

ROSS AND ENDERLIN, PA
ATTORNEYS AT LAW

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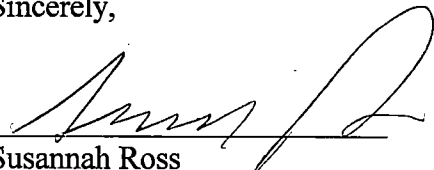
Mr. Daniel E. Shearouse
Clerk, The S.C. Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re: Calvin Terrell Williams v. State
2018-CP-42-0057

Dear Mr. Shearouse:

Enclosed you will find the original Notice of Appeal in the above matter along with Proof of Service upon the Respondent and the Order of Dismissal. These matters are being referred to the Office of Appellate Defense.

Sincerely,


Susannah Ross
Attorney at Law

enclosure

cc: Office of the Attorney General
Office of Appellate Defense
Spartanburg County Clerk of Court

330 E. COFFEE ST. • GREENVILLE/SC • 29601
PHONE: (864) 242-0029
E-MAIL: SUSANNAH@ROSSENDERLIN.COM

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Grace Gilchrist Knie, Circuit Court Judge

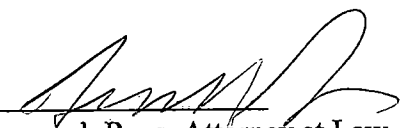
2018-CP-42-0057

Calvin Terrell Williams, Appellant,
v.
The State, Respondent.

NOTICE OF APPEAL

Calvin Terrell Williams appeals the Honorable Grace Gilchrist Knie's Order of Dismissal and Order Denying Applicant's Motion to Alter or Amend filed September 28, 2018.

This 12 day of October, 2018.


Susannah Ross, Attorney at Law
330 E. Coffee St.
Greenville, SC 29601
(864) 242-0029
Attorney for Appellant

Other Counsel of Record:
Jordon Cox, Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211
(803) 734-3970
Attorney for Respondent

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

Calvin Terrell Williams, #218862)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS)
FOR THE SEVENTH JUDICIAL CIRCUIT)

Case No.: 2018-CP-42-0057)

ORDER OF DISMISSAL)

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M. HOPE BLACKLEY

This matter comes before this Court by way of an application for post-conviction relief filed on January 8, 2018, by Calvin Terrell Williams (Applicant). Respondent made its return on April 18, 2018, requesting an evidentiary hearing. An evidentiary hearing was held on June 18, 2018, in the Spartanburg County Court of General Sessions. Applicant was present and was represented by counsel Susannah Ross, Esquire. Respondent was represented by Senior Assistant Deputy Attorney General Megan Harrigan Jameson. At the hearing, testimony was taken from trial counsel Matthew Shealy, Seventh Circuit Solicitor Barry Barnette, and Applicant's co-defendant Shyquone Williams. At the conclusion of the hearing, this Court left the record open to allow both parties to submit post-hearing memorandums. Following the submission of post-trial memorandums by both parties and a review of these memorandum, the record in its entirety, and the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to establish any constitutional violations and denies this application with prejudice.

PROCEDURAL HISTORY

The records before this court establish Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. In April 2015, the Spartanburg County Grand Jury indicted Applicant for armed robbery and bank robbery (2015-GS-42-2312). In May 2016, the Spartanburg County

Grand Jury also indicted Applicant for accessory before the fact to felony bank robbery (2016-GS-42-2368). Assistant Public Defender Matthew W. Shealy, Esquire, represented Applicant. Seventh Circuit Solicitor Barry Barnette prosecuted the case.

On June 6, 2016, Applicant proceeded to a jury trial in the Spartanburg County Court of General Sessions before the Honorable Roger L. Couch, circuit court judge. On June 8, 2016, the jury found Applicant guilty as indicted. Judge Couch sentenced Applicant to imprisonment for life without possibility of parole pursuant to S.C. Code Ann. § 17-25-45 based on his prior federal convictions for armed bank robbery.

Applicant filed a timely notice of appeal. Appellate Defender Laura R. Baer of the South Carolina Commission on Indigent Defense—Office of Appellate Defense filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967). Applicant then filed his own *pro se* brief. On October 18, 2017, the South Carolina Court of Appeals affirmed Applicant's convictions and sentences. State v. Williams, Op. No. 2017-UP-395 (S.C. Ct. App. filed October 18, 2017). The remittitur was returned to the circuit court on November 3, 2017.

ALLEGATIONS RAISED IN THE APPLICATION AND AT THE HEARING

In his application for post-conviction relief, Applicant alleged he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel for failing to object to the State's notice of intent to seek life without parole pursuant to S.C. Code Ann. § 17-25-45 based on his prior federal convictions for armed bank robbery
2. Ineffective Assistance of counsel for failing to properly argue to the trial court that the State failed to establish the element of entry into the bank for bank robbery
3. Ineffective assistance of counsel for failing to object to the State proceeding forward on both bank robbery and accessory before the fact to bank robbery in violation of S.C. Code Ann. § 16-1-50

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At the evidentiary hearing, Applicant also proceeded forward on two additional grounds over Respondent's objections:

1. Ineffective assistance of counsel for failing to require the State to reveal the co-defendant's plea offer
2. Ineffective Assistance of counsel for failing to properly cross-examine the co-defendant regarding his prior inconsistent statements to law enforcement.

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 hearings. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Applicant has alleged five instances of ineffective assistance of counsel. This Court finds these claims are clearly refuted by the record and testimony presented at the evidentiary hearing. Therefore, this Court finds Applicant has failed to establish that counsel was constitutionally ineffective as to any of the five specific allegations.

The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008).

In a post-conviction relief action, an applicant bears the burden of proving the allegations in his or her 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 [it] cannot be relied upon as having produced a just result." Strickland, 466 U.S. 668. Butler, 286 S.C. at 442, 334 S.E.2d at 814.

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In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, an applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. 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.

Applicant failed to Establish Counsel was Constitutionally Ineffective for Failing to Challenge his Sentence Pursuant to S.C. Code Ann. § 17-25-45

Applicant alleges trial counsel should have objected to the State's notice of its intent to seek life without parole pursuant to S.C. Code Ann. § 17-25-45 and to the trial court's imposition of this sentence. Specifically, Applicant alleges his two prior convictions for federal armed bank robbery (18 U.S.C. § 2113 (a) and (d)) do not meet the statutory requirements for enhancement pursuant to S.C. Code Ann. § 17-25-45 and counsel was ineffective for failing to object to his sentence of life imprisonment without the possibility of parole pursuant to S.C. Code Ann. § 17-25-45. This Court finds this argument is without merit, as Applicant's two prior convictions for armed bank robbery pursuant to 18 U.S.C. § 2113 (a) and (d) were the legal equivalent of the

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statutory offense of armed robbery in South Carolina (S.C. Code Ann. §16-11-330(A)), which is a "most serious" offense as enumerated in subsection (C)(1) of S.C. Code Ann. § 17-25-45.

At the evidentiary hearing, both trial counsel and Solicitor Barnette testified that they investigated and compared the elements and factual background of both of Applicant's prior federal armed bank robbery convictions when determining whether Applicant was eligible for an enhanced sentence as a recidivist offender pursuant to S.C. Code Ann. § 17-25-45. Both testified that after their investigations, they both believed Applicant was properly sentenced pursuant to S.C. Code Ann. § 17-25-45 because his federal convictions for armed bank robbery were the legal equivalent of armed robbery, an enumerated "most serious" offense under S.C. Code Ann. § 17-25-45(c)(1). This Court finds this testimony credible.

Pursuant to S.C. Code Ann. § 17-25-45(A), a trial judge has no sentencing discretion and must sentence a defendant to a term of imprisonment of life without the possibility of parole where the defendant was convicted of a "most serious" or "serious" offense and has either one more prior convictions for a "most serious" offense or two or more prior convictions for a "serious" offense. When determining whether a defendant has a prior "most serious" conviction for sentencing enhancement purposes, a defendant's prior criminal record expressly includes "a federal or out-of-state conviction for an offense that would be classified as a most serious offense under this section [.]” S.C. Code Ann. § 17-25-45(A)(1)(b) (emphasis added). Therefore, if a defendant was convicted of a prior federal offense that would have constituted a "most serious" offense in South Carolina, that earlier conviction can be used to enhance the defendant's sentence under our recidivist offender statute. Id.

In the present case, Applicant previously pled guilty on October 31, 2003, before the Honorable Henry M. Herlong, Jr, United States District Judge, to two counts of armed bank robbery pursuant to 18 U.S.C. § 2113 (a) and (d). These charges stemmed from two instances

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that occurred on August 7, 2003 and August 12, 2003, wherein Applicant and co-defendants did rob two separate banks with the use of a dangerous weapon or device (an explosive). When comparing the element, it is clear that Applicant's federal armed bank robbery convictions pursuant to 18 U.S.C. § 2113 (a) and (d) equate to the "most serious" offense of armed robbery in South Carolina. (S.C. Code Ann. §16-11-330(A)). Therefore, the State properly sought to enhance Applicant's sentence as armed robbery is classified as a "most serious" offense under the statute. S.C. Code Ann. § 17-25-45(C)(1). See, e.g., State v. Washington, 338 S.C. 392, 397-398, 526 S.E.2d 709, 711 (2000) (finding Washington was properly sentenced under the recidivist offender statute where the elements of his prior offense of common law burglary now constituted the offense of first-degree burglary, meaning his prior conviction was the legal equivalent of a "most serious" offense and would have constituted a "most serious" offense pursuant to the statute); Hinton v. S.C. Dept. of Prob., Parole, and Pardon Servs., 357 S.C. 327, 339, 592 S.E.2d 335, 342 (Ct. App. 2004) (noting under the "same-elements" test, when comparing the elements of the offenses, a court "looks to whether the particular actions taken by the defendant which satisfy the elements of the crime in the other state would satisfy the elements of one of the enumerated crimes").

In support of his assertions that his sentence was improperly enhanced, Applicant contends his federal armed bank robbery convictions should not have been used for enhancement purposes because armed bank robbery only carries a maximum possible punishment of a twenty-five-year sentence in the federal system. However, when determining whether a defendant is subject to sentencing enhancement based on an earlier federal or out-of-state conviction, the relevant inquiry is not how the federal or out-of-state jurisdiction chooses to classify the federal or out-of-state offense or what the potential punishment for that offense is in another jurisdiction. Instead, pursuant to S.C. Code Ann. § 17-25-45, the relevant inquiry is whether or not the federal

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or out-of-state offense would be classified as a "most serious" offense in South Carolina. See S.C. Code Ann. § 17-25-45(A)(1)(b) (requiring a sentence of life imprisonment following conviction for a "most serious" offense if the defendant has a prior "out-of-state conviction for an offense that would be classified as a most serious offense under this section[.]" (emphasis added)); see, e.g., Daniels v. State, 621 So. 2d 335, 342 (Ala. Crim. App. 1992) ("In determining whether an out-of-state conviction will be used to enhance punishment pursuant to the [Habitual Felony Offender Act], the conduct upon which the foreign conviction is based must be considered and not the foreign jurisdiction's treatment of that conduct.").

Therefore, this Court finds the fact the sentencing range for armed bank robbery in the federal system is up to twenty-five years imprisonment has no bearing on whether or not federal armed bank robbery convictions can be used for sentencing enhancement purposes in South Carolina. Because the federal offense of armed bank robbery would constitute the offense of armed robbery in South Carolina, Applicant's prior federal convictions for armed bank robbery would be classified as the "most serious" offense of armed robbery in our state. Thus, the State properly served Applicant with notice of intent to seek life without the possibility of parole pursuant to S.C. Code Ann. § 17-25-45 and counsel was not constitutionally ineffective for failing to challenge both the notice or imposition of a life without the possibility of parole sentence pursuant to S.C. Code Ann. § 17-25-45.

Additionally, Applicant asserts the State cannot establish his prior federal convictions for armed bank robbery met the legal elements of armed robbery in South Carolina because he and his-co-defendants merely presented a demand note and the State failed to establish that there was any physical representation of a weapon as required under State v. Muldrow, 348 S.C. 264, 559 S.E.2d 847 (2002) and Van Sellner v. State, 416 S.C. 606, 787 S.E.2d 525 (2016). However, this Court finds this argument is without merit, as Applicant knowingly and voluntarily entered guilty

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pleas to both of these offenses, thereby admitting to all the essential elements contained in the indictments, including that he and his co-defendant were armed with explosives. See State v. Allen, 261 S.C. 448, 451, 200 S.E.2d 684, 686 (1973) (“A plea of guilty is an admission or a confession of guilt, and is as conclusive as the verdict of a jury; **it admits all matter of fact averments of the accusation.**” (emphasis added)); Shelnut v. State, 247 S.C. 41, 45-46, 145 S.E.2d 420, 422 (1965) (“By their voluntary submission to a verdict of guilty, the defendants **admitted all material allegations of the indictment, including those relating to the situs of the crime**, thus waiving a trial and the presentation of evidence. These admissions are as conclusive upon them as the verdict of a jury would be.” (emphasis added)).

As Applicant was properly noticed, served, and sentenced to life without the possibility of parole pursuant to S.C. Code Ann. § 17-25-45, trial counsel cannot be deemed constitutionally ineffective for failing to challenge his sentence. This Court should deny and dismiss this allegation with prejudice.

***Applicant failed to Establish Counsel was Constitutionally Ineffective for Failing to Argue
Applicant did not enter the bank***

Applicant alleges trial counsel was constitutionally ineffective for failing to argue that he did not enter the bank. This Court finds this argument is without merit, as the record is brimming with numerous arguments by trial counsel through the trial that Applicant not only did not enter the bank, but was not present at the scene. Trial counsel’s thorough directed verdict motion was based on this very argument. Moreover, the record and testimony from all witnesses at the evidentiary hearing, including Applicant’s own testimony, is that the State never alleged that Applicant personally entered the bank, but rather, had indicted Applicant with bank robbery based on a theory of aiding and abetting and his constructive presence at the scene. This Court finds this argument with without merit and must be denied and dismissed.

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STATE OF SOUTH CAROLINA
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Applicant failed to Establish Counsel was Constitutionally Ineffective for Failing to Challenge the State's decision to proceed forward on Both Indictments

Applicant alleges trial counsel was constitutionally ineffective for failing to challenge the State's decision to proceed to trial on both indictments for bank robbery and accessory before the fact to bank robbery. In support of this argument, Applicant cites to S.C. Code Ann. § 16-1-50, which he asserts "stands for the proposition that an accessory can be indicted and convicted as an accessory before the fact or as a principal." (Applicant's Post Hearing Memorandum 3). This Court agrees with Applicant's interpretation of S.C. Code Ann. § 16-1-50, as an accessory clearly cannot be indicted and convicted as both an accessory and a principal under the plain meaning of the statute. However, this Court finds Applicant's reliance on S.C. Code Ann. § 16-1-50 is misguided in the present case, as Applicant was not convicted as an accessory to bank robbery, but rather, was convicted of bank robbery and bank robbery alone. Applicant overlooks the crucial word of S.C. Code Ann. § 16-1-50—"and"—which requires not only indictment as both the accessory and principal but also conviction as both the accessory and principal to run afoul of S.C. Code Ann. § 16-1-50.

It is clear that the State could proceed forward on two theories at Applicant's trial—first, as an accessory to bank robbery who aided in the planning of the bank robbery before the crime occurred, and second, as a principal who was constructively present at the scene as he arranged the ride to the bank, instructed his co-defendant as to how to rob the bank, remained in the getaway car that was parked in close proximity to the bank, and assisted in fleeing following the robbery. "Multiple offenses, including multiple homicide offenses, may be prosecuted in a single trial[.]" State v. Greene, ___ S.C. ___, 814 S.E.2d 496 (S.C. May 23, 2018), reh'g denied (June 26, 2018); See, e.g., State v. Cavers, 236 S.C. 305, 311–12, 114 S.E.2d 401, 404 (1960) ("It was within the province of the jury to find whether appellant's conduct was negligent or reckless, or neither; if negligent, it would have supported a verdict of guilty of manslaughter, the court

having eliminated murder and voluntary manslaughter; if reckless, it sustains the verdict of guilty of reckless homicide, and that finding by the jury is implicit in the verdict. The jury were instructed that they could not find appellant guilty on both counts. To sustain this point of appellant would require the court, instead of the jury, to determine whether his conduct was negligent or reckless, if either, which, under the evidence in this case, would be an invasion by the court of the province of the jury. The State cannot be required to elect between counts in an indictment when they charge offenses of the same character and refer to the same transaction, whether or not one charges a common law offense and another a statutory offense." (citations omitted)); see also Ball v. United States, 470 U.S. 856, 859, 861 (1985) ("It is clear that a convicted felon may be prosecuted simultaneously for violations of §§ 922(h) and 1202(a) involving the same firearm. This Court has long acknowledged the Government's broad discretion to conduct criminal prosecutions, including its power to select the charges to be brought in a particular case. ... To say that a convicted felon may be prosecuted simultaneously for violation of §§ 922(h) and 1202(a), however, is not to say that he may be convicted and punished for two offenses. Congress can be read as allowing charges under two different statutes with conviction and sentence confined to one."). There was nothing improper as to the State proceeding forward under both indictments, as the trial court made it abundantly clear to the jury that it could only convict Applicant of one offense but not both, or find Applicant not guilty of both offenses. Therefore, this Court finds trial counsel's performance was not constitutionally ineffective and denies this allegation.

Applicant failed to Establish Counsel was Constitutionally Ineffective for Failing to Require the State to Reveal any Plea Offer with his co-defendant

At the evidentiary hearing, Applicant raised for the first time an allegation that trial counsel was constitutionally ineffective for failing to require the State to "reveal the deal" that induced his co-defendant Shyquonie Williams to testify against him. This Court finds this

allegation is without merit and is conclusively refuted by the record and testimony presented at the evidentiary hearing. Trial counsel and Solicitor Barnette credibility testified that there was no plea agreement in place between the State and the co-defendant, and therefore, there simply was no deal to reveal. Applicant failed to establish the existence of any plea agreement other than his bare assertions that his co-defendant received a more lenient sentence. Therefore, this Court finds trial counsel's performance was not constitutionally ineffective and denies this allegation.

Applicant failed to Establish Counsel was Constitutionally Ineffective for Failing to Properly Cross-Examine his Co-Defendant

At the evidentiary hearing, Applicant raised for the first time an allegation that trial counsel was constitutionally ineffective for failing to properly cross-examine his co-defendant Shyquone Williams. Specifically, Applicant alleged trial counsel did not properly elicit testimony that Applicant gave numerous prior inconsistent statements to law enforcement, including that Applicant was not involved in the bank robbery, before he eventually said Applicant was the mastermind of the crime. This Court finds this allegation is conclusively refuted by the record, which reveals that trial counsel thoroughly cross-examined his co-defendant about his inconsistent statements to law enforcement, including prior denials of knowing Applicant, denials that Applicant was involved, and lies that he had not seen Applicant (his father) for more than a decade when he had recently stayed at his home for six days. This Court finds trial counsel's cross-examination of Applicant was well within the standards of competent counsel and does not amount to constitutionally deficient performance. This Court denies this allegation.

CONCLUSION

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

This Court notes Applicant must file and serve a notice of appeal within thirty days from the receipt of this Order by counsel of record 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 post-conviction relief. Rule 71.1(g), SCRPC, provides if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the State.

AND IT IS SO ORDERED this 6 day of August, 2018.



GRACE GILCHRIST KNIE
Presiding Judge
Seventh Judicial Circuit

[Signature], South Carolina

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M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

CALVIN TERREL WILLIAMS,
APPLICANT,

VS.

STATE OF SOUTH CAROLINA,

RESPONDENT.

) IN THE COURT OF COMMON PLEAS
) CASE NO. 2018-CP-42-0057

) MOTION TO ALTER OR AMEND
) THE JUDGMENT

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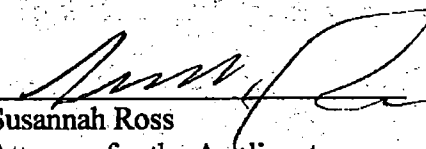
COMES NOW the Applicant and hereby moves pursuant to Rule 59(e), SCRPC, to alter or amend the judgment of this Court filed on August 7, 2018. The Applicant takes issue with the findings of fact and conclusions of law set forth resulting in the denial of post-conviction relief in his case. He further argues that while each allegation may not amount to ineffective assistance of counsel standing alone, the cumulative effect of counsel's performance was deficient and prejudiced him to the degree 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, 386 S.E.2d 624, 625 (1989).

The Order of Dismissal fails to fully address Applicant's arguments of ineffective assistance of trial counsel for failing to challenge his life sentence pursuant to S.C. Code Ann. § 17-25-45. It states that both trial counsel and Solicitor Barnett testified they compared the factual background and elements of Applicant's prior federal bank robbery convictions before using them as enhancing charges. Yet, there was no evidence the transcript of the federal guilty plea was reviewed by either party and Judge Herlong ordered the federal record sealed so no evidence was presented at trial as to the factual

basis for the federal guilty pleas. Thus, had trial counsel challenged the life sentence, there was no factual basis for Mr. Williams' 2003 plea in Federal Court to allow the trial judge to make a determination whether the federal charges could be used under S.C. Code Ann. § 17-25-45. The mere fact that Mr. Williams plead guilty to indictments charging violation of the Federal Bank Robbery and Incidental Crimes statute 18 U.S.C. Sec. 2113 does not amount to admission to armed robbery under S.C. Code Ann. § 16-11-330 (A) because the Federal charge does not require that a defendant actually be armed or allege to be armed by action or words while using a representation of a deadly weapon like the State charge does.

For the foregoing reasons, the Applicant requests the presiding Judge, Grace Gilchrist Knie, alter or amend the Order of Dismissal filed on August 7, 2018.

Respectfully submitted,


Susannah Ross
Attorney for the Applicant
333 E. Coffee Street,
Greenville, SC 29601
(864) 242-0029

Greenville, South Carolina
This 15 day of August, 2018.

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M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

Calvin Terrell Williams, #218862)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS)
FOR THE SEVENTH JUDICIAL CIRCUIT)

Case No.: 2018-CP-42-0057)

**ORDER DENYING APPLICANT'S)
MOTION TO ALTER OR AMEND)
THE JUDGMENT)**

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SPARTANBURG COUNTY
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M. HOPE BLACKLEY

This matter comes before this Court by way of Applicant's "Motion to Alter or Amend the Judgement," filed on August 17, 2018. Respondent made its Return to this motion requesting it be denied and dismissed.

I. Procedural History

The records before this Court show Calvin Terrell Williams (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. In April 2015, the Spartanburg County Grand Jury indicted Applicant for armed robbery and bank robbery (2015-GS-42-2312). In May 2016, the Spartanburg County Grand Jury also indicted Applicant for accessory before the fact to felony bank robbery (2016-GS-42-2368). Assistant Public Defender Matthew W. Shealy, Esquire, represented Applicant. Seventh Circuit Solicitor Barry Barnette prosecuted the case.

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Applicant filed a timely notice of appeal. Appellate Defender Laura R. Baer of the South Carolina Commission on Indigent Defense—Office of Appellate Defense filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967). Applicant then filed his own *pro se* brief. On October 18, 2017, the South Carolina Court of Appeals affirmed Applicant's convictions and sentences. State v. Williams, Op. No. 2017-UP-395 (S.C. Ct. App. filed October 18, 2017). The remittitur was returned to the circuit court on November 3, 2017.

II. Current Post-Conviction Relief Action

On January 8, 2018, Applicant filed an application for post-conviction relief, alleging the following grounds of ineffective assistance of counsel:

1. "Ineffective assistance of counsel for failing to object to the State's notice of intent to seek life without parole pursuant to S.C. Code Ann. § 17-3-45 based on his prior federal convictions for armed bank robbery
2. Ineffective Assistance of counsel for failing to properly argue to the trial court that the State failed to establish the element of entry into the bank for bank robbery
3. Ineffective assistance of counsel for failing to object to the State proceeding forward on both bank robbery and accessory before the fact to bank robbery in violation of S.C. Code Ann. § 16-1-50

Respondent made its return on April 18, 2018, requesting an evidentiary hearing. An evidentiary hearing was held on June 18, 2018, in the Spartanburg County Court of Common Pleas. Applicant was present and was represented by counsel Susannah Ross, Esquire. Respondent was represented by Senior Assistant Deputy Attorney General Megan Harrigan Jameson. At the hearing, testimony was taken from trial counsel Matthew Shealy, Seventh Circuit Solicitor Barry Barnette, and Applicant's co-defendant Shyquone Williams. At the conclusion of the hearing, this Court left the record open to allow both parties to submit post-hearing memorandums. Following the submission of post-trial memorandums by both parties

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and a review of these memorandum, the record in its entirety, and the testimony and evidence presented at the evidentiary hearing, this Court found Applicant has failed to establish any constitutional violations and denied this application with prejudice by written order filed on August 7, 2018.

On August 17, 2018, Applicant served a copy of his "Motion to Alter or Amend the Judgment" on Respondent. Respondent filed a return to this motion, asking that the motion be denied summarily denied and dismissed as this Court's order contained the sufficient legal findings and Applicant's request for reconsideration would more appropriately be addressed on appeal.


III. Dismissal of Applicant's Motion to Alter or Amend

In his "Motion to Alter or Amend the Judgment," Applicant asserts this Court's order of dismissal failed to sufficiently address his arguments that counsel was ineffective for failing to challenge his life sentence pursuant to S.C. Code Ann. § 17-25-45. After reviewing Applicant's motion, Respondent's return, and this Court's order of dismissal, this Court finds Applicant's argument is without merit. This Court's order of dismissal contains detailed findings based on the testimony presented from trial counsel and the prosecutor at the evidentiary hearing and is supported by correct statutory and legal authority. Moreover, Applicant has not alleged any argument was overlooked or misapprehended by this Court, but rather, insists this Court's rulings were erroneous and asks this Court to reconsider to grant post-conviction relief. As Applicant is not requesting an alteration or amendment to the Order, but rather, Applicant is asking this Court to reconsider its ruling and grant Applicant post-conviction relief, such a request is more properly addressed through the appellate process. See Wilder Corp. v. Wilke, 330 S.C. 71, 77, 497 S.E.2d 731, 734 (1998) (noting the proper use of a Rule 59(e) motion is to

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preserve issues raised to but not ruled upon by the trial court). This Court fully ruled on all issues after ample opportunity for Applicant to present all his issues and therefore, this Court finds this motion should be denied in full.

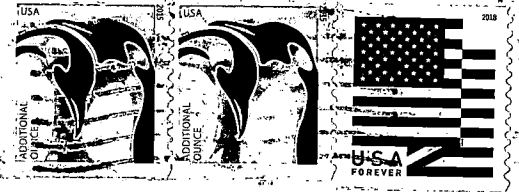
AND IT IS SO ORDERED this 28 day of Sept., 2018.


GRACE GILCHRIST KNIE
Presiding Judge
Seventh Judicial Circuit

Spartanburg, South Carolina

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