONER,)
)
 vs.)
)
 STATE OF SOUTH CAROLINA)
)
 RESPONDENT.)

NOTICE OF APPEAL

The Petitioner, Robert Woods, hereby appeals the Honorable G. Frank R. Addy's May 8, 2018, order denying post-conviction relief to the Petitioner. This order was received by counsel for the respondent on June 1, 2018. A copy of the order on appeal is attached to this notice.

Respectfully submitted,



Brian P. Johnson, Esq.
522 North Church Street
Greenville, SC 29601
Attorney for Petitioner

Date: July 2, 2018

Other counsel of record: DeShawn H. Mitchell
P.O. Box 11549/Columbia, SC 29211

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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

Case No.: 2016CP2301878

ROBERT WOODS,)
)
PETITIONER,)
)
vs.)
)
STATE OF SOUTH CAROLINA)
)
RESPONDENT.)
_____)

PROOF OF SERVICE

I, Brian P. Johnson, Esq., certify that I have today served the within notice of appeal upon the Respondent by depositing a copy in the United States Mail, postage prepaid, addressed to the attorney of record, DeShawn H. Mitchell, at P.O. Box 11549 Columbia, SC 29211.

Respectfully submitted,



Brian P. Johnson, Esq.
522 North Church Street
Greenville, SC 29601
Attorney for Petitioner

Date: July 2, 2018
Other counsel of record: DeShawn H. Mitchell
P.O. Box 11549/Columbia, SC 29211

Grand Jury indicted Applicant at the March 2013 term for criminal sexual conduct with a minor first degree (2012-GS-23-2853) and a separate count of lewd act upon a child (2012-GS-23-2852). Applicant was represented by C. Timothy Sullivan Jr, Esquire.

On April 8, 2013, Applicant was tried before the Honorable Robert E. Hood and a jury. The jury convicted Applicant on both charges as indicted. Judge Hood sentenced Applicant to twenty-five (25) years imprisonment for criminal sexual conduct and a consecutive term of ten years imprisonment suspended upon the service of five years probation for lewd act.

Applicant filed a timely notice of appeal which was perfected by David Alexander, Esquire. App. Case No. 2013-000814. The South Carolina Court of Appeals affirmed Applicant's convictions in an unpublished opinion filed January 6, 2016. 2016-UP-001. The Remittitur was sent on January 22, 2016.


FACTUAL HISTORY

The victim, age ten at the time of trial, was raised in a very unstable home environment. The victim's mother "walked off and left her oldest child," and when the victim was born, "it seemed like everybody was raising her." (R. p. 183, lines 6-10). The victim's younger brother was raised by the victim's aunt. (R. p. 183, lines 6-11). The Department of Social Services ("DSS") became a part of the victim's life at an early age. (See R. p. 152-53; see 2010 Forensic Interview Report). The victim stayed with her mother some of the time but her father had little contact with her and did not assist her financially. (R. p. 26, lines 8-10; p. 156, lines 11-14). The victim's mother had different boyfriends from time to time and she would allow them to live with her. Applicant became one of these boyfriends after the victim's mother met Applicant "over the phone at work" while she was working in housekeeping at a Holiday Inn. (R. p. 147, lines 1-16).

The victim's mother invited Applicant over to the house a couple of days later and after "about a week or so," she moved Applicant into the house. (R. p. 147, lines 10-24).

When the victim started third grade in 2011, her teacher noticed she was emotional, cried a lot, and did not always complete her work. (R. p. 100-102). Near the beginning of the school year, the victim disclosed to her teacher that she had been sexually abused recently in her mother's bedroom. (R. p. 101; p. 105-106). The teacher immediately sent the victim to the guidance counselor pursuant to protocol. (R. p. 101-102). After speaking with the victim, the guidance counselor reported the sexual abuse to DSS. (R. p. 104-105). The victim was referred for a medical exam with Dr. Nancy Henderson, and the victim, then age nine, disclosed the sexual abuse to Dr. Henderson. (R. p. 117-18).

At trial, the victim testified that she was staying with her mother in Greenville before starting third grade. (R. p. 128). She testified that she lived with her mom, Applicant, and her brother. (R. p. 128, lines 23-25). The victim liked Applicant initially and liked his dog "Buttercup." (R. p. 129). However, one day while the victim's mother was at work, Applicant called the victim into her mother's bedroom and "put his private in [the victim's] butt." (R. p. 130, lines 2-14). The victim's little brother was in another room at the time. (R. p. 130, lines 4-8). When Applicant penetrated her, he told the victim that what he was doing would help her "stop scratching." (R. p. 130, lines 16-24). At the time, the victim was suffering from scabies, which caused her to have an itchy rash. (R. p. 120, lines 14-24). When Applicant penetrated her, the victim was laying on her mother's bed and Applicant was standing behind her. (R. p. 131). When he was finished, Applicant told the victim not to tell her mother about what he had just done. (R. p. 133). The victim did not tell her mother because she was afraid her mother would believe Applicant over her. (See R. p. 133, lines 11-12).

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Applicant did not testify at trial, and he presented no witnesses. The jury convicted Applicant, and the trial judge sentenced him to twenty-five years for criminal sexual conduct with a minor and ten years, consecutive, but suspended to five years of probation for lewd act upon a minor.

ALLEGATIONS

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

1. Failure to quash indictments;
2. Failure to obtain Applicant's prior mental health records prior to trial to establish Applicant has prior and present mental health issues;
3. Failure to preserve victim's prior statements for Appellate review;
4. Allowing the State to indict Applicant on 2012 statute when allegations were made in 2009 and 2011;
5. Failure to object to judge instructions on the Applicant to the jury of Applicant's mental health, education, defendant's I.Q. or intelligence, where Applicant's mental health records, education, I.Q., or intelligence records were never introduced to the jury during Applicant's trial proceedings;
6. Failure to quash indictments for exceeding the 90 day time limit;
7. [illegible]
8. Failure to object to the judge for not charging the jury with a lesser included offense of assault and battery of a high and aggravated nature.
9. Failing to explain to Applicant the elements of the offense.
10. [illegible]
11. Allowing State to use forensic video interview with the victim.

SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTARY HEARING

Applicant's Testimony

Applicant testified Trial Counsel represented him on the charges he was facing. He testified Trial Counsel should have had him evaluated prior to him going to trial. Applicant testified he had been taking medication for mental health issues all his life. He testified he was bipolar and suffered from Schizophrenia. Applicant testified that he has a criminal history, he is paranoid about things, and was previously diagnosed with a mental health illness related to paranoia. Applicant testified



he talked to Trial Counsel multiple times during the course of his representation, and Trial Counsel went over his discovery with him somewhat but not *in toto*. He testified he did not understand his conversations with Trial Counsel due to the medication he was taking. Applicant testified that he told Trial Counsel about his mental health issues, but Trial Counsel failed to do anything about it.

Trial Counsel's Testimony

Trial Counsel testified he was appointed to represent Applicant. He testified he had been practicing law for over fifty years and the last thirty of those years had been devoted to criminal law. Trial Counsel testified about the facts of the case and how Applicant was charged with criminal sexual conduct with a minor, first degree. He testified he met with Applicant frequently during his representation. Trial Counsel testified he sent Applicant a copy of his discovery twice and went over it with him at length. He testified the State extended a plea offer to Applicant to plead guilty to a lewd act, but Applicant declined the offer. Trial Counsel testified that, during the course of his representation, Applicant appeared to comprehend fully everything they discussed and that Applicant appeared to understand the charges he was facing.

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.

After careful review of the entire record, including the testimony presented at the evidentiary hearings, based on the standard discussed above, this Court finds Applicant has failed to carry his burden in this action regarding any of his allegations of ineffective assistance of counsel. Applicant proceeded on the following allegations during his evidentiary hearing.

Failure to Request a Competency Evaluation

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Applicant asserts Trial Counsel was ineffective for failing to request a competency evaluation. As to this ground, this Court finds that Trial Counsel was not ineffective in failing to request a competency evaluation. This Court finds Trial Counsel's testimony that he experienced no problems communicating with Applicant as very credible. Additionally, Applicant's PCR counsel alluded to a competency evaluation conducted prior to the evidentiary hearing on Applicant's PCR, and although this evaluation was not made a part of the record, Applicant has failed to show any prejudice from Trial Counsel's supposed failure to request an evaluation. 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.

Ineffective Assistance of Counsel

Applicant also asserts Trial Counsel did not sufficiently meet or review discovery with him. To the extent Applicant raises the issue of Trial Counsel not meeting with him enough or sufficiently reviewing discovery with him, this Court finds this ground wholly lacking in merit. Trial Counsel testified he provided copies of the discovery to Applicant twice and sufficiently reviewed the material with Applicant. Additionally, this Court finds the underlying factual basis for the conviction involves a delayed reporting incident where the only direct evidence of abuse is the victim's testimony at trial, and Applicant elected not to testify. Clearly, this Court finds the

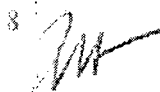


jury found the child's testimony credible. Accordingly, having reviewed the full trial transcript, this Court finds that Trial Counsel was well-versed in the factual allegations, that Trial Counsel asked appropriate questions which were relevant to Applicant's theory of the case, and that Trial Counsel's 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.

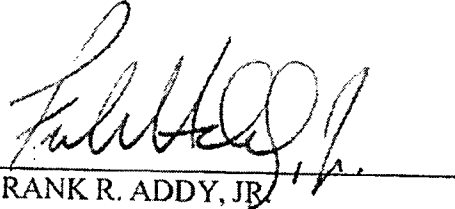
This Court notifies Applicant that he must file and serve a notice of appeal within thirty (30) days from receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. *See* Rule 203, SCACR. An applicant has a right to an appellate counsel's assistance when they 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), SCRCP. Refer to Rule 243 of the South Carolina Appellate Court Rules for appropriate procedures for appeal.

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IT IS THEREFORE ORDERED THAT:

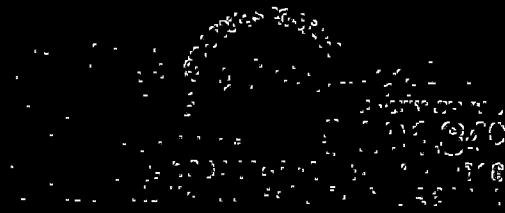
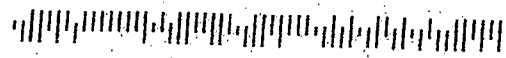
1. The application for Post-Conviction Relief is denied and dismissed with prejudice;
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

IT IS SO ORDERED this 8th day of May, 2018.

A handwritten signature in black ink, appearing to read "Frank R. Addy, Jr.", written over a horizontal line.

FRANK R. ADDY, JR.
Presiding Judge
Thirteenth Judicial Circuit

Greenwood, South Carolina



The Law Office of Brian P. Johnson
522 North Church Street
Greenville, SC 29601

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