



THE LAW OFFICE OF NATHAN J. SHELDON,
LLC
Working on your behalf

331 E. Main St., Suite 200
Rock Hill, SC 29730
www.nathansheldonlaw.com
(803)909-9343

October 5, 2018

Daniel Shearouse, Clerk
The Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29201

Re.: Seager v. State
2016-CP-12-0394

Dear Clerk:

Please find enclosed the original Notice of Appeal and Proof of Service on the above referenced case along with a copy of the order being appealed. Please file the originals and file and mail the also enclosed copies of each back to me in the also enclosed self-addressed stamped envelope. Please note that I have also sent a copy of this appeal to Appellate Defense and have asked them to take over representation at this point. Thank you and please feel free to call with any additional questions or concerns.

Sincerely Yours,

Nathan Sheldon
The Law Office of Nathan J. Sheldon

RECEIVED

OCT 10 2018

S.C. SUPREME COURT

RECEIVED

OCT 10 2018

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

Brooks P. Goldsmith, Circuit Court Judge

Case No. 2016-CP-12-0394

State of South Carolina, Respondent,

v.

Carl Seager, Appellant.

NOTICE OF APPEAL

Carl Seager appeals the order of the Honorable Brooks P. Goldsmith dated September 7, 2018 denying his request for post-conviction relief. Appellant received written notice of entry of this order on September 10, 2018.

October 5, 2018



Nathan J. Sheldon
331 E. Main St.; Suite 200
Rock Hill, South Carolina 29730
(803) 909-9343
Attorney for Appellant

Other Counsel of Record:
DeShawn Mitchell, Esquire
Assistant Attorney General
Post Office Box 11549
Columbia, South Carolina 29211-1549
Attorney for Respondent
(803) 734-3970

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

OCT 10 2018

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Brooks P. Goldsmith, Circuit Court Judge

Case No. 2016-CP-12-0394

State of South Carolina,

Respondent,

v.

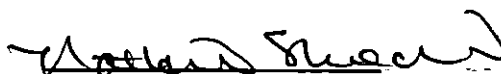
Carl Seager,

Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on DeShawn Mitchell with the Attorney General's Office by depositing a copy of it in the United States Mail, postage prepaid, on October 5, 2018 mailed to Post Office Box 11549, Columbia, South Carolina 29211-1549.

October 5, 2018



Nathan Sheldon
331 E. Main St., Suite 200
Rock Hill, SC 29730
803-909-9343
Attorney for Appellant

STATE OF SOUTH CAROLINA)
COUNTY OF CHESTER)
Carl Seager, #362969,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
THE SIXTH JUDICIAL CIRCUIT

Case No.: 2016-CP-12-0394

ORDER OF DISMISSAL

FILED
2018 SEP - 7 AM 9:33

This matter comes before the Court by way of an application for post-conviction relief filed on September 23, 2016, by Carl Seager (Applicant). Respondent made its Return on or about November 16, 2017. An evidentiary hearing into the matter was convened on July 18, 2018, at the Lancaster County Courthouse in Lancaster, South Carolina. Applicant was present at the hearing and represented by Nathan J. Sheldon 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 Plea Counsel Amy S. Raney, Esquire, Esquire also testified. This Court had before it a copy of the records of the Chester County Clerk of Court regarding the Applicant's convictions, the transcript from Applicant's guilty plea, the PCR application, Respondent's Return and Applicant's records from the Department of Corrections. 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 Chester County Clerk of Court. In August 2013, the Chester

County Grand Jury indicted Applicant for criminal sexual conduct, first degree (2013-GS-12-0340). April D. Porter, Esquire, represented Applicant. Assistant Solicitor Karen N. Fryar, Esquire, prosecuted the case. On February 10, 2015, Applicant pled guilty to the lesser included offense of criminal sexual conduct, second degree before the Honorable Benjamin Culbertson. Judge Culbertson sentenced Applicant to imprisonment for twenty years for criminal sexual conduct, second degree. Applicant did not appeal his conviction or sentence.

The underlying facts for this case are as follows: On March 13, 2013, the Applicant raped the victim. GP Tr. 13:12-13, 14:9-15. The victim had been living with the Applicant's mother and stepfather and was preparing to move. Id. at 13:13-18. On March 13, the Applicant was in the victim's room helping her pack after his mother and stepfather had gone to bed. Id. at 13:25-14:9. It was at this time the Applicant raped the victim, and the following day the victim went to the hospital to be seen by a sexual assault nurse and receive an exam. Id. at 14:9-19.

ALLEGATIONS

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

1. "The plea was involuntary,"
2. "Trial counsel was ineffective assistance due to ill-advised for defendant to plea," in that;
 - a. "The State did not have any DNA evidence to adequately charge the Applicant with crime of CSC 1st. degree."
3. "Trial Counsel failed to file notice of appeal. White v. State."

SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTARY HEARING

Applicant's Testimony

Applicant testified that Plea Counsel represented him on his charges. He testified that nothing was explained to him regarding an appeal of his guilty plea. Applicant testified had the appeal process been explained he would have wanted to appeal his guilty plea.

Plea Counsel's Testimony

Plea Counsel testified she represented Applicant on his charges. She testified Applicant pled guilty and received the maximum sentences for his charges. Plea Counsel testified she did not file a notice of appeal on Applicant's behalf. She testified she did not see any meritorious issues in Applicant's case to appeal. Plea Counsel testified she would have advised Applicant about an appeal had he asked. She testified Applicant never asked her to appeal his case.

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. With respect to guilty' plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 (1985).

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. This Court finds as follows on the following grounds presented by Applicant at the evidentiary hearing:

Statute of Limitations

The Court finds that this application must be summarily dismissed with the exception of the failure to file an appeal claim under White v. State¹, for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160. Specifically, the act requires as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower

¹ White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974).



court from an appeal or the filing of the final decision on appeal, whichever is later.

S.C. Code Ann. § 17-27-45(A).

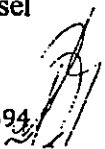
The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) authorizes the Court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.”

Applicant pled guilty and was sentenced on February 10, 2015 and he did not appeal his sentence. The Application was therefore due on February 11, 2016. The current application was not filed until September 23, 2016 — seven months after the one-year statutory filing period expired. Therefore, the application, with the lone exception of the White claim, shall be summarily dismissed for failure to file within the time mandated by Uniform Post-Conviction Procedure Act.

Failure to File Notice of Appeal

Applicant alleges Plea Counsel was ineffective for failing to file a notice of appeal after his guilty plea. Applicant testified that nothing was explained to him regarding an appeal of his guilty plea. Applicant testified had the appeal process been explained he would have wanted to appeal his guilty plea.

Plea Counsel testified she did not file a notice of appeal on Applicant's behalf. She testified she did not see any meritorious issues in Applicant's case to appeal. Plea Counsel



testified she would have advised Applicant about an appeal had he asked. She testified Applicant never asked her to appeal his case. While trial counsel is required to make certain the defendant is made fully aware of the right to appeal, the standard for a guilty plea differs. Turner v. State, 380 S.C. 223, 224, 670 S.E.2d 373, 374 (2008). Absent extraordinary circumstances, such as when there is reason to think a rational defendant would want to appeal (for example, because there are non-frivolous grounds for appeal) or when the defendant reasonably demonstrated an interest in appealing, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea. *Id.* at 225, 670 S.E.2d at 374 (citing Roe v. Flores-Ortega, 528 U.S. 470 (2000); Weathers v. State, 319 S.C. 59, 459 S.E.2d 838 (1995)). “Acts inconsistent with the continued assertion of a right, such as a failure to insist upon the right, may constitute waiver.” Bonnette v. State, 277 S.C. 17, 18, 282 S.E.2d 597, 598 (1981).

This Court finds no deficiency on the part of Plea Counsel or prejudice therefrom as Applicant never asked for an appeal. Moreover, on appeal from a guilty plea the notice must be accompanied by “a written explanation showing that there is an issue which can be reviewed on appeal,” and the explanation must also identify the issues and provide a factual basis for the issues. Rule 203(d)(1)(B)(iv), SCACR. After a review of the record, this court finds no meritorious issues exist in Applicant’s case. This court finds Applicant never asked for an appeal and based on Plea Counsel’s testimony, there were no appealable issues. Therefore, this court finds no basis for a belated direct appeal. Accordingly, Applicant’s request for relief by way of this allegation is denied and dismissed.

A handwritten signature in black ink, appearing to be the initials 'B' or 'B.' with a flourish.

CONCLUSION

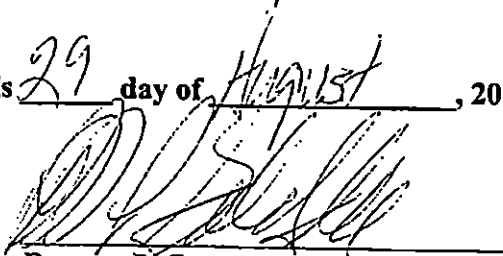
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

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), SCRPC 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. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

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 South Carolina Department of Corrections.

AND IT IS SO ORDERED this 29 day of August, 2018.



BROOKS P. GOLDSMITH
Presiding Judge
Sixth Judicial Circuit

_____, South Carolina

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2018 SEP - 17 A 9:35
CLERK OF COURT

CONCLUSION

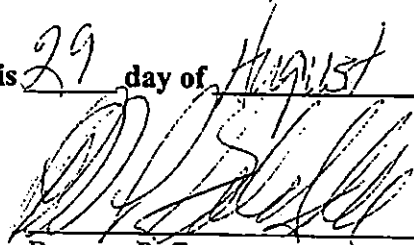
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

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AND IT IS SO ORDERED this 29 day of August, 2018.



BROOKS P. GOLDSMITH
Presiding Judge
Sixth Judicial Circuit

_____, South Carolina

FILED
2018 SEP -1 A 9:35
CLERK OF COURT

STATE OF SOUTH CAROLINA)

COUNTY OF CHESTER)

Carl Seager, 362969)

Plaintiff)

v.)

State Of South Carolina)

Defendant.)

IN THE COURT OF COMMON PLEAS

CASE NO.
2016-CP-12-0394

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

FILED
2016 SEP 7 A 9:43
CLERK OF COURT
CHESTER CO S.C.

Plaintiff's Attorney: Nathan J. Sheldon, Esquire, Bar No. 74943 Address: 331 E Main St; Suite 200 Rock Hill SC 29730 phone: (803) 909-9343 fax: e-mail: nathan@nathansheldonlaw.com other:	Defendant's Attorney: Deshawn H. Mitchell, Aag, Bar No. 10443 Address: Post Office Box 11549, Columbia SC 29211-1549 phone: (803) 734-3737 fax: (803) 734-4113 e-mail: DMitchell@scag.gov other:
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MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
 PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion:
 Estimated Time Needed: _____ Court Reporter Needed: YES / NO

SECTION II: Motion/Order Type

Written motion attached
 Form Motion/Order
 I hereby move for relief or action by the court as set forth in the attached proposed order.


 Signature of Attorney for Plaintiff / Defendant

Date submitted: August 22, 2018

SECTION III: Motion Fee

PAID - AMOUNT:
 EXEMPT:

(check reason)

Rule to Show Cause in Child or Spousal Support
 Domestic Abuse or Abuse and Neglect
 Indigent Status State Agency v. Indigent Party
 Sexually Violent Predator Act Post-Conviction Relief
 Motion for Stay in Bankruptcy
 Motion for Publication Motion for Execution (Rule 69, SCRPC)
 Proposed order submitted at request of the court; or,
 reduced to writing from motion made in open court per judge's instructions
 Name of Court Reporter:
 Other:

JUDGE'S SECTION

Motion Fee to be paid upon filing of the attached order.
 Other:

JUDGE _____
 CODE: _____ Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____
 MOTION FEE COLLECTED: _____



Chester County, South Carolina
OFFICE OF CLERK OF COURT
POST OFFICE DRAWER 580
CHESTER, SOUTH CAROLINA 29706

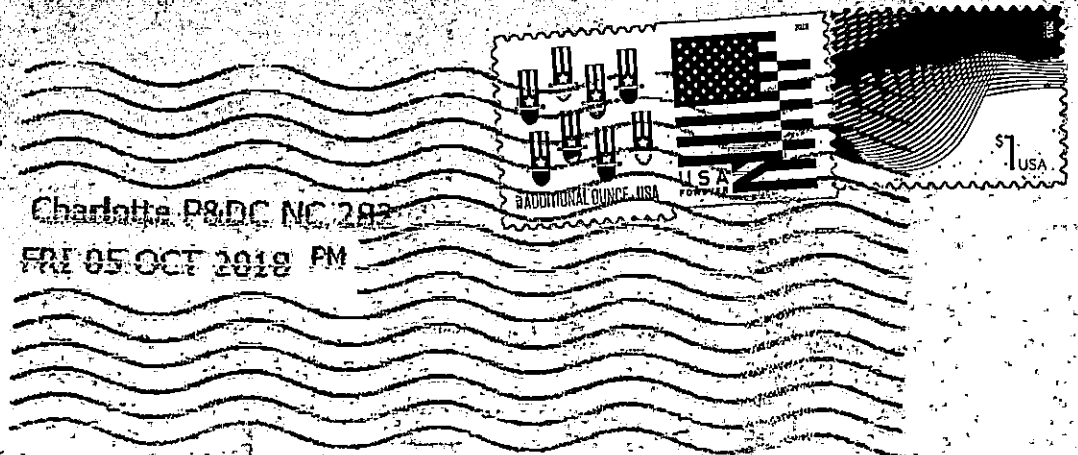
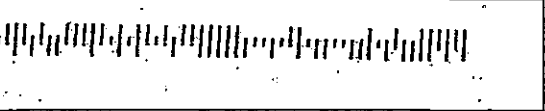
DATE *Sept. 7, 2018*

TO *Dr. Shawn H. Mitchell*

*This note is to certify the orders of dismissal
were mailed to the above and to Atty.
Nathan Sheldon at 331 E. Main St., Suite 200,
Rock Hill, S.C. 29730 on the above date.*

*Thank you,
Lee H. Carpenter
Clerk of Court*

SIGNED



Charlotte, NC 282

FRI 05 OCT 2018 PM

Law Office of Nathan Sheldon
E. Main St., Suite 200
Columbia, SC 29730

Daniel Shearouse, Clerk
The Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29201