

THE BOOZER LAW FIRM, LLC

RECEIVED

AUG 15 2016

SC SUPREME COURT

Lance S. Boozer, Esq.*
*Also admitted in Florida

807 Gervais Street, Suite 203
Columbia, SC 29201

Telephone: 803-608-5543
Fax: 803-926-3463

Email: lsb@boozerlawfirm.com
Website: www.boozerlawfirm.com

August 12, 2016

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

The Honorable Liz Godard
Clerk of Court
P.O. Box 583
Aiken, SC 29802-0583

272194

RE: Tyrik Bright, #272191, v. State of South Carolina
2015-CP-02-1484

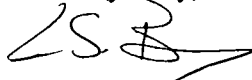
Dear Mr. Shearouse and Ms. Godard:

Enclosed for filing is a Notice of Appeal in the above-referenced case. Also enclosed are the following:

- (1) Proof of Service of the Notice of Appeal;
- (2) A copy of the Order which is to be challenged on appeal; and
- (3) Prior Order of Appointment of Counsel.

As I was appointed to represent Mr. Bright in his PCR proceeding, I anticipate that the Office of Appellate Defense will represent Mr. Bright in this appeal.

Yours very truly,



Lance S. Boozer

cc: Justin Hunter, AAG
Office of Appellate Defense
Tyrik Bright, #272191

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED
AUG 15 2016
SC SUPREME COURT

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Diane Schafer Goodstein Circuit Court Judge

Case No. 2015-CP-02-1484

Tyrik Bright, #272191,Petitioner,

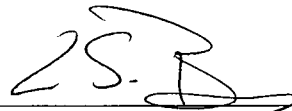
v.

State of South Carolina,.....Respondent.

NOTICE OF APPEAL

The Petitioner appeals the Honorable Diane Schafer Goodstein's Order dated July 15, 2016, denying post-conviction relief to the Petitioner. The Order was received by undersigned counsel on July 27, 2016. A copy of the Order on appeal is attached to this notice.

Respectfully submitted,



Lance S. Boozer
The Boozer Law Firm, LLC
807 Gervais Street, Suite 203
Columbia, SC 29201
Tele: 803-608-5543

August 12, 2016

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

AUG 15 2016

GO SUPREME COURT

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Diane Schafer Goodstein Circuit Court Judge

Case No. 2015-CP-02-1484

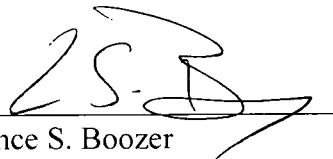
Tyrik Bright, #272191,Petitioner,

v.

State of South Carolina,.....Respondent.

PROOF OF SERVICE

I, Lance S. Boozer, appointed attorney for Petitioner, certify that I have today served within Notice of Appeal upon the Respondent by depositing a copy of it in the United States Mail, postage prepaid, addressed to Assistant Attorney General Justin Hunter, P.O. Box 11549, Columbia, SC 29211. I further certify that all parties required by Rule to be served have been served this 12^h day of August, 2016.



Lance S. Boozer
The Boozer Law Firm, LLC
807 Gervais Street, Suite 203
Columbia, SC 29201
Tele: 803-608-5543

STATE OF SOUTH CAROLINA)
)
 COUNTY OF AIKEN)
)
 Tyrik Bright,)
 S.C.D.C. No. 272194,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 OF THE SECOND JUDICIAL CIRCUIT

2015-CP-02-01484

ORDER OF DISMISSAL

FILED 7-27-16
Shirley Hadard
 J.C.C.P. & G.S.
Christa Koopfle // SE
 Deputy Clerk

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed June 19, 2015. Respondent made its Return on or about July 13, 2015. Applicant filed an Amendment on September 30, 2015. An evidentiary hearing into the matter was convened on May 26, 2016, at the Aiken County Courthouse in Aiken, South Carolina. Applicant was present at the hearing and represented by Lance Boozer, Esquire. Justin Hunter, Esquire, of the South Carolina Attorney General's Office represented Respondent. At the hearing, Applicant testified on his own behalf. Applicant's trial counsel, David Hayes, Esquire, also testified. This Court had before it a copy of Applicant's records from the Aiken County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's PCR Application, and Respondent's Return.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. In March 2012, the Aiken County Grand Jury indicted Applicant for Burglary – Second Degree (2012-GS-02-423). David Hayes, Esquire, represented Applicant. On June 10, 2013, Applicant proceeded to trial before the

Honorable J. Derham Cole and a jury. The jury found Applicant guilty as indicted. Judge Cole sentenced Applicant to twelve years imprisonment.

Applicant filed a timely notice of appeal. Wanda H. Carter, Esquire, of the Office of Appellate Defense perfected the appeal. Following briefing, the South Carolina Court of Appeals affirmed Applicant's conviction on May 6, 2015. State v. Bright, Op. No. 2015-UP-222 (S.C. Ct. App. filed May 6, 2015). The Remittitur was returned to the circuit court on May 28, 2015.

PCR Application

On June 19, 2015, Applicant filed an application for post-conviction relief alleging ineffective assistance of counsel. On September 30, 2015, Applicant filed a Motion to Amend, alleging the following grounds:

1. Ineffective assistance of counsel for failure to object to Wolf's testimony constituting improper character evidence
2. Ineffective assistance of counsel for failure to object to Detective Glover's testimony
3. Ineffective assistance of counsel for failure to object to improper jury instructions

II. APPLICABLE LAW

In a post-conviction relief action, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (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, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

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. 668. Applicant must overcome this presumption in order 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. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any 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." Id. at 117-18, 386 S.E.2d at 625.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the trial transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

As a matter of general impression, this Court finds Counsel's testimony to be credible and persuasive on all matters. These credibility findings have been applied to the Court's findings and conclusions set forth below.

Ineffective assistance of counsel for failure to object to Wolf's testimony constituting improper character evidence

Applicant testified that Counsel should have objected to testimony from Mary Wolf, the co-owner of All-Star Rental, where Wolf discussed compiling a list of employees who could

have been involved in the crime and mentioned a pre-release program. Applicant testified that an objection was made but the Court did not rule on the objection, leaving the issue unpreserved for appeal. Applicant testified that he believed Wolf was talking about him being part of a pre-release program, but also agreed that she never stated that he was ever part of a pre-release program.

Counsel testified that he objected to Wolf's testimony because he did not want the jury to think that Applicant was involved in a pre-release program. He testified that the judge called a sidebar but could not remember the substance of the sidebar discussion. He testified that the judge did not make a ruling on his objection and testimony continued.

This Court finds that Applicant's allegation is without merit. This Court finds that Wolf did not testify that Applicant was incarcerated or in a pre-release program. This Court finds that when reading the testimony as a whole, Wolf had already identified Applicant from the surveillance video as being involved in the burglary and made a list before the trial of potential employees who might have also been involved with Applicant. Additionally, this Court finds that Wolf did not testify to any prior bad acts, criminal history, or negative character traits of Applicant. The transcript also reflects that Wolf testified that the three or four employees that may have come from the pre-release program were excluded from her list of possible suspects because they go home to the camp every night and could not have committed the break-in. See Trial Transcript p. 97, l. 24 – p. 98, l. 4.

Accordingly, this Court finds that Counsel was not ineffective for failing to object and receive a ruling regarding Wolf's testimony as such testimony was not inappropriate or prejudicial to Applicant. This Court also finds that Applicant has failed to show that he was prejudiced by Counsel's actions as he has failed to show that the outcome of his trial would have

been different had Counsel made an objection and received a ruling. Accordingly, this allegation must be dismissed.

Ineffective assistance of counsel for stipulating to Applicant's two prior burglary convictions

At the PCR hearing, Applicant verbally amended his allegations to allege that Counsel was ineffective for agreeing to stipulate as to Applicant's two prior burglary convictions. These two prior convictions were used by the State to prove an element of first degree burglary. Applicant testified that he did not have a discussion about this stipulation prior to the trial and believed that it made him look like a criminal in front of the jury.

Counsel testified that he made a strategic decision to stipulate to Applicant having two prior burglary convictions because the alternative would be for the State to present the clerk of court who would read each conviction out loud to the jury. Counsel testified that he believed that he informed Applicant of this stipulation, and testified that if Applicant told him not to stipulate to the convictions he would have done so if Applicant's case deserved such action. Counsel further testified that Applicant's two prior burglary convictions were damaging but there was nothing Counsel could do since the proof of two prior burglary convictions is an element of first degree burglary. Counsel testified that having the Clerk of Court present certified copies of his prior convictions would be much more damaging to Applicant's case. Counsel testified that he believed stipulating was the best form of damage control.

This Court finds that Counsel's decision to stipulate to Applicant's two prior burglary convictions was a valid strategic decision and Counsel was not ineffective as a result. This Court finds that Counsel's decision to stipulate to the prior convictions was a valid strategy as the alternative would have been for the Clerk of Court to present two certified copies of convictions to the jury. This Court finds that Counsel was not ineffective for pursuing this strategy. This Court

finds that Applicant has failed to show that the outcome of his trial would have been different had Counsel not agreed to stipulate and has failed to show that he was prejudiced by Counsel's actions. Accordingly, this allegation must be dismissed.

Ineffective assistance of counsel for failure to object to Detective Glover's testimony

Applicant alleged that Counsel was ineffective for failing to object to testimony from Detective Anthony Glover where Detective Glover identified Applicant on the surveillance video and testified that he had known Applicant for fifteen years and knew his residence was across the street from All-Star Rental because he had seen him there numerous times riding through the neighborhood. See Trial Transcript p. 105, l. 12 – p. 106, l. 11. Applicant testified at the PCR hearing that he had known Detective Glover since he was young. Counsel testified that he did not want Detective Glover to testify because he believed his testimony would be cumulative. He testified that he did not object to this testimony but believed the issue to be preserved.

This Court finds that Counsel was not ineffective for failing to object to Detective Glover's testimony as it was not objectionable. This Court finds that Detective Glover did not state or suggest that he had arrested Applicant before or that he knew him from any experience with law enforcement. Detective Glover's testimony simply identified Applicant based on his own personal perceptions and knowledge of Applicant. This Court finds that the testimony in question did not suggest that Detective Glover knew Applicant in any regard other than seeing him ride through neighborhood.

Further, this Court finds that Detective Glover's identification of Applicant from the surveillance video constituted proper lay witness opinion testimony as this Court finds it was rationally based on Detective Glover's own personal perceptions and knowledge of Applicant; was helpful to the jury in determining a fact in issue; and did not require any special knowledge,

skill, experience, or training on the part of the officer. See SCRE 701 (a lay witness is fully permitted to offer opinion testimony during trial when the witness' opinion or inference: (1) is rationally based on the witness' perception; (2) is helpful to a clear understanding of the witness' testimony or to the determination of a fact in issue; and (3) does not require special knowledge, skill, experience, or training). See also State v. Mitchell, 399 S.C. 410, 416, 731 S.E.2d 889, 893 (Ct. App. 2012) (holding that a police officer's identification of the defendant from surveillance photographs was admissible because the officer had firsthand knowledge of the defendant through twenty years of living in the area). As Detective Glover's testimony was proper, this Court finds that Counsel was not ineffective for failing to object to the testimony. Applicant has failed to show that Counsel was deficient and that he was prejudiced by Counsel's actions. Accordingly, this allegation must be dismissed.

Ineffective assistance of counsel for failure to object to improper jury instructions

Applicant alleges that Counsel was ineffective for failing to object to the trial court's charge to the jury which stated, "Your sole objective is to simply be fair and impartial and render a verdict based solely upon the evidence presented and the law that's applicable as I will have provided it to you." Trial Transcript, p. 125, ll. 3-6.

This Court finds that the instructions given to the jury were proper and not objectionable. The trial court is required to charge only the current and correct law of South Carolina. Sheppard v. State, 357 S.C. 646, 665, 594 S.E.2d 462, 472 (2004). "If, as a whole, the charges are reasonably free from error, isolated portions which might be misleading do not constitute reversible error." State v. Simmons, 384 S.C. 145, 178, 682 S.E.2d 19, 36 (Ct. App. 2009). "The substance of the law is what must be charged to the jury, not any particular verbiage." State v. Adkins, 353 S.C. 312, 318-19, 577 S.E.2d 460, 464 (Ct.App.2003). This Court finds that when

reading the jury charge as a whole, the trial judge properly charged the jury on the law and made it clear that Applicant was presumed innocent, the State had the burden of proof, and the jury cannot convict on any standard less than proof beyond a reasonable doubt. This Court further finds that the isolated portion at issue is not objectionable as the jury's role is to be fair and impartial and to render a verdict based upon the evidence presented and the law as instructed by the trial judge.

Accordingly, Applicant has failed to show that Counsel was ineffective in this regard and that he was prejudiced by Counsel's actions. As such, this allegation must be dismissed.

IV. CONCLUSION

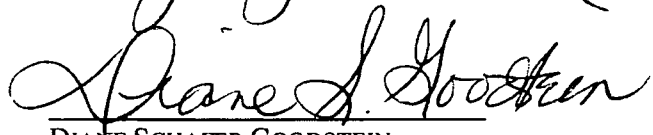
Based on the foregoing facts, the Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Applicant failed to demonstrate that Counsel's performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

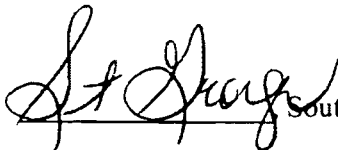
The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
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 15 day of July, 2016.


DIANE SCHAFER GOODSTEIN
Presiding Judge
Second Judicial Circuit


South Carolina

STATE OF SOUTH CAROLINA)
 COUNTY OF AIKEN)
 Tyrik Gerrard Bright #272194,)
 Plaintiff(s),)
 -vs-)
 South Carolina State Of,)
 Defendant(s).)

IN THE COURT OF COMMON PLEAS
 Second JUDICIAL CIRCUIT
 CASE NO.: 2015CP0201484
 APPOINTMENT OF COUNSEL OR GAL
 (Select one.)

ORDER
 AMENDED ORDER

TYPE OF CASE/PROCEEDING: (Check one.)

- Post-Conviction Relief (PCR)/habeas case Adoption Juvenile
 SVP case Custody and/or Visitation Abuse and Neglect
 Minor Name Change Other: Post Convict Rel 500

It appears Tyrik Gerrard Bright #272194, who is a litigant in this case, is entitled to court-appointed counsel or a guardian ad litem.

It further appears that: (Select only one.)

- counsel/guardian ad litem has not yet been appointed by the court; therefore, an appointment for counsel/guardian ad litem is necessary.
 counsel or a guardian ad litem was previously appointed by the court but has indicated either a possible conflict of interest, an entitlement to exemption, or other good cause warranting the appointment of new counsel or guardian ad litem based on:
 counsel was previously appointed by the court but has not indicated that the litigant has retained private counsel and is no longer entitled to appointed counsel.
 court appointed counsel has obtained, Esquire as substitute counsel pursuant to Rule 608(h)(2); provided, however, only the member who originally received the appointment and who sought substitute counsel shall receive credit.
 Other: .

*6-29-15
 Lance Booser
 Esquire*

Therefore, it is ordered that Lance Booser hereby is appointed as (Select one.)

- counsel lead counsel (if capital PCR case) guardian ad litem
 for the above-named person. Any counsel or GAL previously appointed is/are hereby relieved.

(If Death Penalty PCR Case) It is further ordered that, Esquire, is hereby appointed as second counsel in this capital PCR case.

The clerk of court is directed to forward a copy of this order to all persons entitled to notice.

IT IS SO ORDERED
 June 29, 2015

L3 Modaraby Aneta Kneeply
 Circuit Judge Clerk of Court *P/C*

Plaintiff Attorney:

| | |
|-----------------------------|-------------------------------|
| Lance Booser | Tyrik Gerrard Bright # 272194 |
| 807 Gervais Street Ste 2013 | TCL, Dorm 161 |
| Columbia, SC 29201 | Box 252 |
| | Turbeville, SC 29162 |

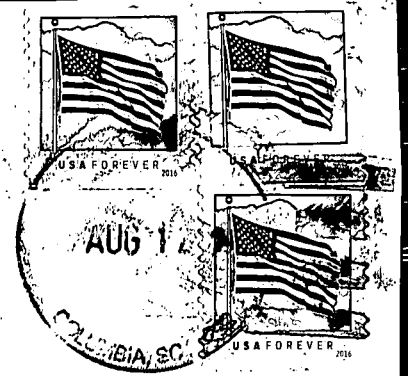
Defendant Attorney:

| | |
|---------------------------|--|
| Daniel Francis Gourley II | |
| P.O Box 11549 | |
| | |
| Columbia, SC 29211 | |

NOTICE: SC Supreme Court Order of September 29, 2006, requires appointed counsel entitled to payment from the Office of Indigent Defense (OID) to register the case online with OID within fifteen (15) days of this appointment at www.secid.sc.gov, and further directs that reimbursement vouchers be submitted directly to SCCID and not to the trial judge or clerk of court. See SCCID website for further details.

THE BOOZER LAW FIRM, LLC

807 Gervais Street, Suite 203
Columbia, SC 29201



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