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November 29, 2016

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

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DEC -5 2016

S.C. SUPREME COURT

Re: Marquis Breeland, 298259 v. State of South Carolina
C/A No.: 2013-CP-03-61
W B File No.: 13-00019-BRE
Notice of Appeal in a Post-Conviction Relief Proceeding

Dear Mr. Shearouse:

Enclosed please find an original and one copy of a Notice of Appeal on behalf of Petitioner Marquis Breeland of the Order, as amended by subsequent Consent Order, dismissing Mr. Breeland's post-conviction relief request in Allendale County along with a Proof of Service for same. Please date-stamp the copies and kindly return them to our office in the enclosed self-addressed, stamped envelope.

I was appointed to represent Mr. Breeland in an order dated June 18, 2013 from the Allendale County Clerk of Court. I am respectfully requesting that I be immediately relieved as counsel for Mr. Breeland in this matter, and that the lawyers from the Division of Appellate Defense for the South Carolina Commission on Indigent Defense be appointed to represent Mr. Breeland in the appeal of this matter immediately henceforth. By copy hereto, I am hereby providing copies of the enclosed documents and this request to be relieved as counsel for Mr. Breeland to opposing counsel, the Allendale County Clerk of Court, Mr. Breeland, and the Division of Appellate Defense of the South Carolina Commission on Indigent Defense.

[Signature page to follow]



Honorable Daniel E. Shearouse
November 29, 2016
Page 2 of 2

Thanking you, and with best wishes, I am

Most sincerely,

Evan K. Bromley

EKB:clo

Enclosures

cc: Clerk of Court for Allendale County

Attn: The Honorable Elaine Sabb
South Carolina Attorney General's Office

Attn: J. Rutledge Johnson, Esquire
South Carolina Commission on Indigent Defense

Attn: Division of Appellate Defense
Marquis Breeland

NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ALLENDALE COUNTY
Court of Common Pleas

Honorable Roger L. Couch, Circuit Court Judge

Case No. 2013-CP-03-0061

Marquis Breeland, #298259,

Petitioner,

v.

State of South Carolina

Respondent.

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DEC - 5 2016

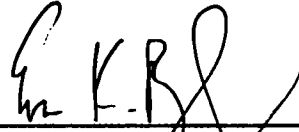
S.C. SUPREME COURT

NOTICE OF APPEAL

With respect to the above-captioned post-conviction relief proceeding, Marquis Breeland appeals the Order of Dismissal of the Honorable Roger L. Couch first dated January 28, 2016 and filed on February 3, 2016, as amended by that certain Consent Order dated November 2, 2016 and filed on November 14, 2016. Undersigned counsel received written notice of entry of the Order of Dismissal on February 11, 2016, and then served a Rule 59(e) motion on February 16, 2016. The undersigned received written notice of entry the Consent Order granting the Rule 59(e) motion on November 18, 2016. A copy of the order(s) on appeal is attached to this notice.

[Signature page to follow]

November 29, 2016



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Bluffton, SC 29910
Evan@WardBromley.com
Tel: (843) 706-2896
Fax: (843) 706-2894
Attorney for Petitioner Marquis Breeland

Other Counsel of Record:
J. Rutledge Johnson, Esquire
SC ATTORNEY GENERAL'S OFFICE
PO Box 11549
Columbia, SC 29211
803-734-3970
Attorney for Respondent

PROOF OF SERVICE OF A NOTICE OF APPEAL

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ALLENDALE COUNTY
Court of Common Pleas

Honorable Roger L. Couch, Circuit Court Judge

Case No. 2013-CP-03-0061

Marquis Breeland, #298259

Petitioner,

v.

State of South Carolina,

Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the below listed respondents by depositing a copy of it in the United States Mail, postage prepaid, on November 29, 2016, addressed to:

Clerk of Court for Allendale County
The Honorable Elaine Sabb
PO Box 126
Allendale, SC 29810-0126

J. Rutledge Johnson, Esquire
SC ATTORNEY GENERAL'S OFFICE
PO Box 11549
Columbia, SC 29211
Attorney for Respondent

South Carolina Commission on Indigent Defense
Attn: Division of Appellate Defense
PO Box 11433
Columbia, SC 29211-1433

Marquis Breeland 298259
Kershaw Correctional Institution
4848 Gold Mine Highway
Kershaw, SC 29067

November 29, 2016



WARD & BROMLEY, LLC
Evan K. Bromley, Attorney at Law
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Evan@WardBromley.com
Tel: (843) 706-2896
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Attorney for Petitioner Marquis Breeland

EXR

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STATE OF SOUTH CAROLINA
COUNTY OF ALLENDALE

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Marquis Breeland, #298259,

2013-CP-03-0061

Applicant,

ORDER OF DISMISSAL

v.

State of South Carolina,

Respondent.

FILED FOR RECORD
2016 FEB -3 AM 11:04
CLERK OF COURT
ALLENDALE COUNTY, S.C.

This matter comes before the Court by way of an Application for Post-Conviction Relief filed April 10, 2013. The Respondent made its Return on September 22, 2014. An evidentiary hearing into the matter was convened on October 21, 2015, at the Beaufort County Courthouse. Evan K. Bromley, Esquire, represented Applicant. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

At the hearing, Applicant did not testify. Steven Plexico, Esquire, testified as a witness for the State. This Court had before it a copy of the records of the Allendale County Clerk of Court, records from the South Carolina Department of Corrections, the trial transcript and the appellate records.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Allendale County Clerk of Court. The Applicant was indicted at the March 2010 term of the Allendale County Grand Jury for murder (2009-GS-03-0056) and possession

TRUE COPY
Date 2/4/16
Elaine Sabb
ELAINE SABB
CLERK OF COURT
ALLENDALE, SC

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Referred to R. Johnson/jem
Answered _____

of a weapon during the commission of a violent crime (2009-GS-03-0057). The Applicant was represented by Steven Plexico, Esquire.

The Applicant proceeded to trial and was convicted as indicted. On August 10, 2011, the Applicant was sentenced by the Honorable William H. Seals, Jr. to confinement for a period of life for murder and five (5) years for possession of a weapon during the commission of a violent crime.

The Applicant filed a timely Notice of Appeal. The appeal was perfected by Elizabeth Franklin-Best, Esquire, and Susan Hackett, Esquire, of the South Carolina Office of Appellate Defense. The Applicant's convictions and sentences were affirmed by the Court of Appeals. The Remittitur was issued on March 7, 2013.

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

1. Ineffective assistance of counsel.
 - a. Counsel failed to object to solicitor misconduct and critical Brady violation.
2. Trial judge erred by denying motion for direct verdict when evidence did not rise above mere suspicion that Applicant was guilty of murdering the victim.

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 witness presented at the hearing, closely pass upon his credibility and weigh his testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

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Ineffective Assistance of Counsel

The Applicant alleges he is entitled to post-conviction relief on the basis that he received ineffective assistance of trial 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). To be entitled to post-conviction relief, the applicant must prove both of the following: (1) his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) the applicant suffered prejudice by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). Under this standard, counsel's deficient performance must have prejudiced the Applicant to the extent that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. 115, 117-18, 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. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

A. Trial counsel's failure to object to the solicitor's improper comments during closing arguments.

The Applicant first alleges that trial counsel's failure to object to the solicitor's improper comments during closing arguments constituted ineffective assistance of counsel requiring a reversal

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and new trial. The South Carolina Supreme Court has held that the prosecution may introduce testimony on direct examination concerning a plea agreement between the government and the witness "only if the prosecutor's questions do not imply the government has special knowledge of the witness' veracity, the trial court gives a cautionary instruction, and the prosecutor's closing argument contains no improper use of the witness' promise of truthful cooperation." State v. Shuler, 344 S.C. 604, 629, 545 S.E.2d 805, 817-18 (2001). Under this limitation, "[a] prosecutor cannot vouch for the credibility of a witness by expressing or implying his personal opinion concerning a witness' truthfulness." Id., at 630, 545 S.E.2d at 818; see e.g., Gilchrist v. State, 350 S.C. 221, 228, 565 S.E.2d 281, 285 (2002) (finding trial counsel's failure to object to the solicitor's improper comments required a reversal where the State improperly vouched for the testimony necessary to convict the defendant). "Improper vouching occurs when the prosecution places the government's prestige behind a witness by making explicit personal assurances of a witness' veracity, or where a prosecutor implicitly vouches for a witness' veracity by indicating information not presented to the jury supports the testimony." Shuler, 344 S.C. at 630, 545 S.E.2d at 818; see State v. Kelly, 343 S.C. 350, 540 S.E.2d 851 (2001).

Subject to this limitation, the prosecutor may still convey to the jury "his version of the testimony and to comment on the weight to be given such testimony." Randall v. State, 356 S.C. 639, 642, 591 S.E.2d 608, 610 (2004). The fact that the prosecutor improperly commented on the veracity of witness testimony in closing does not require reversal unless the statements were prejudicial to the defendant. Id. In an action for post-conviction relief, the applicant "has the burden of proving he did not receive a fair trial because of the alleged improper argument." Id. To satisfy this burden, the

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applicant must demonstrate that the prosecutor's improper comments "so infected the trial with unfairness as to make the resulting conviction a denial of due process." Id.

The solicitor's comments during closing argument, while constituting improper vouching for Marcus Witherspoon's credibility, were not prejudicial to the Applicant as required by Strickland. With regard to Witherspoon's testimony, the solicitor's comments concerning Witherspoon's motivation for testifying improperly vouched for his credibility by presenting information that was not presented to the jury during the trial. Because the solicitor's comments concerning this testimony were improper, trial counsel's failure to object constituted a failure to provide effective assistance under the prevailing professional norms. However, although trial counsel's performance was deficient under the first prong of Strickland, the Applicant did not suffer prejudice as the result of this deficient performance. Unlike the State's case in Gilchrist, the State's case against the Applicant did not rely on the improperly bolstered testimony of a single witness. Additional testimony presented at trial placed the Applicant at the scene where the crime took place, and the testimony of Willie James Elmore concerning the Applicant's statement that he planned to kill the victim provided a sufficient basis for the jury to convict the Applicant. Given the weight of the evidence against the Applicant excluding the improperly vouched testimony, the guilty verdict did not result from a denial of due process. Therefore, because the Applicant has not met his burden of proving prejudice resulting from trial counsel's deficient performance, this allegation is denied.

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B. Trial counsel's failure to use a peremptory strike on juror Ora Cave, sister to witness Willie James Elmore.

The Applicant next alleges that trial counsel's failure to use a peremptory strike on juror Ora Cave constituted ineffective assistance of counsel requiring a reversal and new trial. Ms. Cave was the sister of Willie James Elmore, whose testimony, the Applicant argues, was essential to the State's case. The Applicant contends that by electing not to use his peremptory strike against Ms. Cave, when he had a peremptory strike available to him at the time, trial counsel rendered ineffective assistance, causing severe prejudice to the Applicant. At the hearing on October 21, trial counsel testified that he did not view Ms. Cave's relationship to the witness as harmful to the Applicant. Noting that he had only one remaining peremptory strike at the time, trial counsel testified that there were other potential jurors remaining whom he viewed as significantly more harmful to his case than Ms. Cave. Furthermore, Ms. Cave indicated that she could be fair and impartial to both sides during juror selection. Therefore, trial counsel's strategic decision to conserve his remaining peremptory strike for another juror was reasonable under prevailing professional norms at the time it was made. Further, jurors are presumed to follow the instructions of the trial court. State v. Queen, 264 S.C. 515, 521, 216 S.E.2d 182, 185 (1975). The Applicant failed to produce any evidence that Ms. Cave was impartial to the State or that she did not follow the instructions of the trial court as to prejudice the Applicant's trial. Because the Applicant has failed to satisfy either prong of Strickland, this allegation is also denied.

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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 notifies the Applicant that he must file and serve a notice of appeal within thirty (30) 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 PCR. Rule 71.1(g), SCRCP, provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant's attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

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IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED!



Roger L. Couch
Presiding Circuit Court Judge
Fourteenth Judicial Circuit

1/28, 2016

Spawthorpe, South Carolina

2013-CP-03-0061

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BY: (EKB).....

STATE OF SOUTH CAROLINA)
)
COUNTY OF ALLENDALE)
)
MARQUIS BREELAND (298259),)
)
Plaintiff,)
)
vs.)
)
STATE OF SOUTH CAROLINA,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
CASE NUMBER: 2013-CP-03-0061

CONSENT ORDER

FILED FOR RECORD
2016 NOV 14 AM 9:31
ELAINE SABB
CLERK OF COURT
ALLENDALE COUNTY, S.C.

THIS MATTER is before the Court upon the motion of Evan K. Bromley, Esquire in his capacity as counsel for Petitioner, Marquis Breeland, to alter or amend this Court's Order of Dismissal filed on February 3, 2016 ("Order"). Upon the consent of the all parties to this action, as noted by their signatures below, and there being good grounds for same,

IT IS SO ORDERED:

The Order is amended as follows:

1. Mr. Breeland's PCR petition alleged a claim of ineffective assistance of counsel due to a critical Brady violation. After consultation with Mr. Breeland and upon Mr. Breeland's express consent at the hearing, Mr. Bromley moved to strike the claim due to a lack of factual foundation in the record, opposing counsel consented to the striking of such claim, and this Court granted such oral motion. Thus, Mr. Breeland's claim arising from the alleged Brady violation was struck from the application;
2. Mr. Breeland's PCR petition alleged a claim that the trial judged erred by denying his motion for directive verdict when the evidence did not rise above a mere suspicion that the applicant was guilty of murdering the victim. This issue had already been raised and ruled upon by the South Carolina Court of Appeals, which affirmed the trial court's ruling on Mr. Breeland's motion for directed verdict. See Unpublished

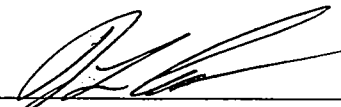
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Date 11/14/16
Elaine Sabb

ELAINE SABB
CLERK OF COURT
ALLENDALE, SC

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[Signature]
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Opinion No. 2013-UP-073, filed on February 13, 2013. As such, this was not a cognizable claim in Mr. Breeland's PCR proceeding and this Court summarily dismissed such claim at the October 21, 2015 hearing. *See Simmons v. State*, 264 S.C. 417, 215 S.E.2d 883 (1974); *Roscoe v. State*, 345 S.C. 16, 546 S.E.2d 417 (2001).

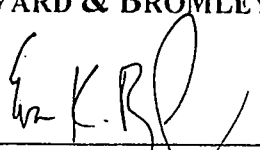
AND SO IT IS ORDERED this 2^d day of November, 2016.



Honorable Roger L. Couch
Presiding Circuit Court Judge
Fourteenth Judicial Circuit

WE SO MOVE:


WARD & BROMLEY, LLC



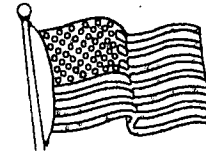
Evan K. Bromley, Attorney at Law
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Evan@WardBromley.com
Tel: (843) 706-2896
Fax: (843) 706-2894
Attorney for Petitioner Marquis Breeland

WE SO CONSENT:

SC ATTORNEY GENERAL'S OFFICE



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Attorney for the State of South Carolina



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BROMLEY**
ATTORNEYS

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BLUFFTON, SOUTH CAROLINA 29910

TO: The Honorable Daniel E. Shearouse
Clerk of Court for South Carolina Supreme Court
P.O. Box 11549
Columbia, SC 29211

Bx 11330 ?